



CONSTITUTIONAL GUARANTEES OF THE RIGHT OF INDIVIDUALS AND CITIZENS TO ENGAGE IN ENTREPRENEURSHIP IN UZBEKISTAN

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Article history:	Abstract:
<p>Received: 11th February 2025 Accepted: 10th March 2025</p>	<p>The article provides a comprehensive analysis of the constitutional guarantees of the right of individuals and citizens to engage in entrepreneurship in the Republic of Uzbekistan. The role and significance of this right in economic activity, its specificity in the system of human rights, and the norms included in the new edition of the Constitution of the country to ensure the right to entrepreneurship are discussed. The article discusses the issues of the inviolability of private property rights, the role of the state in the development of market relations, and ensuring freedom of entrepreneurship based on legal guarantees of property ownership. Referring to international experience, the constitutional norms of such countries as Italy, Spain, and France are comparatively analyzed and their features in protecting entrepreneurial activity are outlined. In addition, specific proposals are made to further strengthen the legal foundations of entrepreneurial activity in Uzbekistan, improve the mechanisms for implementing constitutional norms in practice, and eliminate shortcomings in legislation.</p>

Keywords: right to engage in entrepreneurship, constitutional guarantees, property rights, economic freedom, Constitution of the Republic of Uzbekistan, judicial protection, international experience, human rights and freedoms.

INTRODUCTION

The right of individuals and citizens to engage in entrepreneurial activity in Uzbekistan is a key factor in economic development. The guarantees of this right have been further strengthened in the new edition of the Constitution of the Republic of Uzbekistan. This article provides a comparative analysis of the constitutional guarantees of the right to entrepreneurship, mechanisms for ensuring their implementation, as well as international legislative experience in this area. The main purpose of the article is to study the positive and negative factors in the development of the right of individuals and citizens to engage in entrepreneurship in Uzbekistan and to develop proposals for its improvement.

The relevance of the topic lies in the fact that the right to engage in entrepreneurship, along with ensuring the personal economic independence of a person, contributes to increasing the general well-being of society. Strengthening this right is important for the democratic development of the country.

MATERIALS AND METHODS

Scientific-analytical and comparative-legal methods are effectively used in the presentation of the article. In particular, during the analysis of legal documents, the Constitution of the Republic of Uzbekistan and its

articles on the right to engage in entrepreneurship are studied.

During the comparative analysis, the constitutions of France, Italy, Spain and other countries are studied, and their mechanisms aimed at protecting the right to engage in entrepreneurship are studied.

During the study of scientific literature, the theoretical foundations of the right to engage in entrepreneurship and the opinions of international and local specialists on its protection are analyzed.

As a result of the analysis of practical problems, data on the current implementation of entrepreneurship law in Uzbekistan and the problems associated with them are considered.

The constitutional right of individuals and citizens to engage in entrepreneurship is one of the most fundamental rights and is aimed at ensuring freedoms in the economic sphere of the country and the full satisfaction of material and spiritual values in various spheres. Recognition of the primacy and superiority of rights and fundamental freedoms at the constitutional level is of great importance for the existence and development of a modern democratic society and a legal state.

Despite a number of principles inherent in the theory of constitutionalism, science and practice must take into



account the specific features of a certain constitutional right or freedom belonging to a person. In this case, such specific features characterize the constitutional mechanism for protecting the rights of citizens to engage in entrepreneurship.

RESEARCH RESULTS

The problem of guarantees of individual rights and freedoms is one of the issues that has been deeply studied in legal research. According to experts in the field, the concept of "guarantees" is understood primarily as means or conditions that ensure the practical implementation and comprehensive protection of rights and freedoms[1]. According to another definition, guarantees are a system of economic, political, spiritual, legal, organizational conditions, conditions, means and methods that create equal opportunities for individuals to exercise their rights, freedoms and interests.

We believe that the significance of the definition provided is that it more clearly defines the main features of the concept - the methods of ensuring the rights and freedoms of the individual as a group of guarantees aimed at creating favorable conditions for the exercise of fundamental rights and the fulfillment of obligations. The definition of the concept of guarantee is usually used in scientific literature as a synonym for the term "security". The Head of our state Shavkat Mirziyoyev emphasized that "New Uzbekistan is a state that develops on the basis of the principles of friendly cooperation with the world community, strictly adhering to universally recognized norms and principles of democracy, human rights and freedoms, and whose ultimate goal is to create a free, prosperous and prosperous life for our people[2]." The new edition of the Constitution of the Republic of Uzbekistan, adopted as a result of a nationwide referendum on April 30, 2023, includes new norms and principles affecting the economic rights and freedoms of citizens, aimed at further expanding and ensuring human rights and freedoms, as well as the conditions and opportunities created for the population. In particular, the fundamental changes introduced into the Constitution mean that such principles and rules as the inviolability of private property, the right to land ownership, raising the place of civil society institutions to a constitutional level, and improving the foundations of state power have been established, which are the hallmarks of democratic legal statehood.

In the newly adopted Constitution of Uzbekistan, the right to property is understood as a guaranteed and inalienable right. The changes introduced into the constitutional mechanism for protecting the right of a person to engage in entrepreneurship require the need

to clarify scientific ideas about the content and essence of this subjective right, its connection with other rights and freedoms of a constitutional nature, guarantees for ensuring its implementation, and responsibility for its violation.

The Constitution of the Republic of Uzbekistan contains several norms on the basis of the economic organization of society. The issues of economic freedom are covered in Articles 30, 41-43, 54-55, 65-67, 79 of the Constitution of our country, but this to some extent does not allow the full recognition of the economic freedoms of citizens as their right. In today's modern conditions, the following question arises: is it a democratic necessity to strengthen the economic foundations of the social system at the constitutional level? Different points of view are based on different grounds, but they do not affect the essence of the issue at hand. Ultimately, views on such an issue are inextricably linked with the theoretical debate on the subject of constitutional law. Based on these positions, in our opinion, it is expedient to study the freedom of the right to engage in entrepreneurship as a separate principle of the constitutional system of the Republic of Uzbekistan.

The constitutional right of citizens to engage in entrepreneurial activity cannot be considered in a narrow sense. By definition, it is a very broad right, since this right includes or is related to other rights and freedoms of man and citizens guaranteed by the fundamental law. For example, the right to free self-development (Article 21), the right to property (Article 43), the right to freedom of speech guaranteed by Article 33 of the Constitution can also be implemented in the form of registration of the relevant private mass media. The publication of magazines, newspapers or other printed publications by citizens, the broadcasting of radio or television productions indicate the simultaneous exercise of two important constitutional rights, such as freedom of thought and speech and the right to engage in entrepreneurship.

First of all, it should be noted that Article 30 of the Constitution of the Republic of Uzbekistan establishes the rule that no one may be convicted, punished, deprived of property or any other right on the basis of an unpublished law. In the process of legitimizing the rights of citizens, the Constitution of the Republic of Uzbekistan widely uses the terms "citizen" and "individual", combined into the concept of "everyone". The strengthening of the right of "everyone" means that this privilege applies to all persons, regardless of their legal status.

In essence, the right of every person to own property is considered his inalienable right, and only when this right



is strengthened at the constitutional level, the economic foundations of society are formed at the organizational level. According to Academician H.R. Rakhmonkulov, the Constitution provides for a positive solution to the main issue that forms the basis of the economy, namely, property rights, in all spheres of social life, to develop the initiative qualities of citizens, to carry out entrepreneurial activities in production and the economy, to jointly benefit citizens and organizations, that is, individuals and legal entities, to create common property between them and to jointly use this property productively and achieve effective results[3].

According to Article 41 of the Constitution of the Republic of Uzbekistan, every person has the right to own property. According to some of our scholars, the right to property enshrined in the Constitution, in turn, is divided into the right to property in two senses: objective and subjective. Property rights in the objective sense are understood as a set of legal norms that reflect measures taken in the interests of the people to determine, regulate and strengthen the existing resources and methods of social appropriation of natural resources. Property rights in the subjective sense are the rights of individual persons, that is, legal subjects (individuals and citizens), to possess, use and dispose of property, arising on the basis of objective legal norms[4].

According to Husanov O.T., owning property is a means of ensuring people's freedom and having their own opinion in everything[5].

Audrey Redford, a professor at the University of Western Carolina in the USA, points out that this right is structural and institutional. In his opinion, if the communication channel between property rights and other rights is blocked and property rights do not facilitate the implementation of business activities at a certain time and place, this inconsistency will hinder the economic development of the country. The right to property indicates that there is no institutional basis for the full realization of the legal freedom given to a person if the legal and constitutional connection of individual rights that are interrelated and require each other is not ensured[6].

In our opinion, the right of everyone to engage in entrepreneurship using their own capabilities and property is closely related to the right to property, which indicates its purpose. We cannot say that the fact that everyone "has the right to own property" in the Constitution of the Republic of Uzbekistan alone fully guarantees citizens the freedom to engage in entrepreneurship. Ensuring the connection of this right with other legal freedoms and strengthening the legislative foundations requires ensuring such a

connection in the constitution itself. Constitutionally, the transfer of property rights from the category of exclusive ownership to the category of general connection implies changing and amending some norms in the constitution. In particular, ensuring the right of everyone to freely use their own capabilities and property for entrepreneurial activity serves to expand the scope of general connection to some extent. Ownership itself does not mean that there are grounds for free use of property.

Along with the freedom to work, we consider the right to own property and labor for the personal development of a person as a social being to be a fundamental right of the individual. Article 42 of our Constitution gives everyone the right to work, freely choose a profession and type of activity.

According to Olga Akimova, entrepreneurial activity is a type of labor. The fact that the right to engage in entrepreneurship simultaneously manifests the socio-legal qualities inherent in both labor and entrepreneurship indicates its specific factors related to labor and professional freedom[7]. Factors such as the purposeful orientation of efforts to satisfy the material and spiritual subjective needs that exist for labor, the desire for creativity, the social manifestation of results, the social positive impact, the generalization of specialization and professionalism combine the possibilities of legal provision of both concepts. That is, the entrepreneurial activity of a person also requires legal grounds for ensuring the practical freedom of labor. However, if a person is not given the opportunity to freely dispose of his labor capacity, it means that the citizen has no other option than to engage in wage labor or other types of labor. According to Alexandra Havel, the constitutional right of everyone to exercise their labor capacity, freely choose their type of activity and profession can be classified as economic rights, since this is of great importance for ensuring the free movement of workers and creating a labor market[8].

We believe that, although the content of the two rights listed above does not imply legal uniformity, the right of every person to manage their own labor opportunities, to choose their type of activity and profession reflects a certain connection. The implementation of the labor right granted to citizens allows for individual labor activities in the field of handicrafts, household services to the population, personal labor of citizens and their family members, as well as other types of activities.

Despite the differences in the human rights mechanism, the forms of state protection of citizens' rights to entrepreneurial activity have a common source, namely Article 55 of the Constitution of the Republic of Uzbekistan, according to which "Everyone has the right



to protect their rights and freedoms by all means not prohibited by law. Everyone is guaranteed the right to protect their rights and freedoms in court, to appeal to the court against unlawful decisions, actions and inaction of state bodies and other organizations, their officials.”

The express inclusion of a right in the Constitution is a powerful tool for the effective protection of that right and the adoption of consistent laws at the lower level. Therefore, constitutional protection gives rights a special status, which can significantly increase their impact on economic activity[9].

The protection of rights is its entire component in the human rights system. That is, the provision of any right necessarily works only for the development and interests of man. However, the constitutional foundations may not work sufficiently to protect the right of citizens to engage in entrepreneurship. This is due to the fact that human economic freedoms do not have a sufficiently fundamental legislative document to ensure the right to engage in entrepreneurship in terms of categories. Although the above norm is considered general from a constitutional point of view, its application to specific situations is slow to be implemented by executive bodies, which leads to certain difficulties in fully ensuring the right of citizens to engage in entrepreneurship. In particular, a citizen is forced to face numerous procedural processes and adversarial factors when considering disputes arising from the exercise of his rights to engage in entrepreneurship through the courts. Constitutional norms on the judicial protection of the rights and freedoms of man and citizen in the Republic of Uzbekistan serve as an important guarantee of fundamental rights. In accordance with the Constitution of the Republic of Uzbekistan, the right to judicial protection belongs to every citizen, foreign citizen, and stateless person and is guaranteed by the state. In case of violation of the rights and freedoms of a person and a citizen, any decisions of state authorities, local government bodies, public associations, officials, as well as any of their actions and inactions, may be appealed to the court, judges are independent and subject only to the Constitution and laws of the Republic of Uzbekistan. The need to comply with international standards for the protection of human rights and freedoms implies the existence of specific guarantees that ensure the effective restoration of rights through a fair trial that meets the requirements of justice.

Speaking about foreign experience in this regard, the third chapter of the Constitution of the Italian Republic states that the state has a legal obligation to take care of the training and upgrading of workers, while

guaranteeing freedom of personal economic initiative[10]. The Spanish Constitution has a special chapter devoted to the main principles of socio-economic policy, which stipulates the obligation of the authorities to create favorable conditions for social and economic development[11].

According to the first part of Article 65 of the Constitution of the Republic of Uzbekistan, “The basis of the economy of Uzbekistan, aimed at increasing the well-being of citizens, is formed by various forms of property. The state creates conditions for the development of market relations and fair competition, guarantees freedom of economic activity, entrepreneurship and labor, taking into account the primacy of consumer rights.” This norm specifically notes that the basis of the state economy is formed by various forms of property and that these forms of property are an important factor in the implementation of market relations. The freedom of economic activity, entrepreneurship and labor, enshrined in the norm, should be considered precisely as the constitutional right of everyone to freely use their abilities and property for entrepreneurial activities. Here, the main attention should be paid not only to economic activity, entrepreneurship, but, first of all, to the free use of one's own property to carry out this activity. In the constitutional sense, entrepreneurship is an institutional system that encompasses any activity aimed at obtaining profit or other income through the use of property, the sale of goods, the performance of work or the provision of services.

According to Benjamin Barros, a researcher at Stetson University in America, property fairly acquired by any person should be protected from external interference. Advocates of the position that property should be inviolable often imply that interference with property is interference with personal freedom[12].

Regarding the inviolability of property, according to the second and third parts of Article 65 of the Constitution of the Republic of Uzbekistan: “In the Republic of Uzbekistan, equal rights and legal protection of all forms of property are ensured. Private property is inviolable. The owner may not be deprived of his property except in cases and in accordance with the procedure provided for by law and without a court decision.”

According to Article 66 of the Constitution of the Republic of Uzbekistan, the owner shall own, use and dispose of the property belonging to him at his own discretion. It is established that the use of property shall not cause harm to the environment, nor violate the rights and legitimate interests of other persons, society and the state.



According to some researchers, the protection of private property may be organized in a weak form. The main reason for this is the occurrence of cases of corruption, biased courts, arbitrary and unpredictable implementation of regulatory legal acts when the owner faces partial expropriation (seizure of property by the state in necessary cases) of his property, direct seizure of assets and their transfer under control, which indicates the inadequacy of the constitutional foundations in relation to state property, regardless of the form of ownership[13].

Strong protection of private property rights simultaneously ensures the freedom of entrepreneurship and is the legal basis of the market economy, one of the main factors that negates the state monopoly in the organization of economic life. Constitutional guarantees of entrepreneurship should systematically establish internal harmony that defines the main guarantees of entrepreneurship. At this point, it should be noted that the traditional concept of "economic constitution", which represents a set of constitutional norms and establishes a separate relationship, provides legal stability of the foundations of entrepreneurship in our country.

According to Article 67 of the Constitution of our state, the State shall ensure a favorable investment and business environment. It is established that entrepreneurs have the right to carry out any activity in accordance with the legislation and independently choose the direction of their activities. The significance of this norm opens the way to separate support for types of entrepreneurial activity. We can say that individuals or groups of citizens who jointly organize and own an enterprise are subjects of the right to engage in entrepreneurship. The subjects of the right to engage in entrepreneurship are persons who own property on the basis of property rights, as well as persons who have the right to dispose of property by the owner by law or contract.

According to the second part of the norm, the unity of the economic space, the free movement of goods, services, labor resources and financial resources are guaranteed on the territory of the Republic of Uzbekistan.

The social significance and essence of entrepreneurial activity are its free implementation in territorial and border terms and the rational legal regulation of this process. The fact that a citizen engaged in entrepreneurial activity encounters obstacles in the sale and delivery of goods or products produced by him, his inability to benefit all consumers from the results of this activity, the cessation of personal growth, development of his activities, the emergence of stagnation and other

similar situations lead to the loss of the citizen's incentive to this activity.

ANALYSIS OF THE RESULTS OF THE STUDY

The main issue today is to improve the quality of rule-making activities in the economic sphere aimed at improving entrepreneurial legislation, to identify and abolish regulatory legal acts that contradict the Constitution and laws. The analysis shows that more than half of the shortcomings in the legislation are associated with the introduction of unlawful restrictions on the free movement of goods and services, the establishment of illegal taxes and fees, and the restriction of the legal status of entrepreneurial entities. Such approaches to ensuring the right to engage in entrepreneurship are characteristic mainly of highly developed democratic states with a market economy, an established system of separation of powers and a stable social structure, in which situations where citizens are deprived of the right to freely engage in entrepreneurial activity cannot arise. Western countries effectively use constitutional provisions protecting property rights and "free entrepreneurship" to expand the scope of the market. The decisions of the French Constitutional Council of January 17, 1982 and July 27, 1982 established freedom of entrepreneurship as a principle of constitutional significance. For example, the Italian Constitution (Article 41) proclaims the freedom of private economic initiative. The Spanish Constitution (Article 38) establishes the recognition of freedom of entrepreneurship in a market economy[14].

We believe that the norm established in the first part of Article 65 of the Constitution of the Republic of Uzbekistan should be further improved in ensuring the rights of citizens to this activity. In our opinion, the subjective right to entrepreneurial activity as a separate type is related to the subjective right to economic activity and is an integral part of a single system. The implementation of this right implies the formation of conditions under which the state has the right to not fulfill its obligations to citizens in ensuring rights and freedoms in the constitution itself or to deprive citizens of these rights. In our opinion, the views of some researchers on this issue are very controversial. In our opinion, it is unacceptable to restrict the rights and freedoms of citizens by law, since in this case the boundary between the subject of constitutional regulation and the subject of legislative regulation is violated. This proportionality between the constitution and the law breaks the imperative nature of the constitutional norm. In conclusion, we can say that if the human rights and freedoms established in the constitution are subject to exceptions through the



adoption of laws, they lose their status as constitutional, fundamental rights and freedoms of citizens.

CONCLUSION

In conclusion, we must say that the entrepreneurial activity of people and citizens is one of the important legal guarantees that ensure personal economic independence of a person and contribute to the economic stability of society. This right is also clearly visible in the experience of international legislation, in particular, in countries such as Italy, Spain and France, effective mechanisms have been developed for the protection and development of entrepreneurial freedom at the constitutional level. During the research, it was found that the improvement of legislative mechanisms aimed at the implementation of the right of entrepreneurship, increasing the efficiency of the judicial system and the introduction of laws in accordance with international standards are the basis for the further development of this right. Also, the role of the state in the economic policy is also important in the implementation of the right to entrepreneurship.

Based on the above, our proposals are that, **firstly**, it is necessary to ensure that one or more laws and sub-legal acts are developed and implemented in practice, depending on the content and methods of implementing the constitutional right to engage in entrepreneurship, which should be strengthened in the law defining constitutional norms. In particular, it is necessary to amend Part 3 of Article 65 of the Constitution of the Republic of Uzbekistan as follows: "Private property is inviolable. Everyone has the right to engage in entrepreneurial activity, to freely use their abilities and property. The owner may not be deprived of his property except in cases and in the manner provided for by law and not based on a court decision."

Secondly, to clearly define the meaning of all terms used in the formation of this right, to regulate in a normative-legal manner all methods of its implementation, to determine the procedure for legal actions that the subject may take, to determine the responsibilities and functions of state and government bodies necessary for the implementation and protection of this right, to supplement the procedure for the implementation and protection of this right from the perspective of human rights, to monitor that the structure of the normative document ensures the logical development of the subject of legal regulation. In particular, to adopt the Entrepreneurship Code of the Republic of Uzbekistan and to clearly define in this code the right of citizens to engage in entrepreneurship and the main terms used within its framework, to develop these terms in accordance with international standards.

Thirdly, the Constitution of the Republic of Uzbekistan also does not contain specific provisions aimed at, on the one hand, encouraging and facilitating the development and increase of property, and on the other hand, developing its absolute nature. In contrast, the Basic Laws of many foreign countries contain separate provisions on the "main fundamental principles of socio-economic policy", a market economy, small and medium-sized businesses, the social function of property, determining its boundaries, rules for encouraging and assisting the development of property, and supporting private entrepreneurship. We believe that there is a great opportunity and a need to consolidate in a constitutional document the appropriate boundaries of the rights of citizens to entrepreneurial activity.

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