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Ү. Abaideldinov

*L.N. Gumilyov Eurasian National University, Astana, Kazakhstan
(E-mail: erbolabay@mail.ru)*

Constitutional Court of the Republic of Kazakhstan: continuity and innovation

Abstract. The article discusses some decisions of the Constitutional Council of the Republic of Kazakhstan on a number of issues of constitutional and international law. These legal positions, as a continuity, in accordance with paragraph 1 of Article 66 of the CLRK «On the Constitutional Court of the Republic of Kazakhstan», can establish the basis for the forthcoming activities of the recreated Constitutional Court of the Republic of Kazakhstan. The article emphasizes that constitutionality in the country will be ensured not only by the Constitutional Court, but also by all branches of the unified state power, every state body, and every civil servant throughout the country. The attention is drawn to the concept of «presumption of constitutionality» of acts of state bodies: laws; decisions of judicial and executive bodies.

Keywords: Constitutional Council, Constitutional Court, continuity, international law, human rights, «Just Kazakhstan».

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Introduction

The Republic of Kazakhstan is implementing large-scale reforms aimed at modernizing the political system and forming a just state, economy, and society.

Proposed by President K.K. Tokayev, the principle of a “hearing state”, as an important quality of the forming “Just Kazakhstan”, implies a constructive public dialogue between the government and society. This dialogue is in demand at all levels of government, and in all spheres of public life. The order, objectivity, and legal framework of this dialogue are based

on common political, legal, and ethical values, concentrated embodied in the Constitution of the country, which content included a number of new provisions in 2022.

Methodology

As research methods, the authors used the dialectical method of research, historical-legal and comparative approaches to the analysis of the material, which made it possible to cover more than thirty years of formation and some aspects of the activities of the constitutional control

bodies in the Republic of Kazakhstan and their decisions in comparison with the norms of international law.

Discussion

Currently, one of the most discussed topics in society has been the restoration of the Constitutional Court. The first association concerned with this body of constitutional control is the personality of the only chairman of the Constitutional Court of the Republic of Kazakhstan until the current time for the period from 1992 to 1995, a prominent scientist and true citizen, academician M.T. Baimakhanov (01.11.1933 – 03.06.2022). Boundless erudition, logical thinking, high decency, restraint, civic courage, and scientific responsibility - it is not a complete list of qualities inherent in Murat Tadzhi-Muratovich. It is sufficient to mention that in 1973, in the midst of the period of the “final victory of socialism”, he had defended his own thesis for a Doctor of Juridical Science on the topic “Contraventions in the development of the legal superstructure of a socialist society and ways of their overcoming”.

The consistent upholding of constitutional values by the first Constitutional Court, the formation of its decisions, which in some cases canceled some acts of executive power, in conjunction with other tasks of state building, have led to the adoption of the new Basic Law of the country in 1995, which established a presidential form of government, the Constitutional Court was transformed into the Constitutional Council, etc.

The Constitutional Council of the Republic of Kazakhstan, fulfilling its mission in the political and legal conditions corresponding to the time of its activity,

proved to be a worthy successor to the first constitutional control body of a young sovereign country. It is the continuity of personnel, and the thoroughness, validity, and high quality of the ongoing versatile work in accordance with the powers given to this state body. This became possible, as a rule, due to the high qualification of the members of the Constitutional Council throughout the entire period of its activity, and to a large extent - the leaders of this body of constitutional control, prominent scientists, and public officials: Yu.A. Kim, Yu.A. Khitrin, I.I. Rogov, K.A. Mami.

It is noteworthy that paragraph 1 of Article 66 of the Constitutional Law of the Republic of Kazakhstan “On the Constitutional Court of the Republic of Kazakhstan” contains a provision that “The Constitutional Court of the Republic of Kazakhstan is the successor of the Constitutional Council of the Republic of Kazakhstan.” [1]. It is an important provision, which confirms a deeply thought-out approach to reforming the entire state system. The wording of this article is quite consistent with the laws of evolutionary processes, which provide for consistent, balanced, but steady development of the state and society while maintaining all previously accomplished achievements. It includes continuity both in personnel and in the legal positions contained in the decrees on the official interpretation of the provisions of the Basic Law, and in the decisions on the appeals of the courts, as well as other documents of the Constitutional Council.

It should be especially noted that among the legal positions of the Constitutional Council on the application of the norms of constitutional and international law, there are those that are of an enduring, relevant nature for our

country, as a sovereign state. These are provisions on territorial integrity as the main condition for the national security of Kazakhstan and the inadmissibility of dismembering its territory; on the inviolability of the state boundary and the prohibition of territorial concessions to the detriment of national interests and the international principle of the sovereign equality of states. It is output on the extension of the sovereignty of Kazakhstan to international relations, on the inadmissibility of the institution of dual citizenship in Kazakhstan; it is the provision that human rights and freedoms, in accordance with the Constitution, the International Bill of Human Rights, are absolute, inalienable, universal and determine the content and application of laws and other regulatory legal acts, etc.

One of the most resonant and effective was the Resolution of the Constitutional Council dated May 7, 2001 No. 6/2 "On the submission of the Kyzylorda Regional Court on the recognition as unconstitutional part the second of paragraph 6.12 of Article 6 of the Lease Agreement of the "Baikonur" complex, Articles 5 and 11 of the Agreement on the interaction of law enforcement bodies in ensuring law and order on the territory of the "Baikonur" complex.

During the checking, of the constitutionality of the norms of international acts specified in the submission of the Kyzylorda Regional Court, the Constitutional Council of the Republic of Kazakhstan proceeded from a number of constitutional provisions, including those providing guarantees for the constitutional rights and freedoms of citizens of Kazakhstan (Article 12 of the Constitution), as well as the provisions of

paragraph 2 of Article 2 of the Constitution, under which the sovereignty of the Republic extends over its entire territory. This principle, as emphasized by the Constitutional Council, means the independence and autonomy of Kazakhstan in matters of domestic and foreign policy, the supremacy of the state and its power within its territory [2]. By this Decree, the Constitutional Council protected the rights of our citizens, confirmed the significance of the Basic Law of the country as a political and legal act that has the highest legal force and direct effect throughout the Republic, stood up for the sovereignty of the state, which entailed a change in prior acted international treaties between Kazakhstan and Russia, and confirmed the desire of the parties for constructive cooperation and mutual understanding.

The construction of the "New Kazakhstan" includes the tasks of not only building a modern "Just Kazakhstan", but also attention to its historical past, one of the poorly studied topics of which to date is the period of mass political repressions in the 1920s-1930s, which caused irreparable damage to our people.

Therefore, one of the resonant acts of the President of the Republic of Kazakhstan K.K. Tokayev was the Decree of November 24, 2020, which, in order to comprehensively study and address issues of rehabilitation of victims of political repression, established the State Commission for the Complete Rehabilitation of Victims of Political Repression, the main task of which was the full legal and political rehabilitation of victims of political repression [3]. It should be noted that significant scientific and administrative resources, archives and libraries, professionals, and volunteers

throughout the country are involved in the work to implement this Decree of the President. Significant material has already been accumulated, thousands of new previously unknown names of our fellow citizens, who were illegally repressed, have been discovered, and relevant legislative acts are being prepared for their full rehabilitation.

This Decree of the President was adopted in accordance with the expectations of society and the norms of international law. Thus, the UN General Assembly in the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” recognizes that “millions of people around the world are harmed as a result of crime and abuse of power and that the rights of these victims are not properly recognized” [4]. Therefore, the purpose of the Declaration is to assist the governments of sovereign states and the international community in their efforts to ensure justice and provide assistance to victims of crime and abuse of power. The Declaration calls for the implementation of a whole range of social health measures, including mental health protection, education, and economy, as well as specific measures to facilitate the provision of assistance to victims in distress; periodically reviewing existing laws and practices to ensure their ability to respond to changing conditions, and also adopting and enforcing provisions outlawing acts that violate internationally recognized norms on human rights and the behavior of legal entities and other cases of misfeasance; to develop cooperation with other states based on the provision of mutual judicial and administrative assistance in such matters as the identification and prosecution of offenders, their extradition and confiscation of their

property in order to provide restitution to victims, etc.

Violation by the state of internationally recognized norms concerning human rights leads to the recognition of the latter as a victim of misfeasance. It should be noted here that the Constitutional Council of the Republic of Kazakhstan in the early 2000s made a significant contribution to the process of rehabilitation of victims of political repression. What is meant here is the decision taken by the Constitutional Council of the Republic of Kazakhstan on the appeal of the court to verify the constitutionality of the norms of the current law of the Republic of Kazakhstan “On the rehabilitation of victims of mass political repressions” (hereinafter - the Law of the Republic of Kazakhstan “On rehabilitation”).

Over the first 10 years of the work of the Law of the Republic of Kazakhstan “On Rehabilitation”, more than 320 thousand citizens of our country of different nationalities were rehabilitated. If the first stage of the rehabilitation of victims of political repression was quite active until the early 2000s, then at the beginning of the new millennium this process almost stopped. Significant difficulties in the process of rehabilitation of victims of mass political repressions and providing them with decent material support arose in connection with the interpretation of Article 26 of the Law of the Republic of Kazakhstan “On Rehabilitation”, which notes that the effect of Articles 18-24 of the Law (they contain provisions on social support for the rehabilitated) applies to victims of political repressions rehabilitated *before* the entry into force of this Law.

Some citizens, even after receiving a

court decision on full rehabilitation, could not receive a “Certificate of a Rehabilitated Citizen” of a single sample established by the Government of the Republic of Kazakhstan. And due to the fact that this document was the basis for receiving a monthly rehabilitation allowance and other benefits, as well as compensation for moral damage and material damage, many citizens were left without material support that was essential for them.

Thus, the Law of the Republic of Kazakhstan “On Rehabilitation” practically ceased to operate as a result of the introduction of one article into it. Moreover, according to the authors of the draft law, this article was not included in the draft they developed. Article 26 contradicted the essence, purpose, and meaning of the Law of the Republic of Kazakhstan “On Rehabilitation” and Art. 1, 12, 13, 14 of the Constitution of the Republic of Kazakhstan.

In such cases, the last word belongs to the Constitutional Council of the Republic of Kazakhstan, which the court of the Medeu district of Almaty addressed the relevant case on the rehabilitation of citizens of our country. The appeal was initiated by members of the human rights society “Adilet”, which was headed by academician M.T. Baimakhanov, and one of the members was the author of this article. The Constitutional Council, by its Decree No. 9 dated January 24, 2003, obliged the Supreme Court of the Republic of Kazakhstan to adopt a regulatory Decree clarifying the issues of applying the Law of the Republic of Kazakhstan “On Rehabilitation”. In accordance with the Decree of the Constitutional Council dated January 24, 2003, No. 9 “On the need to clarify the issues of application of the Law of the Republic of Kazakhstan dated April

14, 1993 “On the rehabilitation of victims of mass political repressions”, the Plenary session of the Supreme Court of the Republic of Kazakhstan decided to introduce amendments and additions to paragraph 8 of the Regulatory Decree of the Supreme Court dated April 14, 1993, June 21, 2001 No. 3 “On the application by the courts of legislation on compensation for moral damage”. Their essence lies in explaining the acting of Art. 18-24 is not limited to the moment of rehabilitation of victims before or after the entry into force of the law and applies to victims of mass political repression, rehabilitated both before the entry into force of the law and after that. Therefore, as Supreme Court Judge V. Kim emphasized, the indication in article 26 of the law, which follows the mentioned articles, on the extension of articles 18-24 to victims of political repressions rehabilitated before the entry into force of this law should be understood as giving the law retroactive effect rather than limiting the rights of persons whose rehabilitation will be carried out after the entry into force of the law since with a different interpretation of this article, the adoption of the law itself is meaningless [5].

Among the key documents adopted by the Constitutional Council of the Republic of Kazakhstan regarding the implementation of the decisions of international organizations and their bodies by the country is the Decree of November 5, 2009, in which the body of constitutional control, relying on the norms of the Basic Law, noted that the decisions of international organizations and their bodies, formed in accordance with international treaties of the Republic of Kazakhstan, “cannot contradict the Constitution of the Republic of

Kazakhstan". This provision (in its relationship with paragraph 1 of Article 46 of the "Vienna Convention on the Law of Treaties" dated May 23, 1969) will certainly need to be taken into account in the dialogue with certain international organizations and international quasi-judicial bodies, which sometimes recommend countries to correct not only legislation but also the norms of the Constitution.

Among the novelties related to the activities of the Constitutional Court being created, one can single out the right to appeal to the Constitutional Court of citizens, the Prosecutor General of the Republic of Kazakhstan, and the Commissioner for Human Rights. There should be noted that time will show how this will be implemented in practice, how the practice will develop, and how, in case of need, it will be necessary to correct the legislation in order to achieve maximum compliance with these and other provisions of the law with the requirements of the Constitution and the expectations of society.

Results

The analysis carried out in the article allows us to arrive at the following general result. The evolution of constitutional control bodies in the Republic of Kazakhstan over the years of independence since 1991 shows that at all its stages: since the functioning of the first Constitutional Court under the leadership of acad. M.T. Baimakhanov, and then - many years of work of the Constitutional Council of the Republic of Kazakhstan until the present stage of the reconstruction of the Constitutional Court, multifaceted activities were carried out in the field of

preserving and developing constitutional legality in our country. A legal, methodological, and organizational basis has been created for the fruitful activity of the reconstituted Constitutional Court, which is as of right named the successor of the Constitutional Council at the legislative level. At this new stage, it would be quite logical both to work on the implementation of the new powers of this body of constitutional control and to use the material in their work that is currently relevant and previously developed by the Constitutional Council. This is one of the moments of the activity of state bodies, which contains the meaning of the gradual, dialectical development of the country, the construction of the "New Kazakhstan".

Conclusion

Thus, there should be emphasized that the Constitutional Court will quite naturally build its activities on the basis of the norms of the currently amended Constitution of the country, relying on the experience of constitutional control bodies already gained in the country, using the norms of international law recognized by the country. At the same time, constitutionality in the country will be ensured not only by the Constitutional Court. All branches of the unified state power, every state body, and every civil servant throughout the country are obliged to carry out their activities within the framework of the Constitution, on the basis of the Constitution and the legislation drafted in its development. There it is quite appropriate to talk about the "presumption of constitutionality" of acts of state bodies: laws adopted by the Parliament; acts of judicial and executive bodies, both central and local, etc. For all that the rich

experience of the Constitutional Council of the Republic of Kazakhstan, the long-term practice of many countries of the world shows the demand for a special body of constitutional control, which is the guarantor of compliance with the norms of the Constitution, the rights and freedoms of citizens, which is how the established Constitutional Court of the Republic of Kazakhstan is seen.

Another important aspect needs to

be emphasized. Every person, anyone who is on the territory of Kazakhstan - whether a citizen, a foreigner, or a stateless person - must all behave within the framework of the law in force in Kazakhstan. Only by joint efforts of the state and society, on the basis of observance of their rights and obligations by all, the general constitutional legal order will be maintained and improved.

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Е. Абайділданов

Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Астана, Қазақстан

Қазақстан Республикасының Конституциялық Соты: сабақтастық пен инновация

Аңдатпа. Мақалада конституциялық және халықаралық құқықтың бірқатар мәселелері бойынша Қазақстан Республикасы Конституциялық Кеңесінің кейбір шешімдері талқыланады. Бұл құқықтық ұстанымдар сабақтастық ретінде «Қазақстан Республикасының Конституциялық Соты туралы» ҚРКЗ 66-бабының 1-тармағына сәйкес қайта құрылған Қазақстан Республикасы Конституциялық Сотының болашақтағы қызметі үшін негіз бола алады. Мақалада елдегі конституциялылықты

тек Конституциялық сот қана емес, сонымен бірге біртұтас мемлекеттік биліктің барлық тармақтары, республика бойынша әрбір мемлекеттік орган, әрбір мемлекеттік қызметші қамтамасыз ететіні баса айтылған. Мемлекеттік органдар актілерінің «конституциялық презумпциясы» түсінігіне назар аударылады: заңдар; сот және атқарушы органдардың шешімдері.

Түйін сөздер: Конституциялық Кеңес, Конституциялық Сот, сабақтастық, халықаралық құқық, адам құқығы, «Әділетті Қазақстан».

Е. Абайдельдинов

Евразийский национальный университет им. Л.Н. Гумилева, Астана, Казахстан

Конституционный Суд Республики Казахстан: преемственность и новаторство

Аннотация. В статье рассматриваются некоторые решения Конституционного Совета Республики Казахстан по ряду вопросов конституционного и международного права. Эти правовые позиции, в качестве преемственности, в соответствии с пунктом 1 статьи 66 КЗРК «О Конституционном Суде Республики Казахстан», могут составить основу для предстоящей деятельности воссозданного Конституционного Суда Республики Казахстан. В работе особо подчеркнуто, что конституционность в стране будут обеспечивать не только Конституционный суд, но и все ветви единой государственной власти, каждый государственный орган, каждый государственный служащий на всей территории страны. Обращено внимание на понятие «презумпция конституционности» актов государственных органов: законов; решений судебных и исполнительных органов.

Ключевые слова: Конституционный Совет, Конституционный Суд, преемственность, международное право, права человека, «Справедливый Казахстан».

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Information about author:

Abaidedinov Y.M. - Doctor of Juridical Science, Professor of the Department of International Law, L.N. Gumilyov Eurasian National University, 2 Satpaev str., Astana, Kazakhstan.

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