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**THE CONSTITUTIONAL COURT
AND THE CONSTITUTIONAL COUNCIL
OF THE REPUBLIC OF KAZAKHSTAN:
A COMPARATIVE ANALYSIS**

(translated by the Constitutional Council of Kazakhstan)

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Annotation: the article is devoted to the analysis of constitutional legal basis of activity of the first in the Republic of Kazakhstan Constitutional Court. The authors search the order of formation of Constitutional Court, legal status of its judges, competence and juridical force of decisions of Constitutional Court. The comparative analysis of legal status of Constitutional Council of the Republic of Kazakhstan is made in this work.

The clue words: constitutional legislation, constitutional control, judicial protection of constitution, juridical force of decisions, constitutionalism.

1. The formation of stable constitutionalism and establishment of strong regime of constitutional legality is the strategic goal and effective means of further establishment of the Republic of Kazakhstan as modern, democratic and legal state. The practice of functioning of statehood in the form of “the Republic of Soviets”, the experience of countries of stable and developing democracies showed that doing this without effective institute of constitutional control is practically impossible.

2. In May 1990 practically at the same time after establishing the post of the President of Kazakh SSR and election to this high position of N.A. Nazarbayev the project of law was elaborated. It foresaw the establishment in the country of committee of constitutional control with rather limited authorities on the model of the Committee of constitutional control of USSR. But it was not adopted by the Supreme Council. That is why it will be the right beginning of formation of the institute of constitutional control in Kazakhstan to consider the Constitutional law of the December 16, 1991 of the Republic of Kazakhstan “Of the Constitutional independence of the Republic of Kazakhstan”. In the Article 10 of this historical act, from which now the account of new epoch of Kazakhstan is started the following position is established: “The Higher body of judicial protection of the Constitution is the Constitutional Court of the Republic of Kazakhstan”.

3. The acting Constitution of the Republic of Kazakhstan, adopted at the Republican referendum on August 30 1995, the model of the institute of the constitutional control is changed. It became a Constitutional Council of the Republic of Kazakhstan.

4. Below the short comparative analysis of the legal positions of the Constitutional Court and Constitutional Council and some other totals are presented to the attention of the reader.

Constitutional and legal basis

5. The principle for status, in first turn, of independence of body of the constitutional control, is the level of its legal regulation. The acting guarantees here are positions and norms, included in the constitutions. The parliaments, often having a claim on the first roles in state mechanisms especially in the countries where the supremacy of the deputy corps is accepted and realized in legislative sphere and whose acts become under controlled to constitutional courts and councils the measures for their opportunities limitations are not seldom taken.

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6. Norms of the Constitutional Court were included in the first Constitution of the country, adopted on November 28, 1993. In particular, in Chapter 21 «Ensuring stability of the Constitution and protection of its provisions» two articles were present. In Article 130 it was proclaimed that «judicial protection of the Constitution and ensuring its supremacy are assigned to the Constitutional Court considering claims about compliance to the Constitution of laws and other acts, the international contractual and other obligations of the Republic of Kazakhstan». In Article 131 an order of the coming into force of decisions of the Constitutional Court and their legal consequences were fixed, and also institute of introduction of objections on the resolution of the Constitutional Court by the President or the Chairman of the Supreme Council, with possibility for the Constitutional Court to reject these "vetoes" by the majority not less than in two thirds of voices of total number of judges.

7. In formation of the doctrine of constitutionalism in Kazakhstan the adoption on June 5, 1992, that is for half a year earlier of the Constitution of January 28, 1993, of two laws: «Of the Constitutional Court of the Republic of Kazakhstan» and «Of the Constitutional legal proceedings in the Republic of Kazakhstan» was significant.

8. In the law of the Republic of Kazakhstan of June 5, 1992 «Of the Constitutional Court of the Republic of Kazakhstan» new body of the constitutional legality and rule of the Constitution of the Republic of Kazakhstan was for the first time institutionalized in details [1]. This Law concretized fixed by means of entering of corresponding changes into the "Soviet" Constitution of the country of 1978 the status of the Constitutional Court of the republic as the supreme body of judicial authority on protection of the Constitution of the Republic of Kazakhstan (Article 1). Independence and independence of the Constitutional Court – body of judicial authority - both from state authorities and officials, and from public associations was declared.

9. As it appears from the name of the second named law, it established the basic beginnings and details of the constitutional production on consideration of claims of appropriate subjects of the address.

10. Thereby it was declared of the commitment of Kazakhstan to principles of constitutionalism and an embodiment in practice of the constitutional construction of its values.

11. Distinctive feature of the status of the Constitutional Council operating nowadays providing rule of the Constitution of the Republic of Kazakhstan on the whole territory of the republic, has a more detailed consolidation of its legal beginnings in the Constitution of 1995.

12. There is a special section VI «Constitutional Council» in it, including four articles. In Article 71 the numerical structure, a formation order, incompatibility of positions, immunity of members of the Constitutional Council is defined. Article 72 defining powers and a circle of subjects initiators of the constitutional production is key article. In Article 73 consequences of the address to the Constitutional Council and institute of objections of the President of the Republic are fixed. In Article 74 – validity and consequences of decisions passed by the Constitutional Council. The special attention is deserved by located in the Section VII «Courts and justice» Art. 78 concerning the subsequent constitutional control, that only courts are entitled to initiate.

13. Thus, the highest constitutional level of legal regulation is one of serious guarantees of independence and stability of the Constitutional Council.

14. According to item 6 of Article 71 of the Constitution «The organization and activity of the Constitutional Council are regulated by the constitutional law». In Constitutional law of the Republic of Kazakhstan of December 29, 1995 «Of the Constitutional Council of the Republic of Kazakhstan» the general provisions (the status of the Constitutional Council, its structure, the order of formation made to candidates in members of council demands, a term of office, the

oath an order of convocation and quorum of meetings, concept of the constitutional production, and also structure of the legislation on the Constitutional council) are settled in details; Constitutional Council. Status of the Chairman and members of the Constitutional Council; competence of the Constitutional Council and its officials and also questions of the constitutional production; decisions of the Constitutional council; final and transitional provisions (financing of the Constitutional Council; office of the Constitutional Council; symbols and seal of the Constitutional Council, certificate of the Chairman and members, and also order of formation and term of office of the first structure of the Constitutional Council) are also provided in Constitutional law.

15. For updating of the constitutional law the complicated procedures are foreseen that in turn create additional restrictions for its subjective editing under concrete political interests. Incidentally, the Constitutional law on the Constitutional Council – one of stability examples. Substantial changes and additions were brought in it only once – on the results of the constitutional reform of 2007.

The order of formation and staff

16. The Constitutional Court was the elective body. According to Article 6 of the Law of the Constitutional Court, he was elected by the Supreme Council of Republic of Kazakhstan. Each judge was elected in an individual order on representation of the head of state by a way of open voting to the term of ten years. For election it was necessary for candidate to gather more than a half of votes of deputies of the Supreme Council. Candidates to positions of judges of the Constitutional Court were discussed previously at meetings of committees of the Supreme Council.

17. In separate chapter of the Law the status of judges of the Constitutional Court of the Republic of Kazakhstan which was connected with a role of the Constitutional Court in formation of democratic traditions Kazakhstan society was defined. First of all, their independence while accomplishing their duties, subordination of judges of the Constitutional Court only to the Constitution, and also their irremovability during the term of office were established. As the Constitutional Court hasn't the right to interfere with political processes, the Law defined that the status of the judge is incompatible with membership in political party and other public association pursuing political aims (Law Article 15).

18. The constitutional Court passed resolutions of the exclusive significance therefore there was a norm that judges haven't the right to speak up publicly their personal opinion on a question studied or accepted to consideration by the Constitutional Court somewhere, except meetings of the Constitutional Court, before decision on the matter is not passed. Inviolability of judges of the Constitutional Court was provided with immunity which was expressed in impossibility to be instituted criminal proceedings, to be the arrested etc. Criminal case concerning the judge of the Constitutional Court could be raised only by the General prosecutor. Inviolability of the dwelling, office, the transport used by the judge of the Constitutional Court was legislatively set (Article 16).

19. The constitutional Council consists of seven members whose authorities last for six years. Life members by law are ex-presidents of the Republic. The chairman of the Constitutional Council and two members are appointed by President of the republic. In 1995 the Constitution provided that two members of the Constitutional Council are appointed by the chairmen of the Senate and two members are appointed by Mazhilis of Parliament. In the course of the constitutional reform of 2007 the decision was taken and now two members are elected by each Chambers of Parliament on the proposal of their chairmen.

20. The basic guarantees of independence and responsibility of the Chairman and members of the Constitutional Council are included directly into Constitution and developed in the Constitutional law of the Constitutional Council (in articles 4 – about the requirements, claimed to candidates to members of the Constitutional council; 5–about a term of office and an order of change of structure; 6–about the oath of the Chairman and members; 10–about the chairman and members as officials of the state; 11–about their independence; 12–about inviolability; 13–about equal rights of the chairman and members; 14 and 15 – about the grounds and procedure of suspending or the termination of powers and 16 – about ensuring the activity).

21. Actually, there are no any essential distinctions in the status of judges of the Constitutional Court and members of the Constitutional Council.

The authorities of the constitutional control body

22. Certainly, the most important indicator of possibilities of the constitutional control body to make real impact on the constitutional process is its competence. In Article 2 of the Law of the Constitutional Court it was established that the Constitutional Court resolves disputes, first of all, about compliance of the Constitution of the Republic of Kazakhstan: acts of state authorities; actions of its highest officials; practice of application of the constitutional legislation of the Republic of Kazakhstan.

23. More specifically the authorities of the Constitutional Court of the Republic of Kazakhstan are regulated by Law Article 10. The constitutional Court is competent to consider cases on compliance to the Constitution of laws of the Republic of Kazakhstan and other acts adopted by the Supreme Council of the Republic of Kazakhstan and its bodies, and also the normative acts, passed by President. The range of other normative acts which could become object of consideration of the Constitutional Court about their compliance to the Constitution is rather wide. Along with decisions of executive authorities it included also the acts of normative character, adopted by the General prosecutor and guiding explanations of plenums of Supreme Court and the Supreme Arbitration Court of the Republic of Kazakhstan.

24. The imposing upon the Constitutional Court a duty of hearing of cases about constitutionality of the law-enforcement practice, concerning constitutional rights of citizens, in our opinion, was very significant. The priority of the rights and freedoms of citizens became key at determination of the constitutional legality in Kazakhstan. Besides, competence of the Constitutional Court included the authority to make conclusion about observance of the Constitution and Laws of the Republic in case of arousing of a question of the early termination of authority of the President, the Vice-president, cabinet ministers, the Chairman of the Supreme Court, the Chairman of the Supreme Arbitration Court, the General prosecutor, and also diplomatic and other representatives of the Republic of Kazakhstan (Law Article 10).

25. As one of indicators of availability of institute of the constitutional control is the range of subjects initiators of proceeding arousing. According to Article 18 of the Law on the constitutional legal proceedings, the right to address to the Constitutional Court is possessed by:

- Supreme Council, not less than one fifth part of its structure,
- Presidium of the Supreme Council,
- Chairman of the Supreme Council,
- President,
- Prime minister,
- Chairman of the Supreme Court, Plenum of the Supreme Court,
- Chairman of the Supreme Arbitration Court, Supreme Arbitration Court Plenum,
- General prosecutor, and also republican bodies of public associations, regional (the cities of republican value) representative and executive bodies, Academy of Sciences – every on questions, defined personally for each of three subjects in the Law. There was an institute of

the individual complaint – citizens had the right to initiate hearing of cases on the questions which are directly concerning their constitutional rights if they not within the jurisdiction of other courts or when other courts didn't apply the norms of a constitutional law which were subject to application, or applied standards of the Constitution which were not subject to application in this concrete case, or incorrectly interpreted norms of a constitutional law.

26. The constitutional Court possessed the right to raise legal proceedings on its own initiative on questions of compliance of the Constitution of the Republic of Kazakhstan laws and normative legal acts, and also about constitutionality of the law-enforcement practice concerning constitutional rights of citizens of the Republic of Kazakhstan.

27. As we see, the Constitutional Court could consider to the subject of constitutionality all acts of the law acting at that time at the initiative of almost unlimited circle of subjects of appeal. Such comprehensive constitutional control also showed the formation of principles of the constitutional state in Kazakhstan.

28. The competence of the Constitutional Council and the subjects of appeal are set in Article 72 of the Constitution.

29. The constitutional Council on the appeal of the President of the republic, the Chairman of the Senate, the Chairman of the Mazhilis, not less than one fifth part of total number of deputies of Parliament, the Prime-Minister: solves in case of dispute a question of correctness of elections of the President of the Republic, deputies of Parliament and carrying out a republican referendum; considers the laws adopted by Parliament to their compliance to the Constitution of the Republic before President signs them; considers before ratification of the international agreements of the Republic to compliance to Constitution; gives official interpretation of norms of the Constitution; gives the conclusions in the cases provided by points 1 and 2 of Article 47 of the Constitution (an early release from a position or dismissal from a position of the President of the Republic).

30. The law of the Republic of Kazakhstan of May 21, 2007 «Of making amendments and additions to the Constitution of the Republic of Kazakhstan» the authorities of the Constitutional Council were a bit expanded giving it the right to consider the resolutions adopted by Parliament and its Chambers to their compliance to the Constitution.

31. The constitutional Council considers appeals of courts in the cases established by Article 78 of the Constitution. It imposes a ban for courts on application of the law and other regulatory legal acts infringing the rights and freedoms of the person and the citizen set in the Constitution. If the court sees that the law or other regulatory legal act which is subject to application, infringes the rights and freedoms of the person and the citizen set in the Constitution, it is obliged to suspend proceeding and to address the Constitutional Council with idea of recognition of this act unconstitutional.

32. This very important instrument for ensuring of the person, his life, the rights and freedoms as highest value of the Republic of Kazakhstan, was for the first time given to the Constitutional Court and was confirmed in authorities of the Constitutional Council.

33. In Chapter III of the constitutional law on the Constitutional Council there are two articles – 18 and 19, regulating respectively other powers of the Constitutional Council (the right to request and receive documents, materials and other information from state agencies and to involve experts and experts in scientific and advisory work and also to make petition for suspending of powers of the Chairman and members) and powers of the chairman of the Constitutional Council. Both that and others have organizational character.

The legal power of the decisions

34. Validity of decisions of the Constitutional Court was defined by Article 131 of the Constitution of 1993 and Article 11 of the Law of the Constitutional Court. Establishment of illegality of laws and other regulations as a whole or in a part cancelled their action upon the territory of the country. Decision of the courts and other law-enforcement bodies based on the statutory act, recognized unconstitutional, were not subject to be applied. The resolution of the Constitutional Court of not observing the Constitution of the Republic of Kazakhstan by officials was the basis for consideration of a question of their compliance to their posts (item 4 of Article 11 of the Law).

35. The Constitution gave to the Head of state and the speaker of the Supreme Council a peculiar veto. The resolution of the Constitutional court come into force from the moment of acceptance if the President or the Chairman of the Supreme Council don't bring objection on the resolution of the Constitutional court decision in ten-day term from the moment of its passing. Introduction of objections suspended the action of the resolution. If the Constitutional court with the majority in two thirds of voices of total number of judges confirms earlier taken decision, it comes into force from the moment of its passing.

36. According to Article 4 of the Constitution of 1995 the normative resolutions of the Constitutional council are a part of the acting law. It is necessary to note that when developing the project of the acting Constitution of 1995 its subject was expanded at the expense of inclusion in Article 73 of legal consequences of the appeal to the Constitutional Council of authorized subjects.

37. In the same article two more principle positions are established. The constitutional Council passes the decision within a month from the date of receipt of the appeal. This term on request of the President of the republic can be reduced to ten days if the question doesn't suffer delay.

38. On the decision of the Constitutional Council as a whole or objections of the President of the Republic which are overcome by two thirds of voices of total number of members of the Constitutional Council can be brought in its parts. At not overcoming of objections of the President the decision of the Constitutional Council is considered not accepted. Speakers of Chambers of Parliament don't possess such right. It is quite logical, considering function of the Head of state on ensuring firmness of the Constitution, human rights and the citizen.

39. It is necessary to emphasize that this power is applied by the President of the republic extremely seldom, only four times during sixteen years, and in two cases the Constitutional Council confirmed the earlier made decision.

40. According to Constitution Article 74 if the Constitutional Council recognizes laws and the international contracts not corresponding to the Constitution, they can't be signed, respectively ratified and put into force. Laws and other regulatory legal acts recognized as unconstitutional, including infringing rights and freedoms of the person and the citizen set in Constitution, are cancelled and aren't subject to application. Decisions of the Constitutional Council come into force from the date of their acceptance, are obligatory on the whole territory of the Republic, final and aren't subject to appeal.

41. In development of this constitutional norm the Law of the Republic of Kazakhstan of «Of making amendments and additions to some acts of the Republic of Kazakhstan concerning implementation of Article 78 of the Constitution of the Republic of Kazakhstan» is passed on July 10, 2012. In the Code of criminal procedure, civil procedure code and Code of administrative offenses are included. Their essence can be described in several moments. Decisions of the courts (bodies of prosecution, bodies and the officials, authorized to consider cases on administrative offenses), based on the law or other regulatory legal act, recognized

unconstitutional, aren't subject to be enforced. The court has the right to suspend proceeding if the Constitutional Council initiated the proceeding on the initiative of other court representation on similar matter.

42. It is necessary to notice that it was a question not only of laws, but also on other regulations, including decisions of bodies of the central and local executive power.

43. These provisions answer all principles of the constitutional state where the Constitution, its supremacy and direct action are immutable attribute of legal statehood.

44. According to Article 40 of the constitutional law on the Constitutional Council, the Constitutional Council can define an order and dates of putting into force of the accepted decisions. If the decision of the Constitutional Council demands increase in the public expenditures or reduction of the income, the Constitutional Council defines dates of executing of the decisions accepted by it in coordination with the Government of the republic.

45. The relevant state agencies inform of the measures accepted in response to decisions of the Constitutional Council in time, established by the Constitutional Council. The recommendation and the offers on improvement of the legislation in decisions of the Constitutional Council are subject to obligatory consideration by authorized bodies and officials with the obligatory notification of the Constitutional Council of the accepted measures.

The organizational – legal forms of activity

46. Activity of the Constitutional Court was carried out in the form of the constitutional legal proceedings. On June 5, 1992 together with the Law of the Constitutional Court the Law of the Republic of Kazakhstan «Of the Constitutional legal proceedings in the Republic of Kazakhstan» was adopted. It regulated in details the procedure of work of the Constitutional Court. The constitutional legal proceedings were understood as a form of realization of the judicial authority, defining an order of procedural activity of the Constitutional Court for full, objective and all-round resolution of matters aiming of the affirming the supremacy of the Constitution of the Republic of Kazakhstan and ensuring the constitutional legality in lawmaking and law enforcement.

47. With reference to a subject of the present article we will note that for formation of the modern Kazakhstan theory of a constitutional law the role of this Law was defined also by promotion of discussion of activization of a role of legal procedure in the mechanism of implementation of the constitution

48. Order of initiation of the constitutional legal proceedings and preparation, hearing of cases by the Constitutional Court, requirements to the accepted decision, rules of its executions, and also other questions of the constitutional legal proceedings (court costs and the right of application of means of procedural protection) are regulated by the norms, united in chapters 4-8 of the Law. Their common goal - all-round, complete and objective clarifications of circumstances of the matter, and also adoption of the legal and reasonable final decision.

49. In the constitutional law of the Constitutional Council the procedural side of fulfilling the functions and powers is fixed by it in articles united in Chapter IV «Constitutional procedure», and also in Chapter V «Decision of the Constitutional Council of the Republic». Without going into detail we will note that the norms of the constitutional law developed in Regulations of the Constitutional Council, provide due functioning of institute of the constitutional control.

50. Let's pay attention to three provisions of the constitutional law, which are important from a position of powers realization.

51. Possibility of passing additional decision by Constitutional Council in exceptional cases when a) there is a question of interpretation of the decision of the Constitutional Council (according to the petition of participants of the constitutional procedure or state agencies or the officials is brought, obliged to execute the final decision) and b) there is a necessity to correct the discrepancies committed in the final decision and mistakes of editorial character (on the own initiative of the Constitutional Council). The additional decision shouldn't contradict the real contents, sense and purpose of the total decision.

52. Possibility of revision of the decision of the Constitutional Council to them at the initiative of the President of the republic or its own initiative. It can be done only in two cases: a) the norm of the Constitution on the basis of which the decision was made changed; and) there are new essential circumstance to a subject of a matter.

53. One more basis is included in item 2 of Article 36: «In interests of protection of the rights and freedoms of the man and the citizen, ensuring national security, the sovereignty and integrity of the state the decision of the Constitutional Council can be reconsidered at the initiative of the President of the Republic of Kazakhstan». About decision revision the Constitutional Council takes out the resolution of the revision of the decision, cancelling this decision.

54. As we see, the limits of imperious powers of the Constitutional Council are outlined extremely specifically, that does not allow it to show willfulness and to break the role assigned to it by Constitution.

The activity of the body of the Constitutional control

55. The destiny of the Constitutional Court, according to the academician of the Kazakhstan National academy of Sciences G. Sapargaliyev, appeared to be very dramatic [3; Page 61] as the Constitution of the Republic of Kazakhstan adopted on a republican referendum on August 30, 1995, established body of quasi-judicial control – the Constitutional Council instead of the Constitutional Court. Thus it is necessary to recognize that the legislation regulating the organization and functioning of the Constitutional Court, was in the tideway of democratic transformations of political system of Kazakhstan.

56. Despite quite short period of the functioning (July, 1992 – August, 1995), in constitutionalism formation the importance of the Constitutional Court is very significant.

57. In total Constitutional Court considered and passed the total decision on about fifteen matters. They concerned the necessity of observance of the property right, labor and other constitutional rights of citizens; introductions of a principle of division of the authorities and new intrinsic distinctions between the Supreme Council and local Councils of people's deputies; indispensable observance of the constitutional procedures of adoption of laws; independence and responsibility of courts and judges; organizations and carrying out election campaigns. Other paramount components of arising constitutionalism also got in sight of the Constitutional Court.

58. The decision of the Constitutional Court on so-called « Kvyatkovsky case» rendered special influence on destiny of the Kazakhstan constitutionalism and formation of the constitutional state. As a result of scrupulous, lasting nearly a year, preparations, the Constitutional Court agreed with arguments of Kvyatkovskaya and in resolution of March 6, 1995 found a number of acts of the Central Electoral Commission concerning cutting of constituencies and definition of results of elections breaking a principle of an equal electoral law [5]. By two thirds of voices of total number of judges the Constitutional Court it overruled the objection of the President of Kazakhstan and the Chairman of the Supreme Council.

59. Consequences of the resolution appeared negative for the Supreme Council of the thirteenth convocation – the last in the history of the country «socialist parliament».

60. In additional definition of March 11, 1995 the Constitutional Court represents to the President N.A.Nazarbayev according to his appeal the following interpretation of the resolution of March 6, 1995 «A legal consequence of the resolution of the Constitutional Court of March 6, 1995 is unconstitutionality of powers of the Supreme Council elected on March 7, 1994, and also deputies of the Supreme Council elected in additional elections on January 22, 1995 ...» [6]. It was specified that disproportions in number of voters led to violation of a principle of equal representation of citizens by deputies in the Supreme Council. Thus it was once again underlined that «recognized violations of the Constitution of the Republic took place in the territory of the Republic of Kazakhstan and equally touched upon constitutional rights of all the electorate citizens».

61. Current situation with illegality of the Supreme Council and, respectively, the termination of its activity, should call to the question of legitimacy of all branches of the power. On the basis of the Constitution of 1993 the Supreme Council directly participated in formation of various state authorities (chose, appointed or affirmed). After decisions of the Constitutional Court all of them were reestablished. From April 19, 1994 to March 6, 1995 the parliament adopted only 314 acts, including 24 legal acts. In this regard after the scrupulous analysis of each of these acts, the President of the Republic of Kazakhstan N.A.Nazarbayev by Decree of March 23, 1995 «Of acts of the Supreme Council of the Republic of Kazakhstan» recognized 128 acts as acting and possessing validity from the date of putting in action.

62. Meanwhile, as other academician of the Kazakhstan National academy S.Z.Zimanov fairly noticed, «it is doubtful whether calculation of the Constitutional Court included creation of threat of paralysis of all political power of Kazakhstan» [7].

63. The called resolution and additional definition of the Constitutional Court are differently estimated by politicians and scientists. So, William Cortney, those days the ambassador of the USA to Kazakhstan, wrote: «Kazakhstan represents not the school student, but the teacher of democracy. All Kazakhstan citizens can be proud of it, and the USA have a reason to be proud of Kazakhstan» [8]. That is how the Constitutional Court was awarded by the Medal of OSCE/ODIHR «For courage». For that time there was also opposite opinion: «Now, the faster President of the republic dissociates from present Constitutional Court, the better it will be not only for democracy and the state, but also for the President» [9; p.220].

64. Nowadays along with the general positive assessment of a big contribution of the Constitutional Court of the Republic of Kazakhstan in the consolidation of constitutionalism, it is useful to emphasize its following "lessons".

65. Firstly, in the country in the conditions of formational change of a social order, as a whole, and also the state form and the government mechanism, in particular, the status of imperious body of the constitutional control inevitably came into conflict with far imperfect in the functional and institutional relation government, which was strongly influenced by recent past.

66. Secondly, situation considerably became complicated by a transition state of the Constitution. Till January 28, 1993 it represented a motley mix of provisions and standards of repeatedly changed Constitution (Basic law) of Kazakh Soviet Socialist Republic of 1978, the Constitutional law «Of the state independence of the Republic of Kazakhstan» according to which «norms of the Constitution and other acts of the Republic of Kazakhstan operate as they don't contradict the present Law». It was objectively very difficult for judges of the Constitutional Court to choose "original" for comparison. Moreover, absence of constitutionally established concept "law in force" and the official status of the main human rights international documents did very difficult direct application while considering the affairs by the Constitutional Court.

67. Thirdly, the construction de jure of the powerful body of the constitutional justice was de facto imposed" on far imperfect and inconsistent division of the authorities under the Constitution of 1993 including a judicial branch and institute of public prosecutor's supervision which still had to pass a way of substantial reforming and release from negative «soviet remnants». In those conditions giving to the Constitutional Court the right to estimate the constitutionality law-enforcement practice of these mighty bodies, and also regulatory legal acts of the General prosecutor, Supreme and the Highest arbitration courts, to put it mildly, didn't add constructivism in common cause of ensuring supremacy and direct action of the Constitution.

68. Fourthly, the aspiration of that time to boundless "democracy" and absence for 1992 of own practice of effective and thus most weighed administration of the constitutional control, didn't allow in the legislation of the Constitutional Court to carry out division between the constitutional (legal) and political spheres, to create guarantees from politicization of judges.

69. Fifthly, in 1992 in the Kazakhstan concept of purely judicial constitutional control the absolute of the subsequent constitutional control with following of it traditional for the theory, but very dangerous to practice, consequences of loss of validity of all decisions based on the recognized act not corresponding to the Constitution triumphed. The Supreme Council of the thirteenth convocation became the hostage of this constitutional imperative.

70. The main outcome of activity of the Constitutional Court, in particular, its decisions on «Kvyatkovsky affair», is that as a result of the situation of the termination of activity of the last created in 1995 in the history of the country of the Supreme Council, from March to December of the same year of temporary "autocracy" of the President of the republic, was transferred by the decrees of the head of state «to rails» of the market transformations and a new political system. On August 30 on a national referendum the new Constitution of the Republic of Kazakhstan [10] is adopted. With amendments and the additions brought by laws of the Republic of Kazakhstan of October 7, 1998 and on May 21, 2007, it continues to act successfully, providing stable forward development of society and state.

71. In the norms of the existing Constitution and Constitutional law of the Constitutional Council the experience of the Constitutional Court found its reflection.

72. Competence of the Constitutional Council is designed so that

- to combine at most the benefits of preliminary and the subsequent, and also abstract and concrete types of the constitutional control;
- to consider and fix features of activity on Constitution observance in the field of ensuring unity and a division of the government, functioning of the supreme state authorities and in the sphere of the rights and freedoms of the person and the citizen;
- to autonomize constructively the functions and activity of the Constitutional Council, courts and bodies of prosecutor's office, thus to use a resource of institute of the constitutional control on strengthening of judicial authority and on the contrary;
- to exclude at most a factor of politicization of members of the Constitutional Council and excess of their powers;
- gradually, in process of development of civil society and the state to carry out increase of capacity of the Constitutional Council by means of expansion of its powers and access to institute of the constitutional control.

73. Today normative resolutions of the Constitutional Council are one of the most important sources of the law.

74. As a whole for years of activity the Constitutional Council considered more than 180 appeals and more than 140 normative resolutions which gradually turn into impellers of

development of the constitutional doctrine and practice. Amendments and additions are made to more than 65 laws.

75. Appeals of official interpretations of Constitution norms on which 68 normative resolutions with an explanation of questions of ensuring human rights, the device of the state, providing a principle of unity and a division of the state power, the status of state authorities and their officials, a judicial system and legal proceedings, public prosecutor's supervision and other important aspects were considered.

76. The majority of the appeals were got from the Chairmen of the Parliament Chambers and groups of its deputies (about 70) and courts of the Republic (64), Prime –Minister of the Republic (25), and 9 petitions of supplementary interpretation of the resolutions of the Constitutional Council. More than 20 appeals were got from the Head of state.

77. At the initiative of the President of the Republic the Constitutional Council considered before the Head of state signed the Law «Of making amendments and additions to the Constitution of the Republic of Kazakhstan» (2011), the Constitutional law «Of the First President of the Republic of Kazakhstan» (2000), usual laws «Of modification and additions to the Law of Kazakh Soviet Socialist Republic «Of ensuring of pensions of citizens in Kazakh Soviet Socialist Republic» (1996), «About languages in the Republic of Kazakhstan» (1997), «About political parties» (2002), the Land code of the Republic of Kazakhstan (2003), «About mass media» (2004), «About activity of the international and foreign non-profit organizations in the Republic of Kazakhstan» and «Of making amendments and additions to some acts of the Republic of Kazakhstan concerning non-profit organizations» (2004), «Of making amendments and additions to some acts concerning a freedom of worship and activity of religious associations» (2002) and «Of making amendments and additions to acts of the Republic of Kazakhstan concerning a freedom of religion and religious associations» (2009), etc. In one cases laws were recognized corresponding to the Constitution, in others – contradicting it (of making amendments and additions to Constitution, about mass media, about religious associations, about the international and foreign noncommercial associations, etc.).

78. Three times the President of the Republic posed the questions of the Constitution interpretation.

79. It is necessary to note that active application by President of the Republic of this authority strengthens a mode of the constitutional legality, promotes harmonization of the relations between the Head of state and Parliament.

80. The legal acts «Of making amendments and additions in the Constitution of the Republic of Kazakhstan», «Of the activity of the international and foreign non-profit organizations in the Republic of Kazakhstan», «About mass media», «Of making amendments and additions to some acts of the Republic of Kazakhstan concerning religion and religious associations» and others were recognized unconstitutional in whole or partially in 26 laws and international treaties.

81. In total by means of official interpretation or in the course of the analysis of the constitutionality of normative legal acts provisions of 73 articles of the Constitution are interpreted.

82. The legal positions included in resolutions, and recommendations of annual messages of the Constitutional Council «Of a condition of the constitutional legality in the country», give the open space for the accelerated realization of the constitutional reforms, promote the further statement of Kazakhstan as the democratic and constitutional state, to development of system of the acting law in the tideway of the constitutional values, and also make a contribution to the doctrine of the Kazakhstan constitutionalism.

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