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主 論 文 の 要 旨

論文題目

Interrelationship Between Constitutionalism and Political Parties in Uzbekistan: Comparative Review with Russia and Germany
(ウズベキスタンにおける立憲主義と政党の関連—ドイツとロシアとの比較研究中心—)

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論 文 内 容 の 要 旨

The research entitled “Interrelationship Between Constitutionalism and Political Parties in Uzbekistan: Comparative Review with Russia and Germany” makes a new approach to analysis of the constitutionalism and political parties in Uzbekistan. This paper was prepared due to the long-drawn-out transition process to democratic society in Uzbekistan. The time to design new constitutionalism, as soon as possible before the lonely supervisor of the country will live his throne leaving it to the unpredictable successor, has already come.

The main idea of this paper is to increase the guarantees of protection of rights and freedoms by Constitutional Court in Uzbekistan. Moreover, expand the scope of provisions about the right to appeal to the Constitutional Court by political parties against decisions of the Ministry of Justice in Uzbekistan. Also, to make clear constitutional provision of Article 57 (prohibited political parties) about the component of danger that comes from religious, ethnic and professional parties.

For this reason, there is a historical analysis was done not only in Uzbekistan constitutionalism, but Russian and Germany. The selection of these countries is relates to

their historical crosses during WWII and existence of the USSR. These and many other factors were influenced to the legal culture in all three countries. The first factor relates to democracy under the rule of law that all three countries established in their legal systems, but in different period of times and different results. The second factor is an innovation in the judicial system – Constitutional Court – an institution that makes a constitutional review and has a nature of guardian of the Constitution, democracy and constitutional order in all three countries. However, there are a big difference in their workability with constitutional issues and making judgments, decisions and interpretation of the questioned constitutional provisions. The third factor that makes interesting to compare three countries that autocratic party governed them in the past, in particularly Uzbekistan and Russia by Communist Party, Germany by Nazi Party. Consequently, this paper makes some steps back on the history to examine constitutionalism in Uzbekistan, Russia and Germany.

The historical analysis of constitutionalism in Uzbekistan was done in the Soviet period from 1917 to the late 1980s and post-Soviet period. The historical analysis of constitutionalism in Russia covers periods from pre-Soviet time up to October Revolution of 1917, from 1917 to the late of 1980s, and post-Soviet period. The historical analysis of constitutionalism in Germany combined the periods of Prussian Empire in particularly in First (1849) and Second *Reich* (1871), the period of Weimar Republic of 1919, Separation of Germany after WWII period, and Unification of Germany after 1991.

The historical analysis was based on the constitutional and legal examination of the political and party systems existed under the different constitutions and governors of the state power. For example, Uzbekistan has passed the period with Islamic culture before communist colonization. This culture was cultivated for many years with conservative thinkers of Islam under Sharia and Adat systems. When communists came to Central Asia,

the Islamic culture was negated by the new system. The attempt to westernize the Islamic culture by Jadids in Central Asia was failed. Instead traditional khanat's government with inheritance of the throne came the Communist Party government by the proletariat. The cultivation of the new culture in the territories of Uzbekistan continued with series of Muslims repression, Uzbek language negation and using Russian language is the main. Moreover, traditional schools in Mosques were closed, and instead were opened schools for all boys and girls. Political repression of Muslims or other ideologists were prohibited during the Soviet period. This research found that even the pluralism is already protected by Constitution after 1991, political negation of Muslims in the party system is symbolized some danger.

The cultivation of Islam and communism in Uzbekistan has changed formally people's political values to the secular side with some western elements. The Islam for Uzbekistan people is more not religion, but value of life that current generation is still keeping as tradition. Today as many centuries before, there are many extremist thinkers in Islam that struggling illegally with government leaders. Current Uzbekistan government created a *Constitution* of 1992 prohibiting any kinds of religion, nationalistic and professional parties who are struggling for the power.

This research found necessity to change the way of strict supervision over each political party that aim to present some alternatives to the people, but use all established democratic institutions effectively. With *Constitution* of 1992 was started a new constitutionalism and democracy under the core principle of the rule of law. This constitutionalism makes possible to control all enemies of the people's values and democratic principles they want to break with not only executive, but also parliament and judicial bodies. This research concentrates more attention to the role of the Constitutional

Court in constitutional review of the laws, decisions and constitutional complaints on political issues.

To support arguments about the role of the Constitutional Court, this paper analyzed the formation of the constitutionalism in Russia after the collapse of the USSR and Germany after WWII. These two countries were taken because of their constitutions – Constitution of 1993 and Basic Law of 1949 – where the role of each democratic institution was detailed according to the needs of time. The Constitution of 1993 of Russia combined a great catalog of rights and freedoms, with experienced Federal Constitutional Court in reviewing a diverse of constitutional complaints and laws. This paper found that current autocratic presidential political system without strong parliament and independent court system may lead to the political crisis in Russia. The success of the Basic Law of 1949 was in its stability during more than 60 years and strong guarantor of the Constitution such as Federal Constitutional Court. This research has findings that the party systems with leaders that have some inclination to the nationalistic thoughts may bring new discussions about limitations and not only toward them, but the high level of immigrants with different Islamic views may also be a new issue for discussion from the constitutional perspective.

This paper becomes convinced of idea about the importance of the Constitutional Courts in three countries. The limitations that exist in each country about this idea are different. Uzbekistan has constitutional provisions and regulations on political parties that granted to people rights and freedoms of ideas, associations, and assemblies. However, they are limited with conflicting constitutional provisions that made executive body –the ministry of Justice – practically to be a final stage in two possible to decide the future of political parties. For this reason, cases on Birlik and Erk analyzed in this paper were very unclear and complex in the context of government argumentation. In case of Constitutional Court it has

never functioned in that way, as it must to be with qualitative judgments and decisions.

The limitation that was found in the constitutionalism of Russia related to the role of the Federal Constitutional Court (FCC) that already has a great experience with presidential distrust, constitutional complaints on interpretation of party law. The quality of the judgments and decisions of the FCC in the part of argumentation are too general that confuse the representatives of political parties to initiate their rights of association. The interpretation of the laws on political issues must take more detailed and logical explanation that may solve lots of misunderstanding in the step of formation of political parties without extra prohibition of some of them based on religious, professional, ethnic and nationalistic features. Still, the power of the executive power – the Federal Ministry of Justice and other divisions in all territorial entities – has some control over the unpleasant political parties in the step of registration, which may be neutralized only by the FCC based on the constitutional complaint.

The limitations founded in the constitutionalism in Germany are in the theoretical interpretation of the FCC, which concentrated more on the past – Nazi Party and Communist Party. The current Germany society was changed, but the instrument of Constitution protection is the same. This shows the stability in the political system with strong control over the party organizations, but does it mean that even with high immigration of Islamic groups in Germany, may still leave the Basic Law and constitutional order and democracy safe, raise the question that in search of answer by German scholars and judges.