

**КОНСТИТУЦИЯЛЫҚ ҚҰҚЫҚ. ӘКІМШІЛІК ҚҰҚЫҚ ЖӘНЕ ПРОЦЕСС  
КОНСТИТУЦИОННОЕ ПРАВО. АДМИНИСТРАТИВНОЕ ПРАВО И ПРОЦЕСС  
CONSTITUTIONAL LAW. ADMINISTRATIVE LAW AND PROCESS**

IRSTI 10.15.33  
UDC 342.5

10.51889/2959-6181.2025.81.3.003

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**CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN:  
ISSUES IN THE IMPLEMENTATION OF ITS COMPETENCE AND PROSPECTS FOR  
DEVELOPMENT**

*Abstract*

The article is devoted to a comprehensive analysis of the current state and prospects for the development of the institution of constitutional justice in the Republic of Kazakhstan in the context of constitutional reform. It reveals the theoretical and legal foundations of constitutional control and the specifics of the institutional evolution of the Constitutional Court, which, as a result of reforms, has acquired the status of a full-fledged judicial body. Much attention is paid to the new right of citizens to file constitutional complaints, which has significantly strengthened the potential for protecting fundamental rights and freedoms of the individual. The main problems of the Constitutional Court's jurisdiction are identified: a heavy workload on the constitutional justice body with limited procedural filters for the admissibility of complaints and insufficient transparency of procedures. It is noted that without the creation of a system of parliamentary and public control over the implementation of the decisions of the Constitutional Court, there remains a risk of undermining the role of constitutional justice. The article argues for the need to introduce additional procedures, in particular, the amicus curiae mechanism, as a way to improve the quality of case consideration and strengthen trust in the court. It is emphasized that public trust and the development of a legal culture are the determining factors for the stability of democratic institutions. The conclusion is made that further improvement of constitutional control in Kazakhstan should combine the institutional independence of the court, the binding nature of its decisions, and the broad involvement of civil society.

**Key words:** constitution, human rights, constitutional justice, constitutional review, constitutional court, constitutional reform, constitutional complaint.

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**ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ КОНСТИТУЦИЯЛЫҚ СОТЫ:  
ҚҰЗЫРЕТТІЛІГІН ЖҮЗЕГЕ АСЫРУ МӘСЕЛЕЛЕРІ ЖӘНЕ ДАМУ  
ПЕРСПЕКТИВАЛАРЫ**

*Аңдатпа*

Мақалада Қазақстан Республикасындағы конституциялық реформалар жағдайында конституциялық әділет институтының қазіргі жай-күйі мен даму перспективаларына кешенді талдау жасалады. Конституциялық бақылаудың теориялық-құқықтық негіздері және реформаның нәтижесінде толыққанды сот органы мәртебесіне ие болған Конституциялық

соттың институционалдық эволюциясының ерекшеліктері ашып көрсетіледі. Азаматтардың конституциялық шағым жасау құқығына ерекше көңіл бөлінген, бұл құқық адамның негізгі құқықтары мен бостандықтарын қорғау әлеуетін едәуір арттырды. Конституциялық соттың құзыретіне қатысты негізгі мәселелер анықталған: конституциялық әділет органына түсетін жүктеменің жоғары болуы, шағымдарды қабылдаудың процессуалдық сүзгілерінің жеткіліксіздігі және рәсімдердің айқын еместігі. Конституциялық сот шешімдерінің орындалуына парламенттік және қоғамдық бақылау жүйесі құрылмайынша, конституциялық әділеттің рөлінің төмендеу қаупі сақталатыны атап өтілген. Мақалада істерді қарау сапасын арттыру және сотқа деген сенімді нығайту тәсілі ретінде *amicus curiae* тетігін енгізу қажеттігі негізделеді. Қоғамның сенімі мен құқықтық мәдениеттің дамуы демократиялық институттардың тұрақтылығының шешуші факторлары екендігі айқын көрсетілген. Қазақстандағы конституциялық бақылауды одан әрі жетілдіру соттың институционалдық тәуелсіздігін, оның шешімдерінің міндеттілігін және азаматтық қоғамның кеңінен қатысуын үйлестіруі тиіс деген қорытынды жасалған.

**Түйін сөздер:** конституция, адам құқықтары, конституциялық әділет, конституциялық бақылау, Конституциялық сот, конституциялық реформа, конституциялық шағым.

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## **КОНСТИТУЦИОННЫЙ СУД РЕСПУБЛИКИ КАЗАХСТАН: ПРОБЛЕМЫ РЕАЛИЗАЦИИ КОМПЕТЕНЦИИ И ПЕРСПЕКТИВЫ РАЗВИТИЯ**

### *Аннотация*

Статья посвящена комплексному анализу современного состояния и перспектив развития института конституционной юстиции Республики Казахстан в условиях конституционной реформы. Раскрываются теоретико-правовые основы конституционного контроля и специфика институциональной эволюции Конституционного Суда, который в результате реформ получил статус полноценного судебного органа. Большое внимание уделено новому праву граждан на конституционную жалобу, существенно усилившему потенциал защиты основных прав и свобод личности. Выявлены основные проблемы компетенции Конституционного Суда: высокая нагрузка на орган конституционной юстиции при ограниченных процессуальных фильтрах допустимости жалоб и недостаточная прозрачность процедур. Отмечено, что без создания системы парламентского и общественного контроля за исполнением решений Конституционного Суда сохраняется риск нивелирования роли конституционной юстиции. В статье аргументируется необходимость внедрения дополнительных процедур, в частности, механизма *amicus curiae*, как способа повышения качества рассмотрения дел и укрепления доверия к суду. Подчеркивается, что именно доверие общества и развитие правовой культуры являются определяющими факторами устойчивости демократических институтов. Сделан вывод о том, что дальнейшее совершенствование конституционного контроля в Казахстане должно сочетать институциональную независимость суда, обязательность его решений и широкое вовлечение гражданского общества.

**Ключевые слова:** Конституция, права человека, конституционная юстиция, конституционный контроль, Конституционный Суд, конституционная реформа, конституционная жалоба.

### *Introduction*

The relevance of the study of the status of the Constitutional Court is due to changes in the system of constitutional control as a result of the constitutional reform of 2022. The proclaimed course towards building a New Fair Kazakhstan predetermined the need to strengthen judicial mechanisms for protecting individual rights and freedoms, including through the restoration of a full-fledged Constitutional Court as an independent body of constitutional justice. The introduction of this institution

marks a new stage in the development of the national model of separation of power and constitutional control, correlated with the trends of world practice.

Modern research is reflected in analytical reports and the writings of scientists. In the science of constitutional law of foreign countries, issues of institutionalization of constitutional justice and the transformation of its role in the context of political reforms are actively discussed. Particular importance is attached to the problems of the independence of constitutional courts in transitional democracies, the compliance of the activities of constitutional justice bodies with the principles of the rule of law.

Of undoubted interest is a study analyzing the process of transformation of the Constitutional Court of Kazakhstan into the Constitutional Council in 1995 and its subsequent use as an instrument of authoritarian legitimization. In the context of our research, this work seems valuable in view of the fact that it justifies the institutional risks of politicization of constitutional control bodies and serves as a negative background on which the latest model of the Constitutional Court of 2023 can be considered as an attempt to return the true judicial nature to this institution [1]. The legal literature indicates that "on the example of the constitutional reform of 2022 in Kazakhstan, one can see a significant potential of legal policy, law for minimizing, eliminating and preventing social conflicts, including democratic mechanisms for strengthening the unity of the people, cooperation in the interests of reforming and developing society" [2, p. 52].

However, in foreign literature there is another point of view regarding constitutional amendments: "on the one hand, they are a step towards democratization and strengthening the guarantees of human rights and freedoms; on the other hand, they strengthen existing undemocratic mechanisms of public administration", and it is further argued that these reforms generally fit into the paradigm of so-called authoritarian constitutionalism; and represent the adaptation of the constitutions of these countries to the current needs of their undemocratic presidents [3].

Researchers rightly believe that "that the study of this issue allows us to choose the optimal model that allows us to effectively solve the problems of national rulemaking. For the Republic of Kazakhstan, this problem is very important in the light of the formation of a new model of constitutional justice in the country, which requires scientific understanding, taking into account the accumulated world experience in organizing constitutional justice [4, p. 63].

Researchers are conducting an active scientific controversy about the advisability of reviving the Constitutional Court of the Republic of Kazakhstan, designed to provide citizens with direct access to constitutional justice. It is noted that procedural barriers are preserved, and individual complaints require simplification and expansion of legal tools [5].

The new hypostasis examines the relationship between constitutional and administrative justice, focusing on new opportunities for citizens to apply to the Constitutional Court [6, p. 34].

Thus, the status of the Constitutional Court of the Republic of Kazakhstan today is considered as a transitional institution - from the so-called "presidential council" to a full-fledged judicial body capable of really protecting rights and balancing power.

The purpose of the article is a comprehensive study of the status of the Constitutional Court as a body of constitutional control in the context of modern constitutional and legal reform.

#### *Materials and methods*

The study is based on a comprehensive approach combining both regulatory and comparative legal analysis. The materials for the study were the Constitution of the Republic of Kazakhstan of 1995, as amended during the constitutional reform of 2022, the Law of the Republic of Kazakhstan of November 5, 2022; regulatory decisions of the Constitutional Court of the Republic of Kazakhstan, including decisions of 2023 illustrating the formation of a new practice of constitutional control, analytical materials on the reform of 2022 and its impact on the development of the institution of constitutional justice; materials of international organizations on the rule of law and confidence in the judicial system. (Venice Commission of the Council of Europe, Association of Asian Constitutional Courts, etc.). The works of domestic and foreign researchers on constitutionalism, independence of courts and comparative law were used as sources.

The methodological basis of the study was the comparative legal method used to compare the model of constitutional control of Kazakhstan with foreign samples; formal legal method, which made it possible to identify the specifics of regulatory regulation of the status and competence of the Constitutional Court of the Republic of Kazakhstan; the historical and legal method used to analyze the evolution of the institution of constitutional control in Kazakhstan; a systematic approach that made it possible to consider the Constitutional Court as an element of the mechanism for sharing power and protecting human rights and freedoms; institutional and sociological analysis, including an assessment of public confidence and perceptions of ongoing reforms.

### *Results and discussion*

The Constitutional Court of the Republic of Kazakhstan was restored from January 1, 2023 as part of a large-scale constitutional reform approved at a republican referendum on June 5, 2022. The reform was a response to a public demand for democratization and political modernization after the protests in January 2022. If the Constitutional Council, which existed from 1995 to 2022, had limited powers and was more perceived as an instrument of political power, then the Constitutional Court of the Republic of Kazakhstan was modeled as an independent judicial body with the right to consider appeals from a wider range of subjects - citizens, ombudsman, and prosecutor's office. Kazakhstan almost returned to the model that effectively operated in 1992-1995, but taking into account the lessons of the previous period. It should be noted the assessment of international observers (UN, OSCE): the creation of the Constitutional Court of the Republic of Kazakhstan is an important step towards ensuring the rule of law and the balance of branches of government.

The legal status of the Constitutional Court is enshrined in the Constitution of the Republic of Kazakhstan and the Constitutional Law of the Republic of Kazakhstan "On the Constitutional Court of the Republic of Kazakhstan" dated November 5, 2022. The Constitutional Court of the Republic of Kazakhstan consists of 11 judges, including the Chairman, appointed by the President, Senate and the Mazhilis of Parliament. This scheme is aimed at ensuring balance in the formation of the composition of the court.

The status of the Constitutional Court is defined as a judicial body of constitutional control, the main function of which is to check regulatory legal acts for compliance with the Constitution. The Constitutional Court is authorized to consider disputes on the interpretation of the Constitution, check the constitutionality of bills, and ensure the protection of the rights and freedoms of citizens.

A novelty of the regulation of the status and competence of the Constitutional Court of the Republic of Kazakhstan was the provision of the right of direct appeal of citizens and civil society institutions. According to the data, in 2024 alone, the court received more than 3.7 thousand appeals, which confirms the high level of demand for the institute in society. In general, such an indicator of appeals means that the Constitutional Court has grown from the image of a symbolic body into a really working mechanism of legal protection. In addition, the Constitutional Court of the Republic of Kazakhstan is empowered to check international treaties for compliance with the Constitution; resolving issues of competence between authorities; participation in the formation of legal positions of the state in the field of human rights protection.

Practice 2023-2025 confirms that the position of the Kazakh constitutional control body has intensified, going beyond the previous advisory function of the Constitutional Council. The decision to abolish the privileged status of N.A. Nazarbayev as the "Leader of the Nation," which became an indicator of the dismantling of authoritarian structures and the strengthening of the supremacy of the Constitution. The regulatory decision of the Constitutional Court of the Republic of Kazakhstan dated January 10, 2023 №. 2 "On the official interpretation of paragraph 4 of Article 62 of the Constitution of the Republic of Kazakhstan" indicates the absence of legal grounds for preserving the Law on the First President after the reform of 2022 - the law is recognized as invalid<sup>1</sup>.

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<sup>1</sup> Regulatory decision of the Constitutional Court of the Republic of Kazakhstan of January 10, 2023 №. 2 "On the official interpretation of paragraph 4 of Article 62 of the Constitution of the Republic of Kazakhstan"

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In a number of regulatory decisions, the Constitutional Court analyzed the provisions of the Criminal Procedure Code of the Republic of Kazakhstan. Thus, the decision on the second part of Article 127 of the Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014, the Constitutional Court, referring to international standards for the protection of human rights, emphasized that civil decisions cannot automatically predetermine conclusions in criminal cases, since this would violate the presumption of innocence. The court has shown an ability to develop reasoned positions comparable to international standards, confirming its judicial nature rather than an advisory role<sup>2</sup>.

Thus, in the regulatory decision of the Constitutional Court of July 11, 2023 No. 20-NP, it is noted: "The Basic Law guarantees ownership only of property that is acquired legally. Constitutional guarantees do not apply to property benefits acquired in violation of the grounds and procedures established by law, as well as to revenues received from their use. «The said regulatory order also recognizes that "initially illegally acquired property, including as a result of corruption, fraud or abuse of office, on the basis of the law and in accordance with the methods and procedures defined in it, must be returned to its rightful owner, including the state"<sup>3</sup>.

In the regulatory decision of the Constitutional Court of February 22, 2023 No. 3 On consideration for compliance with the Constitution of the Republic of Kazakhstan, subparagraph 1) of paragraph 1 and paragraph 2 of Article 610 of the Code of the Republic of Kazakhstan of December 25, 2017 "On taxes and other mandatory payments to the budget" (Tax Code) provided an explanation for the legislator in the context of ensuring a balance between the fiscal interests of the state and the constitutional rights of citizens. The Constitutional Court declared inconsistent with paragraph 2 of Article 13 and Article 14 of the Constitution of the Republic of Kazakhstan the provisions of paragraph 2 of Article 610 of the Code of the Republic of Kazakhstan "On taxes and other mandatory payments to the budget" (Tax Code) in terms of the words "when filing an administrative claim, statement of claim (statements) on such disputes "that lead to infringement and restriction of everyone's constitutional right to judicial protection of their rights and freedoms. The constitutional control body considered that the gap that arose after the exclusion from the legislation of the Republic of Kazakhstan of instruments that provide access to justice for citizens who find themselves in a difficult property situation (reduction in size, exemption, deferral, installment payment of state duties, etc.) prevents the full realization of the constitutional right of everyone to judicial protection of their rights and freedoms.<sup>4</sup>

The regulatory decision of the Constitutional Court of the Republic of Kazakhstan of June 1, 2023 №. 18-NP On consideration for compliance with the Constitution of the Republic of Kazakhstan of paragraph five of point 3 of the regulatory decision of the Supreme Court of the Republic of Kazakhstan of March 31, 2016 No. 2 "On the practice of courts applying legislation on the adoption of children" contains conclusions checking the constitutionality of norms regarding the procedure for applying legislation in this area. For the first time, it was clearly established that when adopted, the child is a subject of law, and not an object of legal relations. The decision contributed to a change in judicial practice: the courts are now obliged to take into account the psychological state of the child, his right to know his origin and the right to identity. This decision actually confirmed the judicial nature of the Constitutional Court, which did not limit itself to checking the formal constitutionality of the norm,

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<sup>2</sup> Regulatory decision of the Constitutional Court of the Republic of Kazakhstan of July 14, 2023 №. 23-NP "On consideration for compliance with the Constitution of the Republic of Kazakhstan, part two Article 127 of the Criminal Procedure Code of the Republic of Kazakhstan of 4 July 2014 "On consideration for conformity with the Constitution of the Republic of Kazakhstan of part two of Article 127 of the Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014" // [https://online.zakon.kz/Document/?doc\\_id=32099643](https://online.zakon.kz/Document/?doc_id=32099643)

<sup>3</sup> Regulatory decision of the Constitutional Court of the Republic of Kazakhstan of February 22, 2023 №. 3 "On consideration for compliance with the Constitution of the Republic of Kazakhstan of subparagraph 1) of paragraph 1 and paragraph 2 of Article 610 of the Code of the Republic of Kazakhstan of December 25, 2017" "On taxes and other mandatory payments to the budget" ("Tax Code") // [https://online.zakon.kz/Document/?doc\\_id=37626433](https://online.zakon.kz/Document/?doc_id=37626433)

<sup>4</sup> Regulatory decision of the Constitutional Court of the Republic of Kazakhstan of February 22, 2023 №. 3 On consideration for compliance with the Constitution of the Republic of Kazakhstan of subparagraph 1) of paragraph 1 and paragraph 2 of Article 610 of the Code of the Republic of Kazakhstan dated December 25, 2017 "On taxes and other mandatory payments to the budget" (Tax Code) // [https://online.zakon.kz/Document/?doc\\_id=37626433](https://online.zakon.kz/Document/?doc_id=37626433)

but formed legal standards that are binding on the entire judicial system and correlated with the practice of the European Court of Human Rights.

The successful cases of the Constitutional Court undoubtedly testify to the transformation from a body of "negative legislation" into a full-fledged body of constitutional justice, adapting the world's best examples of constitutional justice.

Thus, the modern Constitutional Court has the legally enshrined status of an independent judicial body, whose institutional mission goes beyond constitutional control and is aimed at ensuring the rule of the Constitution and protecting human rights. For Kazakhstan, this means institutional rapprochement with legal systems, where constitutional justice is perceived not just as a technical filter for laws, but as a central element of a modern state.

Thus, the modern competence of the Constitutional Court of the Republic of Kazakhstan demonstrates a noticeable strengthening of its role as an institution of constitutional control, which emphasizes its significance and at the same time such an expansion of competence and growth of the public role inevitably pose new challenges to the constitutional control body. As the practice of recent years shows, the more actively the court uses the granted powers, the more acute are the structural, institutional and political-legal problems associated with independence, efficiency of execution of decisions and interaction with other branches of government.

One of the main challenges for the body of Kazakhstan's constitutional control remains the issue of its institutional independence. Despite the principle of independence enshrined in the law, the procedure for forming the composition of judges still depends on the head of state and the speakers of the chambers of Parliament. The historical experience of the Constitutional Council shows that excessive dependence on public authority can turn a constitutional control body into an instrument of legitimation, not protection of the Constitution. This risk remains relevant for the modern Constitutional Court, if real guarantees of independence are not provided.

The issue of guaranteed and effective execution of decisions of the Constitutional Court is of particular relevance. According to the Constitution, acts of the Constitutional Court are mandatory for all bodies and officials, but in practice there is a possibility of difficulties with their implementation. In modern conditions, the priority direction of the development of constitutional justice is the institutionalization of mechanisms of parliamentary and public control over the execution of decisions of the Constitutional Court, and this will contribute to the transformation of court acts into an effective tool for influencing the legislative process and administrative practice.

An important role in assessing the effectiveness of the judicial system is played by the issue of public confidence and the level of legal culture. In general, in Kazakhstani society, the level of trust in the judiciary is consistently low. As for the activities of the Constitutional Court, given the high level of burden on judges of the Constitutional Court (more than 3.7 thousand appeals were received in 2024 alone), the risk of rejecting a significant part of complaints on formal grounds objectively increases. In such a situation, there is a danger of the formation of the opposite effect: a decrease in confidence in the institution of constitutional justice itself, if proper transparency of procedures and convincing arguments for decisions are not ensured.

Despite the possibility of direct access of citizens, it is quite difficult to use this opportunity, since such procedural filters as, firstly, the requirement to exhaust other remedies before applying to the Constitutional Court remain; second, strict criteria for admissibility of complaints; thirdly, the limitations of the subject of consideration (only norms, not individual acts). This construction certainly reduces the real availability of constitutional justice. It seems appropriate to consider simplifying permissibility filters with the introduction of the practice of *amicus curiae*. This format is the opinion of independent experts, scientific organizations, international structures or NGOs involved in order helping the court in the consideration of the case. *Amicus curiae* can be seen as a conduit for institutionalized dialogue between the court, society, and the scientific community.

Politically significant cases have shown that the current Constitutional Court is capable of institutionally significant steps. At the same time, there remains a danger that such decisions will be perceived as politically motivated, especially in conditions of dependence on the subjects of the

appointment of judges. The stability of constitutional control is achieved only with long-term institutional guarantees - the stability of the composition of the court, the transparency of the argumentation of decisions and independent funding.

Summarizing, we note that the main problematic aspects of the status of the Constitutional Court of the Republic of Kazakhstan are ensuring real independence, guaranteed execution of decisions, increasing public confidence and eliminating procedural barriers. Without solving these problems, there is a risk that the new institution may repeat the fate of the Constitutional Council and remain a "formal" body. World comparative legal experience shows that the main factors of the stability of constitutional courts are the long term of office of judges and their irremovability; clear rules for selection and appointment; financial and organizational autonomy; openness of decisions and arguments for society.

Promising areas of reform, in our opinion, are guarantees of independence, efficiency of execution of decisions, transparency and public control, development of the doctrine of a constitutional complaint, as well as integration into international relations on issues of constitutional justice. With regard to the problem of guarantees of independence, the direction of reforming the procedure for appointing judges seems promising, ensuring a balance between the presidential, parliamentary and professional quotas, which will allow the risk of political bias.

An important task of improving the institution of constitutional control is to ensure the execution of decisions of the constitutional court. In this context, it is advisable to introduce mechanisms for parliamentary monitoring of the implementation of decisions of the Constitutional Court and making the necessary legislative changes.

### *Conclusion*

The modern Constitutional Court of the Republic of Kazakhstan has all the attributes of a full-fledged judicial body of constitutional control. Its status is qualitatively different from the model of the Constitutional Council. The effectiveness of this institution largely depends on how effectively its independence, transparency and quality of execution of decisions are ensured. If all urgent challenges are successfully overcome, the Constitutional Court will be able to become the foundation of the rule of law in Kazakhstan, otherwise the risk of formalizing its role remains.

The modern stage of the development of constitutional justice in the Republic of Kazakhstan is characterized by a profound transformation of its institutional role: from an advisory body under the presidential government to a full-fledged court with expanded powers, recognition of citizens' right to a constitutional complaint.

The prospects of Kazakhstan's constitutional justice largely depend on the ability to combine two most important factors - legal force and public trust. The Constitutional Court should be able not only to abolish unconstitutional norms, but to turn into a platform for dialogue between the state and society - an institution whose decisions are not only binding, but, most importantly, are perceived by citizens as fair and justified. This is precisely the historical mission of the constitutional justice body: to establish the supremacy of the Constitution not as an abstract slogan, but as an objective legal and political reality.

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