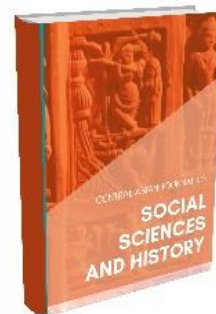




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### Constitutional Guarantee of the Right to Petition in the Basic Laws of the Central Asian Republics

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#### Abstract:

This article provides windows into the constitutional guarantee of the right to petition in example of Central Asian republics. The authors rely heavily on primary sources such as constitutions and laws in force. The article draws together a significant body of theoretical and practical writing, providing insight into the key questions being raised by scholars in the field. It delves into the details of constitutional guarantee and summarizes and highlights the main differences and similar situations in the constitutions of the Republic of Uzbekistan, Turkmenistan, Tajikistan, Kyrgyzstan and Kazakhstan. In particular, based on the comparative textual analysis of the constitutions and the legal practice related to the realization of the right to petition, preliminary scientific and practical conclusions are drawn, the main peculiarities are outlined.

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#### INTRODUCTION

A petition can be defined as a written application made by a person to the competent authorities in

order to exercise a certain right [1]. The right to petition is the right of individuals to submit their wishes and complaints regarding personal or public issues, alone or together with others, to official institutions other than the judicial body. The right to petition is one of the most fundamental and oldest political and public rights of the citizen and is considered one of the most basic human rights [2]. With the emergence of the ruler-governed separation, the origin of the petition practice, the ability to make demands and complain, can be traced back to the unknown time when the “state” was born, as the ruled had to convey their wishes and complaints to the rulers. With the emergence of the state, the most effective way for the governed to convey their complaints and wishes has become the petition method [3].

As far as the nature of the right to petition is concerned, different opinions have been put forward regarding the place of the right to petition within the rights` classifications. What is discussed here is whether the right to petition is a personal right, not a political right, contrary to general opinion. In general, the right to petition is accepted as a political right that enables individuals to obtain information by getting answers to their questions, to supervise by making a complaint, and to democratic participation by making wishes and suggestions. Some authors have argued that the right to petition is a human right beyond being a civil right. Therefore, according to them, the subject of the right to petition is everyone. For this reason, it is possible to consider the right to petition as a personal right, although it has a political aspect [4].

Considering that the rights are closely related to each other, it would be correct to make a distinction by evaluating two different aspects of the right to petition. It seems to indicate that individuals convey their "wishes and complaints" about themselves or the public in writing to administrative authorities or to the parliament. In petitions, citizens demand that the legislature take into account some problems in public matters and, if possible, take action on this issue. In complaints-type applications, there is a request to remedy the injustices or illegalities that a person has been exposed to [5]. Therefore, petitions for complaints-type can be said to be aimed at individual interests, while petitions for wishes are aimed at public interests. Therefore, since the right to petition is individual in one aspect, it is a personal right; On the other hand, it can be considered as a political right because it relates to the impersonal sphere, for example, political participation.

## DISCUSSION

Today, when talking about major legal systems in Central Asia, we refer here to the legal systems of five states: Uzbekistan, Kazakhstan, Turkmenistan, Kyrgyzstan and Tajikistan, all of them being former Soviet republics. Although countries in the region have a common history and Islamic traditions, the local and national attributes began to highlight in their legal systems since after their independence in the early 1990s. Since, these countries have undergone a period of legal reforms and modernization of the whole legal system. Their main task has been to align their systems with the deep political and economic changes characterized by the transition of social and economic institutions from centrally planned to market ones. In 1991 all of the five Central Asian States proclaimed their independence. Large-scale reforms aimed at establishing a legal framework for the strengthening of the sovereign national statehood, democratization and the transition to a socially oriented market economy have launched in the beginning of 1990s.

Modern legal systems of Central Asian states can be confidently affirmed as a part of the Roman legal system based on a strictly secular basis, guided by the Roman-Germanic traditions and internationally

recognized principles, norms and standards, including in the field of human rights. Firstly, almost all spheres of the legal systems of Central Asian states are codified and the law is a main legal source for all of them. Secondly, legal systems of all Central Asian states are strictly based on the hierarchy of the sources of law and the Constitution of each state occupies the highest place in this hierarchy [6].

The Constitution of Turkmenistan adopted on 18 May 1992 and was amended in 1995, 1999, 2003 and 2006. It was amended on 26 September 2008, abolishing the 2,500 member People's Council (*Halk Maslahaty*) and expanding the elected Assembly (*Mejlis*) from 65 to 125 members. The current Constitution was adopted on 14 September, 2016.

The Constitution of Uzbekistan was adopted on December 8, 1992 on the 11th session of the Supreme Council of Uzbekistan. The Constitution of Uzbekistan initially contained six parts and it is further divided into 26 chapters. Since 1992, the constitution had been amended 15 times until constitutional reforms in 2022. The new redaction of the Constitution of the Republic of Uzbekistan entered into force on May 1, 2023 based on the result of the referendum held on April 30, 2023. The number of articles in the Basic law increased from 128 to 155, and the norms in it increased from 275 to 434, respectively. In total, the constitution has been updated by 65%.

The first Constitution of Kazakhstan was adopted at the IX session of the Supreme Council of Kazakhstan of the XII convocation on January 28, 1993. Structurally, it consisted of a preamble, 4 sections, 21 chapters and 131 articles. Later on, the second Constitution of the Republic of Kazakhstan, adopted on August 30, 1995 at the republican referendum, completed an important period of reforming state bodies of independent Kazakhstan, which proclaims itself as a democratic, secular, legal and social state. Since the adoption of the current Constitution, amendments and additions have been made to it five times: in 1998, 2007, 2011, 2017, 2019. The current Basic law was adopted as a result of the referendum on amendments to the Constitution which took place on June 5, 2022 with a positive result of 77%.

The first Constitution of Kyrgyzstan was adopted on May 5, 1993. The 1993 constitution was amended several times: the first on 10 February 1996, then on 2 February 2003, and finally twice in quick succession on 9 November 2006 and 15 January 2007. This Constitution was replaced by the new constitution from 2010 until 2021 passed by referendum on June 27, 2010. It introduced a strong parliament to the country, reducing the power of the historically strong presidential power. On contrary, the current Constitution of Kyrgyzstan adopted by referendum on April 11, 2021 and came into force on May 5, 2021 created a presidential form of government in the country.

The Constitution of Tajikistan (Конституцияи Ҷумҳурии Тоҷикистон) was adopted on 6 November 1994 and amended three times, on September 26, 1999, on June 22, 2003 and on May 22, 2016. The Basic law comprises 10 chapters and 100 articles.

### **Scope of the Right to Petition in the Constitutions of Central Asian Countries**

According to Article 33 of the Constitution of the Republic of Kazakhstan adopted by the national referendum of 1995 and amended on September 17, 2022: "Citizens of the Republic of Kazakhstan shall have the right to participate in the government of the state's affairs directly and through their representatives, to address personally as well as to direct individual and collective appeals to public and local self-administrative bodies" [7].

The article 31 of the Constitution of Tajikistan, adopted on November 16, 1994 and revised on May 22, 2016 states the right of citizens to apply to state bodies individually or collectively [8].

In accordance with the Article 60 of the Constitution of Turkmenistan, everyone shall have the right to appeal in the court against the decisions and actions of the state bodies, public associations, local self-governments and officials.

The article 61 of the Basic law stipulates that all citizens shall have the right to seek redress in courts for material and moral damage caused to them by illegal actions of state bodies, other organizations and their employees, as well as private individuals [9].

Section 5 of the Article 37 of the Constitution of Kyrgyzstan (Chapter III. Political rights) lays foundation for national scale's petition right: "Everyone has the right to appeal to state authorities, local self-government bodies and their officials, who are obliged to provide a reasoned answer within the period established by law. It its turn, section 5 of the Article 58 thereof guaranties to every person the right to apply for the protection of his or her violated rights and freedoms to international human rights bodies [10].

The right of petition of individuals has gained a stronger place in the renewed Constitution of the Republic of Uzbekistan, *which was* adopted by popular vote in the referendum of the Republic of Uzbekistan held on April 30, 2023 and entered into force on May 1, 2023, and its guarantee was strengthened with new mechanisms. In particular, according to its Article 40, "Everyone shall have the right, both individually and collectively, to submit applications, proposals, and complaints to competent state bodies and organizations, citizens' self-governance bodies, officials or people's representatives.

Such applications, proposals and complaints shall be considered in accordance with the procedure and within the time-limit specified by law" [11].

In fact, in the article 35 of the previous version of the Constitution of Uzbekistan adopted in 1992, also it was noted that every person has the right to apply directly to the competent state bodies, institutions or people's representatives with applications, proposals and complaints [12]. The changes made in this regard are that now, according to Article 40 of the renewed Constitution of Uzbekistan, citizens' self-government bodies and officials are also included in the range of responsible entities to which people's petitions are addressed. For the first time, national institutions which are directly responsible for the petitions of individuals and legal entities in the field of human rights are given constitutional status. In particular, Article 56 of the renewed Constitution stipulates that "National human rights institutions shall supplement the existing forms and means of protecting human rights and freedoms, promote the development of civil society and enhance the culture of human rights.

The State shall create conditions for organizing the activity of national institutions of human rights".

In addition to the constitutional norms, relations related to the right to petition in Uzbekistan are regulated by laws such as "Law on Citizens' Petitions", "Law on Petitions to Courts against Actions and Decisions Violating the Rights and Freedoms of Citizens", "Law on Petition of Physical Bodies and Legal Entities".

In particular, the Law of the Republic of Uzbekistan "Law on Petition of Physical Bodies and Legal Entities" of September 11, 2017 incorporated a number of new norms regarding consideration of petitions of legal entities as well as natural persons, use of modern IT technology in petitions, shortening of petition review periods [13]. Now it is necessary to infuse the spirit and content of the new constitutional norms into these laws [14].

As far as the right of individuals to petition international bodies is concerned, such dispositions can be found only in the constitutions of Uzbekistan and Kyrgyz Republic among Central Asian states.

Based on advanced foreign experience and international standards, the right of citizens to petition international bodies in the field of human rights is recognized for the first time in the updated Constitution of Uzbekistan adopted *on April 30, 2023 and entered into force on May 1, 2023*. According to Article 55 of the renewed Constitution “Everyone shall have the right, in accordance with the legislation and international treaties of the Republic of Uzbekistan, to petition international bodies that protect human rights and freedoms if all internal means of legal protection of the state have been used” [11].

Section 5 of the Article 58 of the Constitution of Kyrgyzstan contains similar disposition: “Every person the right to apply for the protection of his or her violated rights and freedoms to international human rights bodies in accordance with international treaties that have entered into force in the manner prescribed by law” [10].

This means that every person permanently residing or temporarily staying in Uzbekistan or Kyrgyzstan can apply to the human rights bodies of international organizations, in particular, the conventional human rights bodies of the United Nations, in order to protect their rights and freedoms or to restore their violated rights stipulated in the main international human rights treaties ratified by Uzbek and Kyrgyz republics. The number of the UN conventional human rights bodies reached today 10 including: United Nations Human Rights Committee (CCPR), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination Against Women (CEDAW), Committee Against Torture (CAT), Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Committee on the Rights of the Child (CRC), Committee on the Rights of Persons with Disabilities (CRPD), Committee on Enforced Disappearance (CED), Committee on Migrant Workers (CMW). In addition, everyone has the right to petition the Third Committee of the UN General Assembly and the UN Human Rights Council through special procedures.

In the constitutions of Kazakhstan, Turkmenistan and Tajikistan, the right to petition should be evaluated and explained within the scope of freedom to seek justice in accordance with international human rights mechanisms. The freedom to seek justice, which is a right that covers and protects other rights and freedoms, simply covers the ability to apply to relevant institutions for the compensation of human rights violations and obtain effective results. In addition, it would be appropriate to clearly express the right to petition in the constitutions of the countries mentioned. It is inevitable to take the necessary precautions in order to use the right to petition in the best possible way. Necessary legal regulations on this issue should be made in Kazakhstan, Turkmenistan and Tajikistan. This right will be used more widely as the education and cultural level of citizens improves. On the other hand, an important point in using the right to petition is to prevent abuse of the right and it should not be used to the detriment of others. Care should be taken to take the necessary precautions in this regard.

## RESULTS

Although there is such a regulation regarding the persons to whom the subject of the right can be exercised in order to exercise the right to petition, when looking at the relevant articles in the constitutions of Kazakhstan, Tajikistan, Turkmenistan, Kyrgyzstan and Uzbekistan, the different approaches can be seen regarding the subject or limits of the right to petition.

First, considering the constitutions of Kazakhstan and Tajikistan, the right to petition is granted only *to citizens*. In the constitutions of these two countries, only “citizens” have the right to apply to state bodies within the scope of the right to petition. Therefore, it can be argued that legal entities do not have this right. In our opinion, it would be more accurate to include the concept of “everyone” in the constitutional regulations of Kazakhstan and Tajikistan instead of the expression “citizen”. Although there is no problem in practice, such a regulation is necessary in order to make the subjects of the right clearer in the constitution.

Since it is not possible for foreigners to exercise this right, it would be appropriate to grant them this right within the framework of mutual reciprocity principles. It would be even more efficient in terms of international human rights standards if granting the right to petition to foreigners becomes a constitutional provision in the mentioned countries. The regulations can be made without imposing too many restrictions on the exercise of this right. On the other hand, although “foreigners” do not have the right to petition, foreigners with temporary residence in Turkmenistan can apply for the right to petition, as the phrase “everyone” is included in Article 60 of the Turkmenistan constitution: “Every person has the right to appeal to the court the decisions and actions of state bodies, public associations, local governments and officials”.

When we look at the constitutional regulations of Uzbekistan and Kyrgyzstan, it is seen that “*physical and legal persons*” have the right to apply to state bodies. Although it does not express the right of petition to “legal entities” in the constitutions of these countries, only the expression “everyone” is used. Thus, from the expression “everyone” in the constitution, we can say that “physical (natural) and legal persons” also have the right to apply. Although the right to petition is a consequence of citizenship, there is no acceptable reason for not allowing legal entities to benefit from it.

Private law persons and foreigners can apply to the relevant public institutions on the basis of reciprocity in accordance with international agreements. The ability of foreigners who are not citizens of these two countries to apply to government institutions with a petition is a subject to certain conditions. However, granting such a right to foreigners is extremely important in terms of international human rights agreements. Recognizing such rights to compensate foreigners for the damages they have suffered or to compensate for the victimization and injustice they have experienced will gain the trust of both Uzbekistan and Kyrgyzstan countries, both international human rights organizations and foreigners. In addition, the image of these two countries in the international community will increase.

In general, the phrase “foreigners residing in the country” is not found in the said articles of the constitutions of Turkmenistan, Kyrgyzstan and Uzbekistan. The citizens and foreigners residing in these countries, provided that the principle of reciprocity is observed, have the right to apply in writing to the competent authorities regarding their wishes and complaints regarding themselves or the public. The results of the applications regarding them are notified to the petitioners in writing without delay. The way this right is exercised must be regulated by law.

However, the absence of regulation in the constitutions in question should not mean that the right to petition is an unlimited right [5]. Even if the constitution does not impose any restrictions on a right, it should be accepted that objective limits “arising from the nature of things” are inherent in that right. Therefore, even if there is no regulation regarding the limits of the right in the constitutions and relevant laws, due to its nature, it cannot be used to insult, swear, slander, blackmail or threaten

someone [4].

Second, in its transactions, the state must specify which legal remedies and authorities the relevant persons will apply to and their deadlines. As a matter of fact, when we look at the regulations of Kyrgyzstan and Uzbekistan, we see that the state is obliged to provide a reasoned answer. However, the articles of the constitutions of Kazakhstan, Tajikistan and Turkmenistan regarding the right to petition do not mention the state's obligation to provide a reasoned response within the specified period. Such applications, suggestions and complaints must be evaluated duly and within the periods specified in the law.

Third, when we investigate the constitutions of Turkmenistan and Kyrgyzstan, unlike the constitutions of Kazakhstan (art.33), Tajikistan (art.31) and Uzbekistan (art.40), the expression "collectively" is not included regarding the right to petition. This situation has caused controversy in the doctrine. It argues that the way for restrictions has been paved because the constitution does not include the expression "collectively" in the doctrine. According to the opposing view, it does not matter whether the phrase "collectively" is included in the constitution or not. Although the constitution does not make such a distinction, it is of the opinion that it does not prohibit the right to collective petition. In our opinion, due to the nature of the right to petition, individual or collective use is inherent in the right. Therefore, whether it is stated in the constitution or not, the collective use of the right to petition must exist due to its nature. However, it should be considered natural to impose restrictions on some groups of people by law, provided that they do not contradict the constitution [1].

Since the right to petition is a right that can be exercised individually or collectively, the absence of the expression "collectively" in the text can only mean that this form of use lacks constitutional guarantee. To think that this right is prohibited would be an interpretation that goes beyond the scope [5].

This way such countries as Kyrgyzstan and Uzbekistan have protected the most basic human rights and freedoms within the scope of the right to petition within the framework of both national and international criteria.

## CONCLUSION

When international legislation regulating the right to petition is compared with national legislation, it is seen that there are comprehensive regulations regarding petition application in Uzbekistan and Kyrgyzstan and that the provisions in question are compatible with international law on many issues. Particularly in Kyrgyzstan and Uzbekistan, the inclusion of the right to petition and the deadline for responding to applications in the Constitution and other relevant regulations, and the existence of binding provisions, encourage the use of the right to petition and obtain results. It is guaranteed by the law enacted by Uzbekistan regarding the exercise of the right to petition. Theoretically, they appear to act in a manner similar to international human rights convention criteria.

Generally speaking, when we analyze the constitutions of Central Asian countries, the right to petition in Kyrgyzstan and Uzbekistan is also guaranteed by the above-mentioned international regulations. Evaluating within the framework of international human rights criteria is possible by including this entire process in the monitoring study. When paragraphs 16 and 17 of the International Covenant on Civil and Political Rights and the legislative provisions within the scope of the right to petition are evaluated as a whole, it is seen that it is theoretically possible for individuals and legal entities in Kyrgyzstan and Uzbekistan to obtain results from their applications within the scope of the freedom to seek their rights.

The inclusion of this right to petition international bodies in the modern constitutions of the Central Asian states (properly, Uzbekistan and Kyrgyzstan) is of great revolutionary importance in improving the human rights situation in the region. In other words, the inclusion of this institution in the constitutions of Uzbekistan and Kyrgyzstan and its full implementation complies with the international legal obligations of both Central Asian republics and will positively affect their image before the international community. As a participant of the core international conventions in the field of human rights, Uzbekistan and Kyrgyzstan shows their will to fulfill their obligations arising from them. In addition, it once again demonstrates the policy of openness and transparency in these countries and its irreversible nature. Now, shortcomings and problems in the field of human rights cannot be hidden, everything is openly shown as it is. The practice of right to petition international bodies in the field of human rights serves to show the real situation in these two countries.

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