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HISTORY OF FORMATION AND DEVELOPMENT OF CONSTITUTIONAL CONTROL IN THE REPUBLIC OF KAZAKHSTAN

BAYAN OSHAN¹

ABSZTRAKT ■ Ez a tanulmány részletes feltárást kínál a Kazah Köztársaság alkotmányos ellenőrzésének történetéről, kialakulásáról és fejlődéséről. A jogi keretrendszer részleteibe mélyedve a tanulmány több kulcsfontosságú altémán keresztül bontakozik ki. Először is megvizsgálja a kazah alkotmányos kontrollmechanizmusok fejlődési pályáját, nyomon követve fejlődésüket a kezdetektől a mai szerkezetükig. Másodsorban elemzi az Alkotmánytanács kulcsszerepét a nemzeten belüli alkotmányos ellenőrzés kialakításában és előmozdításában. Különös hangsúlyt kap a tanács funkcióinak, hatáskörének és az ország jogi környezetéhez való hozzájárulásának megvilágítása. A tanulmány megvizsgálja továbbá a kazah bíróságok fellebbezéseire válaszul indított alkotmányos eljárások sajátosságait, kiemelve az ebben a folyamatban rejlő árnyalatokat és kihívásokat. Végül górcső alá veszi az Alkotmánybíróság kialakulásának szakaszait és intézményi felállítását, betekintést nyújtva annak történelmi összefüggéseibe és jelentőségébe. Ezen altémák alapos vizsgálata révén ez a cikk átfogó képet nyújt az alkotmányos ellenőrzés dinamikus fejlődéséről a Kazah Köztársaságban, rávilágítva annak jogi keretrendszerére, intézményi mechanizmusaira, valamint a kormányzásra és a jogállamiságra gyakorolt szélesebb körű hatásaira.

ABSTRACT ■ This paper offers a thorough exploration of the history, formation, and progression of constitutional control within the Republic of Kazakhstan. Delving into the intricacies of this legal framework, the study unfolds through several key subtopics. Firstly, it examines the developmental trajectory of constitutional control mechanisms in Kazakhstan, tracing their evolution from inception to their contemporary structure. Secondly, it analyzes the pivotal role played by the Constitutional Council in shaping and advancing constitutional control within the nation. Special emphasis is placed on elucidating the council's functions, powers, and contributions to the country's legal landscape. Furthermore, the paper investigates the specifics of constitutional proceedings initiated in response to appeals from courts across Kazakhstan, highlighting the nuances and challenges inherent in this process. Lastly, it scrutinizes the formative stages and institutional establishment of the Constitutional

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Court, providing insights into its historical context and significance. Through a meticulous examination of these subtopics, this article offers a comprehensive understanding of the dynamic evolution of constitutional control in the Republic of Kazakhstan, shedding light on its legal framework, institutional mechanisms, and broader implications for governance and rule of law.

KEYWORDS: constitution, constitutional control, constitutional court

1. INTRODUCTION

The establishment of constitutional control in the Republic of Kazakhstan relates to the constitutional establishment of the formation of a state based on the rule of law. The unconditional supremacy of the Constitution over other normative acts is one of the features of a state based on the rule of law. Another fundamental principle of the rule of law is the supremacy of law, which is expressed in the mandatory subordination of the state itself and its bodies to the Constitution of the Republic of Kazakhstan.

Constitutional control is a special type of law enforcement activity in the state, which consists in checking the compliance of laws and other normative acts with the constitution of a given country. The institution of constitutional control is the power granted to the people appointed to it to control and, if necessary, to sanction the conformity to the constitution of acts adopted by public authorities and especially of laws voting by representatives elected by the sovereign people.²

The main mission of constitutional control is to ensure the supremacy and stability of the constitution, to preserve the constitutional separation of powers and to guarantee the protection of constitutionally enshrined human rights and freedoms. In addition, one of the important functions of constitutional justice is to control the constitutionality of normative legal acts of various types.

Testing for constitutionality is a way to resolve conflicts generated by contradictions between normative acts of different legal forces. The necessity of hierarchical order in the legal system causes the need to control the conformity of acts of national legislation and international obligations of the state.

In the Republic of Kazakhstan, the following groups of normative legal acts are subject to control for compliance with the Constitution: laws adopted by the

² B. I. ISMAILOV: "The formation of a system of constitutional control in the law enforcement practice of foreign states." In: *All-Russian digital encyclopedia*. Portalus, Moscow, 2008.

Parliament; resolutions adopted by the Parliament and its Chambers; international treaties of the Republic before their ratification.³

2. DEVELOPMENT OF CONSTITUTIONAL CONTROL IN KAZAKHSTAN

According to MUKANOV K., the periodisation of the development of constitutional control in the Republic of Kazakhstan is directly related to the periods of state-legal development of Kazakhstan.⁴

The first period comprises the largest time period, which includes the stages of formation of constitutionalism of Kazakhstan, starting from the Kazakh khanate to independence, including the entire Soviet period.

The second period is marked by the acquisition of sovereignty as a result of the collapse of the USSR, the adoption of the Constitution of the Republic of Kazakhstan in 1993 and on its basis the creation of the country's valid practising body of constitutional control – the Constitutional Court that was the first in its history until its disbanding.

The third period shows a new form of constitutional justice in Kazakhstan – the Constitutional Council, which was formed on the basis of the Constitution of the Republic of Kazakhstan adopted at the republican referendum on 30 August 1995.

A number of scientific studies by scholars in Kazakhstan indicate that the first stage includes the post-revolutionary period of the 20th century, having in mind the programme acts of the “Alash autonomy” adopted at that time. For example, such acts as a set of rules of customary law called “Char Provision” of 1885, “The Bright Way of Kasym Khan”, “The Old Way of Esim Khan”, Seven Regulations of Tauke Khan (“Zhety Zhargy”) became a kind of the beginning of the formation of Kazakh constitutionalism, and its continuation is the entire Soviet period, when the prerequisites for the introduction of institutions of constitutional control matured and articulated, but in fact this control was not institutionalised.

The establishment and creation of a specialised body of constitutional control became possible only in the early 1990s, after the collapse of the USSR and, accordingly, the abandonment of the Soviet legal ideology, which denied the need to protect the Constitution. On 22 September 1989, the Supreme Soviet of the Kazakh SSR made amendments and additions to the Constitution (the Basic Law)

³ А. И. ЗЫБАЙЛО: Конституционный контроль и международные обязательства государств. *Ип: Вестник Института законодательства Республики Казахстан*. – № 4 (24). Almaty, 2011. 197.

⁴ К. М. МУКАНОВА: Становление и развитие института конституционного контроля в РК. ББК 74.58 М 75, 182.

of the Kazakh SSR in order to develop socialist democracy and improve the bodies of justice. One of the progressive amendments made to the Constitution was the addition providing for the establishment of the Committee of Constitutional Supervision of the Kazakh SSR. The Committee of Constitutional Supervision was vested with the following powers: to submit to the Supreme Soviet of the Kazakh SSR an opinion on the conformity of acts of the Supreme Soviet with the Constitution and laws of the Kazakh SSR; to monitor the conformity of resolutions and orders of the Council of Ministers, decisions of local Soviets of People's Deputies with the Constitution and laws of the Kazakh SSR; to give an opinion on the conformity of acts of other state bodies and public organisations with the Constitution and laws of the Kazakh SSR.

Final decisions adopted by the Constitutional Supervision Committee did not have binding legal force for those subjects who adopted acts not corresponding to the Constitution and laws of the Kazakh SSR. Final decisions of the Constitutional Supervision Committee could be implemented only after elimination of contradictions by the same body that adopted acts not corresponding to the Constitution and laws of the Kazakh SSR. The Committee of Constitutional Supervision in case of detection of contradictions could only suspend the execution of unconstitutional acts. The cancellation of such acts was the prerogative only of the Supreme Soviet or the Council of Ministers, where the Committee of Constitutional Supervision should enter with a submission on the cancellation of acts not corresponding to the Constitution and laws of the Kazakh SSR.⁵

The Law "On Amendments and Additions to the Constitution of the Kazakh SSR" also provided for the order of formation of the composition, the status of persons elected to the Committee of Constitutional Control. However, in accordance with this normative legal act, the Committee of Constitutional Supervision was not the only body of constitutional control. These amendments also entrusted the Presidium of the Supreme Soviet of the Kazakh SSR with control over the observance of the Constitution of the Kazakh SSR.

Constitutional amendments to establish a Constitutional Oversight Committee were ultimately not implemented. The Constitutional Review Committee of the Republic, unlike the Union Constitutional Review Committee, was not established. The lofty intentions of the Constitution remained only on paper. The creation of the Committee was hindered by various reasons, including the unpreparedness of the party-bureaucratic power structure for new political and legal transformations and the recognition of the priority of law.

⁵ И. И. Рогово – В. А. Малиновского: *Конституционный контроль в Казахстане. Доктрина и практика утверждения конституционализма*. Almaty, 2015. 85.

After gaining sovereignty and subsequent independence, the Republic of Kazakhstan embarked on the difficult path of forming a new type of statehood. In this regard, the Constitutional Law of 16 December 1991 “On the State Independence of the Republic of Kazakhstan” was of particular importance, Article 10 of which immediately designated the highest body of judicial protection of the Constitution – the Constitutional Court of the Republic of Kazakhstan.

Two constitutional laws became an indicative achievement of numerous debates and disputes concerning the form and structure of the formation of the Court, its set of powers, rights and duties, and the competence of the final acts: the Law of the Republic of Kazakhstan dated 5 June 1992 “On the Constitutional Court of the Republic of Kazakhstan” and “On Constitutional Court Proceedings in the Republic of Kazakhstan”. The competence of the Constitutional Court consisted of control over the compliance with the Constitution of the Republic of Kazakhstan of the following normative legal acts:

- laws and other acts adopted by the Supreme Soviet;
- decrees and other acts of the President;
- decrees of the Cabinet of Ministers;
- normative acts of ministries, state committees and departments;
- normative acts of the Prosecutor General of the Republic of Kazakhstan, guiding explanations of the Supreme and Supreme Arbitration Courts of the Republic of Kazakhstan;
- international treaties and other obligations of the Republic of Kazakhstan that have not entered into force.

The competence of the Court also included consideration of cases on verification of the constitutionality of law enforcement practices affecting the constitutional rights of citizens.

However, it is important to note that the Constitutional Court of the Republic of Kazakhstan did not have competence to resolve issues that traditionally fall within the competence of European constitutional courts. For example, the Constitutional Court of the Republic of Kazakhstan, unlike the Constitutional Court of the Italian Republic, did not have the authority for preliminary constitutional control of constitutional amendments to the Constitution, submitted to referendum, and the authority to check the constitutionality of the procedure and results of the referendum itself.

At the same time, the role and practice of the Constitutional Court in the history of the formation of constitutional control of the Republic of Kazakhstan is important. To ensure constitutional legality and supremacy of the Constitution, disputes on the conformity to the Constitution of the Republic of Kazakhstan

of acts of state bodies, actions of its highest officials, as well as the practice of application of constitutional legislation of the Republic of Kazakhstan were resolved, which laid the foundation for constitutional control in the state.

Thus, it can be concluded that the activity of the Constitutional Court of the Republic of Kazakhstan was well within the European legal context of constitutional control, but the reasons for the abolition of this body lie outside the legal theory.

The Constitution of the Republic of Kazakhstan, adopted at the republican referendum on 30 August 1995, established a new body of constitutional control – the Constitutional Council of the Republic of Kazakhstan, in connection with which the Constitutional Court was abolished.

Regarding the opinion of the first president, the stability of state institutions was especially important, when Kazakh society is at the initial stage of democratization. Therefore, the establishment of a constitutional justice body exercising subsequent control over the constitutionality of laws, elections, as some believed, is fraught with negative consequences and carries a threat to political stability. The French model of constitutional justice – the Constitutional Council, which exercises preliminary control over the observance of the norms of the Constitution, does not have the right to independently initiate cases and does not consider specific judicial disputes – is more acceptable for transitional societies.

The Concept of Forming the State Identity of the Republic of Kazakhstan, approved by the Order of the President of the Republic of 23 May 1996, states that the Constitution of the country provides for such a state body as the Constitutional Council. Under the conditions of presidential rule, when the President is the supreme arbiter in the state, the Constitutional Council serves as the optimal model of a body to ensure constitutional legality.

The year 2022 brought a new turn in the history of Kazakhstan. The first article of the Law “On Amendments and Additions to the Constitution of the RK” states that the word “council” is changed to “court”. Since the amendments were adopted, the Constitutional Court was restored in Kazakhstan from 1 January 2023.

3. THE ROLE OF THE CONSTITUTIONAL COUNCIL IN THE DEVELOPMENT OF CONSTITUTIONAL CONTROL IN KAZAKHSTAN

Since the Constitutional Court was restored in an inconsistent manner, to understand the development of constitutional control in Kazakhstan, it is necessary to analyse the Constitutional Council.

The Constitutional Council consisted of seven members. The Chairman and two members of the Council are appointed by the President of the Republic, two members each are appointed by the Senate and Majilis of Parliament for a term of six years. Half of the members of the Council are renewed every three years. In addition, ex-Presidents of the Republic are by right members of the Constitutional Council for life.

The legal basis for the organisation and activities of the Council is the Constitution and Constitutional Act No. 2737 of 29 December 1995 on the Constitutional Council of the Republic of Kazakhstan. According to its constitutional status, the Council, in exercising its powers, is autonomous and independent of State bodies, organisations, officials and citizens, subject only to the Constitution of the Republic and may not proceed from political or other motives.

The Constitution of the Republic establishes the range of powers of the Constitutional Council, including: in the event of a dispute, deciding on the correctness of the elections of the President of the Republic, deputies of Parliament and the holding of a republican referendum; reviewing laws adopted by Parliament for their conformity with the Constitution of the Republic before the President signs them; reviewing international treaties of the Republic for their conformity with the Constitution before they are ratified; officially interpreting the norms of the Constitution; giving opinions in the cases envisaged in paragraphs 1 and 2 of the Article 1 of the Constitution; issuing opinions in the cases envisaged in paragraphs 1 and 2 of the Constitution.

Constitutional proceedings may be initiated only on appeals of the President of the Republic of Kazakhstan, Chairpersons of the Chambers of Parliament, at least one fifth of the total number of deputies of Parliament, and the Prime Minister.

The subjects of appeal to the Constitutional Council did not include citizens of the Republic. Their constitutional rights and freedoms may be protected in the courts of general jurisdiction and before the Constitutional Council in the cases and in accordance with the procedure established by article 78 of the Constitution, according to which, if a court finds that a law or other normative legal act subject to application infringes on the human and civil rights and freedoms enshrined in the Constitution, it must suspend proceedings and apply to the Constitutional Council to declare the act unconstitutional.

The constitutional reforms carried out in the country have played an important role in the development of the institution of constitutional review.

In 2007, resolutions adopted by Parliament and its chambers were subject to review by the Constitutional Council.

By way of a legislative initiative of the President of the Republic of Kazakhstan, in 2008 additions were made to the Constitutional Council Constitutional Act, under which recommendations and proposals for improving legislation contained in decisions of the Constitutional Council are subject to mandatory consideration by the authorised State bodies, with mandatory notification of the Constitutional Council of the decision taken.

4. SPECIFICS OF CONSTITUTIONAL PROCEEDINGS INITIATED ON APPEALS OF COURTS OF THE REPUBLIC OF KAZAKHSTAN

The legal positions of the Constitutional Council of the Republic of Kazakhstan were divided into the following groups:

- on the issues of modernisation of the constitutional doctrine of the Republic of Kazakhstan;
- on the consolidation and guarantee of the foundations of the constitutional system of the Republic of Kazakhstan, on the strengthening of a legal, democratic and social state in Kazakhstan;
- on strengthening the mechanism of protection of human and civil rights and freedoms;
- on improvement of the electoral system of the Republic of Kazakhstan;
- on the development of sectoral legislation of the Republic of Kazakhstan.

It should be noted that legal positions acquired a generally binding character through their reflection in the normative resolutions of the Constitutional Council of the Republic of Kazakhstan. It is the generally binding nature of the legal positions of the Constitutional Council that gave its decisions the force of sources of law. Legal positions of the Constitutional Council are binding not only for law enforcement bodies, but also for legislative bodies. Many legal positions served as a reference point for the legislator; he is obliged to take the position into account in new regulation and may not re-adopt a norm of the same content and meaning that was recognized as unconstitutional.

Such a feature of legal positions as their generally binding nature is of particular importance in matters of protection, guaranteeing and ensuring human and civil rights and freedoms.⁶

⁶ ZAURE AYUPOVA: Constitutional Liberties in the Republic of Kazakhstan. *Tulsa Journal of Comparative and International Law*, 1/1998, 77–86.77.

Thus, analysing the specificity of legal positions in the decisions of the Constitutional Council of the Republic of Kazakhstan on the protection of fundamental rights and freedoms of citizens of the republic, as far back as in 2005 in his dissertation research OSTAPOVICH I.Y. noted that *“fundamentally important decisions were taken by the Constitutional Council when considering cases on individual constitutional human rights and freedoms. The analysis of its decisions related to pension legislation, legislation on employment, social security and benefits to certain categories of citizens showed that the Constitutional Council contributes to the harmonisation of legislation with the Constitution”*.⁷ Noting the correctness of this statement, it should be noted that from 2005 to 2017 the Constitutional Council adopted a significant number of decisions on the protection of citizens' rights, including those initiated by the courts of the Republic.

Since the citizens of the Republic of Kazakhstan did not have the right to appeal directly to the Constitutional Council for the protection of their rights, the body of constitutional control acquires special importance in the issue of protection of their constitutional rights and freedoms. Consequently, it can be concluded that citizens have the right to initiate consideration of the unconstitutionality of a law or other legal act infringing their rights in the Constitutional Council through the courts. Accordingly, there is a link between citizens of the Republic of Kazakhstan and the body of constitutional control through the system of courts of the country.

The link is made through the consideration of specific cases on the recognition of acts of sectoral current legislation as unconstitutional. When considering specific cases and making decisions on them, the Constitutional Council reflects in them its legal positions aimed at protecting and ensuring the Fundamental Law of the country, which are a reflection of the constitutional and legal doctrine existing in this state, including the ideas and theories laid down in the Constitution, the provisions of the Constitution and the state legislation based on it, as well as the whole complex of instruments for the implementation of these provisions in life, their legal support, guarantee and implementation.

The analysis of the decisions adopted by the Constitutional Council during the period of its activity has shown that on applications of the courts, cases have been considered in the following areas of life activity of the individual, society and the state:

- 1) relations in the sphere of migration policy – 1 judgement;
- 2) relations in the area of civil law – 3 judgements;

⁷ И. Ю. Остапович: *Конституционный Совет Республики Казахстан. Вопросы теории и практики*. Томск, 2005. 92.

- 3) relations in the area of civil procedural relations – 2 judgements;
- 4) relations in the sphere of social protection of the population – 3 decisions;
- 5) relations in the sphere of regulation of the Criminal Code of the Republic of Kazakhstan and the Criminal Procedure Code of the Republic of Kazakhstan – 7 decisions;
- 6) in the sphere of notaries – 1 decision;
- 7) in the sphere of administrative and legal relations – 4 decisions;
- 8) in the sphere of legal regulation of the status of arbitration courts on economic disputes – 1 decision;
- 9) on the issues of amnesty – 1 decision;
- 10) in the sphere of advocacy – 2 decisions;
- 11) in the sphere of taxation – 1 decision;
- 12) on issues of legal regulation of the civil service – 1 decision;
- 13) on issues of legal regulation of the status of the Baikonur complex – 1 decision;
- 14) on issues of religion – 1 decision.

An example is the decision of the Constitutional Council of the Republic of Kazakhstan, which “*declared unconstitutional the provisions of the Act on amendments and additions to certain legislative acts of the Republic of Kazakhstan on freedom of religion and religious associations*”. In its Resolution No. 1 of 11 February 2009, the Constitutional Council stated that the Act, in terms of the possibility of restricting “freedom to manifest religion”, was inconsistent with paragraph 3 of article 39 of the Constitution. The purposes listed in the norm of the Law, for the achievement of which the possibility of such a restriction is allowed, are expanded in comparison with the constitutionally significant purposes named in paragraph 1 of Article 39 of the Constitution, and do not coincide with them.⁸

Such diversity of covered spheres of legal relations shows that the legislation should be developed in a timely manner, keeping up with the daily progressing needs of society in different spheres of its life activity, which is not always the case. It should be noted that the range of relations regulated by the norms of Kazakh law is constantly expanding. With the development of the economy, social sphere, international relations, science, development and implementation of new technologies, business, etc., there are new spheres of relations that require legal intervention. In 2016-2017 alone, the Parliament adopted more than 100 laws, which is caused by the development of legal relations in the sphere of

⁸ И. И. РОГОВА – А. К. КОТОВА: *Конституционный контроль в Казахстане*. Алматы, 2005. 232.

bringing the republican constitutional and legal legislation into compliance with the new version of the Constitution, is connected with the development of free economic zones in the Republic of Kazakhstan, the introduction of new medical, reproductive, food, pharmaceutical, cosmetic, agrarian, environmental, processing, energy, logistics, transport, customs, tax and other technologies, the emergence of new technologies, and the introduction of new technologies.

The special attention of the country's leadership, the Government and the entire Kazakh community is drawn to the issues of combating such a social evil as corruption, especially in the sphere of providing public services to the population, protecting and ensuring human rights. *"In the process of improving legislation and law enforcement activities, it is necessary to steadfastly follow the principles of the supremacy of the Constitution and compliance of lower-level acts with higher-level acts. Systemic measures are needed to ensure both the regime of legality in the country and the stability of the legal system, as well as the progressive development of national law within the framework of the current Constitution. An integrated approach to legal policy will allow us to modernise the entire legal and regulatory framework in the context of the overall strategy for the development of the state, including the construction of a qualitatively new model of public administration on the principles of efficiency, transparency and accountability, ensuring the protection of the rights and freedoms of citizens, the interests of society and the state".*⁹

Many legislative acts are adopted in the history of Kazakhstan for the first time, and many of their provisions in the process of law enforcement practice may be tested painfully and for a long time and are likely to cause disputes and conflict situations that will be considered by the courts and serve as a basis for the courts to appeal to the Constitutional Council. Consequently, the range of public relations on which the Constitutional Council will take decisions will increase and expand. In addition, with the establishment and work of special courts in Kazakhstan, such as juvenile, administrative, economic, financial, mediation, etc., the number of cases to be considered and, accordingly, the range of potential subjects of appeals will expand. Accordingly, the number of appeals to the Constitutional Council will increase significantly, and the load on the members of the Constitutional Council will also increase, which will require them to improve their professional qualities, special knowledge and strengthen their legal positions.¹⁰

⁹ Указ Президента Республики Казахстан, О Концепции правовой политики Республики Казахстан на период с 2010 до 2020 года» от 24 августа 2009 года, № 858 // https://online.zakon.kz/Document/?doc_id=30463139. 05.12.2017.

¹⁰ JAKUB JAKUSIK: Constitutional Reforms and the Circumstances Behind the Transition of Power in the Republic of Kazakhstan. In: GULAYHAN AQTAY – CEM ERDEM (eds.): *Language and Society in Kazakhstan. The Kazakh Context*. Poznań, Adam Mickiewicz University, 2020. 59-70. 59.

The institution of consideration by the Constitutional Council of the Republic of Kazakhstan of appeals of courts on the constitutionality of laws and other legal acts traces the connection and determination of the balance between the legal positions of the Parliament as a legislative body, courts as direct law enforcers and the Constitutional Council of the country as an interpreter of the Constitution and the supreme arbiter of the constitutionality of all acts. This is the essence and significance of the institution of consideration by the Constitutional Council of the Republic of Kazakhstan of appeals by the courts on the constitutionality of laws and other legal acts. The Constitutional Council, when resolving a clash between the legal positions of the court and the legal positions of the legislator, becomes a real official force endowed with the right to resolve the problem of the correlation of the strength of these positions, and reflects in its decision the spirit and letter of the Constitution as an act that embodies the will of the people of Kazakhstan. In the decisions of the Constitutional Council its own legal positions aimed at protecting and ensuring the interests of the citizens of Kazakhstan, civil society, legal, democratic and social state are honed.

From the point of view of relations between an individual citizen and the body of constitutional control in Kazakhstan, in fact, this institution is the only opportunity for a citizen to indirectly raise the issue of checking the compliance with the Constitution of an act that is applied to him, his rights, freedoms, duties, family, property, honour, dignity and other vital interests and which, possibly, violates them.

It should be remembered that “one of the important mechanisms for ensuring the regime of constitutional legality, accurate interpretation of the principles and norms of the Constitution, formation of guidelines for the development of national law and law enforcement practice is to increase the effectiveness of the Constitutional Council and the exhaustive practical implementation of its normative decisions in the legal policy of the state. In the process of further establishing the principles of the rule of law in the country, it is important, on the one hand, to ensure that the exercise of constitutional human and civil rights and freedoms is guaranteed to the greatest extent possible and, on the other hand, that all State bodies, officials, citizens and organisations fulfil their constitutional obligations unconditionally and exhaustively. To ensure human and civil rights and freedoms, it is important to create conditions that guarantee equality of rights and freedoms regardless of origin, social, official and property status, sex, race, nationality, language, attitude to religion, beliefs, place of residence or any other circumstances, as required by our Constitution”.

Legal positions of the Constitutional Council are reflected in the annual Message “On the state of constitutional legality in the Republic of Kazakhstan”, which is announced at a joint session of the Chambers of the Parliament of the

Republic of Kazakhstan. The messages of the Constitutional Council have been adopted since 1996 and contain analyses as well as proposals for strengthening constitutional legality. Throughout all the years in which the Constitutional Council has been issuing its annual messages, it has kept its attention focused on the protection and safeguarding of the rights and freedoms of citizens, considering, among other things, cases on applications from the courts. Thus, already in its first Address “On the State of Constitutional Legality in the Republic of Kazakhstan” (based on the results of its work for 1996) it was noted that *“during the first year of its work, the Constitutional Council considered 11 appeals: 2 – on the constitutionality of laws adopted by the Parliament, 4 – on issues of official interpretation of the norms of the Constitution and 5 – on appeals of the courts of the Republic”*.¹¹

Touching upon such an important issue as infringement of human and civil rights and freedoms, the constitutional review body emphasises that in the first year of its existence, the Constitutional Council also faced the fact that some courts in their submissions proceed from a very common interpretation of legal acts infringing human and civil rights and freedoms. Thus, the chairman of the East Kazakhstan regional court addressed the Constitutional Council with a submission to recognise article 19 of the Law of the Republic of Kazakhstan “On Trade Unions” unconstitutional, according to which dismissal on the initiative of the administration of employees elected to trade union bodies is not allowed within two years after the end of the elected powers, except in cases of complete liquidation of the enterprise or the employee’s culpable actions. In the opinion of the chairman of the court, the above article of the Law contradicts the provisions of Article 14 of the Constitution of the Republic of Kazakhstan that all are equal before the law and the court.

In refusing to accept the submission, the Constitutional Council proceeded from the fact that the infringement of human and civil rights and freedoms should be referred to only in cases where the laws establish worse conditions for certain individuals or an insignificant group of them than for the bulk of the population. If the laws refer to benefits and advantages of individual or a group of subjects, which may to some extent worsen the situation of the bulk of the population, the validity of such benefits and advantages can be challenged in accordance with the established procedure.

In the Message, the Constitutional Council, formulating its legal positions, notes that *“some appeals were caused by the fact that previously adopted laws conflict with the norms of the Constitution. Therefore, it is necessary to bring legislation into*

¹¹ Послание Президента Республики Казахстан Н. Назарбаева народу Казахстана от 31 января 2017 года Третья модернизация Казахстана: глобальная.

line with the current Constitution (Article 92). Execution of the Constitution and laws is a necessary and constant rule of life, therefore, bringing laws into compliance with the Constitution is an important stage in ensuring compliance with constitutional legality”.

This statement reflects the realities of the second half of the 90s, the stage of formation and strengthening of the sovereignty and statehood of Kazakhstan, the formation of an array of its own constitutional, legal and other sectoral legislation, the creation of its own professional apparatus of public administration, as well as the beginning of the formation of state ideology, Kazakh patriotism and the beginning of the formation of civil society. All this, based on the provisions of the Constitution of the Republic of Kazakhstan, relying on the achievements of domestic and foreign constitutional and legal science, created the basis for the formation and strengthening of the legal position of the Constitutional Council, including on appeals from the courts of the republic.¹²

Subsequently, over the years of strengthening the independence of Kazakhstan, in the process of qualitative changes in the political, social and economic life of the country, carrying out deep reforms that affected all aspects of the life of Kazakh society, in connection with changes in the development of legislation and law enforcement practice of the republic, the current tasks facing the Constitutional Council are changing, during these years, constantly resolving cases on appeals from the courts of the Republic of Kazakhstan.

But the main tasks of the constitutional control body to protect the rights and freedoms of citizens remain unchanged and paramount, which is repeatedly emphasized in the Messages of the President of the Republic to the people of Kazakhstan. In his Message dated January 31, 2017, the Head of State noted that all the achievements of the Kazakh people over the years of their independence *“are the result of the correct political path and the high authority of Kazakhstan in the international arena. Kazakhstan should be among the 30 developed countries of the world by 2050. We are confidently moving towards this goal”*.¹³

In its Messages over the years of independence, the Constitutional Council of the Republic of Kazakhstan constantly focuses on the establishment of constitutionalism in the Republic of Kazakhstan, strengthening constitutional legality, rights and freedoms of citizens, using various institutions.

¹² ALEXEI TROCHEV – ALISHER JUZGENBAYEV: Instrumentalization of constitutional law in Central Asia. In: ROBERT M. HOWARD – KIRK A. RANDAZZO – REBECCA A. REID (eds.): *Research Handbook on Law and Political Systems*. Cheltenham, Edward Elgar Publishing, 2023. 139-168.

¹³ Б. А. СТРАШУН: Решения Конституционного Суда Российской Федерации как источник права. К 10-летию Конституционного Суда Российской Федерации. материалы международной конференции. Москва, 2002. 162-172.

In 2017, a constitutional reform took place in Kazakhstan, which “*became a new logical stage on the path of a consistent comprehensive transformation of society and the state in line with the Kazakhstan-2050 Strategy*”, Kazakhstan’s entry into the ranks of the thirty most developed countries. It crowns the implementation of five institutional reforms of the President of the Republic N.A. Nazarbayev and creates political and legal prerequisites for the qualitative growth of Kazakhstan within the framework of the third stage of modernization and ensuring the country’s strong position in global competitiveness. The Republic of Kazakhstan is an example of the successful establishment of modern constitutionalism. The content of the Basic Law corresponds to the needs of the socio-economic, political, cultural, humanitarian and other spheres of life of every person, society and state, and the priority course of the country. Ensuring the inviolability of the foundations and implementing the latest achievements of constitutionalism, the effective combination of stability and dynamism of the Constitution, its responsiveness to the needs of social development are carried out through legislative and other implementation of the potential of the Constitution, as well as through timely introduction of changes and additions to the text of the Basic Law. This constitutional policy is under the leadership of the guarantor of the Constitution, the First President of the Republic – N.A. Nazarbayev and it is carried out systematically, on a deep scientific basis, with the most correct use of advanced foreign experience and the involvement of all segments of Kazakh society in the constitutional process.¹⁴

The constitutional reform of 2017 one of its objectives was the redistribution of powers between various government bodies. A number of innovations are aimed at ensuring the supremacy of the Constitution in the system of current law and its unconditional implementation throughout the country, improving government administration, strengthening the protection of constitutional rights and freedoms of human beings and citizens, and ensuring the fulfillment of constitutional duties by citizens.

In order to properly implement the novelties of the Law of March 10, 2017, the Head of State has set tasks to bring the entire body of the country’s current law into conformity with the updated Constitution. In total, as a result of the work carried out by the Constitutional Council, 6 normative resolutions were reviewed and canceled in full and 21 – partially.

At the same time, those normative decrees that were not consistent with the amended and supplemented norms of the Basic Law were subject to abolition as a whole, and normative decrees were partially revised and repealed, with the

¹⁴ NORA WEBB WILLIAMS – MARGARET HANSON: Captured Courts and Legitimized Autocrats. Transforming Kazakhstan’s Constitutional Court. *Law & Social Inquiry*, 4/2022, 1201–1233.

exclusion of certain provisions that did not correspond to the constitutional innovations, the internal logic and interconnection were not lost, the content and meaning of the interpretation of the norms of the Constitution.¹⁵

In determining the procedure for executing the decision, the Constitutional Council indicated that the revision of normative resolutions does not mean the loss of legal force of the laws of Kazakhstan, as well as other legal acts related to these normative resolutions, or the return of legal force to acts previously recognized as unconstitutional. If necessary, these laws and relevant legal acts can be adopted, repealed, amended and supplemented in the prescribed manner.

The decision of the Constitutional Council opens up the scope for rethinking the content and nature of the noted and other constitutional provisions, which, if necessary, can be reinterpreted taking into account the results of the constitutional reform.

The Constitutional Council believed that legislative activity in the new conditions, as before, should be based on the rule of law, the most important components of which are legality, legal certainty, exclusion of arbitrariness, access to justice, respect for human and civil rights and freedoms, non-discrimination, justice and equality everyone before the law.¹⁶

5. FORMATION OF THE CONSTITUTIONAL COURT IN KAZAKHSTAN

The nationwide referendum held in 2022 on amendments and additions to the Basic Law of the country – the Constitution of the Republic of Kazakhstan was a significant event for Kazakhstan. As a result of the referendum, 56 changes were made in accordance with the provisions of Article 33 of the Constitution. The purpose of the analysis of the changes made to the Constitution is to radically transition from the “super-presidential” governance model in the Constitution to a presidential republic with an influential Parliament and an accountable Government, to increase the influence of maslikhats, and to introduce a mixed majoritarian-proportional model of electing deputies of Majilis and regional maslikhats indicates that it is aimed at introduction. In addition, issues such as establishing the independence of the President from all political forces and parties, banning the close relatives of the Head of State from holding political positions and holding leadership positions in the quasi-state sector are also included. In addition, radical changes were made in the field of law enforcement. In particular, the Constitutional Court was established.

¹⁵ Y. ABAYDELDINOV: Constitutional Court of the Republic of Kazakhstan. Continuity and innovation. *Bulletin of LN Gumilyov Eurasian National University Law Series*, 1/2023, 11–19.

¹⁶ K. BOTA: Constitutional policies of Kazakhstan. *European science review*, 3-4/2023, 19–33.

The status of the human rights representative, that is, the ombudsman, is established in the Constitution. The death penalty got completely abolished in our country. Among the changes and additions made to the Constitution, first of all, the issue of improving the model of constitutional control is of particular interest. According to the changes, the Constitutional Court started its activities from January 1, 2023. Now every citizen can directly protect his constitutional rights and freedoms in this body. Unlike the Constitutional Court and the Constitutional Council, citizens can apply directly to the new body. The Council did not consider such a possibility. Now the Constitutional Court examines the compliance of normative legal acts directly affecting their rights and freedoms with the Constitution at the request of citizens. In addition, the Prosecutor General and the Commissioner for Human Rights have the right to appeal to the Constitutional Court.

The institution of constitutional complaint is the most important means of protecting the rights and freedoms of a person and citizen, its implementation, according to scientists, “forms the basis of a modern democratic state”.¹⁷ N.S. BONDAR considers the right of constitutional complaint to be “*an expression of the complex of constitutional rights, including not only the right to be protected by a court, but also the right to participate in the management of state affairs*”.¹⁸ Increases the responsibility of the authorities to the people, as well as allows citizens, political parties and public associations to directly protect their violated rights at the highest constitutional level. Flora and fauna, other natural resources belong to the people. The value of this norm is to legally confirm that natural resources belong to the people, of course, it has a great impact on social and economic processes in society. Constitutional recognition of public property is an important historical step for the future development of Kazakhstan. It is the basis of an effective model that allows faster updating of economic legislation, and its goal should be to increase the standard of living and well-being of the citizens of Kazakhstan.

Another innovation in the Constitution of the Republic of Kazakhstan should be noted. Article 43 of the Constitution was supplemented with new paragraphs 3 and 4. According to them: the President of the Republic of Kazakhstan should not be in a political party during the exercise of his powers, and his close relatives do not have the right to hold the positions of state political servants, heads of quasi-state sector entities indicates a lack of views. For example, in the USA, South Korea, the Republic of Turkey and other presidential republics, heads of state retain their membership in a political party after being elected.

¹⁷ М. М. ПЕТИНА: Конституционная жалоба в системе прав средств прав человека в России. 2023.

¹⁸ NIKOLAY S. BONDAR: Eternal constitutional ideals. How unchangeable are they in a changing world? *Gosudarstvo i pravo*, 6/2020, 20–34.

Previously, Azerbaijan had such a restriction on the President, who did not have the right to be a member of a political party during his entire presidential term. Currently, according to the Law “On Political Parties”, Chairmen, deputy chairmen and judges of all courts of the Republic of Azerbaijan, Human Rights Commissioner of the Republic of Azerbaijan, military personnel, prosecutor’s office, justice, internal affairs, national security, border service, customs, finance, tax authorities employees, etc. individuals cannot be members of political parties during the entire term of office. In other words, the law does not establish any imperative norm for the Head of State.¹⁹

In parliamentary countries such as Hungary, Israel, Germany, Italy, etc., however, there is no direct ban on leaving the party or suspending membership after being elected. It should be noted that this is practically impossible in foreign countries due to high political competition, mass media involvement in political life and other factors regarding the appointment of relatives of state leaders to high positions.

The President of the Republic of Kazakhstan is the highest official of the state. It is a guarantee of the rights and freedoms of a person and a citizen. Due to its special constitutional status and authority, it takes measures to protect the country’s sovereignty, independence and state integrity of the territory, ensures the coordinated functioning and interaction of state authorities, and also determines the main directions of the state’s internal and external policy.

In September 2022, additional amendments were made to the Constitution. On September 1, 2022, Head of State Tokaev announced the start of the election cycle in his Address to the People of Kazakhstan. On November 20 last year, extraordinary presidential elections were held in Kazakhstan in accordance with the updated Constitution. For the first time, the Head of State was elected for a seven-year term without the right to re-election. The single-term Presidential initiative is a logical continuation of the steps taken to finally move away from the super-presidential model. The one-time introduction of the presidential term thus closes the process of institutionalization of the presidential republic with an optimal balance of power. The basis of this initiative is, on the one hand, 7 years is a sufficient period to implement any large-scale program and fulfill promises to the people, to implement major projects for the country. On the other hand, the limitation of the presidential mandate to one term can ensure that the Head of State is more focused on solving the strategic tasks of national development.

¹⁹ C. QARACAYEV: Individual constitutional complaint in the Republic of Azerbaijan. *Наукowyй вiсник Мiжнародного гуманiтарного унiверситету. Сер.: Юриспруденцiя*, 63/2023, 34–37.

Another important direction of changes and additions to the Constitution is the increase in the influence of the Parliament. First of all, according to the new wording of Article 50, Clause 3 of the Constitution, a mixed election system with proportional and majoritarian methods was introduced during the creation of Majilis. 30 percent of Majilis deputies, and 50 percent of maslikhat deputies in regions and cities of republican significance are directly elected through one-mandate district. With the adoption of the 1995 Constitution adopted in the republican referendum in the Republic of Kazakhstan, the majoritarian election system was approved at all levels. In 2007, after the next constitutional reform, during the formation of the Majilis of the Parliament, there was a full transition to the proportional system of forming the lower house of the Parliament. Returning to the majoritarian-proportional system of forming the representative bodies of power increases the motivation of voters, their active participation and activates the election processes in the country. The electoral system is a political consideration that it is able to give a certain impetus to reconstructions, to improve the legislative process and public administration, the electoral legislation of Kazakhstan can accept the needs and demands of the society as much as possible.

6. CONCLUSION

Based on the above, the proposal of the head of state to move to a new model of formation and interaction of power institutions and transformation of political processes in society can pave the way for new development. Amendments to the Constitution are aimed at ensuring the constitutional security of the country, improving the legislation, strengthening the welfare of the people and increasing the standard of living of the citizens of Kazakhstan, in particular:

1. The Constitutional Court, being an important part of the system of checks and balances in any country, controls other branches of government and prevents them from adopting laws that violate the constitutional rights of citizens. The presence of such a court ensures more effective implementation of the provisions of the Basic Law.

2. The wealth of land, subsoil, flora and fauna, of course, belongs to the nation. In many countries, this rule exists in different formulations. On the other hand, it is difficult to imagine that every citizen manages the underground treasury himself – it will lead to chaos. Therefore, there is a state in the management system. The state is representative of the entire people, because the president is elected by the people, parliamentarians are elected by the people, and the government

is approved by the president's proposal. The state rules over the land and its subsoil on behalf of the people of Kazakhstan. Therefore, this change to the Constitution does not mean that every citizen of the country will receive direct income. However, the benefits of the earth's surface and wealth affect everyone. The ownership of the land of Kazakhstan by the people is an imperative norm and this is an imperative norm and the main part of the constitutional provision.

3. The norm of terminating the membership of the ruling party during the term of office of the president increases political competition, creates equal conditions for the development of all parties, promotes the emergence of new political parties and movements, and has a positive effect on the political situation in the country.

4. The introduction of a one-time presidential term without the right to re-election seems to be an important step towards softening the power of the president and giving more power and opportunities to the government and parliament. Political reforms and institutional restructuring are aimed at increasing the responsibility of the state and state bodies to citizens, promoting economic and social development.

5. In connection with the transition to a mixed electoral system in the Majilis of Parliament and maslikhats, the entire system of holding elections was reorganized. The Mazhilis of the Parliament will work according to the new system, some of the deputies will be elected according to party lists, and some will be elected according to single-mandate territorial constituencies. This means that a part of the deputies will be elected through party lists, and a part will be elected by the people directly.

The decision to introduce a mixed proportional-majoritarian system of elections creates a more harmonious election model that ensures the rights of citizens and lays the foundation for a new format of relations between the people and their elected representatives.

The implementation of these measures will be an indispensable condition for further consolidation of the ideas of the rule of law and constitutionalism in Kazakhstan, it will minimize constitutional risks and threats and ensure constitutional legitimacy in the state.

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