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The legal nature of the regulatory decisions of the Supreme court of the Republic of Kazakhstan

Abstract. *The present article is based on the study of the nature of the regulatory resolutions of the Supreme Court of the Republic of Kazakhstan on the legal platform, as well as in determining the place of normative decisions of the Supreme Court in the public consciousness at the present time and the contribution to the establishment of legality, the place in the categories of legal acts. The analysis of the contribution to the Judicial system and Common Law formation in the sequence of application of legality and legal standards are given, the results are criticized. In the legal field, the definition of the meaning of normative decisions of the Supreme Court and its constant practical application.*

This article seeks to assess the legal status, functions and consequences of normative decisions by Kazakhstan's Supreme Court on legislation and law enforcement in Kazakhstan. Specifically, its study seeks to explore their specificities within Kazakhstan's legal system as well as with relation to legislative bodies.

This work has significant theoretical and practical importance, contributing to an enhanced understanding of legal regulation mechanisms in Kazakhstan as well as exploring how judicial practice influences legal norm formation. The focus of the present research lies on an examination of legislation, legal normative acts and judicial practice.

Keywords: *regulatory resolutions of the Supreme Court, the nature of regulatory resolutions, legal acts categories, regulatory resolutions concept.*

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Introduction

Modern jurisprudence places great significance on understanding the legal nature of normative decisions of Kazakhstan's Supreme Court as part of an overall legal mechanism. Yet despite considerable interest in its function and role within it, research on normative Supreme Court decisions remains inadequately done; even with this significant interest surrounding law enforcement practice and system development overall. As normative decisions by this Supreme Court can significantly impact law enforcement practice as well as overall development of its system; without comprehensive analysis this aspect creates gaps in scientific comprehension regarding judicial involvement within Kazakhstan's legal mechanism and this aspect remains understudied and under-analyzed scientific understanding resulting in incomplete scientific

understanding and scientific comprehension regarding its function within legal mechanism in Kazakhstan's legal mechanism.

This research investigates normative decisions issued by the Supreme Court of Kazakhstan and their legal implications, status, functions and impact upon legislation and law enforcement. This article's goal is to offer an in-depth examination of the legal nature and impact of Supreme Court normative decisions on Kazakhstan's legal system. To reach our objective, the following tasks have been set in motion: research into theoretical foundations; investigation of judicial practice; comparative legal analysis with that of other countries. Methodological approaches in this research study involve an examination of normative-legal acts, judicial practice and application of comparative legal method. Our hypothesis suggests that normative decisions of Kazakhstan's Supreme Court play an integral part of legal regulation within Kazakhstan's system of legal regulations.

This study makes an essential contribution to understanding Kazakhstan's legal regulatory mechanisms by highlighting the Supreme Court's role in shaping law enforcement practice and developing the legal system. As such, its results could prove helpful both for improving legislation as well as increasing efficiency within Kazakhstan's justice system.

Research methodology

This study relies upon an examination of various materials, such as normative decisions of Kazakhstan's Supreme Court, legislative acts governing the activities and role of Kazakhstan's Supreme Court are on record, official comments and explanations related to normative acts, academic papers and articles analysing Kazakhstan's legal system and decisions of court officials as well as those made elsewhere are also included here.

At various points during my research I employed various methodologies including normative-legal analysis, analytical method, comparative-legal and historical approaches. Normative-legal analysis is used to study legislation and normative acts regulating the activities of the Supreme Court. Analytical methods are utilized in studying normative decisions made by this court as well as their structure, content, and legal implications.

Comparative-legal analysis allows us to examine how the Supreme Court of Kazakhstan compares to other higher judicial bodies around the world and identify both unique features and common trends in practice. The historical method is applied in order to study the evolution and impact of normative decisions from Kazakhstan's Supreme Court over time, on its legal system and development as a country.

This study begins by collecting and systematising normative decisions of Kazakhstan's Supreme Court as well as any pertinent legislative acts, followed by an analytical review to identify their key characteristics and features, comparative review with court decisions from other countries to identify how Kazakhstan court decisions fit within world practice, and using data obtained on these normative decisions from the Supreme Court to formulate conclusions regarding their legal nature and significance for Kazak legal system. This study stands out by taking an in-depth, multidimensional look at the legal nature of Supreme Court normative decisions, taking into account historical development, current legislation and international practices - providing for a unique multidimensional approach that fosters deeper comprehension of this complex topic.

Discussion and results

A normative ruling of the Supreme Court is a normative ruling which, having examined in detail the court cases and documents which have come before it, gives explanations on the substance of matters relating to the concepts envisaged by the rule of law to which, as a result, the attention recognised as necessary for the observance of legality must be drawn.

One of the well-known concepts in accordance with paragraph 1 of Article 4 of the Constitution of the Republic of Kazakhstan among the current norms of law of the Republic of Kazakhstan are recognised the Constitution, laws corresponding to it, normative legal acts,

international treaties and other obligations, as well as norms established by normative rulings of the republican Constitutional Court and the Supreme Court [1].

On the official interpretation of the concept and provisions of normative resolutions of the Supreme Court, concerning paragraph 1 of Article 4, paragraph 1 of Article 14, subparagraph 3) of paragraph 3 of Article 77, paragraph 1 of Article 79 and paragraph 1 of Article 83 of the Constitution is defined by the resolution of the Constitutional Council of the Republic of Kazakhstan dated 6 March 1997 № 3: the norms of law adopted by the authorised body in accordance with the procedure established by normative legal acts are considered as valid law in the Republic of Kazakhstan [2].

Under Article 81 of the Constitution, the Supreme Court is the organ of the Supreme Court with respect to civil, criminal cases and other cases under the jurisdiction of local and other courts, considers, in cases provided for by law, court cases subject to its jurisdiction, and gives explanations relating to matters of judicial practice.

On the legal platform, the Constitution affirms the fundamental provisions of special legal norms and concretises them.

The Constitutional Law of the Republic of Kazakhstan “On Amendments and Additions to Certain Constitutional Laws of the Republic of Kazakhstan” dated 15 June 2017, Article 17, paragraph 1 of the Constitutional Law of the Republic of Kazakhstan dated 25 December 2000 “On the Judicial System and the Status of Judges of the Republic of Kazakhstan”- among the authorised superior courts is the Supreme Court, which examines the rulings of criminal, civil and other judicial bodies, is recognised as the highest judicial body and performs the duties of a court of cassation with respect to them, as well as commenting on the judicial practice by adopting [3].

Articles 4 and 81 of the Constitution give the powers of the Supreme Court to clarify the norms of law by adopting normative resolutions, are fixed, enshrined by the amendments and additions adopted in 2017. The possibility of adopting new normative resolutions gave a real opportunity to realise the powers established by the Constitution.

The Law of the Republic of Kazakhstan on Legal Acts recognises rules of general or temporary behaviour, applied individually by certain groups of persons, intended for permanent application in a number of social relations subject to regulation [4].

Regulatory legal acts share all the specified rules, the action of regulatory legal acts in relation to persons of uncertain environment is divided into adoption by authorised bodies, universal general and ordinal.

Thus, it is assumed that normative rulings of the Supreme Court refer to norms of law outside the range of norms of law. Performs the functions of a legal act, law, normative legal acts on normative acts.

Legal nature of normative legal acts of the Supreme Court has generated theoretical and practical issues of legal sciences among legislative acts of the Republic of Kazakhstan. For this reason, along with the approved normative legal act, the norms of law implemented by the Constitution of the Republic of Kazakhstan, in the legislation can be traced the norms of other legal sciences and their features. As a result, we see that the Constitution and the law “On Legal Acts” comment on the judicial practice of the norms of the law of the Supreme Court, the normative rulings of which contain issues of judicial practice. It can be seen that the established norms, normative legal acts in practice diverge from the explanations set out in the law.

The said set of norms leads to a number of questions concerning the nature of norms of law and associated with frequent disputes, for this reason we turn to science and practice in order to define it.

The Constitutional Council by its normative rulings seeks to form the concept of “normative rulings of the Supreme Court”, which can be traced in the following text: Part 1 of Article 4 of the Constitution of the RK considers as a normative act the issues of application by the Supreme Court of the norms of law for courts and rulings forming provisions providing for the court order of a particular object. Such normative decrees are mandatory for all republican courts, contain

only the norms of law concerning the issues of court practice, the norms of the Constitution of the Republic of Kazakhstan [2].

Among Kazakh scholars G. Sapargaliev and G. Suleimenov explain that normative rulings of the Supreme Court are not included in the number of normative legal acts Article 81 of the Constitution of the Republic of Kazakhstan the Supreme Court comments only on judicial practice, Article 4 of the Law of the Republic of Kazakhstan "On Legal Acts" does not define the place in the hierarchy of normative legal acts.

Bakishev contrasts the high framework of thought and expresses his point of view as follows: Article 81 of the Constitution defines the scope of activity of the Supreme Court, defines the nature and behaviour of law as a normative decree, and as norms of law [5].

Thus, summarising the judge's thought, the purpose of issuing a normative decree, forming in judicial practice the implementation by the Supreme Court of the norms of law, is limited to clarification.

As a characteristic of law enforcement actions, there are four forms enshrined in the theory of law, which possess the form-forming properties of a rule of law, namely: preservation, execution, application and implementation. Preservation includes prohibitions. The basis of this form includes warning against the realisation of certain prohibited actions. Execution involves active fulfilment of mandatory actions. Enforcement, known as enforcement, can be carried out by a person, actively or slowly, as he or she wishes. Complex enforcement, realising the norms of law in a special place, is distinguished by simultaneous diversity [6].

According to ex Supreme Court Judge R. Yurchenko, the following conclusions can be drawn: normative resolutions adopted by the Supreme Court are recognised as "a specific approach to the implementation of law", "a branch body implementing the rule of law", forming a general understanding, application and differentiation of the norms of law. At the same time, normative resolutions of the Supreme Court clarify the issues of procedural norms in order to disclose the understanding of the norms, requirements of the Criminal Procedure Law of the Republic of Kazakhstan due to the absence of relevant law norms[5].

Law enforcement actors not only carry out law enforcement in ordinary life, but also carry out compliance with the norms and requirements of law. Normative rulings on behaviour recognise behaviour in various ways: permissive, prohibitive and prescriptive. Prescriptive, requiring the subjects of law to take active actions in normative decrees, provides for the procedure of fulfilment of norms of law by the normative decree. Prohibitory regulations provide for compliance with the requirements of the rules of law. This means that normative decrees are developed permissive in nature, recognised as enforceable. As a result, the normative rulings of the Supreme Court provide an exhaustive commentary on the ways of realisation of law, provide for compliance, enforcement, use of the norms of law and their comprehensive use.

In addition, by normative rulings of the Supreme Court not all rulings can serve as a basis for the implementation of the right, the law provides for a special order of behaviour. This statement is considered properly differentiated where rules of behaviour are formed. This nodal thought is held to be correct. The Supreme Court session examines the jurisprudence in 2020 pandemic, only during the state of emergency among the regulatory orders related to the state of emergency approved during the state of emergency comment #1 during the state of emergency.

Domestic legislation does not provide clear explanations on "normative rulings of the Supreme Court" to form its colouring one has to resort to scientific and practical concepts.

Judge of the Supreme Court N. Mamanov Explanations of legal norms in the rulings of the Supreme Court are similar in nature to normative legal acts, since their formation is mainly constructive, adequately justified by the norm of law. But nevertheless, such interpretations cannot serve as a basis for the creation of a new legal norm [8].

According to A. Kotov, a member of the Constitutional Council, normative regulations have not only law-explanatory characteristic, but also creative and law-executing functions[10].

M. Suleimenov believes that any explanation given by the Supreme Court is a normative legal act, as a new rule of law forms a common rule of behaviour for all [9].

The scholar S. Udartsev noted that the normative regulations of the Supreme Court assess the degree of legal explanations in its composition at the highest level. In some cases, normative legal acts adopted by the Supreme Court are based on the Constitution, which, in turn, has priority for judges over other legislative acts and norms of the Constitution [11].

The practice of judges together with T. Mukhamedsupiev is fixed by the explanations of the Supreme Court as a result of the activity of the judicial system. As a result, normative rulings determine the rules of behaviour, the order of consideration on the merits of the same cases [12].

E. Abdrasulov, a scientist known to all, noted that normative rulings of the Supreme Court, on the one hand, can be changed or cancelled, since they are subject to the law, limit, expand its understanding, increase the scope of a legal norm or equate to the adoption of a new legal norm, since a new interpretation of a legal norm is carried out in a new logical order [13].

Ж. Baishev, normative rulings of the Supreme Court have a special specificity of a legal act, the composition of which is brought only full, detailed or classified consideration of the concepts of the essence of the basic norm [7].

The foregoing suggests that the opinions of Kazakh scientists and practitioners are divided into two parts. They argue that the next group, specifying that the normative resolutions of the Supreme Court by their legal nature is an explanatory act, is its normative legal act.

As a result, the following conclusion can be made that the normative legal acts of the Supreme Court have two legal nature, on the one hand, commenting on the norm of law, and on the other hand, the normative legal act.

Thus, the normative legal acts of the Supreme Court, which itself laid the foundation of normative legal acts, but emphasise the following features.

Firstly, it ensures the implementation of legal acts containing normative acts of state bodies within the framework of the law. provides for the enforcement of the actually adopted legislative act. And normative rulings are adopted as a result of the implementation of existing norms of the law. The adopted normative decree examines the results of the discussion of judicial practice and the rule of law established during the judicial process in the general judicial practice. But the practice shows that the legislator, although there is some purpose, can not fully and conflictingly determine the legal issues and find a complete solution. The rule of law is the rule of legal process.

The necessary specificity of normative regulations, unlike other laws, plays a special role in interpreting the nature of law as legal norms, is conditioned by the final result of the operational meeting system irarchy of legal acts its significance, the degree of legality, authorised by the adopted body in accordance with the current lawful act.

The normative legal acts of the Supreme Court are not determined at the stage, which is due to the nature, as the gaps in practice are controlled in legal scientific writings. It is this fact that causes distrust of normative legal acts of the Supreme Court of Suleimenov and G. Saparshaliev.

In addition, Article 10 of the Law "On Legal Acts" establishes the stage of normative legal acts according to their legal force, part 5 the following acts are beyond the stage of normative acts established by this article, which are:

- Acts adopted by the Chairman of the Security Council of the Republic of Kazakhstan;
- Normative resolutions and normative legal acts of the Constitutional Court and the Supreme Court of the Republic of Kazakhstan-established.

The scholar J. Bakishev noted that normative rulings of the Supreme Court in this regard are no less than the Decree of the President or the Government Decree are outside the stages of legal acts only [7].

The mentioned Article 10 establishes that normative resolutions of the Constitutional Council of the Republic of Kazakhstan have equal force with the legal force of the law based on the Constitution.

The possibility for the Constitutional Council to make public comments on the Constitution, decisions adopted by the Constitutional Council have equal legal force with the legal force of the interpretation that formed the basis of the decision [2].

While acts adopted by all bodies have equal legal force to the legal stage of legal acts, the legal force of normative resolutions of the Supreme Court can be equated to the stage at which the legislative norm that forms the basis of this resolution has established the legal force of legal norms. On this, R. Yurchenko distinguishes the concept of legal force of the resolutions of the Supreme Court and the Constitutional Council from the stage of legal norms, the legal force of which is established by Part 5 of Article 10.

Thus, normative legal acts are equated with the rulings of the Constitutional Council, which have equal legal force to a certain degree and level, but normative rulings stipulate that the rule of law underlying the various legal steps has equal legal force with the step. This is a special aspect of the Supreme Court rulings.

We may consider the normative decrees of the Constitutional Council which have similar legal force. The normative decrees with legal force enshrined by law according to scientific and practical grounds, according to the stage of the norm on which the legal force is based.

The third difference is that the normative ordinance is valid only in conjunction with the law on which it was based. This normative ordinance has no legal force outside and without the legal norm.

Fourthly, normative ordinances differ in their system of formative law. The result of lawmaking are three elements of a normative act - hypothesis, disposition and sanction. But the specificity of the construction of normative decrees strikes its specificity next to the construction of other legal acts. Normative decrees substantiate the norm of law, establishing it on the basis of which examples and ways of their admission, prohibition and prescription act as fundamental special elements. Such a structure is not found in all norms of law. But despite the special structure, the obvious establishment of frozen concepts is not controlled, and as a result of deep study of Tis from the normative rulings of the Supreme Court, it is possible to see the constituent features of the norms of law: disposition, hypothesis, sanction.

In conclusion, there are special conditions for the preparation, approval and entry into legal force of normative resolutions of the Supreme Court.

Observance of the procedure of preparation, adoption of legislative acts of the Republic of Kazakhstan by the Law "On Legal Acts" does not apply to the procedure of adoption of normative resolutions of the Supreme Court and the Constitutional Council of the Republic of Kazakhstan.

The order of formation, coordination and adoption of normative resolutions of the Supreme Court shall be carried out in a special order adopted by the Supreme Court of the Republic of Kazakhstan.

Furthermore, the normative rulings of the Supreme Court are not subject to the legal force of legal order requirements on the order of legal entry into force after the adoption of general legal norms. The adopted regulations are not subject to anyone's consent. Normative legal acts of the Supreme Court come into force from the date of adoption. their registration does not require fulfilment of the same requirements as other normative legal acts.

Normative legal acts come into force 10 calendar days after the date of their first publication, they are enforced only if the legislative act itself does not establish a special procedure and time. And the special nature of the acts adopted by the Supreme Court is justified by the fact that the exercise of this function by it is established by the Constitution.

Conclusion

Normative resolutions of the Supreme Court are considered among special normative legal acts. Normative rulings of the Supreme Court occupy a special place in the sphere of legal acts, different from other types of legal acts. Normative rulings provide for the formation of uniformity among the courts of the ways of application of the rules of law, provide a general explanation. On the other hand, studies the essence, the concept of the norm of law, on which it was based. The peculiarity of the order of study is that the normative ruling establishes the norm itself, on which

the structure, examples are simultaneously based in order to disclose the understanding of the norm and separately from the example by admission, restriction and prescription. No norms of law does not contradict the fundamentals, does not contradict the fundamentals of the theory of law. Defines the concept and purpose of normative legal acts and provides comprehensive explanations.

Normative rulings of the Supreme Court go beyond the categories of legal force of legal acts. The legal force of the normative legal acts laid on its basis becomes valid.

At present, despite the validity of the legal order, the function of interpreting the norms of law established by the Constitution is fully realised.

On the basis of the information studied above during the 30-year sovereignty of the Republic of Kazakhstan a great contribution to the formation of legal norms, the formation of their uniform practice has made normative decrees of the highest instance as the Institute of Law. Outside the categories of legal norms in its special formation and essential legal acts, it occupies a special place in the legal consciousness of law enforcement agencies and general state residents.

In recent years, we have not seen the judicial system adopting decisions contrary to the above normative rulings, taking into account their rules of law. On the contrary, we see that the practice of the judicial system is centralised.

The normative rulings of the Supreme Court are highly valued in the legislative, executive and judicial authorities. In judicial practice, the normative decrees of the Supreme Court have become an indispensable means of fighting to form a common understanding and uniform practice, with immediate identification of various activities.

The notion of normative resolutions of the Supreme Court is firmly established in the public legal consciousness.

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Қазақстан Республикасының Жоғары соттың нормативтік қаулыларының құқықтық табиғаты

Андатпа. Құқықтық алаңдағы Қазақстан Республикасының Жоғарғы Сотының нормативтік қаулыларының табиғатын зерделеу аталған мақаланың негізіне алынды. Қазіргі таңа қоғамдық санада Жоғарғы Соттың нормативтік қаулыларының алатын орны мен заңдылықтың қалыптасуына қосатын үлесін, құқықтық актілердің санаттарынан алатын орнын айқындау. Сот жүйесі мен жалпы құқықтың қалыптасуына қосатын заңдылықтың, құқық нормаларының қолданылуының бірізділігінде үлесін талдап нәтижелері сынға алынады. Тұрақты тұрғыда Жоғарғы Соттың нормативтік қаулыларының практикалық қолданыста құқықтық алаңдағы маңызын айқындау.

Осы баптың мақсаты Қазақстандағы заңнама мен құқық қолдану үшін Қазақстан Республикасы Жоғарғы Сотының нормативтік шешімдерінің құқықтық мәртебесін, функциялары мен салдарын бағалау болып табылады. Атап айтқанда, зерттеу Қазақстанның құқықтық жүйесі шеңберінде, сондай-ақ заң шығарушы органдармен өзара байланыста олардың ерекшеліктерін зерделеуге бағытталған.

Бұл жұмыс Қазақстандағы құқықтық реттеу тетіктерін тереңірек түсінуге, сондай-ақ сот практикасының құқықтық норма шығармашылығына қалай әсер ететінін зерделеуге ықпал ете отырып, маңызды теориялық және практикалық мәнге ие. Осы зерттеудің негізгі бағыты заңнаманы, нормативтік құқықтық актілерді және сот практикасын зерделеуге бағытталған.

Түйін сөздер: Жоғарғы Соттың нормативтік қаулылары, Нормативтік қаулылардың табиғаты, құқықтық актілердің санаттары, нормативтік қаулы түсінігі.

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Правовая природа нормативных постановлений Верховного Суда Республики Казахстан

Аннотация. Настоящая статья основана на исследовании характера нормативных постановлений Верховного Суда Республики Казахстан на правовой платформе, а также на определении места нормативных постановлений Верховного Суда в общественном сознании в настоящее время и вклада в становление законности, места в категориях правовых актов. Дается анализ вклада в формирование судебной системы и общего права в последовательности применения законности и правовых норм, результаты подвергаются критике. В правовом поле дается определение значения нормативных решений Верховного Суда и его постоянного практического применения.

Целью данной статьи является оценка правового статуса, функций и последствий нормативных решений Верховного Суда Республики Казахстан для законодательства и правоприменения в Казахстане. В частности, исследование направлено на изучение их специфики в рамках правовой системы Казахстана, а также во взаимосвязи с законодательными органами.

Данная работа имеет важное теоретическое и практическое значение, способствуя более глубокому пониманию механизмов правового регулирования в Казахстане, а также изучению того, как судебная практика влияет на правовое нормотворчество. Основное внимание в настоящем исследовании уделено изучению законодательства, нормативных правовых актов и судебной практики.

Ключевые слова: нормативные постановления Верховного Суда, природа нормативных постановлений, категории правовых актов, понятие нормативных постановлений.

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