



**3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
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Questionnaire

**Reply by the Constitutional Court of
the Republic of Tajikistan**

A. DESCRIPTION

The Constitutional Court of the Republic of Tajikistan as a newest institute of the statehood, which occupies a dominate position in the judicial power, was firstly reflected and legally regulated in the section 8 of the Constitution of the Republic of Tajikistan (November 6, 1994). Prior to the adoption of the Constitution in our country the constitutional control had been performed by the Constitutional Control Committee of the Republic of Tajikistan which was established in 1990.

A real basis for activity of the Constitutional Court was set by the Decree of the President of the Republic of Tajikistan No. 238 dated 15 May 1995, in accordance with which all necessary conditions for the activity of the Court have been created. Following the adoption of the Constitutional Law of the Republic of Tajikistan "On the Constitutional Court of the Republic of Tajikistan" on November 3, 1995, №84 the Constitutional Court began its activity.

The Constitutional Court of the Republic of Tajikistan - is the offspring of the independence of the Republic of Tajikistan. As an independent judicial authority it was established in order to ensure the supremacy and direct effect of the norms of the Constitution of the Republic of Tajikistan, the protection of constitutional rights and freedoms of men and citizen.

The Constitutional Court performs its activities through prevention, detection and suppression of violations of the Constitution.

In his speech on the occasion of the 15th anniversary of the adoption of the Constitution of the Republic of Tajikistan the President of the Republic of Tajikistan Emomali Rahmon said; "In the judicial system of the country the Constitutional Court, one of the priorities of which is to ensure the supremacy of the Constitution, occupies a special place... "

The Constitutional Court of the Republic of Tajikistan is a member of the World Conference on Constitutional Justice, Association of Asian Constitutional Courts and Equivalent Institutions and member of the Conference of the constitutional control bodies of the states of new democracy (Armenia) and through the Venice Commission of the Council of Europe takes active part in major events of constitutional control bodies at the international and regional levels.

Judges of the Constitutional Court have been representing our country at various international conferences of the countries of the CIS, Asia, Europe and America. They

introduced to the participants of those events the democratic, legal, secular and social characters of our State and the core values of its Constitution, such as recognition of human rights and freedoms as highest values.

Cooperation of the Constitutional Court of the Republic of Tajikistan with the constitutional courts of the CIS, the Baltic States, Europe and Asia will continue.

The Constitutional Court has its own website and print publication - "The Bulletin of the Constitutional Court of the Republic of Tajikistan", which have been playing a significant role in improving the legal environment and engansing the legal cultural of our society.

POWERS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TAJIKISTAN

The Constitutional Court has the following powers:

- 1) definition of compliance with the Constitution of laws, joint legal acts of Majlisi Milli and Majlisi Namoyandagon, legal acts of Majlisi Milli, Majlisi Namoyandagon, the President, the Government, the Supreme Court, the Supreme Economic Court and other state and public bodies, as well as treaties not entered into legal force;
- 2) resolution of disputes between public bodies with respect to their competence;
- 3) performance of other duties stipulated by the Constitution and laws.

Acts of the Constitutional Court are final.

(Article 89 of the Constitution)

The Constitutional Court of the Republic of Tajikistan determines compliance with the Constitution of the draft changes and amendments to the Constitution, draft laws and other issues submitted for referendum.

The Constitutional Court of the Republic of Tajikistan resolves cases on compliance with the Constitution of the Republic of Tajikistan of:

- a) laws, joint legal acts of Majlisi Milli and Majlisi Namoyandagon, legal acts of Majlisi Milli, Majlisi Namoyandagon, the President, the Government, the Supreme Court, the Supreme Economic Court and other state and public bodies, as well as treaties not entered into legal force;
- b) legal acts of local representative and executive bodies, treaties concluded by regions, districts and cities of the Republic;
- c) agreements between the republican and local authorities;
- d) performance of other duties stipulated by the Constitution and laws,

The Constitutional Court of the Republic of Tajikistan resolves disputes over jurisdiction:

- a) between the republican bodies of the state authority;
- b) between the republican and local bodies;
- c) between local authorities and the territorial local authorities.

The Constitutional Court of the Republic of Tajikistan considers issues of violation of constitutional rights and freedoms of citizens on applied or applicable laws and other legal acts, in a particular legal relationship, as well as determines compliance with the Constitution of laws and other legal acts and policy explanations of the Plenum of the Supreme Court of the Republic of Tajikistan, the Supreme Economic Court of the Republic of Tajikistan applied by the court against them in a specific case in accordance with this Constitutional Law.

The Constitutional Court of the Republic of Tajikistan shall give an opinion in case of high treason by the President.

(Article 14 of the Constitutional Law of the Republic of Tajikistan "On the Constitutional Court of the Republic of Tajikistan")

SUBJECTS WITH RIGHT OF PETITION TO THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TAJIKISTAN

The right of petition to the Constitutional Court of the Republic of Tajikistan belongs to:

- 1) The President of the Republic of Tajikistan, Majlisi Milli and Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan on compliance with the Constitution of changes and amendments to the Constitution, draft laws and other issues submitted for referendum;
- 2) The President of the Republic of Tajikistan, joint meetings of Majlisi Milli and Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan, meetings of Majlisi Milli and meetings of Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan, the Government of the Republic of Tajikistan, members of Majlisi Milli and Majlisi Namoyandagon of the Republic of Tajikistan, the Supreme Court of the Republic of Tajikistan, the Supreme Economic Court of the Republic of Tajikistan, the Prosecutor General of the Republic of Tajikistan, Majlises of People's Deputies of Kuhistan Badakhshan Autonomous Region, regions and the City of Dushanbe on compliance with the Constitution of the Republic of Tajikistan of laws, joint legal acts of Majlisi Milli and Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan, legal acts of Majlisi Milli, Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan, the President of the Republic of Tajikistan, the Government of the Republic of Tajikistan, the Supreme Court of the Republic of Tajikistan, the Supreme Economic Court of the Republic of Tajikistan, as well as international treaties of Tajikistan not entered into legal force;
- 3) The Prosecutor General of the Republic of Tajikistan, the Majlises of People's Deputies of Kuhistan Badakhshan Autonomous Region, regions and the City of Dushanbe and the chairmen of Kuhistan Badakhshan Autonomous Region, regions and the City of Dushanbe on compliance with the Constitution of the Republic of Tajikistan of legal acts of ministries, state committees and other bodies of the government, local public authorities;
- 4) The Government of the Republic of Tajikistan, ministries, state committees and institutions under the Government of the Republic of Tajikistan, the Majlises of People's Deputies of Kuhistan Badakhshan Autonomous Region, regions and the City of Dushanbe, cities and districts, chairmen of Kuhistan Badakhshan Autonomous Region, regions and the City of Dushanbe, cities and districts on disputes between them about their competence;
- 5) Commissioner on Human Rights on violation of constitutional rights and freedoms of an applicant on compliance of the Constitution of the Republic of Tajikistan of laws and other legal acts;
- 6) The citizens on violation of constitutional rights and freedoms related with the applied or applicable law and other legislation in a particular legal relationship, as well as on compliance with the Constitution of the Republic of Tajikistan of law and other legal acts and policy explanations of the Plenum of the Supreme Court of the Republic of Tajikistan, Supreme Economic Court of the Republic of Tajikistan applied by the court against them in a specific case;
- 7) legal entities on violation of constitutional rights and interests by the applied law and other legislation in a particular legal relationship, as well as on compliance with the Constitution of the Republic of Tajikistan of law and other legal acts and policy explanations of the Plenum of the Supreme Court of the Republic of Tajikistan, Supreme Economic Court of the Republic of Tajikistan applied by the court in against them in a specific case;
- 8) other courts and judges of the Republic of Tajikistan on compliance with the Constitution of the Republic of Tajikistan of law and other legal acts and policy explanations

of the Plenum of the Supreme Court of the Republic of Tajikistan, Supreme Economic Court of the Republic of Tajikistan, applied or being applied by the courts in a particular case.
(Article 37 of the Constitutional Law of the Republic of Tajikistan “On the Constitutional Court of the Republic of Tajikistan”)

B. SOCIAL INTEGRATION

1. Challenges of social integration in a globalised world

1.1 What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

- In accordance with Article first of the Constitution of the Republic of Tajikistan - Tajikistan is a social state, therefore, social issues (social rights) are in the constant attention of the Constitutional Court of the Republic of Tajikistan. In recent years, the Constitutional Court of the Republic of Tajikistan considered some following legal problems:

- on pension law - the decision of the Constitutional Court of the Republic of Tajikistan over the petition of a citizen Abdurasulova A. dated from 17.06.2010;
- on tax law - the decision of the Constitutional Court of the Republic of Tajikistan over the petition of the Director-General of CJSC "Babilon-Mobile" dated by 23.12.2011g ;
- on housing law – the decision of Constitutional Court of the Republic of Tajikistan on the appeal of citizens Makhmudova M. and E. Mahmudov dated by 3.10.2011g ;
- labor law - the decision of the Constitutional Court of the Republic of Tajikistan by submission of judge, Chodieva Sh.R. dated by 28.04.2011 . etc.

1.2 How were issues of social integration or conflict transformed into legal issues?

- In accordance with the Constitutional Law "About the Constitutional Court of the Republic of Tajikistan" citizens have the right to apply directly to the Constitutional Court over applicable to them the laws, that's to say that is provided broad access to justice.

1.3 Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

- Yes, there is a trend towards an increase, in cases on legal issues relating to social integration. (on labor, family, housing issues). Most decisions of the Constitutional Court of the Republic of Tajikistan and their summaries in English are sent to the database of «CODICES», and they can be found on the website of the Constitutional Court of the Republic Tajikistan - www.constcourt.tj

2. International standards for social integration

2.1 What are the international influences on the Constitution regarding issues of social integration/social issues?

- The social direction of our Constitution is conditioned by the accumulation of international experience in this field.

2.2 Does your Court apply specific provisions on social integration that have an international source or background?

- At resolving legal issues, the Constitutional Court of the Republic of Tajikistan, along with the current Constitution, also applies international legal-standards ratified by Tajikistan.

2.3 *Does your Court directly apply international instruments in the field of social integration?*

- Yes, it does. It directly applies international instruments in the field of social integration.

2.4 *Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?*

- Yes, it does. Our Court takes account the international legal instruments and directly refer to them.

2.5 *Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?*

- Yes, it encountered with contradictions. It had resolved in favor of international standards recognized by the Republic of Tajikistan.

Examples: -Constitutional Court's decision on the application of citizen Saidova N. dated by 27.09.2013; Resolution over petition of the citizen A. Radjabov dated by 20.12.2012.

3. Constitutional instruments enhancing/dealing with/for social integration?

3.1 *What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution (“social state”), “objective law” , Staatszielbestimmungen,?*

- The Constitutional Court of the Republic of Tajikistan applies in these cases the Constitution and its principles, as well as the fundamental international legal-standards recognized by the Republic of Tajikistan.

3.2 *In cases where there is access of individuals to the Constitutional Court : to what extent can the various types of constitutional law provisions be invoked by individuals ?*

- Individuals have a wide access to Constitutional Court of the Republic of Tajikistan and have broad competence without any restrictions.

3.3 *Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?*

- Yes, it does. It has direct competence and wide authority on this matter.

3.4 *How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?*

- It settles social conflicts by recognizing of separate articles of the law not constitutional, particularly by their cancellation.

3.5 *Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?*

- Yes, it can. It submits the relevant issues for the consideration of the President and Parliament, as well as draws their attention to the necessity of resolving these matters.

3.6 *Has your Court ever encountered difficulties in applying these tools?*

- No, it has not.

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

- There are no limitations in the access of our Constitutional Court. Actually, any citizen, legal entity, state or public body has the right to address to the Constitutional Court of the Republic of Tajikistan.

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

- The Constitution empowered the Constitutional Court of the Republic of Tajikistan with wide powers for effective settlement of various legal problems of a social essence .

4.2. Does your Court de facto act as 'social mediator', or/and has such a role been attributed to it?

- Our Court acts on these issues on the basis of the Constitution and the Constitutional Law "On the Constitutional Court of the Republic of Tajikistan" and in accordance with its powers.

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?

- Yes, there have been.