

The Legal Nature of the Right to Development

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Annotation: This scholarly article provides a systematic analysis of the constitutional and legal foundations of the right to the free development of one's personality. Firstly, it examines the expression of this right in the Constitution of the Republic of Uzbekistan, in its latest edition, and explores its meaning from a legal-theoretical perspective. The application of this right in Germany is also analyzed, drawing on the practice of the Federal Constitutional Court. Furthermore, the presence of this right in the constitutions of other foreign countries and the mechanisms for its implementation are studied using a comparative approach. The article concludes by offering theoretical, legal, and institutional recommendations for the effective realization of this right in the context of Uzbekistan.

Key words: Constitution, Fundamental Law, Human Rights, Comprehensive Right, Subjective Right, Subsidiarity, Constitutional Court.

Human rights and freedoms constitute one of the most important institutions underpinning the constitutional and legal foundations of modern democratic states. Among these rights, the right to the free development of one's personality holds particular significance. This right serves as a fundamental constitutional guarantee that enables an individual to fully realize their natural capacities, freely choose their life goals, and live while protecting their personal dignity within society. Therefore, this right is grounded not only in philosophical principles but also possesses profound legal substance, and its constitutional enshrinement plays a crucial role in maintaining social balance between the individual and society.

In the newly adopted edition of the Constitution of the Republic of Uzbekistan in 2023, the right to the free development of one's personality has been specifically reinforced as a distinct provision. Article 21 of the Constitution establishes that "everyone shall have the right to the free development of their personality," representing a significant step toward ensuring the primacy of human interests in the country. At the same time, a thorough theoretical study of the content, legal scope, and mechanisms for the realization of this right, as well as an analysis of the experience of foreign countries particularly Germany remains a pressing scientific task today.

The constitutional and legal analysis of the right to the free development of one's personality holds not only theoretical but also practical importance. By fully realizing this right, society can foster the creative potential of individuals, democratize social relations, and strengthen legal guarantees in citizens' interactions with the state. This article examines the legal foundations of this right, explores the experience of foreign countries especially Germany and provides scientific recommendations and proposals relevant to the context of Uzbekistan.

In general, when analyzing the concepts of the "right to development," "right to progress," or the "right to the free development of one's personality," it becomes apparent that these terms are often used interchangeably. The first official articulation of the "right to development" or "right to progress" is attributed to the former Senegalese Minister of Foreign Affairs, Doudou Thiam. On September 23, 1966, in New York, during the opening session of the 21st United Nations General Assembly, he delivered a speech introducing this concept to the assembled participants [1]. It should be noted, however, that at that time, the concept differed considerably from its current meaning.

Today, the “right to development” or “right to progress” is recognized as the right of every individual to fully realize their personal potential and freely develop their personality. Its foundations were first reflected in the Universal Declaration of Human Rights. Although the Declaration does not establish the “right to personal development” as an independent norm, its content is encompassed within several of its provisions. Notably, Article 29 states that “the individual can fully and freely develop their personality only within society” [2]. However, the recognition of this right as a subjective legal entitlement was not emphasized, and this trend persisted for many years.

Historical accounts of the “right to development” often trace its origins to a lecture delivered in 1972 at the International Institute of Human Rights in Strasbourg, France, by the Senegalese legal scholar Kebba Mbaye. Subsequently, the concept acquired its current meaning with the adoption of the United Nations “Declaration on the Right to Development” in 1986 [3]. The Declaration recognized development as an inalienable right of every individual and all peoples, interpreting it as a comprehensive process encompassing economic, social, cultural, and political dimensions. According to the Declaration, the primary purpose of development is to enhance human well-being and ensure the full realization of all human rights [4].

At the same time, this instrument remains a “soft law” document in international law, without binding legal force. Its provisions are primarily of a recommendatory nature, and no state has formally accepted them as mandatory international standards. Nevertheless, the Declaration emphasized that “the individual is the central subject of the development process, and development policy should therefore render the person the principal actor and beneficiary of development,” and further affirmed that “the right to development is an inalienable human right.” Comprising ten articles, the Declaration frames the right to development as an inalienable right of every person and people, encompassing self-determination, sovereignty over natural resources, the indivisibility of human rights, a just international order, equal opportunities, international cooperation, and the promotion of peace and well-being. However, the degree to which states implement these provisions depends largely on the political will of those in power. It should be noted that, to date, the precise mechanisms for enforcing this right have not been fully established.

The inclusion of the norm in the first paragraph of Article 21 of the newly adopted Constitution of the Republic of Uzbekistan, which states that “Every person shall have the right to the free development of their personality. No one may be subjected to obligations not established by law without their consent,” provides a legal guarantee for the implementation of the principles of the aforementioned Declaration within the territory of Uzbekistan. Instead of the term “right to development,” the phrase “right to the free development of one’s personality” is used. These terms are considered synonymous and are conceptually linked to the provisions of the 1986 United Nations General Assembly “Declaration on the Right to Development.”

This article is located in the chapter on General Provisions of the second section of the Constitution, which reflects both the broad scope and the recognition of the right as a comprehensive legal guarantee. The right encompasses not only civil and political rights (such as freedom of thought and privacy) but also socio-economic rights (including the right to education, healthcare, and work). Furthermore, this right functions as a meta-right, integrating and directing various fundamental rights toward a unified purpose. It may also be recognized as an “umbrella right,” representing a general and integrated form of multiple rights. Being one of the most important human rights, it facilitates the realization of other rights.

In particular, Julio Montero, in his work *Human Rights as Human Independence*, analyzes human rights as a philosophical-legal concept closely connected to personal independence and freedom [5]. Human rights must continually evolve, and the state must not obstruct this development. The constitutional enshrinement of this right connects it to the principle of the Constitution that emphasizes

future-oriented goals and development. Legal scholars B. Narimanov and F. Madiyev have elaborated on this principle, noting that the Constitution's future-oriented development principle "...not only aims to regulate existing social relations but also sets out future tasks and objectives."

As articulated in the Preamble of our Constitution, the core ideas include: commitment to human rights and freedoms, national and universal values, and the principles of state sovereignty; adherence to democracy, freedom, peace, social justice, and solidarity; and recognition of high responsibility toward present and future generations, along with other objectives outlined in the Preamble [6]. The right to the free development of one's personality fulfills functions derived from these foundational principles.

An examination of the constitutions of foreign countries shows that the "right to development" is rarely explicitly recognized as a subjective right. A notable exception is found in Article 2, Paragraph 1 of the German Basic Law, which establishes the "right to the free development of one's personality." This provision serves as a clear example of a constitutional guarantee of personal development. In German legal scholarship, this right is referred to as the *Allgemeines Persönlichkeitsrecht* (general right of personality). Moreover, within the German legal system, the right not only ensures non-interference by the state but also envisages creating positive opportunities for individual development [7].

Within this framework, the German approach primarily limits excessive state involvement. This means that an individual is free to pursue personal development, provided that they do not violate the rights of others or act contrary to constitutional order or moral standards. In the context of Uzbekistan, Article 21, Paragraph 2 of the Constitution similarly stipulates that in exercising their rights and freedoms, an individual must not harm the rights, freedoms, or legitimate interests of others, society, or the state.

Furthermore, Croatian legal scholar Peter Haberlen notes that in the German constitutional context, the role of the state in relation to the right to personal development is subsidiary. In other words, the state does not directly intervene in the exercise of this right but provides support when an individual encounters difficulties in realizing their rights and opportunities. This principle aligns with the subsidiarity principle in the German legal system: the state intervenes only when necessary and ensures positive conditions for the free development of the individual [8].

It is evident that the precise boundaries of this right are not clearly defined. Accordingly, in such cases, it is necessary to empower the Constitutional Court, based on its authority to interpret the Constitution and laws, to determine in which instances the right to freely develop one's personality has been properly exercised and in which instances it has not been fully realized. Since this is a complex right enshrined in the Constitution, preventing violations and restoring the right when it is breached falls within the mandate of the Constitutional Court.

In conclusion, the above analysis leads to the following observations:

1. The terms "right to development," "right to progress," and "right to self-actualization" are synonymous, sharing the same meaning.
2. Regarding the "right to development," the 1986 UN General Assembly Declaration on the Right to Development recognized this right, though its provisions are of a recommendatory nature for states.
3. The right to development is acknowledged as a complex right, a meta-right, or an umbrella right, encompassing multiple fundamental human rights.
4. Among foreign states, only Germany's Basic Law explicitly recognizes it as a subjective right. The state does not directly interfere with the exercise of this right, but provides support when individuals encounter obstacles in realizing their rights, reflecting its subsidiary nature.

5. Since this right is constitutional in nature, clarifying its scope and resolving disputes arising under it should fall within the jurisdiction of the Constitutional Court.

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