

**"DEVELOPMENT OF THE JUDICIAL SYSTEM OF UZBEKISTAN BASED
ON THE EXPERIENCE OF THE FEDERAL CONSTITUTIONAL COURT
OF GERMANY: RECOMMENDATIONS AND PROSPECTS"**

Iskandarbek Bakhodirbekov Jamshitbek ugli

Abstract: The report analyzes the model of the Federal Constitutional Court of Germany in order to adapt it to the conditions of Uzbekistan. Special attention is paid to the independence of the courts, constitutional control and protection of fundamental rights. Based on a comparative analysis, recommendations are proposed for improving the Constitutional Court of Uzbekistan, aimed at increasing confidence in the judicial system and strengthening the rule of law.

Key words: independence of courts, constitutional justice, judicial reform, constitutional control, rule of law, Uzbekistan, Germany, protection of rights, separation of powers, judicial system.

INTRODUCTION

The phenomenon of globalization continues to have a profound impact on the global community, influencing the political, economic and legal systems of countries around the world. In the context of these transformations, Uzbekistan, under the leadership of President Shavkat Mirziyoyev, is implementing significant reforms of the judicial system in accordance with the Development Strategy of the New Uzbekistan for 2022-2026 and the concept "Uzbekistan-2030". The main areas of reform include ensuring the independence of the courts, improving access to justice and increasing the transparency of judicial proceedings. As part of these reforms, special attention is paid to the creation and improvement of constitutional justice. The development of the judicial system has become an integral part of the country's overall reform strategy, which includes modernizing legislation, improving conditions for the independence of judges and intensifying anti-corruption activities in the judicial sphere. Uzbekistan is actively working to create a more independent judiciary, which has already led to notable improvements, including simplification of case procedures and the creation of specialized courts.

Accordingly, the idea of this report is aimed at analyzing the model of constitutional justice in Germany in order to adapt them to the conditions of Uzbekistan. The report assesses the key differences in the structure and powers of these courts, which are useful for strengthening the independence of the judiciary in Uzbekistan. The focus is also on how these courts maintain a balance between the separation of powers and the protection of constitutional rights, which is especially important for Uzbekistan. An analysis of the strengths and weaknesses of the models will identify elements that can

increase confidence in the judicial process and improve the functioning of the Constitutional Court of Uzbekistan.

Jurisdiction of the constitutional courts

The Federal Constitutional Court of Germany (FCC) is the highest judicial body responsible for protecting the German Constitution and respecting the principle of separation of powers. The Court consists of 16 judges, each of whom is appointed for a period of 12 years. Judges are elected by two different bodies: half by the Bundestag (Parliament) and the other half by the Bundesrat (Federal Council). This ensures a balanced approach to their selection. The Court consists of two chambers, each of which consists of eight judges, who can sit either separately or jointly on important issues.

The Federal Law Enforcement Commission plays a key role in the judicial review process, through which it evaluates the constitutionality of federal and state legislation to ensure compliance with the Basic Law. This function is vital for maintaining the rule of law and the integrity of the Constitution. In addition, the FCC is responsible for resolving disputes between federal agencies and between the federal government and the states (lands). This includes resolving disputes related to the distribution of powers and ensuring compliance with constitutional principles.

The protection of fundamental rights is another important function of the Federal Public Relations Commission. The Commission examines individual complaints concerning alleged violations of the rights enshrined in the Basic Law, protects personal freedoms and prevents abuse by the State. The Court's power to invalidate legislation that violates fundamental rights strengthens its ability to protect individual freedoms and uphold the rule of law. In addition, the Federal Commission of Justice proposes a final interpretation of the constitutional provisions, establishing the procedure for their application throughout the legal system.

The German constitutional system is designed with great precision to maintain a balance between the separation of powers and the protection of rights. This is achieved by guaranteeing the autonomy of the Federal Judicial Chamber. The long tenure of judges and the appointment process, which involves both the Bundestag and the Bundesrat, serve to shield them from political pressure. The Federal Public Relations Commission is responsible for overseeing the activities of both the legislative and executive branches of government, ensuring that their actions comply with the Constitution. The decisions of the Federal Constitutional Court on issues related to fundamental rights and legislative acts serve to strengthen its function of ensuring compliance with the Basic Law and the Rule of Law.

Additional aspects of the FCC's jurisdiction

The Federal Constitutional Court of Germany, as the highest body of constitutional justice, performs a dual role. On the one hand, he defends the Basic Law (Grundgesetz). On the other hand, it plays a key role in maintaining a system of checks and balances between the various branches of government. One of the most important aspects of his work is the ability to exercise judicial control, which is called "constitutional control". As noted in the article "Judicial Review Review: The German Experience" published in the Tulane Law Review, the mechanism of constitutional control in Germany is much more active and detailed than in other jurisdictions such as the United States. This control includes not only checking federal legislation for compliance with the Constitution, but also evaluating the laws adopted by the subjects of the Federation (lands) and their relationship with federal laws.

The Federal Arbitration Court is the only higher court with the exclusive right to overturn laws if they are found unconstitutional, which distinguishes it from many other courts. As evidenced by the analysis conducted in Verfassungsblog, court decisions can also have a significant socio-political impact. For example, the importance of this institution in setting legal precedents is evidenced by its participation in important cases concerning civil liberties, such as freedom of expression and freedom of association, as well as economic policy.

Role in the protection of fundamental rights and freedoms

The FCC is also actively involved in protecting fundamental rights enshrined in the Constitution, such as personal freedoms, freedom of expression and equality before the law. This is especially evident through the consideration of individual complaints from citizens who claim that their rights have been violated by State bodies or acts. As emphasized in the Verfassungsblog source, the effectiveness of the protection of rights in the FCC is especially important for civil society, since it allows every citizen to go to court with a complaint about the violation of his constitutional rights, which strengthens the country's legal system.

In addition, an important element of the court's work is the supervision of State bodies. The Federal Constitutional Court monitors the activities of both legislative and executive authorities, ensuring compliance with constitutional principles. This makes it an important link in maintaining a balance between the branches of government.

Political Independence of Courts

Another key aspect of the FCC is its independence from political influence. The article "Judicial Review Revisited" emphasizes that the mechanism for appointing judges, including both the parliament (Bundestag) and the Federal Council (Bundesrat), helps to reduce the likelihood of political pressure on judges. Judges are appointed for a period of 12 years without the right to extend their powers, which ensures their independence and does not allow political parties to manipulate the appointment process.

The political neutrality and long-term powers of judges contribute to the fact that the decisions of the FCC are made on the basis of legal norms and principles, rather than political expediency. This creates a stable and predictable legal system capable of withstanding the challenges of modern crises, such as international conflicts or economic crises.

In the light of the experience of the German Federal Constitutional Court, a number of recommendations can be made on the development of the judicial system of Uzbekistan.

- **Strengthening constitutional control:** It is recommended to establish a stricter constitutional oversight mechanism, similar to the Federal Council for the Supervision of Compliance with the Constitution, to ensure the constitutionality of legislation and other acts.
- **The independence of the judiciary must be guaranteed:** One of the ways to increase the independence of the judiciary is to more clearly delineate the influence of the executive and legislative branches of government, which corresponds to the model of the Federal Council for the Supervision of Compliance with the Constitution.
- **The importance of transparency and public trust:** As evidenced by the experience of the Federal Judicial Chamber, the publicity and transparency of court decisions contribute to strengthening confidence in the judicial system. In addition, Uzbekistan could take similar measures to increase the level of confidence in the Constitutional Court.
- **Consideration of cases in a specialized constitutional court:** improving the qualifications of judges in constitutional matters, which contributes to a more effective resolution of complex constitutional disputes.

In conclusion, it is worth noting that the Federal Constitutional Court of Germany is an exemplary model of an independent and effective judicial body, which Uzbekistan should emulate. In order to strengthen the independence of the Constitutional Court of Uzbekistan and strengthen public confidence in the judicial system, it would be wise to consider the possibility of adapting the German experience. This may lead to an increase in the term of office of judges, complication of the appointment process and increased transparency of judicial processes. Consequently, reforms aimed at strengthening the judicial system will contribute to strengthening the rule of law in Uzbekistan, thereby strengthening the rule of law and guaranteeing the rights of citizens.

BIBLIOGRAPHY

- Windthorst K, 'Separation of Powers from the German Perspective' (2009) 47 *Duquesne Law Review* 905 <<https://dsc.duq.edu/cgi/viewcontent.cgi?article=3665&context=dlr>> accessed 9 September 2024
- Baer S, '3 RdCongress of the World Conference on Constitutional Justice "Constitutional Justice and Social Integration"' (Commission De Venice 2014) <https://www.venice.coe.int/WCCJ/Seoul/docs/Germany_CC_reply_questionnaire_3WCCJ-E.pdf> accessed 9 September 2024
- Biagi F, 'Memory, Past Evils and Constitutional Justice. Lessons from the United States, Germany and South Africa' (2024) 20 *European Constitutional Law Review* 738 <<https://www.cambridge.org/core/journals/european-constitutional-law-review/article/abs/memory-past-evils-and-constitutional-justice-lessons-from-the-united-states-germany-and-south-africa/FC33F4F0EFEA4D52E1AEDA1902736D99>> accessed 9 September 2024
- Duden K, 'Protect the German Federal Constitutional Court!' (Verfassungsblog13 February 2024) <<https://verfassungsblog.de/protect-the-german-federal-constitutional-court/>> accessed 9 September 2024
- Denninger E, 'Judicial Review Revisited: The German Experience' (2023) 59 *Tulane Law Review* <<https://www.tulanelawreview.org/pub/volume59/issue4/judicial-review-revisited-the-german-experience>> accessed 9 September 2024
- Yodgorov K, 'The Judicial System of Uzbekistan: Reforms and Outcomes' (Regional Dialogue7 May 2024) <<https://regionaldialogue.org/article/judicial-system-uzbekistan-reforms-and-outcomes>> accessed 9 September 2024
- Ismailova G. and Sharin V., HEADS OF THE JUDICIAL SYSTEM OF THE REPUBLIC OF UZBEKISTAN, AS WELL AS REPRESENTATIVES OF international AUTHORITIES and THE EXPERIENCE OF THE COUNTRY'S development " (2021) 71 SCIENTIFIC COLLECTION "INTERCONF" <https://www.researchgate.net/publication/354111253_REFORMY_SUDEBNOJ_SISTEMY_RESpubLIKI_UZBEKISTAN_SKVOZ_PRIZMU_MEZDUNARODNY_H_STANDARTOV_PRAVOSUDIA_I_OPYTA_RAZVITYH_STRAN> date of access: September 9, 2024.