

Review Article

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The Constitutional Guarantees of the Right to Petition (Case of Uzbekistan)

Gulnoza Ismailova^{1*} and Khaydarali Yunusov²

¹Law, Professor of the University of World Economy and Diplomacy, Uzbekistan

²International Law, Associate professor of the International Islamic Academy of Uzbekistan

ABSTRACT

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. Authors scrupulously investigated the case of Uzbekistan. As it is known, the right of citizens to petition international bodies in the field of human rights is recognized for the first time in the renewed 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, by the legislation and international treaties of the Republic of Uzbekistan, to petition international bodies that protect human rights and freedoms of all internal means of the legal protection of the state have been used". In this regard, similar situations in the constitutions of foreign countries are summarized, and different aspects are highlighted. Also, the authors describe the international-legal bases of applying to the bodies of international organizations and reveal its importance for Uzbekistan.

*Corresponding author

Gulnoza Ismailova, Law, Professor of the University of World Economy and Diplomacy, Uzbekistan.

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Introduction

Among the human rights mentioned in the constitutional laws, there are such rights, the provision of which determines the level of functioning and efficiency of any legal system. One of the examples of such rights is the right to petition. 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.

Based on 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 is required in this regard. 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.

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 protecting of human rights and freedoms established by law. Based

on such petitions, people turn to judicial and non-judicial bodies to protect their rights or restore their violated rights.

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 to petition is reflected in the following:

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 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, and the foundations of social partnership are strengthened;

second, the right of people 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 and 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 to petition is a 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”.

Theoretical Overview

The right to petition originated in British common law with Magna Carta in 1215. The Great Charter hardly granted new rights to the populace, but it gave the barons of England a right to petition the crown when the king overstepped royal authority as outlined in the charter. This established the rule of law in medieval England, for now, the king was accountable to the nobility and obligated to respond to their petitions. When Parliament emerged and grew to include appointed county and city representatives after 1265, the idea that lawmakers were duty-bound to hear the concerns of those they represented expanded to include them as well [1].

Native North American petitioning has a history as old as Indigenous diplomacy itself, but early nineteenth-century Native petitioning took on new force and frequency [2].

Women petitioned in ways normal and radical throughout nineteenth century North America. They had been petitioning for a century or more beforehand, often about their own condition. Yet in a moment of cultural and procedural democracy, a more individualized practice of supplication, occasionally rising to collective claims about the welfare of others, gave way from the 1820s to the 1850s to more assertive prayers contending for legal and constitutional equality. These prayers attracted the signatures of many thousands of women, and many men as well. In aggregate and in miniature, women’s petitioning activity on issues of gender complicates the story of national and continental feminism. For one, the earliest North American petitions for woman suffrage came not from New York State before and after Seneca Falls, nor from the United States itself, but from Québec City in 1828 [2]. Women found in petitioning an instrument of politics with which they built alliances and networks.

Democratization in North America cannot be understood apart from the emergence of women’s contestation in defining matters of the public sphere, constitutional rights, property, and electoral democracy. Our narratives of that advance, especially its nineteenth-century origin, usually emphasize its distinctively American achievements, perhaps with some discussion of British correspondence. The history of petitioning offers a cautionary note, a chance to reinterpret American women’s interaction with legislatures and constitutional conventions while also urging us to look elsewhere for critical action.

Legal Basis of Petition Rights

If we look at international and foreign experiences, we can see that the right to petition has already been reflected in the constitutions of advanced foreign countries. In the constitutions of the USA, Germany, France, Japan and several other developed countries, the right of people to apply for the protection of their rights has been strengthened. On December 15, 1791, the USA ratified the Bill of Rights, the first ten amendments to the U.S. Constitution, confirming the fundamental rights of its citizens. Which guarantees freedom of religion, speech, and the press, and the rights of peaceful assembly and petition [3]. In particular, Article 68-2 of the Constitution of the Republic of France, adopted on October 4, 1958, states that any person claiming to be a victim of a serious crime or other major offense committed by a member of the Government in the holding of his office may complain with a petitions committee. Article 71-1 guarantees the right of any person who considers himself a victim as a result of the activities

of the public service or a public body to make a petition to the Defender of Rights (*Defenseur des droits*) [4].

According to Article 17 (Right of petition) of Basic Law for the Federal Republic of Germany of 1949, “Every person shall have the right individually or jointly with others to address written requests or complaints to competent authorities and the legislature” [5]. Article 16 of the Japanese constitution, which came into effect on May 3, 1947, states that everyone has the right to peaceful petition for damages, removal of public officials, correction, introduction or repeal of laws, decrees or instructions, and other matters [6].

Since the entry into force of the Treaty of Maastricht of 1992, every EU citizen and all natural or legal residents of the Member States have had the right to submit a petition to the European Parliament, in the form of a complaint or a request on an issue that falls within the European Union’s fields of activity. Petitions are examined by Parliament’s Committee on Petitions, which takes a decision on their admissibility and is responsible for dealing with them. Articles 20, 24, and 227 of the Treaty on the Functioning of the European Union (TFEU), Article 44 of the Charter of Fundamental Rights of the European Union serve as legal basis for the right of petition while the procedure for dealing with petitions is laid down in Rules 226 to 230 of, and Annex VI (XX) to Parliament’s Rules of Procedure, which confer such responsibility on a parliamentary committee, the Committee on Petitions [7].

More precisely, article 20 (ex. Article 17 of TEC) of the Treaty of Lisbon on the European Union which is the current founding document of the European Union expresses the right of citizens to free movement and residence, the right to vote and be elected, the right to diplomatic and consular protection, the right to petition to the European Parliament and other institutions of the Union, and other rights [8].

Articles 43-44 of Chapter V (“Civil Rights”) of the Charter of Fundamental Rights of the European Union guarantee the right of citizens, residents, natural and legal entities registered in the territory of the European Union to petition European institutions, including the right to send complaints to the European Parliament and the European Ombudsman [9].

Based on advanced foreign experiences, the right of a petition of a person has gained a stronger place in the renewed Constitution 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 Article 40, “Everyone shall have the right, both individually and collectively, to submit applications, proposals, and complaints to competent state bodies and organizations, citizens’ self-governance bodies, officials or people’s representatives. Such applications, proposals and complaints shall be considered by the procedure and within the time limit specified by law” [10].

In fact, in article 35 of the Constitution of the Republic 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 [11]. 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 that 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” [12].

In addition to the constitutional norms, relations related to the right to petition in Uzbekistan are 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 several new norms regarding the consideration of petitions of legal entities as well as natural persons, use of modern IT technology in petitions, shortening of petition review periods [13]. Now it is necessary to infuse the spirit and content of the new constitutional norms into these laws.

By 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 rights or restore their violated rights. Everyone’s right to petition international bodies that protect rights and freedoms is enshrined in authoritative international documents in the field of human rights and has become an international standard. These include the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights and its Optional Protocol I (1966), International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Elimination of All Forms of Racial Discrimination (1965), International Convention on the Elimination of All Forms of Discrimination Against Women (1979), International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), International Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (1990), International Convention on the Rights of Persons with Disabilities and its Optional Protocol (2006), and the International Convention for the Protection of All Persons from Enforced Disappearance (2006).

These documents not only recognize the right of people to petition but also define specific mechanisms and procedures for reviewing applications. In particular, following Article 28 of the International Covenant on Civil and Political Rights adopted by the UN General Assembly in 1966, the Human Rights Committee consisting of 18 members was established. Part IV of the Pact (Articles 28-45) and its Optional Protocol I describe the status, organizational structure, powers and basic rules of the activity of this committee [14]. According to the first article of the Optional Protocol, a State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights outlined in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol. Article 2 provides that Individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit

a written communication to the Committee for consideration [15]. So, in case of violation of their rights, individuals can petition the Committee over their countries. In its closed sessions, the Committee examines the written information received from individuals and interested countries, formulates its opinion and forwards it to individuals and countries. Brief information on the work done in this area is presented to the General Assembly every year through the report of the Economic and Social Council.

According to Article 55 of the renewed Constitution, “Everyone shall have the right, by 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” [16].

This means that every person permanently residing or temporarily staying in Uzbekistan can apply to the human rights bodies of international organizations, in particular, the conventional human rights bodies of the United Nations, to protect their rights and freedoms or to restore their violated rights stipulated in the main international human rights treaties ratified by Uzbekistan. 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), 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 and the UN Human Rights Council through special procedures [17,18].

Conclusion

It is necessary to recognize the fact that in Uzbekistan until now the right of people to apply to international organizations and their bodies was not determined in any national legal document. The inclusion of this right in the renewed Constitution is of great revolutionary importance in improving the system of working with citizens’ petitions.

First, 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 a 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 the individual responsibility of officials. Now they will be forced to approach their tasks more responsibly under the possible pressure of international bodies.

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

Fourth, the inclusion of this institution in the renewed Constitution of Uzbekistan of 2023 and its full implementation complies with the international legal obligations of Uzbekistan and will positively affect its image before the international community. As a participant of the core international conventions in the field of human rights, Uzbekistan shows its will to fulfill its obligations arising from them. In addition, it once again demonstrates the policy of openness and transparency in our country and its irreversible nature. Now, shortcomings and problems in the field of human rights cannot be hidden, everything is openly shown as it is. The practice of the right to petition international bodies in the field of human rights serves to show the real situation in the country.

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