



Strasbourg, 5 February 2021

**CDL-REF(2021)014**

**Opinion No. 1023 / 2021**

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**KAZAKHSTAN**

**CONCEPT PAPER  
ON IMPROVING THE LEGAL FRAMEWORK  
OF THE CONSTITUTIONAL COUNCIL\***

**\*Unofficial translation**

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## **Concept Paper on improving the legal framework of the Constitutional Council of the Republic of Kazakhstan**

**The goal** is to strengthen the mechanisms for the protection of human rights, to intensify the activities of the courts to apply to the Constitutional Council with proposals for reviewing the constitutionality of law and other normative legal acts, to improve the working methods of the Council and the implementation of its decisions.

### **Basic provisions**

In Kazakhstan, citizens do not have the right to apply directly to the Constitutional Council for the protection of their constitutional rights against the application of laws and other legal acts that do not comply with the Basic Law.

The Constitution of the country provides for a mechanism for the indirect implementation of this citizens' right through the courts of the Republic. According to Article 78 of the Constitution, the courts shall have no right to apply laws and other regulatory legal acts infringing on the rights and liberties of an individual and a citizen established by the Constitution. If a court finds that a law or other regulatory legal act subject to application infringes on the rights and liberties of an individual and a citizen, it shall suspend legal proceedings and address the Constitutional Council with a proposal to declare that law unconstitutional.

The practice of applying this mechanism over 25 years shows that the country's legislation regulating the procedure for its implementation needs to be improved.

In this regard, in order to properly implement the provisions of Article 78 of the Basic Law, the Constitutional Council has developed specific proposals to amend the Criminal Procedure Code, the Civil Procedure Code, Administrative Offences Code and the Administrative Procedure and Procedural Code of the Republic of Kazakhstan.

### **Proposals:**

1. Separately highlight the motions of the parties in the proceedings to appeal to the Constitutional Council. Specifying such a possibility in the law will bring clarity and the parties to the process will be aware of the existence of such a tool to protect their rights. The courts in their application will indicate that the decision to appeal to the Constitutional Council is taken on their own initiative or at the request of the parties.

2. To define in the codes a more detailed procedure for the consideration of such motions.

A) Currently, they can be oral. It is proposed that the motions of the parties should be written and contain certain requisites, in particular: an indication of which human and civil rights and freedoms protected by the Constitution are infringed in the application of the law (its separate provisions); the applicant's arguments and the substance of his or her request; if there is evidence to support his or her claims.

B) The law shall provide for the circumstances which the court ascertains when considering the above-mentioned motions of the parties, namely: whether the subject-matter of the appeal falls within the competence of the Constitutional Council; whether the challenged provisions of the law are applicable in the resolution of the case; whether the constitutionality of the provision indicated in the motion has previously been verified and whether there is a valid decision of the Constitutional Council;

whether the motion meets the established legal requirements for its form and content; whether the applicable law infringes on the rights and freedoms of a person and a citizen enshrined in the Constitution. At the same time, the court is not entitled to take a position on the constitutionality of the contested law. The court's decision on the motion is in the form of a ruling.

3. To establish by law specific grounds for refusal by the court to grant such motions by the parties. These include the following: the subject matter of the appeal is not within the competence of the Constitutional Council; the challenged provisions of the law is not applicable in the resolution of the case; the constitutionality of the provision indicated in the motion has already been reviewed by the Constitutional Council and there is a valid decision of the Council; the motion does not meet the established legal requirements for its form and content; there is insufficient data, indicating the rights and freedoms of a person and a citizen enshrined in the Constitution are infringed by law.

4. To secure the possibility of appeal against a court decision on the refusal to satisfy a party's motion to a higher court. Now this is possible only within the framework of an appeal or cassation appeal after the final decision (verdict) of the court has been delivered.

5. Establishment of the procedure that, when applying to the Constitutional Council, the case is suspended only by the court that made the proposal. In similar cases, other courts in the country will have the right to suspend proceedings in pending cases. In any case, the courts of the Republic should not make a final decision on the case until the end of the proceedings in the Constitutional Council.

#### **Amendments to the Constitutional Law “On the Constitutional Council of the Republic of Kazakhstan”:**

- in order to increase the efficiency of the implementation of the Constitutional Council's decisions, it is proposed to establish that, if it follows from them that it is necessary to take legislative measures, then the authorized state bodies, no later than six months after the publication of the decision of the Constitutional Council, shall ensure the submission of a draft law to the Mazhilis of Parliament, adoption of other legal acts. Until the adoption of a new legal act, the Constitution of the Republic of Kazakhstan and the decision of the Constitutional Council are directly applied.

- to legislatively determine that the Constitutional Council may decide that a law is in conformity with the Constitution of the Republic by means of an interpretation given by the Council. When considering a law, the Constitutional Council interprets it, understands the substance in terms of constitutional principles and systemic interrelationships with them. Therefore, the explanations of the Constitutional Council regarding the content of the considered law should be binding on all subjects.

It should be emphasized that these proposals are designed to solve several important tasks: preventing the resolution of a case based on an unconstitutional law, protecting constitutional human rights, ensuring the constitutionality of existing legislation, disclosing the content of the Basic Law's norms and ensuring their supreme legal force and direct application.

An equally important aspect is the citizens' attitude, who will raise the level of their legal, constitutional culture and realize that their doubts about the quality of laws and on their initiative have been given a qualified answer with the participation of the courts and the Constitutional Council.

This will increase confidence in the judicial system, which will be perceived as an important mechanism for protecting their rights, helping to ensure not only the correctness of the establishment of all the circumstances of the case, but also the

fairness and constitutionality of legislation. Thus, with the participation of the court, the perfection of the normative and factual components of the judicial process will be achieved, which will make it possible to take a lawful, well-grounded court decision, achieve the satisfaction of the parties and relieve social tension.

The decisions of the Constitutional Council will be implemented in a timely manner.