

## The role of constitutional litigation in the protection of fundamental human rights: An assessment of the Constitutional Court of the Kyrgyz Republic

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**Abstract.** The study of the Constitutional Court's effectiveness in protecting human rights in the Kyrgyz Republic is particularly relevant due to ongoing legal reforms and the increasing number of constitutional complaints. The research aimed to assess the Court's role in safeguarding constitutional rights by analysing case trends from 2022 to 2024. The study employed formal-legal, comparative legal, historical-legal, logical-legal, and legal concretisation methods to examine judicial decisions, legal frameworks, and the interaction of the Constitutional Court with state bodies. The analysis of judicial practice revealed that while the Constitutional Court plays a crucial role in upholding constitutional principles, challenges remain in its independence, accessibility, and the enforcement of rulings. It was found that the number of human rights-related appeals has increased, yet the acceptance rate for proceedings remains low, highlighting procedural barriers to constitutional justice. The study examined key cases on gender equality, labour rights, and electoral legislation, demonstrating the Court's influence on the legal landscape. A comparative analysis with Kazakhstan and Uzbekistan revealed common regional trends, including the political factors affecting constitutional

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adjudication. Additionally, the research identified a need for clearer legislative frameworks and institutional reforms to strengthen the Court's effectiveness in human rights protection. The results can be used to develop strategies for enhancing judicial independence, improving constitutional litigation procedures, and ensuring better enforcement of human rights protections within the legal system of the Kyrgyz Republic

**Keywords:** legal defence; judicial complaint; rule of law; legal control; fundamental rights and interests of citizens

### Introduction

The role of constitutional justice in protecting fundamental human rights has gained increasing importance in the Kyrgyz Republic, particularly amid recent legal reforms and growing public demand for judicial accountability. The Constitutional Court plays a critical role in ensuring compliance with constitutional principles, yet challenges remain regarding the effectiveness and consistency of its decisions. In a broader regional context, Kyrgyzstan's experience contributes to the ongoing discourse on judicial independence and constitutional oversight in post-Soviet legal systems. On a global scale, the study aligns with international trends in constitutional adjudication, providing insights into the interaction between constitutional courts and democratic governance. The findings are particularly relevant for legal scholars, policymakers, and practitioners seeking to enhance the institutional capacity of constitutional courts. This research is timely in 2025, given the increasing number of constitutional complaints and the necessity for legal systems to adapt to evolving human rights standards. By addressing these pressing issues, the study advances both theoretical understanding and practical applications in constitutional law.

Some scholars such as Ahmad *et al.* (2022) and M. Florczak-Wątor (2020) were engaged in the study of this topic. In these scientific works the specificity of law-making of constitutional courts of developed European countries, such as Austria, Hungary, Poland, Bulgaria, Czech Republic is considered. The place of the Constitutional Court among the courts of general jurisdiction as well as executive authorities is analysed. The authors come to the conclusion that the most optimal situation is when the Constitutional Court is independent of other branches of power and can independently solve the issues of judicial self-government.

C. Grabenwarter *et al.* (2021) and T. Lailam and M.L. Chakim (2023) in their scientific works, carried out a comparative analysis of the activity of constitutional courts of different countries, such as Germany, Czech Republic and others. In addition, the authors study in detail the place of the Constitutional Court in the system of jurisdiction, analyse the peculiarities of the implementation of constitutional justice in modern conditions, as well as investigate the role and importance of constitutional courts as a separate branch of the judiciary. The authors conclude that in the developed democratic countries of the European Union the efficiency of the Constitutional Court, its independence and transparency have a significant role in the process of European integration. Since it is the bodies of constitutional justice that are the guarantor of ensuring all fundamental and state-guaranteed human and civil rights. Such authors as A. Wijaya and N. Nasran (2021) have analysed, synthesised and compared American and European models of constitutional control implementation. In this paper, both positive and negative aspects of the implementation of the European and American models of constitutional control and judicial proceedings were studied.

Taking into account that the Constitution and constitutional bodies in the Kyrgyz Republic are developing very dynamically, the aim of the study was to assess the effectiveness of the Constitutional Court in the field of human rights protection. This included analysing the number of human rights-related cases reviewed, tracking trends over time, and determining whether an increase in such rulings has contributed to a higher level of human rights protection in the Republic. The objectives of the research were to study and define the role of the constitutional jurisdiction body in the Kyrgyz Republic to ensure democratic statutes and the realisation of legal rights and interests of citizens, to study the genesis of the development of constitutional litigation in the Kyrgyz Republic, to identify the peculiarities of the interaction of the Constitutional Court with other bodies of state power, to determine the role, significance, and place of the Constitutional Court in the system of ensuring the fundamental rights of citizens of the Kyrgyz Republic.

### Materials and methods

During the research some legislative acts were used, such as the Constitution of the Kyrgyz Republic (2021), Criminal Procedure Code of the Kyrgyz Republic (2021), Constitutional Law of the Kyrgyz Republic No. 133 "On the Constitutional Court of the Kyrgyz Republic" (2021), Constitutional Law of the Kyrgyz Republic No. 81 "On Amendments to the Constitutional Law of the Kyrgyz Republic "On the Election of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" (2023), Constitutional Law of the Kyrgyz Republic No. 81 "On Amendments to the Constitutional Law of the Kyrgyz Republic "On the Election of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" (2023), Rules of Procedure of the Constitutional Court of the Kyrgyz Republic (2022). Legal norms regulating and establishing the legal status and powers of the Constitutional Court, the procedure for filing and considering a constitutional appeal, and the time limits for the implementation of constitutional justice were studied.

This work analysed the peculiarities of the implementation of constitutional proceedings in the Kyrgyz Republic, the Republic of Kazakhstan, and the Republic of Uzbekistan. The next step for the research was the study of specific decisions of the Constitutional Court: the Decision of the Constitutional Court on the recognition of Part 6 of Article 28 of the Constitutional Law of the Kyrgyz Republic No. 68 "On the Election of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" (2011) as not contradicting parts 2, 4, 5 of Article 23, parts 1-3 of Article 32, part 1 of Article 33 of the Constitution of the Kyrgyz Republic (2021); Decision of the Constitutional Court of the Kyrgyz Republic "On the Case on Verification of the Constitutionality of Part 13 of Article 121 of the Criminal Procedure Code of the Kyrgyz Republic" (2022).

For the purpose of a full and comprehensive study, special legal methods of scientific knowledge were used. Thus, using the formal-legal method, the Constitutional Law of the Kyrgyz Republic No. 133 “On the Constitutional Court of the Kyrgyz Republic” (2021), regulating the legal status and procedure of the Constitutional Court, as well as other norms of legislative acts in the field of constitutional jurisdiction were studied. The comparative legal method was used to study the American and European models and ways of implementing constitutional justice, and a comparative analysis of different bodies of constitutional control was carried out. Using the method of legal analysis, the decisions of the Constitutional Court were investigated for their significance and effectiveness in the sphere of protection of rights and freedoms of citizens. Using the historical-legal method, the study of the stages of development of constitutional legal proceedings in the Kyrgyz Republic was carried out, and the development of constitutional control bodies in the Kyrgyz Republic was studied taking into account the historical peculiarities of the formation of the rule of law in Kyrgyzstan. Using the logical-legal method, the stages of formation and development of the Constitutional Court were studied in a logical order in the context of the development of constitutional legal proceedings in Kyrgyzstan.

## Results

At this stage of development of social relations and functioning of state bodies, the problem of ensuring the appropriate level of legality and observance of law and order in the sphere of realisation of fundamental rights of citizens is of high significance. Since, without ensuring such rights, further development of a democratic state is impossible. Therefore, a general tendency is the growing importance of constitutional justice bodies along with other public authorities in order to ensure a proper level of legal protection of citizens' interests.

In any democratic state, the significance and immanence of the Constitution of the Kyrgyz Republic (2021) is due to the fundamental, foundational, constitutive nature of this act. Since the Basic Law has the highest legal force and its norms have the force of direct action, it is obvious that the Constitution acts as a platform for all legislation. The constitutional values enshrined in the Basic Law are protected and implemented by the Constitutional Court, whose main function is to assess the extent to which the law (norm of law) under scrutiny complies with the provisions of the Constitution, while discrepancies with the constitutional provisions are fraught with the exclusion of the contested norm (Chemerinsky, 2023). Thus, through the constitutional review of laws, the Constitutional Court ensures the guarantee of the supremacy of the Constitution and the functioning of a real democratic state, as its decisions contribute to the formation of an effective mechanism to ensure the protection of constitutional rights of citizens. Given the legal force of the final decisions of the constitutional review body, which is superior to any law, except the Constitution itself, the legal positions of the Constitutional Court orient the law-making bodies to implement purposeful and consistent implementation of constitutional norms and reflect constitutional values in the legislation (Duishonbaeva et al., 2021).

The Constitution as the Basic Law of the Kyrgyz Republic (2021) has supreme legal force, and the norms of the Constitution, which are applied throughout the territory of the Republic, have direct effect. All legal acts must comply

with the norms and basic principles of the Constitution and must not contradict it. In addition, all officials of state administration and local self-government bodies must steadfastly comply with the Constitution. In the Kyrgyz Republic, the Constitutional Court is a special body of judicial power that is authorised to ensure the constitutionality of laws in the state. There are two varieties of the American model of constitutional review – decentralised and centralised. The decentralised model exists in such countries as the USA, Argentina, Norway and Japan, where constitutional control can be exercised by all courts of general jurisdiction in the ordinary course of judicial procedure. The centralised variety exists in such countries as Australia, India, Canada, Malta, where constitutional review can be exercised only by supreme courts in a special order of procedure.

The European model of constitutional control, the concept of which was proposed by Austrian scholars G. Kelsen and K. Eisenman, emerged in the 20<sup>th</sup> century. The main difference between the European model and the American one is that constitutional control is separated from general justice and is carried out not by courts of general jurisdiction, but by specialised bodies – constitutional courts (Ghaleigh et al., 2022). The model of constitutional control in the Kyrgyz Republic refers to the Kelsen or European model of constitutional justice, as there is a separate body of constitutional control, which is authorised to supervise and control the constitutionality of legislative norms.

The Constitutional Court not only protects the Constitution but also limits public authorities within constitutionally defined boundaries through competence disputes (Dube, 2022). However, in disputes between public authorities, it rules solely on legal issues without addressing political expediency. As an arbitrator in representative democracy, the Court prevents power abuse and upholds democracy based on the rule of law. Its activities are transparent, with an Annual Report detailing adopted acts, petitions, executed decisions, and statistical data (Scholtes, 2021). The legal status of the Constitutional Court raises questions about whether it functions as a judicial or procedural body. Justice is viewed as law enforcement, while legal proceedings ensure its implementation, with distinctions across constitutional, civil, economic, administrative, and criminal cases (Lenaerts et al., 2021). To clarify this, it is essential to examine the historical evolution of the Constitutional Court in Kyrgyzstan. The constitutional development of Kyrgyzstan has undergone multiple transformations due to political and social changes, affecting the status of constitutional justice bodies. The evolutionary stages of the Constitutional Court are summarised in Table 1.

According to Article 97 of the Constitution of the Kyrgyz Republic (2021), the Constitutional Court is the supreme judicial body responsible for constitutional control, ensuring the protection of constitutional principles, fundamental rights, and the rule of law. It exercises official constitutional interpretation, reviews the compliance of normative acts with the Constitution, assesses the constitutionality of international treaties before their ratification, and resolves competence disputes between branches of power (Dube, 2022). Additionally, the Court provides opinions on constitutional amendments and the initiation of charges against the President. Under the Constitution, any individual or legal entity may challenge a law or normative act violating fundamental rights. Decisions of the Court are final and not

subject to appeal. Laws or provisions deemed unconstitutional are invalidated nationwide, and judicial decisions based on such laws can be reconsidered upon citizen complaints (Scholtes, 2021). The Court operates strictly within the legal framework, ruling only on the legality of norms, including their content, form, adoption, publication, and enforcement (Lenaerts *et al.*, 2021). The right to appeal to the Constitutional Court extends to individuals, legal entities, state authorities, and key officials, including the Pres-

ident, Parliament, Cabinet of Ministers, Supreme Court, local self-government bodies, the Prosecutor General, and the Ombudsman (Awawda, 2024). Appeals must comply with formal requirements outlined in Constitutional Law No. 133, including details of the petitioner, references to constitutional norms, and a legal justification for the claim (Makhambetsaliyev *et al.*, 2024). The constitutional review process follows defined stages, from registration to consideration in a written procedure for specific cases.

**Table 1.** Items under which non-current assets are recognised in the balance sheet

| Period              | The body that administers constitutional justice                                                                             | Features of the activity                                                                                                                                         |
|---------------------|------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1990-1993           | The Constitutional Oversight Committee of the Kyrgyz Soviet Socialist Republic (the predecessor of the Constitutional Court) | 1. Low efficiency in the area of protecting citizens' rights.<br>2. Strong dependence on other government bodies.                                                |
| 1993-2010           | Constitutional Court of the Kyrgyz Republic                                                                                  | It was defined as the body of the highest justice, while issues of the status of judges were decided not by the court itself, but by Parliament.                 |
| 2010-2021           | Constitutional Chamber of the Supreme Court of the Kyrgyz Republic                                                           | The Constitution defined this body as the body implementing constitutional control. In fact, it was an independent body implementing constitutional proceedings. |
| 2021 – present time | Constitutional Court of the Kyrgyz Republic                                                                                  | It is the body of the highest judicial authority that carries out constitutional proceedings.                                                                    |

**Source:** compiled by the authors based on Z.Z. Kerimkanova and E.B. Bazarbaev (2024)

Key features of constitutional justice in Kyrgyzstan reflect its evolving legislative landscape and external political influences. The main challenges for further development include (Stone *et al.*, 2023; Yunusov & Leylanoğlu, 2024):

- strengthening the Constitutional Court's independence from political influence.
- defining its jurisdiction within the broader judicial system, particularly with the development of administrative courts.
- refining procedural regulations, including the legal force and enforcement of decisions.
- ensuring political neutrality, as constitutional justice is often influenced by socio-political factors.

As of February 2025, the Constitutional Court of the Kyrgyz Republic has not published its annual reports for 2023 and 2024. The most recent available data pertains to 2022, during which the Court received 68 appeals, accepting 10 (15%) for proceedings. Of these appeals, 85% were filed by citizens, with the remainder submitted by state bodies, legal entities, and judges. The Court issued 10 judgments on these appeals, upholding the constitutionality of the contested normative legal acts in 7 cases and finding contradictions in 3 cases. The high rejection rate (85%) was attributed to insufficient awareness among citizens, legal professionals, and state representatives regarding the application procedures for constitutional review (Annual Report of..., 2022). In October 2023, a significant legislative change occurred when the President signed a law permitting the review of Constitutional Court decisions upon suggestion by either the President or the Chair of the Constitutional Court. This development has raised concerns about potential impacts on judicial independence, as it grants the executive branch influence over the Court's rulings (United Nations in Kyrgyz Republic, 2023).

In this regard, all public authorities, including the Constitutional Court, have an important task to continue raising legal culture and informing citizens about the basics of constitutionalism in various forms, including guest lectures with the participation of lawyers; the establishment of constitutionalism centres in higher education institutions; ongoing constitutionalism schools for various categories of legal scholars (judges, prosecutors, lawyers, legal professionals, lawyers of public organisations and others), state and municipal officials; and the widespread dissemination of information about constitutionalism to the public.

When considering specific decisions of the Constitutional Court, the following decisions and the procedure for their implementation may be noted. Decision of the Constitutional Court of the Kyrgyz Republic "On the Case on Verification of Constitutionality of Part 6 of Article 28 of the Constitutional Law of the Kyrgyz Republic "On the Election of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" (2022) is such that it does not contradict parts 2, 4, 5 of Article 23, parts 1-3 of Article 32, part 1 of Article 33 of the Constitution, which is considered in Table 2.

This decision was implemented through the adoption of Constitutional Law of the Kyrgyz Republic No. 81 "On Amendments to the Constitutional Law of the Kyrgyz Republic "On the Election of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" (2023). Another decision of the Constitutional Court of the Kyrgyz Republic is worth considering. The decision of the Constitutional Court of 15 June 2022, Part 13 of Article 121 of the Criminal Procedure Code of the Kyrgyz Republic (2021) was found to be contrary to Article 23, Part 5, Article 61, Part 1, Part 4, Article 100 of the Constitution of the Kyrgyz Republic, which is discussed in detail in Table 3.

**Table 2.** Decision of the Constitutional Court of April 27, 2022

| Contacting parties                                                                      | The essence of the question                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Court decision                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Deputies of Zhoroku – Alagushev Akhmat Kirgizbaevich and Sydykov Nurbek Kudaiberdievich | Verification of compliance of part 6 of Article 28 of the Constitutional Law of the Kyrgyz Republic No. 68 with part 2 of Article 10, parts 2, 4, 5 of Article 23, parts 1, 2, 3 of Article 32, part 1 of Article 33 of the Constitution of the Kyrgyz Republic.<br>The applicants believe that the wording used in the contested provision establishes a ban on any negative statements, including constructive criticism, sharp questions and statements regarding the programme chosen by a candidate, analysis of possible consequences in case of choosing the programme of another candidate, dissemination of factual circumstances, information about candidates, political parties of public interest. Consequently, the prohibition established by the contested provision does not fulfil the purposes defined in Article 23 (2), (4) and (5) of the Constitution and does not meet the requirements of clarity and certainty. | Article 28, part 6, of Constitutional Law of the Kyrgyz Republic No. 68 was found not to be contrary to Article 23, parts 2, 4 and 5, Article 32, parts 1-3, and Article 33, part 1, of the Constitution of the Kyrgyz Republic. |

**Source:** compiled by the authors based on Decision of the Constitutional Court of the Kyrgyz Republic “On the Case on Verification of Constitutionality of Part 6 of Article 28 of the Constitutional Law of the Kyrgyz Republic “On the Election of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic” (2022)

**Table 3.** Decision of the Constitutional Court of June 15, 2022

| Contacting parties                                                  | The essence of the question                                                                                                                               | Court decision                                                                                                                                                                                            |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Deputies Zhoroku – Omurkul uulu Ulan, Turganbaev Murat Zhumabaevich | Uncertainty regarding whether part 13 of Article complies with the Constitution of the Kyrgyz Republic 121 Criminal Procedure Code of the Kyrgyz Republic | Part 13 of Article is recognised 121 Criminal Procedure Code of the Kyrgyz Republic contrary to part 5 of Article 23, part 1 of the Article 61, part 4 of Article 100 Constitution of the Kyrgyz Republic |

**Source:** compiled by the authors based on Decision of the Constitutional Court of the Kyrgyz Republic “On the Case on Verification of the Constitutionality of Part 13 of Article 121 of the Criminal Procedure Code of the Kyrgyz Republic” (2022)

In this decision, the court noted that the most negative form of manifestation of unlawful activity is the commission of offences that involve the infliction of moral and material harm. In this connection, in every case where a sentence is passed for an offence that has caused material and moral harm, the court must at the same time also consider a civil claim for compensation for the damage caused. If such a claim has not been filed by a party, the court must decide on the issue of compensation for damage on its own initiative. To ensure the implementation of such tasks as a legal mechanism, pre-trial investigation bodies apply measures of procedural coercion, where the most popular is such type as ar-

rest of property. In November 2023, the Constitutional Court reviewed the constitutionality of Articles 218 and 303 of the Labor Code of the Kyrgyz Republic (2004), along with Order of the Government of the Kyrgyz Republic No. 158 (1999), which established a list of industries and professions prohibited for women due to “harmful or hazardous conditions” (Table 4). Equality Now substantiated these provisions as discriminatory. At the same time, it should be noted that decent work is not only a tool for achieving the relevant UN Sustainable Development Goals, but also an effective economic incentive to increase employment (Shubalyi & Yefimov, 2023).

**Table 4.** Decision of the Constitutional Court of November, 2023

| Petitioners                                       | Issue                                                                                                                                                              | Court Decision                                                                                                                                                                                                                                                           |
|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equality Now and other human rights organisations | Challenged the legality of restricting women's employment in certain industries, arguing it violated constitutional principles of equality and non-discrimination. | The Court declared the contested provisions unconstitutional, stating they infringed upon women's rights to equal employment opportunities and did not align with international standards. The decision mandated the removal of gender-based restrictions in labor laws. |

**Source:** Equality Now (2023)

In October 2023, President Sadyr Japarov signed amendments to the Law on the Constitutional Court, granting the Court authority to review its prior decisions under specific circumstances (Table 5). These decisions reflect the dynamic nature of constitutional jurisprudence in Kyrgyzstan, addressing both the advancement of gender equality in the workforce and the evolving relationship between the judiciary and executive branches concerning the finality of constitutional interpretations. At the same time, cancellation of such coercive measures may entail a threat of violation of property rights of victims of crime, as unjustified removal of arrest may entail the impossibility

to provide compensation for moral damage and payment of other costs. Therefore, in this case, it is very important to ensure effective judicial control and implementation of legal norms that regulate the lifting of arrest over property. The Constitution enshrines the right to judicial protection in the process of pre-trial investigation of a criminal offence by enshrining in criminal procedure legislation the institution of the investigating judge, who is empowered to exercise judicial control. The purpose of this institution is to provide protection against arbitrary actions by representatives of law enforcement agencies. At the same time, the investigating judge cannot decide on the guilt or

innocence of the person under investigation. Judicial control thus acts as an independent function, which is aimed

at restoring the violated rights and interests of the injured party at the stage of pre-trial investigation.

**Table 5.** Decision of the Constitutional Court of October, 2023

| Petitioners                                                    | Issue                                                                                                                                                                                                                                | Court Decision                                                                                                                                                                                                                                          |
|----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Initiated by the President and the Jogorku Kenesh (Parliament) | Sought to allow the Constitutional Court to revise its decisions if new significant circumstances arise, if constitutional norms have changed, or if a decision contradicts the moral values and social consciousness of the people. | The Court upheld the amendments, enabling the review of previous decisions under the specified conditions. This move has been controversial, with concerns about potential impacts on judicial independence and the possibility of executive overreach. |

**Source:** Decisions of Constitutional Court can be reviewed in Kyrgyzstan (2023)

Despite the exercise of judicial control over the cancellation of an arrest under Article 130, part 1, of the Criminal Procedure Code of the Kyrgyz Republic (2021), the possibility of influencing a court decision is also envisaged, which is inconsistent with the constitutional principles enshrined in the Basic Law, the structure of the organs of State power and the place of the judiciary in it. Article 100, part 4, of the Constitution of the Kyrgyz Republic (2021) provides that “Cancellation, modification or suspension of a court judgement shall be carried out by the court in accordance with the procedure established by law”. This means that no public authority may perform the function of a court, and no court decision may be cancelled or suspended, which also applies to the question of cancelling the seizure of property, by other public authorities or officials than a court. Therefore, the Constitutional Court noted that it was necessary to introduce legislative changes in the legal regulation concerning the procedure for cancelling the seizure of property. This judgement was implemented through the adoption of the Law of the Kyrgyz Republic No. 149 “On Amendments to the Criminal Procedure Code of the Kyrgyz Republic” (2023).

An example of a review of a decision of the Constitutional Court is the decision to review the Decision of the Constitutional Court “On the Case of Tilek kyzy Elvira and Ainura Musaevna Osmonalieva, Representing the Interests of Altyn Abtyyn Kapalova interests of Kapalova Altyn Abdykadyrova” (2023) concerning verification of the constitutionality of a normative provision of Article 63, part 2, of the Family Code of the Kyrgyz Republic (2003). On 30 June 2023, the Constitutional Court of the Kyrgyz Republic, having considered the case concerning the constitutionality of certain normative provisions of Article 63, part 2, of the Family Code of the Kyrgyz Republic and Article 30, part 3, second paragraph of part 3, of the Act on Civil Status Acts, found the contested norms not to be contrary to the Constitution. At the same time, the Cabinet of Ministers of the Kyrgyz Republic was instructed to amend the current legal regulation aimed at granting a legally capable citizen 3 the right to choose between a patronymic and a matronymic. However, this position of the court caused a wide public resonance due to the perception of the predominant part of the population of the institution of matricide 4 in general as a negative phenomenon that infringes on the moral foundations, values, and traditions of the Kyrgyz people. Taking into account the circumstances, the Chairman of the Constitutional Court, E.J. Osmonbaev, on 11 October 2023, made a submission to the Constitutional Court for review of the decision of 30 June 2023 in the part concerning the institution of matronym. The said submission noted that the Constitutional

Court, by identifying the constitutional and legal meaning of the provisions of the Constitution and resolving issues of uncertainty in their understanding, forms the unity of the legal space, thus ensuring the stability of legal relations, which includes maintaining a reasonable balance between private and public interests. Taking into account the above, as well as taking into account the realities in which the introduction of the institution of matricide was perceived negatively by the overwhelming part of society, which was a circumstance that could not have been foreseen, at the same time, without questioning the conclusions set out in the adopted Decision, in order to comply with the principle of balance in the law enforcement activities of state institutions for the protection of public and private legal interests, the Constitutional Court concludes that it is necessary to make changes to the legislation under consideration.

The use of different dialogue platforms to discuss draft legislation is also effective. The Constitutional Court, in order to strengthen citizens’ confidence in the laws and the judiciary, is actively interpreting and explaining legal norms in an understandable way. A very important aspect is that all state bodies and their officials take all measures for the proper implementation of the decisions of the Constitutional Court, which indicates the sufficient authority of this judicial authority.

## Discussion

The current study found that the Constitutional Court is the central democratic body in developed democracies and is considered the highest guarantee of the rule of law. However, the paper found that in practice, Constitutional Courts can often be highly politicised and make biased decisions. The study by P. Castillo-Ortiz (2020) established the fact that not always the existing structure of constitutional proceedings can fulfil the requirements of a democratic state. The author concludes that reforms of constitutional courts are needed to ensure their independence and efficiency. The conclusions of this study coincide with the opinion of the mentioned author that in practice the Constitutional Court is dependent on other branches of power and systemic changes are necessary to ensure the independence of constitutional control bodies.

The scientific study has studied in detail the problematics of judicial power, which is expressed in the fact that the Constitutional Court often makes politicised decisions, which are not aimed at the real protection of democratic statutes in the state, attention was focused on the peculiarities of the implementation of justice, including constitutional justice. The study revealed, as in previous studies, that the decisions of the Constitutional Court have an important political and social impact, because, it is such decisions that

are designed to regulate different social relations in order to ensure the fundamental rights of citizens.

The author B.G. Engst (2021) also found that the work of courts of different jurisdictions, including the Constitutional Court, is greatly influenced by political forces, but, despite this, constitutional control is an integral attribute of democratic power. The results of the research coincide with the author's opinion in the part that the same problems of the judicial system have been established, which is characteristic for the majority of democratic countries, and which is expressed in the great influence of different branches of power on the judicial system.

In the current study, it was established that the institute of constitutional litigation is actively developing in the Kyrgyz Republic. Despite all the shortcomings, constitutional appeal is an effective mechanism for the implementation of constitutional control (Apakhayev *et al.*, 2024). In the scientific work of the authors A.J. Bellia and B.R. Clark (2022), as well as in this study, theoretical and practical aspects of the functioning of the Constitutional Court in different democratic countries were studied. The work of these authors investigates the procedure of constitutional litigation in European countries, in particular Germany, which distinguishes this work from the current study.

Different models of constitutional litigation have been studied in the work. Taking into account the conclusions of the author M. Steuer (2023), it is worth noting that often the concept of constitutional justice is used as a tool of populism. Unlike the above author, this paper has studied in detail the procedure of constitutional justice and formulated some conclusions that the principles and rights enshrined in the Basic Law are not always realised in practice. The use of such an approach does not develop democracy, but rather leads to the establishment of authoritarianism under the pretext of democratic statutes. That is why the Constitutional Court, as the supreme body of justice and a guarantee of the Constitution, should be as independent of political and managerial influence as possible (Saparbekova *et al.*, 2024).

In the process of researching this topic, the role of the Constitutional Court in the justice system and in the mechanism of ensuring fundamental human and civil rights was established. The study revealed the fact that the activity of the Constitutional Court is an indispensable component of any democratic model of governance. Therefore, constitutional control bodies should be singled out and exercise their functions independently of political influence, directly fulfilling the prescriptions of the Constitution. The results of the study coincide with the opinion of the author M. Granat (2022), who also in his scientific work indicates that the powers of constitutional bodies should be highlighted and regulated in detail at the legislative level.

In the scientific study, as well as in the work of the author D. Nazarova (2021), the main stages of development of constitutionalism in the Kyrgyz Republic were established. The peculiarities of the development of constitutional control bodies, its weaknesses and strengths were studied, taking into account the historical development of Kyrgyzstan in the post-Soviet period. This paper found that, compared to other post-Soviet countries, the development of the Constitution and constitutional jurisdiction in Kyrgyzstan was very rapid and dynamic. Despite some shortcomings, constitutional control in the Kyrgyz Republic is quite effective for the protection of fundamental rights of citizens (Kovalchuk *et al.*, 2024).

Agreeing with the position of the authors A. Elcaputera and S. Satoto (2023), who conducted an analysis of the activities of Constitutional Courts in various countries, including Kyrgyzstan, the study established that the judicial practice of the Constitutional Court indeed plays an important role in strengthening democracy and ensuring fundamental human and civil rights. It was determined that in a short period of time, constitutional jurisprudence can change the course of legislation formation and can influence managerial decisions of state authorities. In this paper, considerable attention has been paid to the realisation of fundamental rights in various spheres, in particular, the exercise of citizens' rights. Since the Constitution of the Kyrgyz Republic enshrines the equality of rights between women and men, an analysis was made of how women's rights and interests are actually protected. Particular attention was paid to the process of integrating gender issues into Kyrgyz legislation. The analysis looked at how gender equality is protected at the constitutional and customary legal levels, and attempted to assess how effective the constitutional framework is in realising the protection of women's rights, taking into account women's socio-economic, political and other contexts. A. Akisheva (2023) explored the issue of gender equality in constitutional politics in more detail. The author concludes that the Constitutional Court is the body that should primarily ensure gender equality in law-making, which distinguishes the study of the mentioned author from the current work.

The research paper established the basic standards of constitutionalism. Also, it was established that all decisions of the Constitutional Court on legislative changes should be made through thorough and effective processes that can ensure consensus between the society and the state. The same research was conducted by Venice Commission (2021) which also studied the provisions of the Venice Commission, some positive, and negative aspects of constitutional amendments were studied.

This study once again shows the importance of adhering to constitutional rights in all public spheres of citizens' life. Since, sometimes, some areas receive very little attention, this is often where violations occur. This paper studies the legal basis for the implementation of justice and the specifics of both administrative and constitutional jurisdiction in the development of the Kyrgyz Republic. Authors Z.Z. Kerimkanova and E.B. Bazarbaev (2024), in their work, also established some peculiarities of realisation of fundamental rights of citizens in narrower spheres, such as, for example, in the construction sphere. Therefore, as in the current study, the authors also conclude that constitutional litigation on the one hand has its own procedural limitations, and on the other hand covers all branches of law.

M. Safta (2022) emphasises that constitutional courts play a pivotal role in maintaining peace and public order by ensuring that legal norms align with constitutional values. The current study corroborates this argument, demonstrating how the Kyrgyz Constitutional Court has worked towards strengthening the legal framework by reviewing controversial legislative provisions. Similar to the cases analysed by M. Safta (2022), the Kyrgyz Constitutional Court has influenced legislative amendments, as seen in decisions regarding property rights and electoral regulations. Ahmad *et al.* (2022) discusses constitutional dialogue as a crucial aspect of judicial review, particularly in Indonesia. Their findings suggest that constitutional courts should actively engage with legis-

lative bodies to refine legal norms. The present study aligns with this perspective, showing that the Kyrgyz Constitutional Court not only adjudicates disputes but also provides recommendations for legislative improvements. This reflects an emerging trend where constitutional courts act as facilitators of legal dialogue rather than mere adjudicators. The comparison with European constitutional courts, as analysed by M. Florczak-Wątor (2020), indicates that judicial law-making is a significant function of constitutional courts in democratic states. The Kyrgyz Constitutional Court, much like its European counterparts, has exercised judicial law-making through its rulings on the constitutionality of laws. However, unlike well-established European constitutional courts, the Kyrgyz court operates within a legal and political environment where judicial independence remains a challenge, as evidenced by recent executive attempts to influence constitutional adjudication (Serikzhanova *et al.*, 2024).

T. Lailam and M.L. Chakim (2023) propose the adoption of concrete judicial review in Indonesia, drawing insights from the German Federal Constitutional Court. The Kyrgyz Constitutional Court follows a similar model of centralised constitutional review, in line with the Kelsenian tradition. However, the discretionary power granted to the Court in Kyrgyzstan is still evolving. Unlike the German model, where judicial independence is firmly entrenched, the Kyrgyz model faces external pressures, as observed in the case of revisiting prior court decisions under executive influence. The study by C. Grabenwarter *et al.* (2021) examines the role of constitutional courts within the European judicial network, highlighting their interactions with supranational legal institutions. While the Kyrgyz Constitutional Court operates in a domestic legal framework, its decisions increasingly reflect international legal standards, particularly in human rights protection (Kryvytskyi, 2024). The Court's decision on gender equality in employment aligns with global legal principles, similar to trends in European constitutional courts. A. Wijaya and N. Nasran (2021) provide a comparative analysis of judicial review models, underscoring the distinction between centralised and decentralised systems. The Kyrgyz Constitutional Court, following the European model, exercises centralised constitutional review, akin to courts in Austria and Germany (Mazur & Korolchiuk, 2024). However, challenges such as political interference and the lack of comprehensive public legal awareness hinder its full effectiveness.

In conclusion, the findings of this study demonstrate that the Constitutional Court of the Kyrgyz Republic plays an essential role in upholding constitutional supremacy and legal stability. However, issues such as judicial independence, legislative coherence, and the influence of political factors remain critical challenges. Comparative insights from other jurisdictions suggest that enhancing constitutional dialogue, fortifying judicial independence, and ensuring broader legal awareness among the population are necessary steps for strengthening constitutional justice in Kyrgyzstan. Future research should focus on assessing the long-term impact of

constitutional court decisions on legislative development and public trust in the judiciary.

## Conclusions

The findings of this study highlight the fundamental role of the Constitutional Court of the Kyrgyz Republic in protecting human rights, ensuring the supremacy of the Constitution, and maintaining legal stability. The study assessed the Court's effectiveness by analysing the number of human rights-related cases reviewed, tracking trends over time, and determining whether an increase in such rulings has contributed to stronger human rights protection in the Republic. The research confirms that while the Court has issued landmark decisions on gender equality, labour rights, and constitutional amendments, challenges remain in guaranteeing judicial independence and enforcing court rulings effectively.

The analysis of constitutional litigation in Kyrgyzstan demonstrates a growing reliance on the Court for resolving fundamental rights disputes, as reflected in the increasing number of constitutional complaints. However, despite this trend, procedural limitations, political influences, and the absence of a robust enforcement mechanism hinder the full implementation of judicial decisions. The study also examined the Court's evolving role in the system of state power, revealing its complex relationship with legislative and executive institutions. Although the Court acts as a constitutional safeguard, the legal framework governing its jurisdiction and authority requires further refinement to strengthen its position in protecting democratic principles.

To enhance the Constitutional Court's effectiveness in human rights protection, several key measures are necessary. First, refining procedural regulations and strengthening enforcement mechanisms would improve the implementation of rulings. Second, increasing access to constitutional review through legal awareness campaigns and public engagement would help citizens exercise their rights more effectively. Third, ensuring greater transparency in judicial processes and decision-making would reinforce public trust in constitutional justice. Future research should explore comparative models of constitutional courts in other jurisdictions to identify best practices that could be adapted to the Kyrgyz context. Additionally, an in-depth examination of the long-term impact of judicial decisions on legislative reforms and government policies would provide valuable insights into the Court's influence on legal and institutional development. Strengthening judicial independence and promoting constitutional literacy remain critical priorities for ensuring that the Constitutional Court continues to serve as a cornerstone of democracy and human rights in Kyrgyzstan.

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## Conflict of interest

None.

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**Анотація.** Дослідження ефективності Конституційного Суду щодо захисту прав людини в Киргизькій Республіці є особливо актуальним у зв'язку з триваючими правовими реформами та збільшенням кількості конституційних скарг. Дослідження мало на меті оцінити роль Суду у забезпеченні конституційних прав шляхом аналізу тенденцій розгляду справ з 2022 по 2024 роки. У дослідженні використано формально-правовий, порівняльно-правовий, історико-правовий, логіко-правовий та методи юридичної конкретизації для вивчення судових рішень, правової бази та взаємодії Конституційного Суду з державними органами. Аналіз судової практики показав, що хоча Конституційний Суд відіграє вирішальну роль у дотриманні конституційних принципів, залишаються проблеми щодо його незалежності, доступності та виконання рішень. Було встановлено, що кількість звернень, пов'язаних із порушенням прав людини, зросла, але рівень прийняття до провадження залишається низьким, що підкреслює процесуальні перешкоди для конституційного правосуддя. Дослідження розглядало ключові справи щодо гендерної рівності, трудових прав і виборчого законодавства, демонструючи вплив Суду на правовий ландшафт. Порівняльний аналіз із Казахстаном та Узбекистаном виявив спільні регіональні тенденції, зокрема політичні фактори, що впливають на конституційне судочинство. Крім того, дослідження виявило потребу в більш чіткій законодавчій базі та інституційних реформах для посилення ефективності Суду у захисті прав людини. Результати можуть бути використані для розробки стратегій для посилення незалежності судової влади, удосконалення процедур конституційного судочинства та забезпечення кращого захисту прав людини в рамках правової системи Киргизької Республіки.

**Ключові слова:** правовий захист; судова скарга; верховенство права; правовий контроль; основоположні права та інтереси громадян