

**BULLETIN OF NATIONAL ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN**

ISSN 1991-3494

Volume 2, Number 378 (2019), 100 – 107

<https://doi.org/10.32014/2019.2518-1467.46>

JEL340.115.7

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**ABOUT MODERNIZATION TENDENCIES
IN THE LEGAL SYSTEM
OF THE REPUBLIC OF UZBEKISTAN**

Abstract. The legal system of any state should be considered in close connection with other national legal systems and with international law. Such a “legal triangle” serves as a common legal space, in which different normative legal arrays interact, collide, and coexist. And in this relationship there is a lot of sustainable and regular, controversial and random. It is based on common integrative processes, strengthening cooperation of states in the economic, social, cultural and other spheres. The Constitution of Uzbekistan of 1992 has assigned an important place in the legal system to international law. In the modern period, when intensive work is underway to improve Uzbek legislation, the use of methods of both domestic and international legal regulation is required. In state law, these are the constitutional foundations of foreign policy, the competence of the supreme bodies of state power in the sphere of international relations, the regulation of citizenship, the rights and freedoms of the individual. In the civil and family law, civil proceedings are both traditional issues of private international law, legal assistance in civil and family matters, improvement of foreign economic relations, received particular relevance. In the criminal law and criminal proceedings are multidimensional aspects of cooperation in the fight against crimes, providing legal assistance in the criminal matters.

Keywords: rule of law, supreme of law, international law, legal files, legal triangle, integrative processes, international cooperation, interstate treaties, constitutionality, jurisdiction.

Legislation must reflect the folk traditions, customs, and moral norms rooted in the daily life of the population and inherited from centuries of history of interpersonal and inter-nationality communion and profession of faith which are not contrary to universal humanitarian values, rights, and freedoms of people. One can not turn back the River of Time, nor return a civil secular society to the era of the dominance of norms of the Shari'ah. The Shari'ah is an absolutely concrete historical phenomenon. It is hardly necessary in a modern society to elevate it to an absolute, to treat it literally. This would be contrary to the very pragmatic philosophy of the Shari'ah, where the spirit is raised above the letter, the new is not rejected and is agreed with the known. It would be reasonable to take into account the conciliatory experience of the regulation of certain spheres of private law by the Shari'ah when building a rule-of-law society in Uzbekistan [1].

Such approaches already are underway. Take, for example, the priority of the family and social support (in the spirit of *sadak*-a voluntary gift to the needy). From the times of the caliphs of the Abbassides (who first came as al-Mansur) the *kadii* (judge) was removed from the influence of local authorities. Now that tradition, directed towards the independence of judges, in modern form is embodied in Article 93(11) of the Constitution of the Republic Uzbekistan.

The creative application of the commentary traditions of the *fakir* are of interest when seeking ways of judicial reform. The role of interpretation by the Constitutional and Supreme courts of laws, characteristic for the legal culture of the world of Islam, is growing.

In the Civil Code of the Osman Empire, the Majalla (1869-77), 99 principles of Muslim Law were consolidated, which draw attention for their expression of civility culture. Many norms of Muslim civil and trade law were precisely defined therein: purchase-sale, rental, moveable and immoveable property, worker, suretyship, pledge, commercial and neighboring partnerships, and others. Especially interesting is the legal ethic of trade and labour transactions, commercial relations, that is, not the lack of which so many modern entrepreneurs complain.

A distinctive feature of modern Uzbek society is the perception of the religion of Islam as part of the culture of the people, as the bearer of universal humanitarian values, the custodian of national spiritual traditions. Religious principles and norms serve as an original criterion of the spiritual-moral state of society. Hence the great influence of religion and its norms and principles on the life of society. The mentality of the Uzbek people is determined by them to a significant degree, those values which they share.

A comicalness and paternalism of the State are characteristic of the Uzbek way of life. Of course, the community is a universal form through which all peoples of the world go, but in Uzbekistan the collectivist principles, collective interests, always have prevailed over special interests, individual interests. The weakness of the individualist principle is a specific feature of Uzbek legal being. This should be taken into account when attempts are made to introduce into Uzbek life and to accelerate the development of private entrepreneurship with a global embrace of private ownership in various spheres of life.

Law reform must be based on religious and moral principles and norms traditional for Uzbekistan, for only then do laws acquire their vitality and are accepted by society. Therefore in laws to be adopted the folk traditions, customs, and moral norms rooted in the daily activity of the population and inherited from centuries of history of interpersonal and inter-nationality communion and profession of faith and not contrary to universal humanitarian values, rights, and freedoms of people must obligatorily be taken into account and reflected.

Of course, the traditions of the Shari'ah must be studied above all within the framework of legal education and legal science, and then by legislative policy, obligatorily from the positions of legal progress, humanity, and civilisation.

The need for constitutional reform was evident by the end of the 1980s. After the proclamation of State sovereignty, society could not be content with the Soviet Constitution adopted under the old socio-State system (1978) within the framework of the constitutional system of the former USSR. Attempts to adapt the old Constitution to the new realities were not crowned with success. More than 100 changes and additions made in its text deprived it of internal logic and gave rise to numerous contradictions.

Constitutional reform in Uzbekistan was evolutionary and constant. In March 1990 during the period of existence of the USSR Uzbekistan was the first union republic to introduce the presidential form of rule. This was the beginning of the reorganization and renewal of the politico-legal system in Uzbekistan. In June 1990a Declaration on sovereignty and a Decree of the Supreme Soviet of the republic on the creation of a constitutional commission to work out a new Constitution of Uzbekistan were enacted. In the legal sense these acts were new since in the theory and practice of State-law construction of Uzbekistan they were adopted and implemented for the first time.

The 1992 Constitution became the "visiting card" of sovereign Uzbekistan. It embodied the traditions of many centuries of Uzbek legal history and the principles of world constitutional experience. If the 1992 Uzbek Constitution is considered in connection with world constitutional development, one may say that it has been consistently inserted in a number of the "second generation" constitutions adopted in western European countries after the Second World War [2, p. 21].

World constitutional experience was used in the Constitution of Uzbekistan through:

- the principles of constitutional regulation - human rights, adherence to norms of international law, separation of powers, stability of the Constitution;
- the rejection of ideologization; that is, the Constitution does not aspire to bind society to a previously determined economic system in accordance with the prevailing ideology;
- constitutional guarantees - supremacy of the Constitution, creation of a Constitutional Court, special procedure for changing the Basic Law;

- presidential republic as one of the form of direct power of the people, since the Constitution determines the legal status of the President as the Head of State and executive power;
- constitutional technique; that is, organisation of the text into a Preamble and by sections, chapters, and articles, as well as the logic of their positioning;
- juridicisation and conciseness of content so as not to create superfluous regulation fettering real State life; reducing to a minimum in the Constitution of so-called *renvoi* norms to future law also is responsive to this task.

Often it is asserted that the 1992 Constitution of Uzbekistan is structured along the French model. This assertion is only partly correct. Of course, the Constitution of Uzbekistan has its distinctive features and differs from the French Constitution. It is sufficient to recall that the Uzbek parliament, unlike the French, is unicameral. However, if we speak of the form of rule provided for by the 1992 Constitution of Uzbekistan, here the proximity to the French model is evident. Uzbekistan, just as France, is a republic of the presidential type, both being distinctive from the presidential republic of the American model. The undoubted proximity of the Uzbek Constitution to the French model is to be discovered: in the procedure for election of the President, in the powers of the President as Head of State, in his role in the forming and the activity of the Government, in the right to dissolve parliament in the procedure provided for by the Constitution.

Unlike the Soviet basic law, there is no dominance in the 1992 Constitution of Uzbekistan of Eurocentric constitutional regulation, but there is a reasonable taking into account of the norms of a civil society, separation of powers, checks and balances inherent to the democratic constitutions of the countries of the West. And here the influence of the spiritual and legal traditions of Islam, communities, the constitutional understanding of the State as a large family where the leader is responsible for the quiet, dignity, and well-being of its members is evident [3, p. 29].

The 1992 Constitution of Uzbekistan is the creative unity of fatherland State-legal, spiritual-cultural requirements in progress and the world experience of stable constitutional self-development.

The criteria for the quality and effectiveness of the Constitution of Uzbekistan are:

- the conformity of the Constitution to the requirements and prospects for the development of a democratic, rule-of-law State in Uzbekistan. Here are taken into account the unity of the requirements of the transition period and prospects for cultivating the autonomous experience of Uzbek statehood and law;
- autonomous creative application of world constitutional experience and taking into account the wealth of fatherland historical and legal traditions in the constitutional law-creation of Uzbekistan;
- the high potential of the application of the Constitution;
- the leading role of the Constitution as the source of law in force and orientates of constitutional and current legislation;
- the significance of the Constitution in achieving stability in the State and society; that is, its pluralistic and consensual possibilities;
- legal technique, metaphorical integrity and systematic nature of the Constitution, which ensures its substantive consistency;
- international legal thesaurus (commonality of understanding) of the basic terms in the Constitution, which facilitates its incorporation into worldwide legal space.

The 1992 Constitution of Uzbekistan is the hierarchically major source of Uzbek law. It serves not only as the legal base for the adoption of new normative legal acts based on it (the “external” change of the legal system), but also as the criterion for resolving the question of the constitutionality of prevailing legal norms (change of the legal system “from within”).

The legal properties of the Uzbek Constitution as the centre of the legal system are manifested in the following:

(1) Constitutional norms are the highest material criterion of Uzbek law. All this is contained in Uzbek law and is manifest therein must conform to constitutional norms;

(2) The presence in the text of the Constitution of references to the basic principles of the legal system which were formulated in Section One. These are: man, his rights and freedoms as the highest value, power of the people effectuated directly (referendum) and through representative agencies, law-

abiding state, political and ideological pluralism, separation of powers, freedom of economic activity and equality of forms of ownership, and the primacy of international law. No other provisions of the Constitution and branches of law may be contrary to these principles;

(3) The constitutional determination of the sources of law by means of regulating the competence of State agencies. Here it is essential to clarify that the Constitution has differentiated not all types of sources, but only written;

(4) The constitutional norms themselves have direct effect. The purposes and principles of the Constitution have direct effect if they are directly perceived by people and influence their behavior. The contemporary system of legislation of Uzbekistan acts as part of the legal system. The creation of a stable legal system developing by evolutionary means is a priority in the aspect of the legislative consolidation of new social relations and social values.

The creation of a new legislative system is effectuated with regard to several major orientations. The first orientation is the creation of the legal foundations of State construction. The downfall of the former USSR and acquisition of State independence by Uzbekistan advanced State construction to the group of priority tasks. This above all is confirmation of the principles of sovereignty, democracy; power of the people, human rights, in a word, the creation of the rule-of-law State and a civil society. The need arose to form new institutions of State power and the consolidation thereof. Of course, many of these tasks confronted Uzbekistan earlier, but after the demise of the USSR their significance and urgency grew immensely [4, p. 82].

Within the framework of this orientation constitutional law were adopted "On the Foundations of State Independence of the Republic Uzbekistan" (1991) and "On the Oliy Mazhlis of the Republic Uzbekistan" (1994), laws on the Cabinet of Ministers of the Republic Uzbekistan (1993), on the courts (1993), on the Constitutional Court (1993), on the Supreme Economic Court (1993), laws on elections to the Oliy Mazhlis (1993, 1998-99), on elections of the President (1991, 1998), on the referendum (1991), on the Central Electoral Commission (1998), on the Procuracy (1992), on the notariat (1996), on State power in the localities (1993), on agencies of self-government of citizens (1993, 1998), and others.

A unique mechanism for self-government of citizens has been formed whose roots lie in the folk traditions and historically-formed community relations - the mahalla. It was recognised that gatherings of citizens of settlements, kishlaks, and mahallas are an agency of self-government facilitating the realisation by citizens of their right to participation in management of the affairs of the State, uniting them to resolve social and economic tasks on their territories.

The *second orientation* is the forming of a system of market legislation laying the foundation for new economic relations, above all relations of ownership and free entrepreneurial activity. The legal regulation of economic activity is becoming the basic form of State pressure on the economy. The transition to a market economy required the adoption of numerous laws and other normative legal acts (edicts of the President, decrees of the Government, and departmental acts). Questions of ownership, the legal status of enterprises, the procedure for the effectuation of foreign investments are regulated in them, and other questions of entrepreneurial activity are resolved.

A Civil Code has been adopted - the Charter of market law. Among market laws there are: laws on ownership (1990), on destatisation and privatisation (1991), on pledge (1992), on lease (1991), on privatisation of the State housing fund (1993), on enterprises (1991), on cooperative societies (1991), on the agricultural cooperative "Shirkat" (1998), on the dekhkan economy (1998), on the farmer economy (1998), on economic societies and partnerships (1992), on banks and banking activity (1996), on entrepreneurship (1991), on insurance (1993), on stock exchanges and stock exchange activity (1992), on securities and the stock exchange (1993), in auditor activity (1992), on competition and limitation of monopolistic activity on the goods markets (1996), on limitation of monopolistic activity (1994), on joint-stock societies and defence of the rights of stockholders (1996), on the mechanism for the functioning of the securities market (1996), on chambers of goods-producers and entrepreneurs (1997), a tax code (1997), and others.

In guaranteeing the equality of all forms of ownership, freedom of economic activity, and free movement of goods and capital, market legislation opens broad opportunities for the free development of a civil

society, the forming of a new market, possibly mixed, but in any event more rational economic structure of society than previously [5, p. 276].

The *third orientation* is the creation of legislation ensuring the constitutional and legal rights of man, social guarantees, and social support of the population. Laws have been adopted which regulate and guarantee the rights and freedoms of man, social organisations, freedom of conscience and profession of faith, and the mass media.

A system of social legislation has formed. The labour code (1995), family code (1998), and laws on employment (1992), protection of labour (1993), social defence of disabled persons (1991), State pension security of citizens (1993), foundations of State youth policy (1991), protection of the health of citizens (1996), quality and safety of food products (1997), and additional privileges for women (1999) defend the interests of the most needy strata of the population under the complex conditions of transition to a market.

No less important than those considered is *the fourth orientation* of law-creation. Without devoting attention to the moral health of society, spiritual development of its members, raising of their legal culture, one will not succeed in resolving those practical tasks which determine the prospects for the development of Uzbekistan; that is, essential legislation directed towards preserving national distinctiveness, language, education, and cultural legacy [6, p. 68].

Uzbekistan has acceded to the principal documents of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), such as the 1954 Hague Convention on the protection of cultural valuables in the event of armed conflict, the 1972 Convention on the protection of world cultural and nature legacy, and the 1970 Convention on measures directed towards the prohibition and prevention of the illegal import, export, and transfer of the right of ownership to cultural valuables.

Laws on the flag (1991), arms (1992), and anthem (1992) demonstrate to the entire world the norms of honour, pride, historical memory, and aspirations of the peoples of Uzbekistan. Laws on the State language (1989, 1995) and citizenship (1992) have important significance for a spiritual renaissance. Laws on education (1997), on the protection of nature (1992), on author's right and mixed rights (1996), on the establishment of titles of honour (1996), and on specially protected territories (1993), on the export and import of cultural valuables (1998) are being realized. Spiritual-cultural legislation is directed towards preserving the valuables for the people, for their spirit, affirmation of self-awareness, love for life, and strengthening of patriotism. Any State is strong with such a spirit.

The fifth orientation is the creation of legal foundations determining Uzbekistan to be an equal subject of international relations - one of the new and virtually unexplored orientations of law-creation activity. Under conditions of a totalitarian unitary system Uzbekistan de facto was deprived of the possibility of direct access to the international arena, did not have its own foreign policy and foreign economic State institutions, and did not have its own legislation.

The ratification by Uzbekistan of the basic international covenants and agreements opened a new page in the history of the development of foreign links of the country. Laws on the procedure for the appointment and recall of heads of diplomatic representations (1992), the establishment of diplomatic classes and ranks for diplomatic workers (1992), on international treaties (1996), on principles of foreign policy activity (1997), and a consular statute (1996) are fundamental in the sphere of foreign policy activity.

In the foreign economic sphere the adoption of laws directed towards the creation of the legal foundations of attracting foreign investments to the economy of Uzbekistan and an expansion of foreign economic activity are of great importance. Laws on guarantees and measures of defence of the rights of foreign investors (1998), on investment activity (1998), and on foreign economic activity (1992) are directed towards the creation of a normal legal "investment climate" for foreign investors. Investment laws of Uzbekistan, just as bilateral agreement on guarantees and defence of foreign investments and multi-lateral conventions (1964 Washington Convention on the settlement of investment disputes, 1986 Seoul Convention on insurance of investments) contain norms of public law determining the status of foreign private ownership, the legal regime of foreign investments, guarantees of foreign investments against "political" risks (nationalization, taxation, export and import duties, transfer of capital and profit, and so on), and the conditions of legal defence of the rights and interests of foreign investors. Specific private international investment relations are regulated by norms of civil legislation; that is, by private law [7, p. 74].

Thus, the contemporary legislation of Uzbekistan creates a legal foundation for the transition period, the process of a legal replacement of a socio-political system and economic relations which have outlived themselves, and the confirmation of new democratic norms and socio-legal guarantees. Of course, the level of development and quality of the legislative system are determined not by the quantity of laws adopted, but by the execution of these laws at all levels since legal norms live and operate only when they live in man and operate through him, and reflect the historical traditions, customs, and spiritual-moral norms.

Gradually the legal ideology is transformed, a search proceeds for the most effective forms of legal regulation, and a close linkage of law-creation practice and organisation of the law enforcement process with economic and political reforms.

As the research scholars Madina Tasheva, Aigerim Bakhtgalieva and Benjamin Chan Yin-Fah noted: "In last year's Uzbekistan achieved boom in entrepreneurship. Females from urban and rural areas started to establish their private business activities. First Uzbek women NGO, Business Women Association (BWA) has been contributing to the expansion of private sector by supporting new female enterprises" [8, p. 127].

Legal values and ideals of a modern democratic State consolidated in the Constitution of Uzbekistan, and also closer integration of the Uzbekistan legal system with international law, oblige the use of positive international and foreign legal experience in the forming of a unified system of Uzbek legislation.

The legal system of any State can not be considered outside its links with other national legal systems and with international law. Such a "legal triangle" serves common legal space in which various normative legal blocks interact, collide, and coexist. In that interlinkage there is much stable and in accord with the laws of societal development, and much contradictory and incidental. General integrative processes strengthening the cooperation of a State in economic, social, cultural, and other spheres are the foundation.

The 1992 Constitution of Uzbekistan, in relegating to international law an important place in the legal system (Article 17), stipulated a close contiguity of the Constitutional Court of the Republic Uzbekistan with international law. We refer to the fact that, according to Article 109 of the Constitution of Uzbekistan, the Constitutional Court determines the conformity to the Constitution of inter-State treaties. Generally-recognised principles and norms of international law in the practice of the Constitutional Court are important criteria of the constitutionality of laws and other normative acts contested in the Court and falling within its jurisdiction.

In the modern period when intensive work is being conducted with regard to improving Uzbek legislation, the use of both municipal and international legal regulation are required. Today virtually any branch of legislation is linked with international treaties. In State law these are the constitutional foundations of foreign policy, the competence of the highest agencies of State power in the sphere of international relations, the regulation of citizenship, the rights and freedoms of the individual. In civil and family law and in civil procedure there are traditional questions of private international law and of rendering legal assistance in civil and family cases, as well as questions of improving foreign economic links, and in criminal law and criminal procedure, multi-tiered aspects of cooperation in the struggle against criminality and rendering legal assistance in criminal cases [8, p. 130].

The 1992 Constitution of Uzbekistan accepted a complex of principles and norms of international law from the United Nations Charter, the 1948 Universal Declaration of Human Rights, and other international covenants on human rights, the Helsinki Final Act, and the Paris and Madrid charters. This approach is especially clearly expressed not only in Chapter IV "Foreign Policy", but also in the Preamble, Section Two on the "Basic Rights, Freedoms, and Duties of Man and Citizen", and Section Three "Society and the Individual", Chapter XXIII "Electoral System", Chapter XXII "Judicial Power of the Republic Uzbekistan" and Chapter XXVI "Defense and Security".

In the conclusion we would like to remind, that for the first time in the history of Uzbek law, the priority of generally-recognised norms of international law over municipal has been proclaimed. This completely corresponds to the general trend of resolving the question of the correlation of municipal and international law, reflecting the growing role of the last during the second half of the twentieth century.

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ӨЗБЕКСТАН РЕСПУБЛИКАСЫНЫҢ ҚҰҚЫҚТЫҚ ЖҮЙЕСІНДЕГІ МОДЕРНИЗАЦИЯЛЫҚ ТЕНДЕЦИЯЛАР ЖАЙЛЫ

Аннотация. Өркениетке ұмтылған қандай елдің құқықтық жүйесін қарастырмасақта оларды басқа да ұлттық құқықтық жүйелермен, халықаралық құқықпен салыстыра отырып қараймыз. Осындай құқықтық үшбұрыш жалпы құқықтық кеңістік болып қызмет етеді. Онда әртүрлі нормативті-құқықтық массивтер кездесе отырып бір-біріне әсеретеді. Осы әсерлерде, байланыстарда көптеген қалыптасып қалған және заңдастырылған қайшылықтармен кездейсоқтықтар бар. Олардың негізінде жалпы интегративтік процесстер жатыр, олар мемлекет аралық қатынасты экономикалық, әлеуметтік, мәдени қатынастарды біріктіреді. 1992 жылғы Өзбекістан Конституциясында халықаралық құқықта ерекше орын берілген. Қазіргі кезде Өзбекістан заңнамалары интенсивті түрде жетілдіру үстінде бұл шаралар халықаралық тәжірибелерді қолдануды талап етеді. Мемлекет құқығында ол сыртқы саясаттың конституциялық негізі, мемлекеттік биліктің жоғарғы сатысындағы қызметкерлер құзыретінде және азаматтардың тұлғалардың құқықтары мен еркіндіктерін сақтауға бағытталын. Азаматтық және жанұя құқығында, азаматтық процессте бұл бағыт халықаралық жеке құқығы мәселесі ретінде дәстүрлі түрде қаралады, азаматтар мен жанұя ісінде және соңғы кезде белсенділік көрсетіп отырған халықаралық экономикалық байланыстарда, қылмыстық құқықта, қылмыстық процессте - байланыстардың жан-жақта аспектілер қарастырылып, әртүрлі қылмыстық істерде құқықтық көмек көрсетілуде.

Түйін сөздер: заң басымдығы, құқықтық негіз, халықаралық құқық, құқықтық массивтер, құқықтық үшбұрыш, интегративті процесстер, халықаралық байланыс, мемлекетаралық келісімдер, конституционалдық, заңгерлік.

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О МОДЕРНИЗАЦИОННЫХ ТЕНДЕНЦИЯХ В ПРАВОВОЙ СИСТЕМЕ РЕСПУБЛИКИ УЗБЕКИСТАН

Аннотация. Правовую систему любого государства нужно рассматривать в тесной связи с другими национальными правовыми системами и с международным правом. Такой «правовой треугольник» служит общим правовым пространством, на котором взаимодействуют, сталкиваются, сосуществуют разные нормативные правовые массивы. Причем в этой взаимосвязи есть немало устойчивого и закономерного, противоречивого и случайного. В основе лежат общие интегративные процессы, укрепляющееся сотрудничество государств в экономической, социальной, культурной и иных сферах. Конституция Узбекистана 1992 г., отвела международному праву важное место в правовой системе. В современный период, когда ведется интенсивная работа по совершенствованию узбекского законодательства, требуется использование методов как внутригосударственного, так и международно-правового регулирования. В государственном праве это конституционные основы внешней политики, компетенция высших органов государственной власти в сфере международных отношений, регламентация гражданства, прав и свобод личности. В гражданском и семейном праве, гражданском процессе это как традиционные вопросы международного частного права, вопросы оказания правовой помощи по гражданским и семейным делам, так и получившие особую актуальность вопросы совершенствования внешнеэкономических связей, в уголовном праве и уголовном процессе – многоплановые аспекты сотрудничества в борьбе с преступностью, оказания правовой помощи по уголовным делам.

Ключевые слова: верховенство закона, господство права, международное право, правовые массивы, правовой треугольник, интегративные процессы, международное сотрудничество, межгосударственные договоры, конституционность, юрисдикция.

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