



EX ANTE CONSTITUTIONAL CONTROL IN UZBEKISTAN: ANALYSIS OF CURRENT LEGISLATION

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Аннотация: Статья посвящена анализу предварительного конституционного контроля как разновидности конституционного контроля, осуществляемого органами конституционной юстиции. Показаны сущность и специфика предварительного конституционного контроля. В статье рассмотрены проблемы, касающиеся юридической природы, нормативного регулирования и порядка реализации в Республики Узбекистан института ex ante контроля.

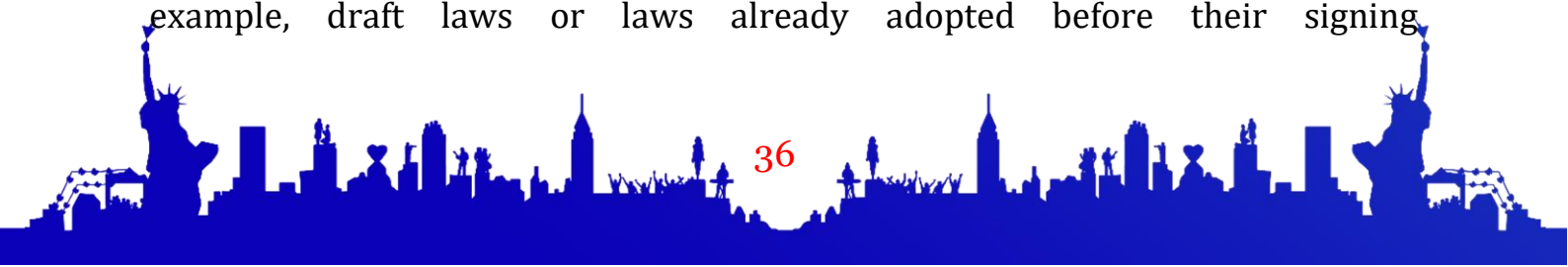
Ключевые слова: предварительный; конституционный контроль; орган; конституция; суд; правосудие; проект; норма; правовой акт; договор.

Annotation: The article is devoted to the analysis of preliminary constitutional control as a type of constitutional control carried out by the bodies of constitutional justice. The essence and specificity of preliminary constitutional control are shown. The article discusses problems related to the legal nature, regulatory regulation and procedure for implementing the institution of ex ante control in the Republic of Uzbekistan.

Key words: preliminary; constitutional control; organ; constitution; court; justice; project; norm; legal act; contract

There are two kinds of judicial review in the world. In the first ex ante model, prevalent in the French and European courts, judges draft and deliberate the court's merits opinion before the case is orally argued and scheduled for the conference meeting. In other words, cases are decided before being decided. The second model –ex post is typical of Anglo-American supreme courts, in particular the United States Supreme Court; in this model, justices do most of the deliberative work after the case has been orally argued and a vote on the merits has taken place at the conference. In other words, cases are decided after being decided.

Ex ante constitutional control usually means checking the compliance of legal acts with the Constitution before they enter into force. This could be, for example, draft laws or laws already adopted before their signing





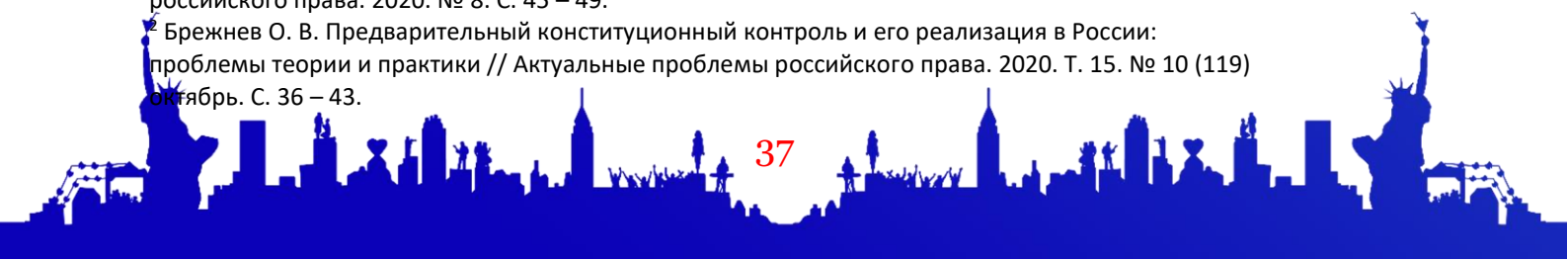
(promulgation), concluded international treaties before their ratification or approval in another form.

At first glance, such control does not carry anything negative and can be regarded as an additional (along with subsequent control) guarantee of ensuring the constitutionality of adopted normative legal acts. Thus, the undoubted advantages of this method are that it helps to avoid subsequent violations of constitutional norms and resolve controversial issues even before the applicants contact the constitutional control body. Preliminary control allows you to avoid the cancellation of regulatory documents, maintain the authority of the legislator and ultimately ensure stability legal field¹

Preliminary constitutional control has a number of advantages: this type of constitutional control, to a greater extent than subsequent control, contributes to ensuring the stability of the current regulatory framework; implementation of preliminary control avoids the need to abolish subordinate regulatory legal acts, as well as review of law enforcement decisions taken in pursuance of an unconstitutional norm. This type of control has its disadvantages: for instance Firstly, preliminary control over draft laws, if it is not implemented by a legislative body, to a certain extent entails the intervention of the body implementing it in the legislative process, which not only can be perceived as a derogation of the independence of parliament in the legislative sphere, but also contributes to some "politicization" of the activities of the control body, which is especially significant if this body is judicial. Secondly, preliminary control does not allow taking into account the peculiarities of perception of the contested norm by law enforcement agencies: this can only be judged in a hypothetical way before the act comes into force. At the same time, as the practice of implementing constitutional justice shows, violations of constitutional rights and freedoms are often determined not so much by the content of the norm of law². Therefore, in some countries the results of preliminary constitutional control are not determined in the legislation. Due to this fact this activity turns overly formal institute. In Uzbekistan the *ex ante* constitutional control provides for the determination of constitutionality of laws that have not been enacted by the Constitutional Court. This institution was reflected in the legislation of our country for the first time in the Constitutional Law "On the Constitutional Court of the Republic of Uzbekistan" adopted in 2017. Before that,

¹ Комарова В. В. Конституционная реформа 2020 года в России (некоторые аспекты) // Актуальные проблемы российского права. 2020. № 8. С. 45 – 49.

² Брежнев О. В. Предварительный конституционный контроль и его реализация в России: проблемы теории и практики // Актуальные проблемы российского права. 2020. Т. 15. № 10 (119) октябрь. С. 36 – 43.





only the Constitutional Court carried out ex-post constitutional control. According to the current legislation Constitutional Court determines the compliance of the Constitution of the Republic of Uzbekistan with the constitutional laws of the Republic of Uzbekistan, the laws of the Republic of Uzbekistan on the ratification of international treaties of the Republic of Uzbekistan - before they are signed by the President of the Republic of Uzbekistan. It can be seen that preliminary control applies only to international treaties and constitutional laws until they are signed.

According to the information of the Constitutional court on constitutional legality in Uzbekistan, in recent years, the effectiveness of the Constitutional Court has been increasing. In 2022-2023, 119 laws and 1384 other regulatory legal documents were checked for compliance with the Constitution in the constitutional control procedure. In 1991-2023, 9 constitutional laws and 98 laws on ratification of international treaties were adopted in our country. This requires them to be initially checked for compliance with the Constitution.³ However according to the official information of the Court any cases related to the priori control aren't considered.

"The ex ante constitutional review is seen in many countries, i.e. before the enactment of legislation, as a highly important device for securing constitutionality of legislation. Nevertheless, there is no common European standard as regards the initiators and the concrete modalities of this review. States decide, in accordance to their own constitutional traditions and specific needs, which organs, and to what extent, are authorized to conduct an a priori review and who should have the right to initiate it⁴."

The studies show that the procedure and mechanism of ex-ante compliance of laws with the Constitution by the Constitutional Court have not been clearly defined. In particular:

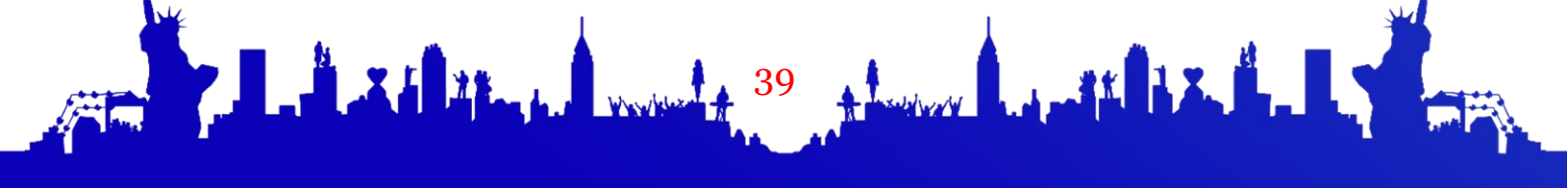
- 1) the legislation does not provide for the basis and procedure and terms for checking the constitutionality of the constitutional laws of the Republic of Uzbekistan, laws on ratification of international agreements with the Constitution, the procedure for applying;
- 2) no specific criteria for checking the conformity of international agreements with the Constitution provided for ratification. In particular, the legislation does not provide for preliminary review of all constitutional or questionable laws.

³ Resolution of the Constitutional Court of the Republic of Uzbekistan No. KSQ-7 of December 5, 2023.
file:///C:/Users/Acer/Downloads/Telegram%20Desktop/ks-7-son-karor-ilova-bilan1%20(2).pdf
⁴ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2022\)050-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)050-e)





3) issues related to the legal consequences of the conclusion issued by the Constitutional Court as a result of preliminary control have not been determined. This may make this activity excessively formal, i.e. turn constitutional control into an advisory institution, and have a negative impact on the protective function of constitutional control and the authority of the court. The analysis of the experience of foreign countries shows that Russia, France, Armenia, and Portugal have clearly defined the range of subjects that can be applied for checking the conformity of international agreements with the Constitution. In particular, in the articles 54-55 of the constitution of France, it is issued at the request of the President of the Republic, the Prime Minister or the chairman of one of the chambers or 60 deputies or 60 senators. Also, in article 88 of the Law "On the Constitutional Court" of the Russian Federation, the following entities are listed: Russia The President of the Federation, the Council of the Federation, the State Duma, one-fifth of the senators of the Russian Federation or deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation, legislative and executive authorities. constituent entities of the Russian Federation. At the same time, in accordance with the Law "On the Constitutional Court of the Republic of Lithuania", the Seimas may apply to the Constitutional Court for a conclusion on all issues provided for in Article 73 of the Law. The President of the Republic may send a request to the Constitutional Court regarding the election of members of the Seimas and international agreements. According to the legislation of Poland, Armenia, only the President has the power to appeal. Article 27 of the Constitutional Law of the Republic of Uzbekistan "On the Constitutional Court" provides the scope of general entities with the right to appeal to the Constitutional Court. Determining individual subjects for preliminary control allows addressing the persons directly involved in the implementation of foreign policy issues of international agreements. In the legislation of Russia, Kazakhstan, Moldova, France, Armenia, Azerbaijan, the legal consequences of preliminary control are clearly stated. For example, in Kazakhstan, laws and international agreements deemed contrary to the Constitution cannot be signed or ratified and put into force. Recognizing the laws as in accordance with the Constitution of Kazakhstan renews the deadline for their signing. Declaring Kazakhstan's international agreements in accordance with the Constitution restores the process of their ratification. The specific criterion for consideration of the cases of determining the compliance of the laws of the Republic of Uzbekistan with the Constitution of the Republic of





Uzbekistan has not been established. In particular, the issue of whether the Constitutional Court considers all laws on the ratification of international treaties before they are signed by the President of the Republic of Uzbekistan, or whether it considers those with certain doubts should be clarified.

The law regulating the activity of the constitutional court should clearly specify the criteria, conditions, terms and subjects of the preliminary control of the constitutional court. Implementation of this proposal: to ensure the state of constitutional legitimacy in the country; full implementation of the constitutional control institution based on international standards; serves for the mature and thorough preparation of constitutional laws and laws on the ratification of international agreements.

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4. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2022\)050-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)050-e)

