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Constitutional Bases of the Right to Petition: Comparative Analysis of Central Asian States

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Annotation: This article is devoted to the issue of a human right to petition. It describes the importance, objects and subjects of the right to petition, the forms, methods, guarantees and procedures for its realization. Author scrupulously investigated the case of Central Asian states. In this regard, similar situations in the constitutions of the Republic of Uzbekistan, Turkmenistan, Tajikistan, Kyrgyzstan and Kazakhstan are summarized, different aspects are highlighted. In particular, based on the textual analysis of the constitutions and the practice related to the realization of the right to petition, preliminary scientific and practical conclusions are drawn, the main peculiarities are indicated. Also, the author describes the international-legal bases of applying to the bodies of international organizations and reveals its importance for Central Asian countries.

Key words: human rights, constitution, right of petition, application, proposal, complaint, state body, official, guarantee, international organization, international body.

INTRODUCTION

The right to petition is one of the basic constitutional rights of a human being. This right, by its nature, belongs to the first generation of human rights – political and civil rights. The peculiarity of the right to petition is that, although it is considered one of the basic human rights, at the same time, it also appears as a means of protecting other human rights. In other words, the right to petition is a right that protects human rights through addressing human rights institutions or law enforcement agencies requesting the restoration of violated rights or protection of rights under the risk of violation.

On the basis of the right to petition, the attention of state bodies and structures of civil society is drawn to a certain issue of social importance or protection of human rights under the question. In order to ensure the guarantee of review of petitions, certain procedures and timelines are defined in the legislative documents, and all state agencies and officials are obliged to comply with them.

DISCUSSION

In legal practice, the right to petition has two meanings: *first*, it expresses the participation of a person in state and community affairs. In this case, any person applies to the state authorities to consider a certain proposal and recommendation related to the life of the state and society; *secondly*, it appears as a means of protection of human rights and freedoms established by law. Based on such petitions, people turn to judicial and non-judicial bodies in order to protect their rights or restore their violated rights.

In accordance with international standards in the field of human rights, every person has the right to apply not only to state agencies and officials, but also to bodies of international organizations to protect their interests or restore their violated rights. When it comes to the mechanisms of realization of this right at international level, universal and regional mechanisms differ depending on the international legal bases, procedures, methods, territorial jurisdiction and institutional means of considering petitions to international organizations. The international legal documents adopted within the framework of the UN and its specialized institutions, as well as the institutions established on their bases and established procedures form the basis of universal mechanisms [1].

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

The legal systems of the states of Central Asia can be defined as transnational, transforming from a socialist to purely Romano-Germanic type based on market economy orientation. And at the same time, they can display certain traits that reflect the national and common-Islamic legal traditions. These peculiarities remained today as a result of the soviet regime lasted up to more than seventy years. Life style and mentality, customs and national traditions of each nation considerably affect the processes of the evolution and development of the national legal system. Despite the impact of varies aspects on the process of development of the legal system of each Central Asian state, there are a lot of peculiarities common to all of these states which have a considerable effect on the process of development of national legal systems.

First of all, it was noticeable when all of these states confronted the same difficulties and challenges during the creation of legal framework of economic and social relations. The main task was the establishment of constitutional state and to create the legal basis of the state-building, including the formation of the new institutes of public administration. So, the first package of constitutional laws adopted in all states of Central Asia was oriented to the establishment of the institutional mechanisms of good governance. The next package of laws was aimed to create the national legislation to regulate economic relations and business activity. The last group of laws was to provide the civil and political rights and establishment of the social protection system [2].

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.

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 has been amended 15 times. The new redaction of the Constitution of the Republic of Uzbekistan entered into force on May 1, 2023. This was based on the adoption of a relevant law consisting of 11 articles based on the result of the referendum held on April 30. A renewed Constitution is attached to Article 1 of this law. As a result of the update, the number of articles in the Basic law increased from 128 to 155, and the norms in it increased from 275 to 434. In total, the constitution has been updated by 65%.

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

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: 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 constitution in force 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 (**Конститутсияи 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.

Today, the right to petition can be found in the constitutions of almost all democratic countries of the world. It is also reflected in the constitutions of the Central Asian states to a certain extent.

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” [3].

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 [4].

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.

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 [5].

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 [6].

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

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

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" [7].

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 [8]. **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" [7].

In addition to the constitutional norms, relations related to the right to petition in Uzbekistan 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 [9]. Now it is necessary to infuse the spirit and content of the new constitutional norms into these laws [10].

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" [7].

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" [6].

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),

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
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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 [11] and the UN Human Rights Council [12] through special procedures.

RESULTS

After analyzing constitutional aspects of the right to petition, the following statement can be drawn: the right to petition strengthens the relationship between the state and the individual and serves to establish public control over the activities of state bodies and officials.

In general, the importance of the right of petition is reflected in the followings:

First of all, this right is an active and targeted form of regulation of relations between the state and the individual. The right of a person to petition, in contrast to the usual, passive or marginal legal behavior, can be considered as an active legal behavior, which is an initiative-based legal activity directed to a specific goal by spending additional time, effort, and sometimes material resources. In other words, the right to petition is a conscious behavior of subjects that conforms to legal norms, resulting in legal consequences and social benefits. As a result of this, the legal regulation of relations between the state and the individual becomes easier, a solid communication bridge is established between them, the foundations of social partnership are strengthened;

second, the right to petition is a unique social barometer that shows the participation level of individuals in the life of the state and society. The active participation of individuals leads society and state to change, ensures the sustainability of political reforming processes. Otherwise, an "inert" society and ineffective state governance will arise. The right to petition fosters the spirit of initiative in citizens. It requires the active engagement of state and civil society institutions in the field of human rights, encourages the implementation of necessary reforms;

third, the right of petition is the means of ensuring social transparency. It highlights hidden flaws in the governance of state and society, particularly in the field of human rights, and “reveals their fever”.

CONCLUSION

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.

First, the ordinary people become more confident in protecting their rights or restoring their violated rights, they begin to feel that they are more and better protected than before. Such confidence creates in them a feeling of living more freely in any society, regardless of the political system and form of governance. For one reason or another, there will be an opportunity to protect the rights that are not satisfied by national mechanisms with the help of international bodies. In other words, **a new border of the “last hope” will appear in the figurative sense**.

Second, the strengthening of the right to petition international bodies on the constitutional basis increases the responsibility of national governmental bodies. **National bodies are no longer “the final stop” in the field of human rights protection.** Reconsideration of petitions of individuals and legal entities by international bodies, which were not satisfied by them, raises concerns about the efficiency of their activities. This situation put under question the institutional responsibility of state organizations and self-governing bodies and individual responsibility of officials. Now they will be forced to approach their tasks more responsibly under the possible pressure of international bodies.

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

Third, after the introduction of this right, the convergence of national and international legislation in the field of human rights, the integration of national and international mechanisms will hopefully take place. As a result, the national legal system of the countries will be further integrated into the international legal order and, finally, a unified legal space will be formed in the field of human rights. This way **a "double shield" protection system of human rights will appear.** The first of them is the national legal shield, and the second is the international protection shield.

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