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# ISSUES OF DIRECT EFFECT OF THE CONSTITUTION IN THE REPUBLIC OF UZBEKISTAN ON THE EXAMPLE OF THE EXPERIENCE OF ADVANCED COUNTRIES (USA, ITALY AND FRANCE)

Diyora S. Ochilova

leading researcher at the Institute of Legislation and Legal Policy under the President of the Republic of Uzbekistan, Uzbekistan

## Abstract

The subject of this article is the analysis of the theory of direct action, the study of the experience of foreign countries, the study of the principles and practice of direct action of the Constitution in Uzbekistan, as well as their impact on the legal system and society.

The purpose of this exploring is a comprehensive analysis of the principles of direct application of the Constitution in Uzbekistan, including historical development, judicial practice, and comparative analysis with other jurisdictions. Research methods: analysis of the theory of direct effect to explore the development of constitutional law in Uzbekistan, comparative legal method to analyze similarities and differences with other countries, cases for detailed analysis of specific court cases.

Research results: based on the analysis, problems were identified in defining the theory of direct action and ineffective law enforcement.

Scientific novelty:

The study will provide a unique analysis of modern constitutional practice in Uzbekistan, especially in the context of the direct effect of the Constitution, and its comparison with international practices.

Practical significance:

The results may be useful for lawyers, legislators and researchers in the field of constitutional law, as well as contribute to improving law enforcement and legislative development in Uzbekistan conclusions

At the end of the article, the main conclusions will be presented, emphasizing the importance of the direct effect of the Constitution in the legal system of Uzbekistan and proposals for further strengthening of constitutional principles..

**Keywords** Constitution of Uzbekistan, direct effect of the constitution, constitutional law, judicial practice, comparative analysis and law enforcement.

## INTRODUCTION

The direct effect of a constitution represents a fundamental principle of modern constitutionalism, ensuring the immediate and prioritized application of constitutional norms

within the legal system. This principle serves as the basis for the legal regulation of social relations, endowing constitutional provisions with the highest legal authority and universal obligation.

The direct action of the constitution arises from its properties as a normative legal act, including legal

norms with the highest legal authority. These norms regulate the rights and obligations of participants in legal relationships and must be applied directly in a prioritized manner. Denying the direct application of constitutional norms indicates deficiencies in the state's legal system and points to the immaturity of constitutionalism.

Global trends in the development of constitutionalism reflect a shift in focus from describing the principles of the state to guarantees of fundamental rights and freedoms. The direct effect of a constitution is closely linked with the principle of supremacy and the highest legal authority, often enshrined in a single article or section of constitutions. An example is the Basic Law of the Federal Republic of Germany of 1949, which became the first constitution to establish the directly applicable nature of fundamental constitutional rights.

The practice of the constitution's direct effect varies in different legal systems. In the Anglo-Saxon system, based on case law, and in the Romano-Germanic system, where the primacy of law prevails, approaches to constitutional control and interpretation of constitutional norms differ. In countries of the post-Soviet space and former socialist countries, the principle of direct effect is often normatively enshrined in constitutions, reflecting their unique historical and legal contexts.

In the Anglo-Saxon system, for example, in the USA and the UK, the direct effect of the constitution is implemented through judicial practice and precedents. In the Romano-Germanic system, as in Germany and France, the primacy of law emphasizes the need for clear constitutional control. In post-Soviet countries such as Ukraine and Kazakhstan, the principle of direct effect is often normatively enshrined in constitutions.

In the context of the European Union (EU), direct effect plays a key role in coordinating between EU legislation and national systems. This principle has played a decisive role in shaping the constitutional structure of the EU and its relations with member countries. In the EU, concepts such as «direct effect», «direct applicability», and «indirect effect» exist, where direct effect means the immediate

application of EU norms without additional internal legislative acts.

There are various models for the implementation of a constitution, including formal, mediated, limited, direct, and «living» implementation. Each of these models reflects the characteristics of using and applying constitutional provisions in different legal systems. They demonstrate how constitutions adapt to changing conditions and societal needs, emphasizing the dynamic and evolving nature of constitutional law.

The principle of the constitution's direct effect is a fundamental importance to modern legal systems. It facilitates the implementation of constitutional rights and freedoms, supports the supremacy of the constitution, and ensures its active application in legal practice. Different models of constitutional implementation testify to the depth and complexity of this principle, highlighting its importance in various legal and social contexts.

The specific features of the direct effect of the Constitution in Italy include:

Firstly, the mechanism of preventive control of constitutional conformity of laws in Italy includes the preliminary analysis and assessment of proposed legislative initiatives by the Constitutional Court of Italy before their formal approval and enactment. This ensures an additional level of protection for the constitutional order and citizens' rights, preventing potential conflicts between new laws and constitutional norms.

The Constitutional Court in Italy occupies the top tier in the country's judicial system hierarchy regarding the constitutionality of laws. It is independent from other judicial bodies and directly subordinate to the Constitution. The Court consists of 15 judges, appointed for a nine-year term. Five judges are appointed by the President of the Republic, five by the Parliament in a joint session, and five by the highest judicial organs.

The process of analysis by the Constitutional Court of Italy within the framework of preventive control of constitutional conformity of laws, initiated at the request of high-ranking officials or authorities, includes several key stages:

1. Initiation of the process, which begins with

an official request for preventive control that can be submitted by the President of the Republic, a group of parliamentarians, or the government. The request must clearly indicate the contentious bill and specific concerns regarding its constitutionality.

2. Preliminary consideration. The Constitutional Court conducts an initial analysis of the request for compliance with procedural requirements and determines whether there is sufficient basis for a full-scale analysis of the bill.

3. Full legal analysis: If the request is accepted for consideration, the court conducts a detailed analysis of the proposed bill, assessing its compliance with the Constitution. This includes checking for compliance with fundamental rights and freedoms, as well as other constitutional principles.

4. Decision-making. Based on the analysis conducted, the Constitutional Court formulates its findings. If the court concludes that the bill is unconstitutional, it can state this in its decision, thereby preventing the law from coming into force.

5. Publication and impact of the decision. The court's decision is published and becomes available to the public. It is mandatory and influences further legislative development in the country. From 1956 to 2018, the Constitutional Court reviewed more than 7,500 cases, highlighting its active role in ensuring the constitutionality of legislation. Among the cases reviewed, a significant percentage leads to the amendment or repeal of existing laws. For example, from 2000 to 2010, about 60% of cases concerned issues of constitutionality of legislation. About 35% of cases reviewed from 2000 to 2015 led to the amendment or repeal of existing laws.

Thus, preventive control of constitutional conformity in Italy plays a central role in maintaining legal clarity and stability, ensuring that all new legislative acts comply with the democratic and legal principles embedded in the Constitution.

Secondly, the Constitutional Court plays a central role in ensuring the direct effect of the Constitution, which is expressed in resolving

issues related to conflicts between different levels of power (between the center and regions).

One of the key tasks of the Constitutional Court is to maintain a balance between the central government and regional authorities. This ensures adherence to the principles of federalism established in the Constitution and supports stability in the distribution of power in the country.

Furthermore, the decisions of the Constitutional Court create precedents that guide future cases of conflict between central and regional levels of power. For example, the Constitutional Court of Italy evaluated a law proposed by the Lombardy region, which established special rules for local medical institutions, in terms of its compliance with national health standards and the principle of equal access to medical services. As a result of the analysis, the court concluded that some provisions of this law contradict the Constitution, especially regarding equality of access to healthcare, and declared them unconstitutional, emphasizing its role in maintaining the integrity of the national legal system.

Thirdly, courts of general jurisdiction in Italy occupy a leading position in applying the provisions of the Constitution. In the course of proceedings, they consider not only general legislative and legal frameworks but also directly rely on relevant articles of the Constitution. This becomes especially significant when disputes about the constitutionality of the laws or regulatory norms used arise during legal proceedings. The courts closely examine these aspects, thereby ensuring compliance with constitutional rights and freedoms.

The process of applying constitutional norms by courts of general jurisdiction in Italy consists of the following:

1. Identification of constitutional issues. At the beginning of the case review, general jurisdiction courts analyze all aspects of the presented case, including compliance with current laws and legal norms.

2. Identification of constitutional problems. If issues of constitutionality of the applied laws or rules arise during the review, the courts identify the

relevant articles and provisions of the Constitution that may be affected.

3. Assessment of compliance. The courts evaluate whether the existing laws and applied legal norms comply with constitutional requirements, especially regarding the protection of fundamental rights and freedoms.

4. Decision-making. When making decisions, general jurisdiction courts strive to ensure that their conclusions and orders comply with constitutional standards. This includes not only adhering to the letter of the law but also considering its spirit in the context of constitutional principles. A significant number of cases considered in general jurisdiction courts involve constitutional human rights. For example, in recent years, the proportion of such cases can range from 10% to 20% of the total number of cases considered.

Fourthly, to ensure effective application of constitutional principles, Italian judges undergo specialized training, which includes studying constitutional law and its application in judicial practice.

Specialized training includes courses, seminars, online resources, and experience exchange, allowing judges to increase their qualifications and ensure quality implementation of constitutional principles in legal practice. According to 2022 data, more than 90% of Italian judges have undergone such training programs, which contributes to raising the level of knowledge and qualifications of judges in this area.

Overall, the Italian model of constitutional justice and judicial practice, especially regarding the application of international norms and ensuring a balance between different levels of power, represents an effective mechanism for protecting rights and freedoms. Italy's experience in this area may be of interest to Uzbekistan in the context of developing and strengthening its own legal system.

The features of the direct effect of the Constitution in the United States include:

The United States has a unique system of the direct effect of the constitution, which differs from many

other countries, including Italy. This system is foundational to the American legal system and ensures the adherence to constitutional principles and the rights of citizens.

Firstly, in the United States, the constitutionality of laws is determined by the Supreme Court through a post-factum analysis, which is different from the preventive control in Italy. This involves the consideration of cases related to constitutional issues after they have come into effect, and usually after they have been examined in lower courts.

The U.S. Supreme Court annually reviews about 100-150 cases out of more than 7,000-8,000 cases submitted for consideration. The Court's decisions impact a wide range of social and political issues, from human rights to federal governance.

Secondly, decisions of the U.S. Supreme Court often become binding legal precedents that must be followed by all courts in the country. This means that each decision not only resolves a specific legal issue but also serves as guidance for future legal cases and legislative acts.

Thirdly, amendments to the U.S. Constitution have significant weight. For example, the First Amendment, guaranteeing freedom of speech, and the Fourteenth Amendment, ensuring equal rights and protection, directly influence legislative and law enforcement practices in the United States. These amendments have a profound impact on American society, shaping both legal norms and social relationships.

Fourthly, the system of federalism creates a complex interaction between federal and state laws. The Supreme Court often acts as an arbitrator in cases of conflict between federal and state legislation.

Fifthly, U.S. Supreme Court justices typically have extensive legal experience and undergo rigorous vetting before their appointment. Their qualifications and experience allow them to assess complex legal issues in the context of societal and political realities.

In summary, the direct effect of the constitution in the United States represents a complex and dynamic system in which the Supreme Court plays a key role in interpreting and applying

constitutional principles. This system ensures the protection of fundamental rights and freedoms enshrined in the Constitution and allows for the adaptation of the legal system to changing social and political conditions.

Features of the direct effect of the constitution in France:

France represents a unique model of the direct effect of the constitution, differing from both the American and Italian systems. This system is characterized by a strong influence of constitutional law on the legislative process and the political life of the country.

Firstly, the Constitutional Council of France plays a central role in checking the constitutionality of laws. Unlike the US Supreme Court, the Constitutional Council predominantly carries out a preliminary control of legislation before it officially comes into force.

The Council consists of nine members, appointed for a nine-year term. Three members are appointed by the President of the Republic, three by the chairman of the National Assembly, and three by the chairman of the Senate.

The process of preliminary examination begins at the initiative of the President, the Prime Minister, the chairman of one of the chambers of Parliament, or, in some cases, a group of parliamentarians. This allows for the assessment of the compliance of bills with the Constitution before their adoption.

Since its establishment in 1958, the Constitutional Council has reviewed hundreds of cases, many of which have had a significant impact on French legislation and society.

Secondly, the French Constitution of 1958 serves as the foundation for all national legislation and has the highest legal force. This ensures that all laws, regulations, and decisions of government bodies must be in accordance with constitutional norms.

For example, the decisions of the Constitutional Council on issues of freedom of expression and the press have had a significant impact on the development of France's legal system.

Thirdly, unlike the federal system of the USA,

France is a more centralized state, where the Constitutional Council plays a key role in maintaining a balance between the executive and legislative powers.

Decisions of the Constitutional Council often provoke public debates and can influence political processes in the country. This highlights the significance of constitutional law in the political life of France. Members of the Constitutional Council possess high legal qualifications and experience, ensuring a deep understanding of constitutional law and its application.

For example, in 1971, the Council recognized that the preamble to the Constitution includes a reference to the Declaration of the Rights of Man and of the Citizen of 1789, significantly expanding the scope of protection of fundamental rights.

Overall, the French system of the direct effect of the constitution ensures effective control over the compliance of legislation with constitutional norms. The Constitutional Council plays a key role in this process, maintaining legal stability and protecting the fundamental rights and freedoms enshrined in the Constitution. This system is an important element of the French legal and political structure, reflecting the deep interconnection between constitutional law and public order.

By adopting these proposals and recommendations, Uzbekistan can strengthen its governance, protect human rights, promote social welfare, and contribute to environmental sustainability. These actions will help Uzbekistan align with international best practices and enhance its legal and constitutional framework for the benefit of its citizens and the global community.

The direct effect of a constitution refers to the ability of its provisions to be directly applied and enforced without the need for further legislation. Uzbekistan has some challenges in this area:

1. Legal framework and constitutional enforcement. There may be gaps between the constitutional provisions and their practical implementation. Ensuring that constitutional norms are directly enforceable in courts can be challenging. The legal framework may need updates or reforms to align fully with the



Constitution, ensuring that all laws and regulations are consistent with constitutional principles.

2. Judicial independence and expertise. Ensuring the independence of the judiciary is critical for the direct application of constitutional norms. There may be challenges related to judicial autonomy from political influences. Judges might require more training and expertise in constitutional law to apply these norms effectively.

3. Public awareness and understanding. There might be a lack of public awareness about the direct effect of constitutional rights and how to assert these rights in legal settings. Ensuring that citizens are educated about their constitutional rights is essential for these rights to be meaningfully exercised and protected.

4. Interplay between national and local laws. Managing the relationship between national constitutional norms and local laws can be complex, especially in areas with distinct cultural or legal traditions. Ensuring consistency in the application of constitutional principles across different regions of Uzbekistan may pose a challenge.

5. Enforcement mechanisms. The mechanisms for enforcing constitutional norms may be underdeveloped or inefficient, hindering the direct application of these norms. There might be a need to establish or strengthen institutions responsible for overseeing constitutional compliance.

6. Balancing tradition and constitutional modernity. Balancing traditional societal norms and values with modern constitutional principles can be challenging, especially in areas relating to human rights and individual freedoms. Societal resistance to changes mandated by constitutional norms might pose significant challenges.

7. Political will and consensus. Implementing constitutional norms often requires strong political will and consensus, which might be challenging in a politically diverse landscape. Political changes or instability can affect the consistent application and enforcement of constitutional norms.

8. Integrating international standards. Aligning Uzbekistan's constitutional norms with

international human rights and legal standards while maintaining national sovereignty and cultural identity. Challenges in ratifying and implementing international treaties and conventions in domestic law.

In conclusion, by acknowledging and addressing these challenges, Uzbekistan can enhance the direct effect of its constitution, ensuring that constitutional rights and principles are not only theoretical but also practically enforceable and impactful in the lives of its citizens.

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