



Research Article

## CONSTITUTIONAL REFORM AS THE BASIS FOR STABLE DEVELOPMENT OF STATES AND SOCIETIES: COMPARATIVE ANALYSIS

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### ABSTRACT

This article deals with the problems of intensive search for models of the constitutional development of the countries of the world. The theses about the absence of universal constitutional models, the only ones suitable for all states, are substantiated, as well as the issues of finding directions for approving fundamental tasks in this area are analyzed.

### KEYWORDS

Constitution, reform, constitutionalism, community, international standards, globalization, integration, rights and freedoms of citizens, comparative studies, modernization, classification.

### INTRODUCTION



In the modern world, although the constitutions reflect the key attitudes and interests of previous generations, without updating them taking into account external and internal challenges and threats to the state, without ensuring their continuity, a situation is created when modern society is governed from the past and when constitutional norms, instead of serving development, on the contrary, will restrain it.

At the same time, the last decade of the 20th Century and the beginning of the 21st Century will go down in world legal history as a period of rise to a qualitatively new level of constitutional reforms, profound qualitative shifts in the constitutional worldview, in the constitutional structure of the members of the world community. Of no small interest is the study of the entire history of the constitutional development of the world community as a whole.

In today's conditions of globalization all over the world there is an intensive search for their own models of constitutional development. Although there is not and cannot be a universal constitutional model, the only one suitable for all states, a number of fundamental tasks in this area can be indicated. In particular, the Constitution

remains one of the key factors in ensuring the political and social stability of the state.

## THE MAIN FINDINGS AND RESULTS

Constitutional principles usually provide:

firstly, the consolidation of fundamental human rights and freedoms;

secondly, representative democracy, including in combination with forms of direct democracy (elections, referendums, and the general discussions);

thirdly, the separation of branches of power, including the principle of "checks and balance" between the legislative and executive branches, as well as the independence of the judiciary branch;

fourthly, the principle of the rule of law and the Constitution;

fifthly, the responsibility and accountability of officials.

Constitutional reform – is a necessary legal prerequisite for current and future successful and sustainable development issues. In particular, it



can be a vital tool to promote “better/good governance” by changing constitutional “rules” to strengthen checks and balances between branches of government, greater accountability, transparency, participation and predictability. Changes aimed at improving the quality and efficiency of governance contribute to the stability of the political system, which in turn benefits the economy, creating a stable environment for investment and development.

As it is widely known, the presidential elections were held in Uzbekistan last year. During the electoral processes, at the meetings of all candidates with representatives of the electorate, an important proposal was put forward, demanded by life itself and dictated by the logic of democratic reforms in our country. This is – a constitutional reform in society. In this regard, Mr. Shavkat Mirziyoyev, the President of Uzbekistan proposed to carefully and deeply study the national, foreign and world experience of constitutional construction, harmonization of the Constitution (Basic Law) with the modern realities of society, the essence of democratic reforms, as well as develop proposals for further

strengthening the constitutional and legal foundation of the Republic of Uzbekistan.

In this context, here we remind that today in the “constitutional map of the world” there are over 500 active constitutions, of which about 200 are the constitutions of independent states, more than 300 are the Constitutions of subjects of federations. At the same time, the Code of Laws of the Sumerian king Ur-Nammu is considered the oldest written constitution in the world – the age of clay tablets exceeds 4 thousand years.

World constitutions can be roughly divided into three generations<sup>1</sup>:

-First generation: constitutions of the XVIII-XIX centuries. - includes the Constitutions of France, the USA, Belgium, Holland, Turkey and the constitutions of states adopted before the Second World War (about 20 in total);

Second generation: constitutions of the Twentieth Century. - constitutions adopted between 1946 and 1990 (more than 80 in total);

Third generation: modern constitutions – constitutions adopted after the fall of the “Berlin

<sup>1</sup> Materials of the International Conference “Modern Constitutionalism: National and Foreign Experience”, 14 December,

2021 (in Russian). // Editor in-chief: Saidov A. Kh. – Tashkent, 2022. – 400.



Wall” and the liquidation of the socialist system in many states (about 90 in total).

Indeed, improving the constitution-making process and the implementation of constitutional support for reform is critical to peace-building efforts today. There are practically no constitutions left in the world in the original version. Even in the most ancient (as some prominent experts believe) in the current understanding of the constitutions, the basic law of the United States, 27 fundamental changes have been made.

An analysis of the situation shows that in the 21st Century alone, more than 100 countries of the world have successfully implemented constitutional reforms, 57 have adopted new constitutions. Moreover, the top ten countries that most often adopted additions and amendments to the constitution are Mexico, New Zealand, Brazil, Switzerland, Austria, Israel, Chile, Colombia, Georgia and India.

More than half of the existing national constitutions have been projected in the last thirty years, revised or reformed. About 20

constitutional reforms are carried out annually, most of which are carried out as part of the modernization of society and the state or the prevention, neutralization of the consequences of political, economic or social crises<sup>2</sup>.

This is connected with entering of the world into a new constitutional era, the distinguishing features of which are, in particular:

- strengthening of integration legal processes and cooperation between states, formation of common political, economic, cultural and legal spaces, transition to common international norms, rules and standards;
- the appearance on the constitutional map of the world of the constitutions of new independent states, the development of statehood and social development of countries. The problems of constitutional reorganization and reform of all spheres of public life have outgrown the purely national framework and are rightfully global;
- the growth of the role and importance of the constitution as a means of transforming social, political, legal and economic relations;

<sup>2</sup> Khabrieva T. Ya. Constitutional Reform in the Modern World (in Russian). – Moscow: INFRA-M, 2021. – P.308; Brandt M., Cottrell J.,

Guy J., Renan E. Development and Reform of the Constitution: The Choice of the Process. Interpeace, 2011 – P. 396.

- the dynamics and pace of development of social processes, as well as changes in the values of society, requiring the need for constitutional changes in order to comply with the spirit of the times.

The overall study of constitutional changes in the world allows us to note a characteristic feature – the need to adapt the Constitution (Basic Law) of the state to the requirements of modernity and its ability to respond to emerging challenges. In doing so, special attention is paid, in particular, to the following questions:

- the complexity of constitutional reforms, so that they cover the political, economic, social, cultural and humanitarian spheres, as well as the interconnections and interdependencies of constitutional reforms and the processes of modernization and improvement of sectoral legislation, including in the private law sphere;
- reforming the mechanism of public administration, the current model of government (in particular, in France – serious steps in this direction were taken in connection with the development of the concept of “Pour un renouveau démocratique” (which means “For a democratic renewal”), covering the following

legal blocks: elections of the President, deputies of the National Assembly and senators; determination of the legal status of the head of the state and ministers; resolution of conflicts of interest in the course of various parliamentary procedures; change of form of government to a parliamentary republic in accordance with the doctrine of Convention pour la VI République (which means “Convention for the Sixth Republic”);

- developing the legal space, strengthening legal sovereignty, improving the system of power, the foundations of the legal status of the individual and the relationship between power and citizen, as well as optimizing the relationship between the concepts of “power of the state” and “power of the law”;
- defining the constitutional identity of the state in the context of constitutional development in the 21st Century;
- guarantees of the independence of the judges, enhancing the role and expanding the powers of the Constitutional Court in law-making, ensuring the rights and fundamental freedoms of man and citizen, declaring unenforceable decisions of state





bodies, granting citizens the right of direct access to the Constitutional Court;

- the influence of international law on ensuring the protection of human rights, freedoms and legitimate interests, the development of society and the state. In particular, fixing international standards for the protection of children's rights, defined in the 1989 UN Convention On the Rights of the Child and other key international conventions, in the Constitution. The influence of European law on the constitutional law of the states of Central and Eastern Europe is evidenced by the "europeanization" of constitutional law, in whatever form it is carried out, which contributes to the creation of constitutional norms that are as open as possible to international, primarily European, law. Some self-limitation of the elements of the state sovereignty of these countries is also noted;

- development of the constitutional right to health care and medical care, its judicial and extrajudicial protection, the principle of accessibility and quality of medical care;

- constitutionalization of private law and simultaneous privatization of public law, the mutual influence of the Constitution and civil law

on the formation and development of each other, the expansion of protection of private property and a clear definition of the grounds for the forced termination of the right to private property, the constitutional consolidation of provisions on investments as property relations, and etc.;

- wide introduction of crowd-technologies, development of innovative and green economy, economy of knowledge, strengthening of tendencies of regional political and economic integration of states;

- constitutionalization of the tax sphere (constitutional and legal regulation of tax relations, consolidation of new legal principles of taxation in modern constitutions);

- institutionalization of the information society, legal regulation of the security of the Internet in conjunction with the provision of constitutional rights and freedoms of man and citizen;

- increasing the responsibility of state bodies for failure to ensure the rule of law, law and order and public security, respectively, as well as state bodies, citizens, public associations - for the fight against new challenges and threats to security,



such as international terrorism, extremism, corruption, organized crime, etc.

At the same time, the process of implementing these reforms is characterized by a multi-vector orientation, which is reflected in:

firstly, in the procedure for adopting constitutions (through the establishment of a special body, at a referendum). There is a tendency to adopt constitutions and amendments to them in referendums (about 36% of the current national constitutions of the countries of the world). For example, Switzerland (51) and Ireland (33) held the most referenda in Europe, and the Philippines (13) in Asia. In general, in 1789-2016. 129 referendums were held in Africa, 124 in Asia, 153 in Europe, 41 in North America, 53 in South America, and 144 in Oceania<sup>3</sup>;

secondly, when choosing the form of the state-territorial structure (federation) and the form of government (for example, the transition from a hyper-presidential to a presidential republic);

thirdly, limiting the powers of the president, distributing power (vertically or horizontally) between branches of power and political institutions, introducing a simplified impeachment procedure;

fourthly, the detailed consolidation of a wide range of social rights (which cannot be guaranteed by the economically developed countries).

The experts of the European Commission for Democracy through Law (The Venice Commission) also pay special attention to the following issues<sup>4</sup>:

- carrying out reforms without compromising constitutional stability, predictability and protection;
- that the main arena for constitutional amendment procedures be the national parliament, as the body best suited to debate and consider such matters;

<sup>3</sup>Z. Elkins, A. Hudson. The Constitutional Referendum in Historical Perspective. // "Comparative Constitution-Making" Research Handbooks in Comparative Constitutional Law series. Edited by David Landau, Mason Ladd. // Edward Elgar Publishing, 2019. – P. 142-164; Zachary Elkins, Tom Ginsburg and James Melton. The Endurance of National Constitutions. – New York: Cambridge University Press, 2009. – 270.

<sup>4</sup>Haller Gret, Seijersted Fredrik, Tuori Caarlo, Welaers Jan. Report On Constitutional Amendments (in Russian). // Adopted by the Venice Commission at the 81<sup>st</sup> Plenary Session (Venice, 11-12 December, 2009). Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)001-rus](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)001-rus)



- in-depth study of the possible consequences of constitutional amendments, conducting a general and comparative analysis, as well as taking into account the national constitutional and political context;

- free and open public discussion of the constitutional reform, allocation of sufficient time for the study of public opinion and the organization of public, expert discussions of the proposed new constitutional norms and principles.

Modern Uzbekistan also has extensive experience in carrying out constitutional reforms. In particular, as part of the implementation of the tasks of the Strategy of Action for 2017-2021 Years, 32 amendments and additions were made to 21 articles of the Constitution. They concerned, in particular, the activities of the Parliament, the Government and the President, the strengthening of the independence and development of the judiciary, the system of checks and balances between the branches of government, the democratization of the electoral system.

Particular attention was paid to a fundamental change in the state and constitutional structure, political, legal, socio-economic, cultural and

spiritual spheres, constitutional provision of fundamental inter-related and inter-dependent democratic political, economic, social and legal reforms aimed at building a New Uzbekistan, the formation of a free and fair civil society.

Furthermore, the era of globalization, digitalization, climate change and rapidly changing life pose more and more urgent, extremely important and relevant tasks for the further modernization of the country, strengthening peace, stability and national independence.

## CONCLUSION

The formation and development of institutions of civil society, parliamentarianism, a multi-party system are the embodiment of true democracy.

Indeed, the current rapidly changing time requires us to act and change in tune with it. In order to have a Constitution that meets the requirements of the time, we must prepare a draft of an updated Constitution (Basic Law), submit it for public discussion and improve it taking into account the proposals put forward.

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