

**КОНСТИТУЦИЯЛЫҚ ҚҰҚЫҚ
КОНСТИТУЦИОННОЕ ПРАВО
CONSTITUTIONAL LAW**

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**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN
IS A TREND OF A NEW ERA OF CONSTITUTIONAL REFORMS**

Abstract

The article is devoted to the characteristics of the legal status of the main body of constitutional justice of the Republic of Kazakhstan – the Constitutional Court. The article substantiates the role and importance of constitutional justice in the mechanism of protection of human and civil rights and freedoms. The analysis of the constitutional legislation revealed the human rights potential of the constitutional control body of the republic. The study concludes that it is important to revive the body of constitutional justice, saturate the practical activities of this body with constructive legal mechanisms to ensure proper protection of the Constitution and the protection of human and civil rights.

Keywords: Constitution, constitutional court, constitutional reform, human rights, constitutional control, constitutional justice.

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**ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ КОНСТИТУЦИЯЛЫҚ СОТЫ-
КОНСТИТУЦИЯЛЫҚ ҚАЙТА ҚҰРУЛАРДЫҢ ЖАҢА ДӘУІРІНІҢ ҮРДСІ**

Аңдатпа

Мақала Қазақстан Республикасы Конституциялық сот төрелігінің бас органы – Конституциялық Соттың құқықтық мәртебесін сипаттауға арналған. Мақалада Конституциялық сот төрелігінің адам мен азаматтың құқықтары мен бостандықтарын қорғау тетігіндегі рөлі мен маңызы негізделеді. Конституциялық заңнаманы талдау республиканың конституциялық бақылау органының құқық қорғау әлеуетін анықтады. Зерттеу Конституциялық Сот төрелігі органын жандандыру, Конституцияны қорғауды және адам мен азаматтың құқықтарын қорғауды қамтамасыз ету үшін осы органның практикалық қызметін сындарлы құқықтық тетіктермен қанықтыру маңызды деген қорытындыға келеді.

Түйін сөздер: Конституция, конституциялық сот, Конституциялық реформа, адам құқықтары, конституциялық бақылау, Конституциялық Сот төрелігі.

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**КОНСТИТУЦИОННЫЙ СУД РЕСПУБЛИКИ КАЗАХСТАН – ВЕЯНИЕ
НОВОЙ ЭПОХИ КОНСТИТУЦИОННЫХ ПРЕОБРАЗОВАНИЙ**

Аннотация

Статья посвящена характеристике правового статуса главного органа конституционной юстиции Республики Казахстан – Конституционного суда. В статье обосновывается роль и значение конституционной юстиции в механизме защиты прав и свобод человека и

гражданина. Анализ конституционного законодательства позволил выявить правозащитный потенциал органа конституционного контроля республики. В исследовании сделан вывод о важности возрождения органа конституционной юстиции, насыщения практической деятельности этого органа конструктивными правовыми механизмами для обеспечения должной охраны Конституции и защиты прав человека и гражданина.

Ключевые слова: Конституция, конституционный суд, конституционная реформа, права человека, конституционный контроль, конституционная юстиция.

The large-scale program of political modernization set out in the Address of the President of the Republic of Kazakhstan “New Kazakhstan: the path of renewal and modernization” became the starting point for a new constitutional reform, carried out at the level of the republican referendum on June 5, 2022 [1]. For the human rights sphere, constitutional novelties are a trigger for progress in the context of strengthening legal mechanisms for the protection of human rights and freedoms: the legal status of the prosecutor's office, the ombudsman - the Commissioner for Human Rights, the body constitutional justice - the Constitutional Council was transformed into the Constitutional Court. In the context of the issues under consideration, it is important to note the solution of the problem of expanding the circle of subjects of appeal to the body of constitutional control, which has been discussed for decades, the purpose of which is primarily to ensure constitutional legality, the legal protection of the Constitution – the basic law of society and the state, the highest values of which are a person, his life, rights and freedom [2].

The sources state: “Among the voiced initiatives, the most expected was the proposal to change the model of constitutional control. The current Constitutional Council, due to the limited powers and subjects of appeal, did not allow to fully ensure the supremacy of the Constitution and protect the rights of Kazakhstani citizens. In this regard, the establishment of the Constitutional Court is more practical and meets modern political realities. The activity of the Constitutional Court is able to penetrate into all spheres of public life. In addition to interpretation, he has the right to establish the constitutionality of law enforcement practice, which undoubtedly increases his human rights potential. Practice shows that it is in this area that the most frequent violations of the Constitution occur” [3].

The Constitution and the Constitutional Law “On the Constitutional Court” regulate: the subjects of appeal are the President of the Republic of Kazakhstan, the Chairmen of the Senate and the Mazhilis, deputies, subject to the number of at least one fifth of the total number of deputies of the Parliament, the Prime Minister, courts, citizens, the Prosecutor General and the Commissioner for Human Rights.

The President of the Republic of Kazakhstan, Chairmen of the Senate and Mazhilis, deputies of the Parliament, the Prime Minister have the right to apply to the Constitutional Court on the following issues: in case of a dispute about the correctness of the elections of the President of the Republic, deputies of the Parliament and holding a republican referendum; on consideration for compliance with the Constitution of the Republic prior to the signing by the President of the laws adopted by the Parliament, resolutions of the Parliament and its Chambers; on consideration for compliance with the Constitution of the Republic prior to the ratification of international treaties of the Republic; on the official interpretation of the norms of the Constitution; on giving an opinion in the cases provided for in paragraphs 1 and 2 of Article 47 of the Constitution – on compliance with the established constitutional procedures when resolving the issue 1) on early dismissal from office in case of the persistent inability of the President of the Republic of Kazakhstan to fulfill his duties due to illness, 2) on dismissal of the President of the Republic from office Parliament for acts committed in the performance of their duties (only in case of high treason).

The President of the Republic of Kazakhstan, in the interests of protecting the rights and freedoms of man and citizen, ensuring national security, sovereignty and integrity of the state, sends an appeal to the Constitutional Court on consideration of the law or other legal act that has entered

into force for compliance with the Constitution of the Republic, on giving an opinion in the case provided for in paragraph 3 Article 91 of the Constitution of the Republic of Kazakhstan - we are talking about the procedure for introducing amendments and additions to the Constitution of the Republic and their compliance with the established requirements.

Citizens, courts and the Commissioner for Human Rights of the Republic are vested with the right to apply to the Constitutional Court for consideration of the compliance with the Constitution of normative legal acts of the Republic of Kazakhstan that directly affect the rights and freedoms of citizens enshrined in the Constitution. Courts are not entitled to apply laws and other normative legal acts that infringe on the rights and freedoms of a person and citizen enshrined in the Constitution. If the court sees that a law or other normative legal act subject to application infringes on the rights and freedoms of a person and citizen enshrined in the Constitution, it is obliged to suspend the proceedings and apply to the Constitutional Court with a motion to recognize this act as unconstitutional .

The Prosecutor General of the Republic of Kazakhstan, in accordance with constitutional norms, has the right to apply to the Constitutional Court on issues of compliance with the Constitution of normative legal acts and international treaties of the Republic before their ratification, as well as the official interpretation of the norms of the Basic Law of the country [4].

The constitutional reform of 2022 restored the right of citizens and other subjects to apply to the body of constitutional control. Commenting on this situation, it should be stated that the decision taken in 1995 to narrow the circle of subjects of appeal to the Constitutional Council to a catastrophic minimum was a big mistake of the reformers of that period. More than a quarter of a century later, the fact was recognized that such a weighty legal instrument for the protection of human rights was not involved in the human rights mechanism of the state. The body of constitutional control has not risen to the rank of a state body capable of really protecting human rights.

All functioning functions of the Constitutional Council have been transferred to the Constitutional Court. As for the procedure for the formation of a body of constitutional justice, it should be noted that the principle of appointing judges of the Constitutional Court has not undergone any transformation. The changes affected the number of judges and the term of office: the Constitutional Court consists of eleven judges, including the Chairman, whose term of office lasts eight years, and the same person cannot be appointed as a judge of the Constitutional Court more than once. The Chairman and four judges of the Constitutional Court are appointed by the President of the Republic with the consent of the Senate of the Parliament, three judges of the Constitutional Court are appointed respectively by the Senate and the Majilis. The position of a judge of the Constitutional Court is incompatible with a deputy mandate, holding other paid positions, except for teaching, scientific or other creative activities, carrying out entrepreneurial activities, being a member of the governing body or supervisory board of a commercial organization.

Judges of the Constitutional Court, during their term of office, may not be arrested, brought to justice, subjected to administrative penalties imposed in court, or brought to criminal responsibility without the consent of the Parliament, except in cases of detention at the scene of a crime or serious crimes . Logical in the context of ensuring the autonomy and independence of the modern Kazakhstan body of constitutional justice - the Constitutional Court - is the exclusion of the constitutional provision that the decision of the Constitutional Council as a whole or in part could be objected to by the President of the Republic, which could be overcome by two-thirds of the votes of the total the number of members of the Constitutional Council; if the objections of the President are not overcome, the decision of the Constitutional Council, by definition, is considered not accepted.

In accordance with the provision of subparagraph 6) of Article 53 of the Constitution of the Republic of Kazakhstan enshrined in the Constitution, the Parliament, at a joint meeting of the

Chambers, hears the annual messages of the Constitutional Court on the state of constitutional legality in the Republic. The first Message of the Constitutional Court of the Republic of Kazakhstan "On the state of constitutional legality in the Republic of Kazakhstan" was announced at a joint meeting of the Chambers of the Parliament of the Republic of Kazakhstan on June 20, 2023. The Message presents an analysis of the activities of the body of constitutional justice of Kazakhstan for the first 5 months. In this context, the expected and quite understandable surge in the activity of citizens as subjects of appeal to the Constitutional Court should be noted: "over 3,000 citizens applied for constitutional protection of their rights within five months of this year. These figures are not just evidence of the interest of citizens in the new body, but confirm the desire of each of those who applied to protect their rights, thereby contributing to bringing regulatory legal acts in line with the Basic Law and helping to restore justice. As the analysis of appeals shows, a significant part of them (41%) concerns disagreement with the decisions of the courts, which is not the subject of consideration by the Constitutional Court. The appeals also raise issues of bankruptcy of individuals, non-execution of judicial acts, housing and labor relations, social protection, execution of sentences, access to information, and others. Only in 26% of appeals do citizens ask to check the constitutionality of laws and other normative legal acts" [5].

According to the judges of the Constitutional Court, "an analysis of the appeals received by the Constitutional Court shows a certain validity of complaints about certain provisions of laws and other regulatory legal acts" [5].

Thus, the Constitutional Court of Kazakhstan began to exercise constitutional control on the wave of major constitutional reforms, under the close attention of society. Along with the positive characteristics of the activities of the new body of constitutional justice, the Constitutional Court is seriously criticized by modern Kazakh scientists about the inability of the current composition of judges to independently form legal positions [6], to carry out an official interpretation of the norms of the Constitution [7], to ensure the certainty and completeness of legal positions[8], in general about the level of competence of the Constitutional Court [9], etc.

Conclusion. The revival of the model of the Constitutional Court as a result of the constitutional reform of 2022 can be logically assessed as a response to a longstanding public request. At the same time, it seems necessary to pay due attention to the thesis that for the establishment of an effective body of constitutional control, it is important not so much to change the sign - the name of the body of constitutional justice, but to saturate the practical activities of this body with constructive legal mechanisms to ensure proper protection of the Constitution and protection of human rights. and citizen.

References:

1. «Новый Казахстан: путь обновления и модернизации» Послание Главы государства Касым-Жомарта Токаева народу Казахстана от 16 марта 2022 года, URL: https://adilet.zan.kz/rus/docs/K22002022_1

2. Конституция Республики Казахстан (принята на республиканском референдуме 30 августа 1995 года) (с изменениями и дополнениями по состоянию на 19.09.2022 г.), URL: https://online.zakon.kz/Document/?doc_id=1005029

3. Жанузакова Л.Т., Караев А.А. Совершенствование конституционного законодательства в свете Послания Президента Республики Казахстан «Новый Казахстан: путь обновления и модернизации», URL: https://online.zakon.kz/Document/?doc_id=35982387&pos=6;-106#pos=6;-106

4. Конституционный закон Республики Казахстан от 5 ноября 2022 года № 153-VII ЗПК О Конституционном Суде Республики Казахстан, URL: <https://adilet.zan.kz/rus/docs/Z2200000153>

5. О состоянии конституционной законности в Республике Казахстан Послание Конституционного Суда Республики Казахстан от 12 июня 2023 года, URL:<https://adilet.zan.kz/rus/docs/S2300000122>

6. Абдрасулов Е. О практике Конституционного Суда рассылать во все организации письма с просьбой дать экспертные заключения по тем или иным делам, находящимся в производстве Суда / Facebook, 1 April, 10:07

7. Marat Bashimov Нужно уйти от порочной практики / Facebook, 11 April, 00:10

8. Гульнара Сулейменова Неопределенная определенность правовой позиции Конституционного Суда?! / Facebook, 13 April, 08:29

9. Сарсенбаев Т.Е. Конституционный Суд Республики Казахстан: реалии и перспективы, URL: https://online.zakon.kz/Document/?doc_id=35531965&pos=5;-106#pos=5;-106

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CONSTITUTIONAL AND LEGAL REGULATION OF RELATIONS CONCERNING CITIZENSHIP

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Abstract

The article explores the phenomenon of the subjective right of an individual to renounce the citizenship of one state and acquire the citizenship of another state. Taking into account the transformation of the geopolitical situation and political systems of modern states, the issues of renouncing citizenship and acquiring citizenship are being updated in the general concept of development of the institution of citizenship. The study, based on scientific methods, presents the concept of protecting human rights at the level of international and national law, focusing on the tendency to increase the influence of international law on the content of citizenship and on the protection of human rights. An analysis of the historical retrospective of the legal regulation of international and domestic practice in the development of the institution of citizenship has been carried out, and the conceptualization of the main definitions of citizenship relations has been substantiated. A review of scientific literature and regulatory legal acts at all levels made it possible to identify patterns in the development of issues of acquiring citizenship and renouncing citizenship.

Keywords: citizenship, constitutional and legal regulation, acquisition of citizenship, renunciation of citizenship, restoration of citizenship, recognition of citizenship.