

【Special Features: Multiple Aspects on Constitutionalism –Asian “Contexts” and its Logic】

The Introduction of Modern Constitutionalism in Central Asian Post-socialist Context: The Case of Constitutional Debate and Development on Human Rights in Uzbekistan in the Twentieth and Early Twenty-First Centuries

ISMATOV Aziz*

Abstract

This research sheds light on a constitutional debate on and development of human rights in Uzbekistan throughout four constitutions from 1927 to 1992, as well as prospects and challenges in conceptualizing and promoting human rights during and after socialism. As a departure point, this research investigates relevant human rights provisions in the 1927, 1937, and 1978 constitutions, which functioned during the period when a socialist human rights tradition was established and evolved in the then Uzbek Soviet Socialist Republic (Uzbek SSR). It follows with the analysis of the debates on the new human rights and citizens' rights provisions in the 1992 Constitution adopted within the sophisticated transition process from socialism to market economy. This discussion touches upon the theoretical collision between antagonistic theories of rights – the positivist theory originating from a socialist state on the one hand, and the natural law inspired by international human rights law and foreign constitutions. The author argues that the discourse of contemporary constitutional human rights development in the Republic of Uzbekistan still bears evident traces of socialist and positivist conceptions, notwithstanding the government's tendency to distance from the socialist state concept. Constitutional human rights also experience substantial practical challenges bounded by multiple factors, which additionally include provisional imperfection regarding the direct (immediate) implementation of rights and incompetent constitutional review system.

* Assistant Professor, Center for Asian Legal Exchange, Nagoya University.

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I. Introduction

Fragmented deliberations touching upon human rights in Uzbekistan appeared in the early twentieth century. The *1927 Constitution of the Uzbek Soviet Socialist Republic* (1927 Constitution) contained the sporadic and limited provisions on rights afforded mainly to the proletarian class.¹ The following *1937 Constitution of the Uzbek Soviet Socialist Republic* (1937 Constitution) contained comparatively more rights-related articles.² The *1978 Constitution of the Uzbek Soviet Socialist Republic* (1978 Constitution) had listed close to 40 of rights.³ The formal discussion on human rights in the USSR, especially its former union-republics of Central Asia, generally remained insignificant or void.

The process of transition towards a market economy in Uzbekistan, which began in 1991, necessitated the creation of an entirely new, non-socialist legal system that would promote market economy, democracy and establish the *Rechtsstaat*. The first two decades of the transition emphasized the human rights topic mainly from the critical perspective in the foreign media and human rights forums, and to a lesser degree within domestic public institutions. As of 2021, the situation with a discussion of human rights is relatively open as compared to, for example, as in 2015. However, there is still an exceptional untouchable grey area that relates to ‘public interest.’

After the formal demise of socialism, one of the intense discussions on human rights took place during the draft process of the *1992 Constitution of the Republic of Uzbekistan* (1992 Constitution). This process involved the previously unknown elements of the nation-wide constitution draft discussion that continued from October to December 1992. The debate on the chapter on human and

¹ “1927 Constitution of the Uzbek Soviet Socialist Republic [1927 Constitution]” (1927).

² “1937 Constitution of the Uzbek Soviet Socialist Republic (1937 Constitution)” (1938).

³ “1978 Constitution of the Uzbek Soviet Socialist Republic (1978 Constitution)” (1978).

citizens' rights attracted limited comments and recommendations from private and public actors, but even this form of *travaux préparatoires* reveals tensions between natural rights and state-granted rights theories. It also brings into attention a dissent between the universalism of international human rights standards and cultural relativism.⁴ The context of the debate on and the development of constitutional human rights, similarly to other new democracies, do not insert any adequate clarity concerning *Rechtsstaat*, the rule of law, and *Etat de Droit*.

Legal studies in the Central Asian region traditionally compose a poorly researched area in the English-speaking academic world. Over the past couple of decades, the published contextual international research on Uzbekistan focuses mainly on practical human rights abuses by the government without pausing on the aspects of the constitution-draft process and legal theoretical variations of rights in the present and predecessor constitutions. Also, there is a lack of adequate attention and research to the theoretical constitutional settings by legal scholars in Uzbekistan, whether in Uzbek or Russian languages. Therefore, multiple critical features related to the constitutionalism in Central Asia have yet to be explored.

This research aims to help to correspond to this divergence and proceeds as follows: Part I investigates the constitutional evolution of the socialist human rights structure in Uzbek SSR through a detailed inquiry into specific constitutional provisions from 1927 to 1992. Part II examines the relevant constitutional debates and political tendencies that led to the adoption of the constitutional provisions on human rights in the 1992 Constitution. This part also examines and assesses the effectiveness of the constitutional human rights provisions. Part III concludes with an evaluation of the prospects and challenges of human rights and their protection in Uzbekistan.

II. The Evolution of the Socialist Human Rights Discourse in Uzbekistan from 1927 to 1992

Uzbekistan has promulgated four constitutions; three during the socialist era in 1927, 1937, and 1978, and one since its independence from the Soviet Union in 1992 (see Table 1). Before socialism, under the Russian tsarist administration, territories of present Uzbekistan experienced a dualist legal nature, an extensive practice of Islamic law, and fragmented experience of a non-religious legal system based on civil law tradition.⁵ There was no formal, written constitution with any human rights

⁴ In Central Asia, policymakers also synonymously use the term Oriental values alongside with Asian values.

⁵ Aziz Ismatov and Sardor Alimdjano, "Developmental Trajectory of Mahalla Laws in Uzbekistan: From Soft Law to Statutory Law," *Nagoya University Asian Law Bulletin* Vol.4 (December 2018): 3.

provision during that period. As a point of departure, the table below provides a concise outline of the provisions on human rights within the mentioned four constitutions.

Table 1. Constitutional Provisions on Human Rights in Uzbekistan (Both during the Socialist and post-Socialist Periods)

| | Rights | Constitutions | | | |
|----|---|----------------------|---------------------|----------------------|---|
| | | 1927 (Fragmented) | 1937 (Chapter X) | 1978 (Chapter VI) | 1992 (Chapter V) |
| 1 | Right to life | | | | Article 24 |
| 2 | Right to liberty and security of the person | | Article 126 | Article 52 | Article 25 |
| 3 | Right to freedom of movement and right to choose one's residence (including the right to travel abroad) | | | | Article 28 (only movement limited by law) |
| 4 | Freedom of expression | Article 7 | Article 124 | Article 48 | Article 29 (limited) |
| 5 | Freedom of association and peaceful assembly | Article 8,9 | Article 124,125 | Article 48, 49 | Article 34 |
| 6 | Freedom of belief and religion | Article 6 | Article 123 | Article 50 | Article 31 |
| 7 | Freedom of press | Article 7 | Article 124 | Article 48 | Article 29 (limited) |
| 8 | Right to be informed (Right to have access to information) | | | | Article 29 Article 30 |
| 9 | Right to (fair) trial | | | | Article 44 (right to a lawsuit) |
| 10 | Right to defense (in criminal proceedings) | | | Article 169 | Article 26, 116 |
| 11 | Right to be compensated for miscarriage of justice | | | Article 56 | |
| 12 | Right to privacy (family, home, telephone or correspondence) | | Article 127 | Article 48, 53,54 | Article 27 |
| 13 | Right to protect own dignity | | | | Article 27 |
| 14 | Right to complaint, denunciations, | | | Article 55, 56 | Article 35 |
| 15 | Right to demonstrate | | Article 124 | Article 48 | Article 33 |
| 16 | Right to use one own's language before the court | Article 17 | Article 109 | Article 170 | Article 115 |
| 17 | Right to take part in the conduct of public affairs | | | Article 47 | Article 32 |
| 18 | Right to make proposals and criticize public institutions | | | Article 46 | |
| 19 | Right to referenda | | | Article 46 | Article 32 |
| 20 | Right to nationality (citizenship) | | | Article 31 | Article 21 |
| 21 | Right to legal protection | | | Article 31 | Article 22 |
| 22 | Right to election | Article 92 | Article 134 | Article 89 | Article 117 |

| | | | | | |
|----|--|--|--------------------------------------|------------------------------------|--|
| | | (Only proletarian class) | | | |
| 23 | Right to asylum | Article 15 | Article 128 | Article 36 | |
| 24 | Right to property | | | | Article 36 |
| 25 | Right to inherit property | | Article 10 | Article 13 | Article 36 |
| 26 | Right to housing | | Article 10 | Article 42 | |
| 27 | Right to benefit from scientific, literary or artistic production | | | Article 44, 45 | Article 42 |
| 28 | Right to work | Article 11 (obligation) | Article 11 (obligation); Article 117 | Article 38 Article 58 (obligation) | Article 37 |
| 29 | Right to social security | | Article 119 | Article 41 | Article 39 |
| 30 | Right to leisure | | Article 118 | Article 39 | Article 38 |
| 31 | Right to education | Article 10 | Article 120 | Article 43 | Article 41 |
| 32 | Right to health (since 1992 – qualified medical service) | | | Article 40 | Article 40 |
| 33 | Right to equality before the law | Article 13 (only Union citizens) | | Article 167 | Article 18 (only citizens) |
| 34 | Equal rights between men and women | | Article 121, 136 | Article 33 | Article 46 |
| 35 | Right to the maternity of female workers | | Article 121 | Article 33 | Article 65 |
| 36 | Rights of children | | | Article 51 | Article 64, 65 |
| 37 | Rights of intellectuals | | | Article 45 | |
| 38 | Rights of vulnerable groups | | | Article 41, 51 | Article 45 |
| 39 | Equal rights among ethnic groups | Article 16 | Article 122 | Article 32, 34 | Article 8 |
| 40 | Equal rights for Union citizens (Since 1992 equal rights for citizens) | Article 13 | Article 18, 122 | Article 31 | Article 21 |
| 41 | Equal rights for foreigners (Since 1978 for foreign residents for stateless persons) | Article 14 (only political rights for proletarian class) | | Article 35 (limited) | Article 23 (limited to norms of international law) |
| 42 | Language rights for national minorities | Article 17 | Article 120 | Article 43 | Article 4 |

The table above may initially draw to the following general considerations. First, apart from the 1927 Constitution, which placed rights mainly within the general introductory provisions, the subsequent three constitutions included provisions on human and citizens' rights into individually titled chapters. Second, from the viewpoint of comparative importance and constitutional hierarchical structure, these chapters on human and citizens' rights demonstrate a tendency of gravitating from final towards earlier chapters of constitutions. For instance, in 1937 Constitution, known also as

Stalin's constitution, the provisions on human and citizen's rights were positioned only in Chapter X, in 1978 Constitution in Chapter VI, whereas in 1992 Constitution these rights already moved to Chapter V. Such progressive dynamism of gradually placing human and citizens' rights provisions into earlier chapters may demonstrate a comparative importance of human rights. Third, constitutional evolution shows that human rights were mainly preserved, elaborated further, and increased. Although several human rights provisions that existed in predecessor constitutions were later removed, such cases are rare. As an example, the 1927 Constitution's Article 14, which extended equal political rights to (proletarian) foreigners, was omitted in subsequent constitutions.⁶ Similarly, the number of rights which existed in socialist constitutions, such as; the right to be compensated for the miscarriage of justice, the rights to make proposals and criticize public institutions, the right to asylum, the right to housing and others were neglected or omitted in the 1992 Constitution.

Simultaneously, modifications in all four constitutions indicate ideological transformations. As a bright example, the absence of the right to private property, introduction, and expansion of the economic, social, and cultural rights in the 1927, 1937, and 1978 constitutions appear to reflect expanding authorization of socialism. On the other hand, the 1992 Constitution revoked many of these provisions. Granting the constitutional right to private property became one of the central modifications signaling about the switch towards a market economy. Moreover, the 1992 Constitution drafters had to revise the significant economic, social, and cultural rights introduced in the 1978 Constitution. Notably, in the socialist period, the right to work was under the direct prerogative of the socialist government, or in other words, it was the government's obligation to secure adequate employment for every citizen.⁷ Similarly, the 1978 Constitution secured for everyone the right to free education at all levels, the right to paid leisure, and the right to free medical service.⁸ The 1992 Constitution drafters, out of their grave concerns that extending such 'generous' rights would be unrealistic within the realities of transition from socialism to a market economy, unanimously neglected these provisions.

The evolution of human and citizen's rights also suggests that there is a profound difference between all four constitutions, which might owe considerably to the socio-political circumstances in which these constitutions were brought into existence. Indeed, each of the four constitutions appears

⁶ Article 14 of the 1927 Constitution of the Uzbek Soviet Socialist Republic [1927 Constitution].

⁷ Article 11 of the 1927 Constitution of the Uzbek Soviet Socialist Republic [1927 Constitution]; Article 11 of the 1937 Constitution of the Uzbek Soviet Socialist Republic (1937 Constitution); Articles 38 and 58 of the 1978 Constitution of the Uzbek Soviet Socialist Republic (1978 Constitution). Note that all three socialist constitutions classified work as an obligation.

⁸ Respectively articles 39, 41, and 43 of the 1978 Constitution of the Uzbek Soviet Socialist Republic (1978 Constitution).

to be a product of its own epoch. While the 1927 Constitution was shaped by the initial slogans of the socialist revolution and dictatorship of the proletariat, the Stalin's 1937 Constitution stressed additionally about "the achievement of socialism and the harmony of classes."⁹ Such approach, however, resulted in dissonance between the promises made in the 1937 Constitution and realities. Further, the 1978 Constitution, known as Brezhnev's Constitution apart from similarly determining the ideas of people's democracy, dictatorship of proletariat, and centrally planned economy, had also consolidated and institutionalized citizen's social and economic rights. This constitution, as a direct copy of the 1977 USSR's Constitution, appeared to reflect the general sense that the Soviet government had reached the state of "developed socialism" (*razvityy sotsializm*).¹⁰ Eventually, the 1992 Constitution was theoretically inspired mainly by the ideas of independence, sovereignty, and attempts to build an economy modeled on Western-type, establish democracy, and vibrant civil society.

All three, 1927, 1937, and 1978 constitutions left no space for pluralistic ideas but incorporated solely the Marxist-Leninist concept in a pursue of socialism and socialist law.¹¹ The scholarship does not offer a single definition of Soviet-type socialism. Neither do any of the former Soviet socialist constitutions contain a separate explicit provision on it. Some scholars tend to interpret it by stressing on the socialist, centrally administered or command economy with considerable public ownership.¹² While stressing about non-economic aspects of socialism, the vanguard role of the Soviet Communist Party and democratic centralism appear as bright characteristics.¹³ The fragmented constitutional analysis allows interpreting socialism as a political ideology promoting state ownership of the means of production within a state-command economy and under the unshared authority of the communist party.¹⁴ Such interpretation appears to have created a political environment in which natural rights idea, as based on international human rights treaties, came to be replaced by the citizen's rights idea based on legal positivism. In other words, in socialist constitutions, rights, including human rights were legal rights granted by the state. As a matter of fact, neither of the Uzbek socialist constitutions

⁹ Sarah Davies and Sarah Rosemary Davies, *Popular Opinion in Stalin's Russia: Terror, Propaganda and Dissent, 1934-1941* (Cambridge University Press, 1997), 102.

¹⁰ *Problems of Communism* (Documentary Studies Section, International Information Administration, 1977), 4. Also, see the Preamble of the 1977 Constitution of the USSR, (1977), "A developed socialist society has been built in the USSR.

¹¹ As an example refer to the article 6 of the 1978 Constitution of the Uzbek Soviet Socialist Republic (1978 Constitution).

¹² P.J.D Wiles, *The Political Economy of Communism*. (Oxford: Basil Blackwell, 1962) As cited in; János Kornai, *The Socialist System: The Political Economy of Communism* (Princeton University Press, 1992), 10.

¹³ William Partlett and Eric Ip, "Is Socialist Law Really Dead?," *New York University Journal of International Law & Politics*. *New York University. International Law Society* 48 (January 1, 2016): 470-71.

¹⁴ Article 6, 11, and 16 of the 1978 Constitution of the Uzbek Soviet Socialist Republic (1978 Constitution).

made a direct reference to the term human rights in any of its sections. Soviet ideologists systematically titled their constitutional chapters regulating rights as ‘Citizen’s rights and obligations’, not ‘Human rights’ as many foreign non-socialist constitutions did. It is worthwhile to mention that the drafters of the Soviet constitutions had elaborated a fundamental doctrine of socialist citizen’s rights, which puts a strong emphasis on the group of social-economic rights and particularly their material guarantees. As an example, the right to housing in the 1977 Constitution secured a provision on “fair distribution of living space under the public control.”¹⁵ Other similar examples included strong governmental guarantees of free education at all levels, paid leisure, free health care system, and employment guarantees. Simultaneously, certain vital human rights, such as the right to private property, were omitted in the constitutions because of their apparent conflict with the core socialist settings. Traditional personal freedoms were somewhat neglected. Simultaneous inseparable unity between rights and obligations presupposed that the material guarantees of social, economic rights could become possible upon the conditionality of every citizen’s thorough participation in socialism building.¹⁶ Such a general constitutional framework somewhat rejected the natural law doctrine as long as the socialist concept of rights could only be derived from the sources of positive law which were created, granted, and protected by the state.¹⁷

Foreign observers commented that such instrumentalist nature of Soviet constitutions revealed a strong need for legitimacy and therefore, *inter alia*, put a strong emphasis on rights and duties.¹⁸ Inspired by the doctrine of socialist legality, such instrumentalist approach legitimized a patronalistic idea that the Soviet Communist Party had exclusive competence to use law as a tool to implement its policies, adopt, amend and, if necessary, abolish the constitution as long as Party’s highest authority was represented by the will of the Soviet citizens. Such logic in all three Uzbek socialist constitutions echoes Marxist-Leninist approaches towards the superiority of the state and its “democratic” dictatorial structure.¹⁹

Hence, by 1978, socialist constitutional evolution had resulted in the formal construction of the socialist citizen’s rights theory. This theory had replaced a concept of human rights by citizen’s rights

¹⁵ Article 42 of the “1977 Constitution of the Union of the Soviet Socialist Republics” (1977).

¹⁶ Article 59 of the 1978 Constitution of the Uzbek Soviet Socialist Republic (1978 Constitution).

¹⁷ F. J. Ferdinand Joseph Maria Feldbrugge, Gerard Pieter Van den Berg, and William Bradford Simons, *Encyclopedia of Soviet Law* (BRILL, 1985), 124.

¹⁸ Gordon B. Smith, Peter B. Maggs, and George Ginsburgs, *Soviet and East European Law and the Scientific-Technical Revolution* (Pergamon Press, 1981), 121.

¹⁹ Refer further to; Joseph V. Femia, “Gramsci, the ‘Via Italiana’, and the Classical Marxist-Leninist Approach to Revolution,” *Government and Opposition* 14, no. 1 (1979): 66–95.

by enshrining rights and duties to citizens – individuals bound to state by the political and legal bond.²⁰ A closer look at those rights demonstrates a clear prioritization of social and economic rights over civil and political rights and freedoms. Legal scholarship and general socialist constitutional discourse simultaneously demonstrated a strong emphasis on collective or social interests in promoting rights and duties of citizens vis-à-vis the state, rather than an individualistic emphasis on human rights as usually is the case in the Western constitutions. In the context of socialist legality, human rights in the Uzbek SSR emerged as positive citizen's rights granted by the state. Opposed to the theory of natural rights, the respect and realization of such citizen's rights depended heavily on the state's will.

In 1991, socialism officially ended amid the collapse of the USSR, which catapulted Uzbekistan, as well as other former Soviet Central Asian republics towards independence and attempts to build an economy modeled on the Western-type and entirely new legal system to promote a smooth transition. In December 1992, Uzbekistan adopted a new constitution.

III. Constitutional Rights in the 1992 Constitution: Introduction of Positive or Natural Human Rights?

The current Constitution of Uzbekistan was enacted in 1992 after the demise of the USSR and, hence, is often related to as the first constitution or even Karimov's constitution.²¹ Indeed, some domestic legal scholars who were members of the constitution draft commission asserted that Karimov was the “main author of the Constitution.”²² The term ‘first’ in the context of the 1992 Constitution does not always make a logical sense for some scholars because it ignores the role and essence of the previous three constitutions. In this regard, a prominent domestic scholar asserts that the principal difference of the 1992 Constitution from previous constitutions is the mere fact that it was not directly and unconditionally imposed by the USSR, but elaborated and adopted by an independent, sovereign government.²³ While acknowledging the primacy of international law, this constitution has no

²⁰ For a discussion on the difference between nationality and citizenship in the post-Soviet context, refer further to; Aziz Ismatov, “Citizenship Regulation in the Post-Soviet Space; an International Legal Study in Nationality and Statelessness” (Doctoral dissertation, Nagoya University, 2014);

²¹ D Carlisle and Levitin, L, *Islam Karimov: President of the New Uzbekistan* (Vienna: Grotec, 1995); L Levitin, *Islom Karimov: O'zbekiston Respublikasining Birinchi Prezidenti [Islam Karimov: The First President of the Republic of Uzbekistan]* (Tashkent: Uzbekistan, 1997), 239–40.

²² Saidov, Akmal and U Tadjihanov, *Islom Karimov Konstitutsiya to'grisida: O'zbekiston Respublikasining Konstitutsiyasi o'rganuvchilarga Yordam*. (Tashkent: Akademiya, 2001), 156.

²³ Saidov, Akmal, *O'zbekiston Konstitutsiyasi Tarihi [History of Uzbekistan's Constitution]* (Tashkent: Tasvir, 2018), 340.

mentioning about the communist ideology, proletarian class dictatorship, democratic centralism, or a single-party leadership.

Its preamble's first sentence manifests that "the people of Uzbekistan solemnly declare their adherence to human rights and principles of state sovereignty."²⁴ By providing the term human rights, Uzbekistan's constitution draft commission members presumably demonstrate a shift from their traditional belief that the constitution must recognize and protect rights not only for citizens but also for foreigners, refugees, and stateless people who live and work in Uzbekistan legally. This constitution also explicitly indicates a shift away from the 'socialist-oriented' economic, social, and cultural rights enshrined in the previous socialist constitutions. The draft negotiation process demonstrates that most of these rights would be difficult or nearly impossible to realize within the new socio-political realities of transition. During the draft and nation-wide discussion process, the commission members had received multiple suggestions and recommendations from private and public actors to amend the economic and social rights with their reference to the predecessor socialist constitutions. For example, numerous recommendations from private parties, which suggested including into the 1992 Constitutions the provisions on free education in all levels and free healthcare as they existed in articles 40 and 47 of the 1978 Constitution, did not find support with the commission.²⁵ Current article 41 of the 1992 Constitution provides for the right to education, but such right is only free at the elementary level. Article 40 provides only for the right to qualified healthcare and contains no wording on free or exceptional cases of state-covered healthcare.

Similarly, the previous socialist constitution provided that citizens had the right to be employed and have state-provided housing. That made a state directly responsible for creating and managing jobs as well as for providing housing assistance.²⁶ A group of activists also demanded the articles regulating employment and housing in the 1992 Constitution contained similar wordings.²⁷ However, the 1992 Constitution merely provides that "everyone has the right to work ... and unemployment

²⁴ Preamble, "The Constitution of the Republic of Uzbekistan" (1992).

²⁵ "O'zbekiston Respublikasining Markaziy Davlat Arhivi [Central State Archive of the Republic of Uzbekistan] XII Chaqiriq, O'zbekiston Respublikasining Oliy Kengashining 1992 Yil 8 Dekabrda Bo'lib O'tgan XI Sesssiya Materiallari [11th Plenary Session Materials]" (Fond-M-69, N 1, 154, 1992), 43, 99, 139, 150.

²⁶ 1978 Constitution of the Uzbek Soviet Socialist Republic (1978 Constitution), Articles 38 and 42.

²⁷ "O'zbekiston Respublikasining Markaziy Davlat Arhivi [Central State Archive of the Republic of Uzbekistan] XII Chaqiriq, O'zbekiston Respublikasining Oliy Kengashining 1992 Yil 8 Dekabrda Bo'lib O'tgan XI Sesssiya Materiallari [11th Plenary Session Materials]," 74-95.

protection as prescribed by law”.²⁸ As for the right to housing, the 1992 Constitution does not demonstrate any explicit provision that would be identical to that of the 1978 Constitution.

Most notably, the 1992 Constitution included and enhanced several human rights, some of which were transplanted from the Universal Declaration of Human Rights. Such rights include; the right to life (Article 24)²⁹, equal citizenship (Article 21), the right to be informed and access to information (Articles 29, 30), the right to property (Article 36), the rights to maintain a secret of bank accounts and legal guarantees on inherited properties (Article 36), the right for entrepreneurship (Article 53), the right to lodge complaints and lawsuit (Article 44), the right to freedom of movement and right to choose one’s residence (including right to travel abroad) (Article 28). Although the practical implementation of these rights still raises many questions, these new rights were considered crucial for the democratic and economic state-building of Uzbekistan in the post-1992 period.³⁰

Mentioned novelties came into existence because of several factors. Firstly, it was the state sovereignty that came unexpectedly and made Uzbekistan, as well as many other former Soviet republics to deal with appearing challenges, including legal reforms, in a very unprepared manner. Such a situation necessitated introduction of the key principles of the market economy, such as respect and protection of the private property, free competition, and freedom of movement. As these ideas existed in successful market-economies where they appeared crucial, the policymakers in Uzbekistan unanimously decided to safeguard them. Therefore, the 1992 Constitution started *de jure* recognizing these ideas, for instance, the right to private property and freedom of movement. Subsequently, the reflection of many universal human rights and ratification of a range of international human rights treaties was considered as a step towards qualifying for membership of the so-called “international democracy club.” Eventually, the 1992 Constitution sets up a mechanism of check-and-balance between different branches of the government and refers to the “law-governed state” (*pravovoe gosudarstvo*).³¹

²⁸ Article 37 of The Constitution of the Republic of Uzbekistan.

²⁹ Notwithstanding the provision of the right to life, the capital punishment was abolished in 2008. Refer further to; Aziz Ismatov and Eliko Ciklauri-Lammich, “Abolishing Capital Punishment in Uzbekistan – Between External Pressure and Pragmatism,” *Zeitschrift Für Die Gesamte Strafrechtswissenschaft* 130, no. 1 (2018): 279–302, <https://doi.org/10.1515/zstw-2018-0010>.

³⁰ Saidov, Akmal, *O‘zbekiston Konstitutsiyasi Tarihi [History of Uzbekistan’s Constitution]*, 371.

³¹ Preamble and Article 11 of The Constitution of the Republic of Uzbekistan. The principle of separation of powers into the legislative, executive and judicial shall underline the system of state authority of the Republic of Uzbekistan.

The term ‘law-governed state’ (*pravovoe gosudarstvo*) within the text of the 1992 Constitution appears once in the Preamble.³² The mere existence of this term in the text of the 1992 Constitution with no definition as such creates a legal-terminological axiom as it may theoretically reflect several meanings. First is a Russian equivalent of the German term *Rechtsstaat*.³³ The concept of *Rechtsstaat* is more oriented towards the nature of the state and has its roots in the written constitutions.³⁴ Historically, *Rechtsstaat* was seen as a counterforce to the absolutist state power in which the executive branch had unlimited authority. Hence it presupposed strong judicial and legislative branches as necessary conditions for the well-balanced power.³⁵ This term was imported from Germany to Russia in the late nineteenth century, and subsequently was borrowed by some former Soviet republics, including Uzbekistan, from Russia. Another meaning may suggest a French originated *Etat de Droit* as a positivist concept of the *pravovoe gosudarstvo*, which concentrates more on the state’s supervision of the statutes.³⁶ Furthermore, such terminological axiom looks even more obscure because Article 15 of the 1992 Constitution contains a provision on the ‘*verkhovenstvo konstitutsii i zakona*’ which means ‘rule by the law,’ not ‘rule of law.’ Scholars assert that ambiguous legal terminological practices and focus on the ‘rule by the law’ is a distinguishing characteristic of many new democracies that had experienced socialism and evolved within the conditions of socialist legality.³⁷

The 1992 Constitution also demonstrates legal imperfection, specifically when it comes to human rights. First, although the 1992 Constitution became a pioneer in terms of using the term human rights, it does not provide a clear distinction between human rights and citizen rights, but simply conflates them. The 1992 Constitution of Uzbekistan dedicates its Part II to the Basic Human and Citizen Rights, Freedoms and Duties and, converges many universal human rights. Consequently, by additionally taking into consideration provisions on “equal rights and freedoms for citizens” (Article 11) and “state

³² Preamble, The Constitution of the Republic of Uzbekistan. “The people of Uzbekistan.... setting forth the task of creating a humane and democratic law-governed state”

³³ Hiroshi Oda, “The Emergence of Pravovoe Gosudarstvo (Rechtsstaat) in Russia,” *Review of Central and East European Law* 25, no. 3 (1999): 373.

³⁴ Eric Wennerstrom, *The Rule of Law and the European Union* (Uppsala:ustus Forlag, 2007), 73. This is opposed to the “Rule of law” which is believed to have appeared in non-written constitutions or in legal precedents. .

³⁵ “Doklad o Verkhovenstve Prava, CDL-AD (2011)003rev” (Venice, April 2011), 5.

³⁶ Wennerstrom, *The Rule of Law and the European Union*, 73.

³⁷ V.D. Zor’kin, “Verkhovenstvo Prava i Pravovoe Soznanie [The Rule of Law and Legal Consciousness],” in *The Rule of Law: Perspectives from Around the Globe*, Francis Neate (IBA, 2009), 43–54; Sergey Holovaty, *The Rule of Law* (Kyiv: Phoenix Publishing House, 2006), 1655–65; Tuori Kaarlo, “The ‘Rechtsstaat’ in the Conceptual Field - Adversaries, Allies and Neutrals, Associations” Vol 6, no. Number 2 (2002): 212.

guarantees the rights and freedoms of citizens” (Article 43), this constitution suggests that provisions on human rights are only extended to citizens and ignore foreigners, refugees and stateless who legally reside and work in Uzbekistan. Many progressive foreign constitutions do not draw such a distinction between citizens and non-citizens.³⁸ Second, many rights in the 1992 Constitution make further references to the laws adopted by the parliament and normative-legal acts (*normativno-pravovye akty*) adopted and promulgated by the public agencies. This outsourcing eventually paves the way for both, public agencies’ ability to promulgate normative-legal acts that may arbitrarily limit constitutional rights, and obstacles to practice and protection means of constitutional rights when they are violated.

The pre-2016 international reports on human rights in Uzbekistan are traditionally limited and highly critical. The existing small number of reports and publications mainly provide critical human rights record with a focus on specific rights and their systematic violation by the government.³⁹ The freedom of religion and freedom of expression are some of many examples.⁴⁰ Almost in all publications, authors directly or indirectly argue that human rights, as provided in the 1992 Constitution, appear more as a favor that might be restricted or generously granted by the state. This approach, coupled by the fact that the 1992 Constitution sporadically contains the phrases such as, “the State expresses...”, “the State builds...”, “the State guarantees...”, “the State ensures...”, “the State

³⁸ Richard B. Lillich, *The Human Rights of Aliens in Contemporary International Law* (Manchester University Press, 1984); David Cole, “Are Foreign Nationals Entitled to the Same Constitutional Rights as Citizens Symposium: Rounding Up Unusual Suspects: Human Rights in the Wake of 9/11,” *Thomas Jefferson Law Review* 25, no. 2 (2002–2003): 372. International human rights law, with the exception of voting rights and the right to take part in public affairs, extends rights to citizens and non-citizens alike. This is getting outdated for Europe (especially EU and EEA) where residence becomes more and more important. This is true for many political rights which within the EU and the EEA can be exercised by any EU or EEA citizen at the place of their residence. In the EU, e.g., any EU citizen is entitled to vote in local and European elections at the place of their residence (e.g. a German citizen residing in Hungary), and some EU countries even opened their national elections to EU citizens residing in the country. The process of looking at residence rather than at citizenship is even more pronounced in the collision of laws where the “personal status” is more and more defined according to residence.

³⁹ For ex., “Democratization and Human Rights in Uzbekistan (October 18, 1999) Document No. 7,” *Series 3: Basket III Hearings before the U.S. Commission on Security and Cooperation in Europe and Other Selected Congressional Hearings, Reports and Prints* 34 (1999–2000): i–108; Abdullahi An-Na’im, “Human Rights and Islamic Identity in France and Uzbekistan: Mediation of the Local and Global,” *Human Rights Quarterly* 22, no. 4 (2000): 906–41; Colin Harvey and Robert P. Barnidge, “Human Rights, Free Movement, and the Right to Leave in International Law,” *International Journal of Refugee Law* 19, no. 1 (March 1, 2007): 1–21; Oskar Lehner, “Respecting Human Rights in Central Asia: Will This Stabilize or Destabilize the Region,” *Security and Human Rights* 20, no. 1 (2009): 48–55; Scott Newton, *The Constitutional Systems of the Independent Central Asian States: A Contextual Analysis* (Bloomsbury Publishing, 2017); Erika Dailey, “Uzbekistan: The Human Rights Implications of an Abuser Government’s Improving Relations with the International Community,” *Helsinki Monitor* 7, no. 2 (1996): 40–51.

⁴⁰ John R. Pottenger, “Civil Society, Religious Freedom, and Islam Karimov: Uzbekistan’s Struggle for a Decent Society,” *Central Asian Survey* 23, no. 1 (March 1, 2004): 55–77; Pottenger; Reuel R. Hanks, “Religion and Law in Uzbekistan,” in *Regulating Religion: Case Studies from Around the Globe*, ed. James T. Richardson, Critical Issues in Social Justice (Boston, MA: Springer US, 2004), 319–30; Zhanna Kozhamberdiyeva, “Freedom of Expression on the Internet: A Case Study of Uzbekistan,” *Review of Central and East European Law* 33, no. 1 (January 1, 2008): 95–134.

regulates” makes an impression that rights are indeed granted by the state, and not incorporated as natural rights. For example, when the 1992 Constitution draft commission originally proposed to the president Karimov Article 19, it stated that;

“...the citizens of the Republic of Uzbekistan are entitled to natural rights and freedoms. Such rights are inalienable and no one is entitled to limit such natural rights and freedoms except for when there is a valid court decision”.

The former member of this commission reported that after reading this draft article, Karimov personally removed the term “natural rights” and largely redrafted the text in the following way;

“All citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status.”⁴¹

Here the question appears, why such conflict and flaw exist in the 1992 Constitution? One hypothesis may suggest that the difference between the strong conceptualization of socialism-rooted positivism of rights and universal human rights standards still composes a grey area within Central Asian constitutionalism, of which Uzbekistan is one bright example. One fundamental problem was the personnel: other than Urazaev, Agzamkhodjaev, Rakhmankulov, and Saidov, the newly independent Uzbekistan had very few constitutional experts who could be involved in the work of the commission. Out of 64 commission members who were predominantly Soviet bureaucrats, only four mentioned individuals were experts in constitutionalism.⁴² Nevertheless, even mentioned constitutionalists belonged to the generation of traditional Soviet legal scholars who were educated and formed as academics within a highly centralist state and law concepts. As long as the commission members were influenced by the socialist law and ideology, they have sporadically applied a positivist approach to many constitutional provisions. In other words, they took an approach that echoes the concept of socialist rights according to which the unlimited will of the state is considered to be a sole

⁴¹ This provision still exists in the Article 18 of the 1992 Constitution. Saidov, Akmal, *O'zbekiston Konstitutsiyasi Tarihi [History of Uzbekistan's Constitution]*, 207.

⁴² “Postanovlenie o Sozdanii Konstitutsionnoy Komissii [Decree on Establishment of the Constitutional Commission]” (Verkhovniy Sovet UzSSR, XII Sozyv VS, 2-ya Sessiya, June 1990), F-2454, N6, 7091 62-67, Gosudarstvenniy Tsentral'niy Arkhiv. And also, “Materiali Pervogo Zasedaniya Konstitutsionnoy Komissii,” 1991, Gosudarstvenniy Tsentral'niy Arkhiv, 4. Notably, this commission was first established in June 1990 and initially included 64 prominent persons. Later in July 1992 the number was raised to 71 persons. The working group formed in April 1991 included 32 persons. Up until, December 1992 when the constitution was promulgated the composition of this commission was slightly changed several times.

source of law. In other words, this approach presupposed that the state acts as a grantor of rights in the constitution. Such an approach might additionally reflect the traditional opinion of Soviet jurists according to which the state is responsible for managing, providing and supervising out of own interest all living essentials that also include rights and obligations.⁴³ Another aspect that demonstrates a clear trace of the socialist concept of rights in the 1992 Constitution is the conflict between human rights and citizen's rights, which might eventually question the absolute nature of rights *per se*. The universal human rights norms are in general absolute norms and do not contain any dependency from the will of the state. They do not refer to the statutes and normative legal acts but instead set a model or moral standard for implementation.⁴⁴ In contrast, the philosophy of addressing rights as granted by the state, theoretically, and practically results in a deviation with the international human rights standards based on absolute or natural rights theory.⁴⁵

IV. Post-2016 Developments: Human Rights at the Crossroads?

In 2016, Uzbekistan experienced a transition of political power. Perhaps the first positive sign that demonstrated the new leadership's respectful approach towards human rights in Uzbekistan became the United Nations High Commissioner's for Human Rights visit to this country in May 2017. Many human rights watchdogs evaluated such a high-level UN representative's visit to Uzbekistan over the decades as a crucial opportunity for initiating long overdue and badly-needed human rights reforms for being viewed as a constructive international partner.⁴⁶

Under the new leadership, the state adopted the 2017-2021 Action Strategy, which targeted five priority development areas.⁴⁷ One of the priority areas directly touches upon the rule of law reforms, including in judicial and legislative sectors. Objectively, the orientation of this strategy is mainly progressive and matches the views expressed long by foreign and some local experts. As a part of this strategy, in 2017, the government initiated a series of constitutional amendments, which, among other

⁴³ V Petrov, V Semyonova, and K Shkenev, *Osnovy Sotsial'nogo Gosudarstva [Fundamentals of Socialist State]* (Nizhniy Novgorod: NNGASU, 2016), 224.

⁴⁴ Antonio Cassese, *Five Masters of International Law: Conversations with R-J Dupuy, E Jiménez de Aréchaga, R Jennings, L Henkin and O Schachter* (Bloomsbury Publishing, 2011), 183.

⁴⁵ Refer further to John Finnis, *Natural Law and Natural Rights* (OUP Oxford, 2011), 198–223.

⁴⁶ International Partnership for Human Rights, "First-Ever Visit by UN High Commissioner for Human Rights to Uzbekistan," May 2017, <https://www.iphronline.org/first-ever-visit-by-un-high-commissioner-for-human-rights-to-uzbekistan-20170510.html>. [Accessed on January 9, 2020]

⁴⁷ "Strategiya Deystviy Po Pyati Prioritetnym Napravleniyamhfpdbnbz Respubliki Uzbekistan v 2017-2021 Gogakh.," *Strategiya Deystviy 2017-2021*, <http://strategy.gov.uz/ru>. [Accessed on January 9, 2020]

things, resulted in a review of the judiciary's role in protecting the citizens' rights and freedoms.⁴⁸ Furthermore, within the framework of the strategy, Uzbekistan started developing an adequate awareness of its obligations concerning international treaties and commitment to protecting human rights. The latter resulted in vibrant discussions among various segments of local society about relatively large gap between the law and its implementation, especially for constitutional rights. In particular, it has been a long and commonly agreed critics that while the 1992 Constitution enacted progressive human rights provisions, some of the rights have not always been fully implemented, including the freedom of movement and residence, freedom of press, freedom of thought, speech and opinion, right to file complaints and many other provisions.

In this regard, the Universal Periodic Review on Uzbekistan in May 2018, specifically the compilation of UN and summary of stakeholders' contents demonstrated the post-2016 Uzbekistan's visible progress in strengthening human rights and freedoms. Whereas all previous evaluations were highly critical⁴⁹, the UPR of 2018 had observed positive changes in multiple human rights areas including, addressing such long-standing problems as child labor, political prisoners and freedom of expression, harassment, civil society, women's rights, and domestic violence, political and civic participation. Together with that, many states, considering Uzbekistan mostly positive achievements, strongly recommended to take further steps in preventing torture and ill-treatment, lifting restrictions for civil society groups, journalists and human rights activists, decriminalize consensual sexual activities between adult males, take further steps in enhancing religious freedom and rights of people with disabilities.⁵⁰

Hence, the post-2016 period has so far demonstrated that Uzbekistan has gained a relatively better understanding of human rights. Such commitments are also simultaneously signaled by establishing the office of the Business Ombudsperson and taking steps for ratification a core United Nations convention – *Convention of the Rights of People with Disabilities*. Uzbekistan additionally set up an ambitious plan to develop and amend many codes and statutes regulating rights and freedoms. There

⁴⁸ “Zakon Respubliki Uzbekistan O Vnesenii Izmeneniy v Nekotore Statyi Konstitutsii Respubliki Uzbekistan, (V chastnosti, Statyi 80, 93, 108 i 109)” (2017). In particular, “The Central Electoral Commission, an independent, permanent and open State body that organizes elections for the President and for the Oliy Majlis (the national parliament) and referendums in Uzbekistan, has been given the right to bring cases involving questions of constitutionality before the Constitutional Court upon the proposal of the Office of the Human Rights Commissioner (Ombudsman)”.

⁴⁹ For example, “UN Human Rights Committee, Concluding Observations, Uzbekistan. U.N. Doc. CCPR/CO/71/UZB (2001),”; “UN Human Rights Committee, Concluding Observations, Uzbekistan. U.N. Doc. CCPR/CO/83/UZB (2005),”.

⁵⁰ “Compilation on Uzbekistan Report of the Office of the United Nations High Commissioner for Human Rights; A/HRC/WG.6/30/UZB/2,” May 2018, Human Rights Council, “Report of the Working Group on the Universal Periodic Review (Uzbekistan), A/HRC/39/7,” July 2018.

is also a positive picture of raising human rights awareness among public and non-public agencies and the existence of human rights in legal curricula. On the other hand, international human rights watchdogs warn that much of the practical work still has to be done to secure human rights.

Furthermore, the progress on human rights demonstrates simultaneously a hidden and continuous debate between two opposing school of thoughts: the traditional school of socialist legality inherited from the former Soviet Union and based on a positivist approach towards the state-granted rights and freedoms from one hand, and a growing number of human rights activist advocating the primacy of natural rights both in law books and practice. Simultaneously, scholars may often detect in Uzbekistan a common tendency of promoting or giving a higher degree of respect to communitarian rights over individual rights and liberties. There might be two explanations for that.

Firstly, Uzbekistan is a newly independent and developing state which had inherited from its socialist predecessor an influential communitarian culture as opposed to western individualism, which was mainly associated with bourgeois rights and, therefore, actively criticized.⁵¹ Such culture had been extended to every aspect of social life, including rights, and always placed social or collective interests above individual. This tendency had its own long-term impact on society as a whole, or in other words, the socialist legacy contributed to the formation of the collectivist society in the former socialist world. Thus, the fragmented appearance of the socialist approach towards human rights by focusing on state and citizens and separately, citizens' societal responsibilities, can be seen as one way towards understanding the communitarian character of rights.

The second viewpoint has a direct relation to the theory of cultural relativism. This theory asserts that "human rights cannot be universal, but should be understood as products of cultural, economic and social conditions in a given society. Such conditions are determinants of human rights norms, and each state varies in the form and substance of its human rights norms and extent of their protection".⁵² Many conservative policymakers in Asia, by justifying this theory, often refer to their "Asian values" and say that the Asian concept of collectivist society centered around the family or having traditionally strong family ties is fundamentally different from Western individualist societies.⁵³ Similar to many authoritarian states in Asia, for example, Myanmar, Vietnam, or Singapore, such an approach to traditional values also echoed in the numerous speeches and essays of Karimov.

⁵¹ This has later transformed into the criticism of Eurocentric approach which emphasized civil and political rights at the expense of economic and social rights.

⁵² Tae-Ung Baik, *Emerging Regional Human Rights Systems in Asia* (Cambridge University Press, 2012), 55.

⁵³ Michael D. Barr, *Lee Kuan Yew: The Beliefs Behind the Man* (Georgetown University Press, 2000), 220.

For example, Karimov regularly claimed that the civil society model in Uzbekistan would be alien and unviable without such vital segments as a collective consciousness and recognition of the leading role of public authorities. In other words, civil society based on collective consciousness - a characteristic which traditionally unified people in the region, in sharp contrast to the Western individualism, was regarded as the most applicable model for achieving a common good. Regarding building a democratic society, he claimed collectivity, order, and respect towards authority as a unique tradition of the Asian society that pertained own customs and demonstrated consciousness concerning the interests of the majority rather than that of the West, which is too cautious about pluralism of opinions and individual freedoms.⁵⁴

Given such a dichotomy, a question appears whether the communitarian nature of the rights enshrined in the constitution is more a specific (post-) socialist tendency or genuine Asian development rooted in Asian values? As such a situation exists in many (post-) socialist, (post-) authoritarian states, it is not always easy to differentiate between two overarching theories. In this regard, one hypothesis may suggest that given strong tendencies of cultural relativism in even non-socialist Asian states which eventually reflects in communitarian rights, and widely individualist orientation in some post-socialist states of Eastern Europe or even former Soviet Baltic republics, the communitarian rights phenomenon in Uzbekistan appears to be more of a product influenced by the cultural relativism. Perhaps, this is the reason for persisting and never-ending scholarly conflict between the younger generation of universalists and conservative representatives of cultural relativism in the region.

Simultaneously, there is a trend of promoting liberal and natural rights conception towards the interpretation of human rights. Mainly young legal academics who advocate this trend attest that human rights, as long as they are natural and fundamental, do not and should not be subjected to the will of the state. Constitution, therefore, must reflect purely universal standards, and must never be dependent on the whims of the state.

The 1992 Constitution, even presently also suffers from a specific legal textual shortage. Part II on the Basic Human and Citizen Rights, Freedoms, and Duties continue limiting specific provisions that would typically be considered as human rights for citizens only. Such provisions include the right to freedom of movement and the right to choose one's residence (Article 28), the right to demonstrate

⁵⁴ Sardor Alimdjanov, "A Political Study on the Nature of Mahalla Institution and Its Relationship with Local Government", Doctoral Dissertation (Nagoya University, Graduate School of Law), (2019), 30. See also Islam Karimov, *Uzbekistan Na Poroge XXI Veka: Ugrozy Bezopasnosti, Usloviya I Garantii Progressa [Uzbekistan on the Threshold of the XXI Century: Security Threats, Conditions and Guarantees of Progress]* (Tashkent: Uzbekistan, 1997), 177-180;

(Article 33), the right to access information (Article 30). Mentioned provisions demonstrate state's sensitivity towards civil and political rights and are in apparent conflict with universal standards. For instance, Article 12 of the International Covenant on Civil and Political Rights, to which Uzbekistan is a state party, asserts that freedom of movement and liberty to choose residency must be extended to everyone lawfully within the territory of the state. Indeed, the 1992 Constitution had largely replaced the previous socialist approaches towards rights as granted by the state, but a closer look shows that such approach was not abandoned entirely. Also, the constitution does not clearly state the principle of immediate effect of the human rights that would have constitutionally guaranteed their adequate protection. The absence of a relevant text raises serious concerns regarding the quality of the constitutional provisions or rights and freedoms.

The 1992 Constitution also does not stipulate several essential rights and freedoms reflected in the ICCPR and many other progressive constitutions. Such rights, *inter alia*, include the right to use one's mother tongue and select the language of communication, the right to marry and divorce, the right to live in a clean environment, the right not to be imprisoned on the grounds of inability to fulfill contractual obligations and other. Therefore, scholars and practitioners have yet to think and discuss the nature of the rights enshrined in the constitution and consider general human rights as a dynamic concept.

Although the 1992 Constitution provides a long list of rights and a separate provision on the stand-alone constitutional court,⁵⁵ Uzbek constitutional review has been mostly non-existent. In fact, over almost 29 years since the collapse of the Soviet Union, the Uzbek Constitutional Court (CC) has issued fewer decisions than the Soviet Committee for Constitutional Supervision (*Komitet Konstitutsionnogo Nadzora SSSR*) issued in 18 months of its short but fascinating life. (see Table 2) Presently, there is no individual access to the CC. Analogically to the Kelsen's original idea of constitutional review, the framers of the CC of Uzbekistan rejected *actio popularis*.⁵⁶ Hence, citizens do not have the right to make an application to the CC, which, in turn, would have been obliged to review the constitutionality of a statute. It is one of the central critical issues about the constitutional principle of protection of fundamental rights in the acts of legislative and executive branches of power. As most violations of fundamental rights in Uzbekistan originate from executive acts and court judgments, individuals have no right to file a complaint to the CC after exhausting all remedies at the

⁵⁵ Article 109 of the the Constitution of the Republic of Uzbekistan (1992); "Konstitutsionniy Zakon Respubliki Uzbekistan o Konstitutsionnom Sude Respubliki Uzbekistan, ZRU-431" (2017).

⁵⁶ Hans Kelsen, *Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution* (Journal of politics, 1942), 197.

ordinary courts. In other words, there is no possibility to initiate a constitutional review of the executive acts, which are believed to result in the violation of individuals' rights, once ordinary courts fail to quash them.

Table 2. Compilation of the Republic of Uzbekistan Constitutional Court's cases as provided in the national legal database.

Source: (https://www.lex.uz/ru/search/nat?body_id=806&fform_id=8837) [Accessed on January 10, 2020]

| Year | Number of cases | | |
|----------------------------|-----------------|-------------|------------|
| | CC Decree | CC Decision | CC Rulings |
| 2019 | 1 | | |
| 2018 | 1 | | |
| 2014 | 1 | | |
| 2009 | | 1 | |
| 2008 | | 1 | |
| 2004 | 1 | | |
| 2003 | 2 | | |
| 2002 | 2 | | |
| 2001 | | 2 | 3 |
| 1998 | 2 | | |
| Total: 17 cases since 1998 | | | |

V. Conclusion

The current Constitution of Uzbekistan (enacted in 1992 and amended in 2017) dedicates its Part II to the Basic Human and Citizen Rights, Freedoms and Duties. By taking a careful look at the contents of this part, it is evident that human rights are sporadically embodied not as natural rights and freedoms but as positivist rights. There is still a strong association within the government and society that the state is the primary grantor of rights, and changing such logic is a time-consuming process in Uzbekistan.

The word human rights, which had been rejected in the socialist constitutions, was provided for in the 1992 Constitution. The question, namely, why human rights were introduced and what were the reasons for Uzbekistan behind its adoption in the early 1990s, has not been explicitly clear yet. One reason may include the intention of the policymakers to integrate sovereign Uzbekistan into the so-called 'Western democratic club.' Perhaps, the same reason resulted in the creation of the separate Constitutional Court evaluated by many as a façade institution. Another reason is the open rise of anti-socialist reformists upon the collapse of the USSR, who promoted political pluralism and

advocated for the draft constitution unconditionally included provisions on human rights. Their radical demands, however, could not find full support as in the draft 1992 Constitution negotiation process, conservatives widely opposed the inclusion of human rights as natural rights. Eventually, human rights provisions were mainly integrated into the category of citizen's rights. Notably, similar approach exists not only in the constitutions of some former USSR states but also in the socialist or (post-) socialist states in Asia.

Contemporary human rights theory in Uzbekistan is mainly reflected in publications from the state-supported National Human Rights Center, and can be basically explained in the following two ways:

- a) a persisting argument that human rights fall entirely into the state's internal matters;
- b) a strong association with the right to development (of the nation).

These notions typically represent a classic example regarding 'Asian human rights' and its close theoretical ties to the third generation of human rights. It subsequently raises scholarly debates between supporters of the complementarity theories and those who oppose the third generation of human rights or cultural relativism. As the government often seeks to approach the human rights concept by actively relying on Asian (Oriental) values and supreme national development interests, it often utilizes an interpretation that in order to achieve developmental goals with particular national characteristics, sacrificing individual freedoms or restricting particular human rights is unavoidable. This claim for development influences the degree of democracy and the rule of law, which in contemporary Uzbekistan is mainly associated with the importance of strong rule by a dominant leader aimed at achieving good results.

In general, drafting the 1992 Constitution and incorporation of many universal principles is a positive sign of human rights awareness on the part of the government. The 1992 Constitution respects the many international treaties of which Uzbekistan is a signatory party. A set of other fundamental rights, for example, freedom of thought, speech, and opinion have been guaranteed under the provisions of the current constitution as well, however, under the strict control of media initiated by the ex-President Karimov, the exercise of citizens' rights, particularly regarding political freedoms, had often been *de facto* restricted. International human rights watchdogs have also criticized Uzbekistan for the lack of direct effect of human rights provisions in the constitution and conservative approaches taken in the statutes which, eventually limit constitutional rights to a great extent. Since the transition of political power in 2016, the government has been so far signalling to international human rights watchdogs about its awareness and intending commitments to address the country's human rights situation. Coupled with specific practical steps already taken in the domain of human

rights, scholars and practitioners should address the remaining existing problems within the constitutional text. This also needs to involve broader public participation and deliberations. Eventually, for human rights' symbolic existence not only in books but their effective protection in practice, an adequate protection mechanism has yet to come to existence.

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