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The constitutional court as a foundation of legal defense in Kazakhstan

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Abstract: The year 2022 is becoming a landmark year for Kazakhstan, radically transforming the legal system and making fundamental changes. Political events that took place in the republic itself prompted President K. Tokayev to change the course of political reforms. In 2023, the Constitutional Court was revived in the country.

The Constitutional Court is a necessity inspired by modern realities. The current Constitutional Court is a relatively "young" institution, maintaining continuity, and is based on the experience of other countries and previous constitutional institutions of the country.

The article analyzes all constitutional institutions that have functioned or are operating in the country. The historical prerequisites for the creation of these institutions, their features, and specifics. The role of the Constitutional Court is defined and analyzed its activities. In addition, indicated the positive outcomes of the Constitutional Court's activities.

The activities of the Constitutional Court aimed, first, at eliminating gaps and ensuring effective protection of the Constitution. The new model of constitutional review assumes the supremacy of the Constitution. This paper analyzes judicial practice and its role in solving current problems of the socio-legal development of the country. Presented the aspects of the importance of deciding on the revival of the constitutional court.

Keywords: Constitution, Constitutional Court, state power, rule of law, constitutionalism, human rights.

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Introduction

Since the Republic of Kazakhstan gained independence in 1991, there has been an urgent need to create an independent legal system for the country. The Constitutional Court became such an institution.

Time has made its own adjustments to the legal system of our country. More than 30 years ago, the country's independence was adopted, and less than 30 years ago, the Constitution was adopted.

Figure 1 shows the periods of action and mechanisms that determine democratic development, protection of citizens' rights, and the stability of the state system.

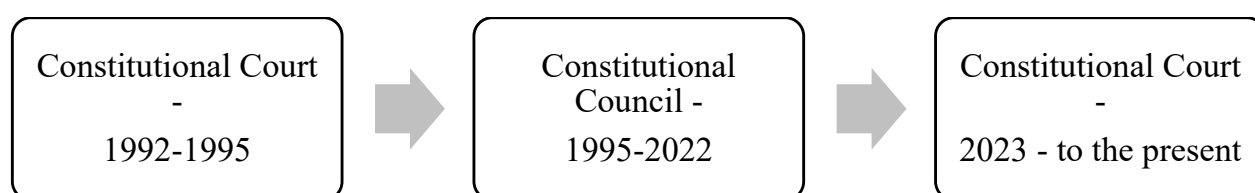


Figure 1. Constitutional institutions of the country

In 1992, the Government made a decision to create a Constitutional Court in the country, which operated in the country until 1995. Despite its short-term operation laid the foundations of future institutions of constitutional control.

From 1995 to 2022, the Constitutional Council operated in the country. The main activity of the Constitutional Council was to verify the constitutionality of bills. The Constitutional Council was a "softer" form of constitutional control.

The beginning of 2022 was complicated for the country. We have overcome the critical period in the political arena. From the same period, the President of the country decided to carry out constitutional reform. The Constitutional Council was abolished, and the Constitutional Court was restored.

It should be noted that the Constitutional Court is an independent legal institution, regulated by the law "On the Constitutional Court of the Republic of Kazakhstan" and the Constitution [1]. Its decisions apply to all state bodies, organizations, and citizens.

Materials and methods

When writing the article, the author used general scientific, specific scientific, and special research methods. These methods defined the role of the Constitutional Court, conducted a historical analysis of the transition of constitutional control, and a comparative analysis of the advantages of the Constitutional Court, etc. The article also used the comparative legal method to determine the differences and similarities of various forms of constitutional control.

Based on scientific works in the field of constitutional law, state building and management, the socio-legal, political, and national characteristics of the state are studied. The specificity of solving these problems required an appeal to the theory and practice of the mechanism for implementing the constitutional rights of citizens, society and the state.

Discussion

The Constitutional Court was revived by a nationwide republican referendum held on June 5, 2022. The prerequisites for holding the referendum were the tragic events of early January 2022, the so-called "Kantar". The referendum was held with the aim of redistributing powers between various government bodies to improve the balance and increase responsibility. The provision on the establishment of the Constitutional Court is highlighted in a separate block of amendments, "Strengthening the mechanism for protecting citizens' rights". More than half of voters supported this initiative, namely 77.18% [2].

From the first days of the functioning of the new branch of government, it aroused particular interest not only among lawyers, but also among political scientists, sociologists, and scholars of related disciplines.

The first Chairman of the Constitutional Court, which operated in 1993-1995, academician of the National Academy of Sciences of the Republic of Kazakhstan, M.T. Baimakhanov [3], also paid attention to constitutional reforms. His works are devoted to the issues of the activities of the Constitutional Council, as well as various concepts and the essence of constitutionalism in general and in individual aspects. Zh.N. Baishev [4] dedicated a monograph to the functioning of the Constitutional Court. All these works trace the importance of adopting a new constitutional body - the Constitutional Court - an independent body endowed with judicial power, while being independent in decision-making from other state bodies. The historical aspects of the creation of the Constitutional Court, its transformation into the Constitutional Council and its subsequent revival are also taken into account [5].

The first Constitutional Court was established six months before the adoption of the 1993 Constitution. This event meant that even then, the legislator determined the status of the Constitutional Court [5].

The establishment and functioning of the Constitutional Court are important evidence of the modernization and redistribution of powers between government bodies, increasing the responsibility of the branches of power in the process of further democratization. A comparative analysis (Figure 3) showed that the Constitutional Court is a key form of the constitutionality system, depending on many factors, such as its independence, the professionalism of judges, accessibility to citizens, etc.

The Constitutional Court has extensive powers and actively interacts with all branches of government (Figure 2).

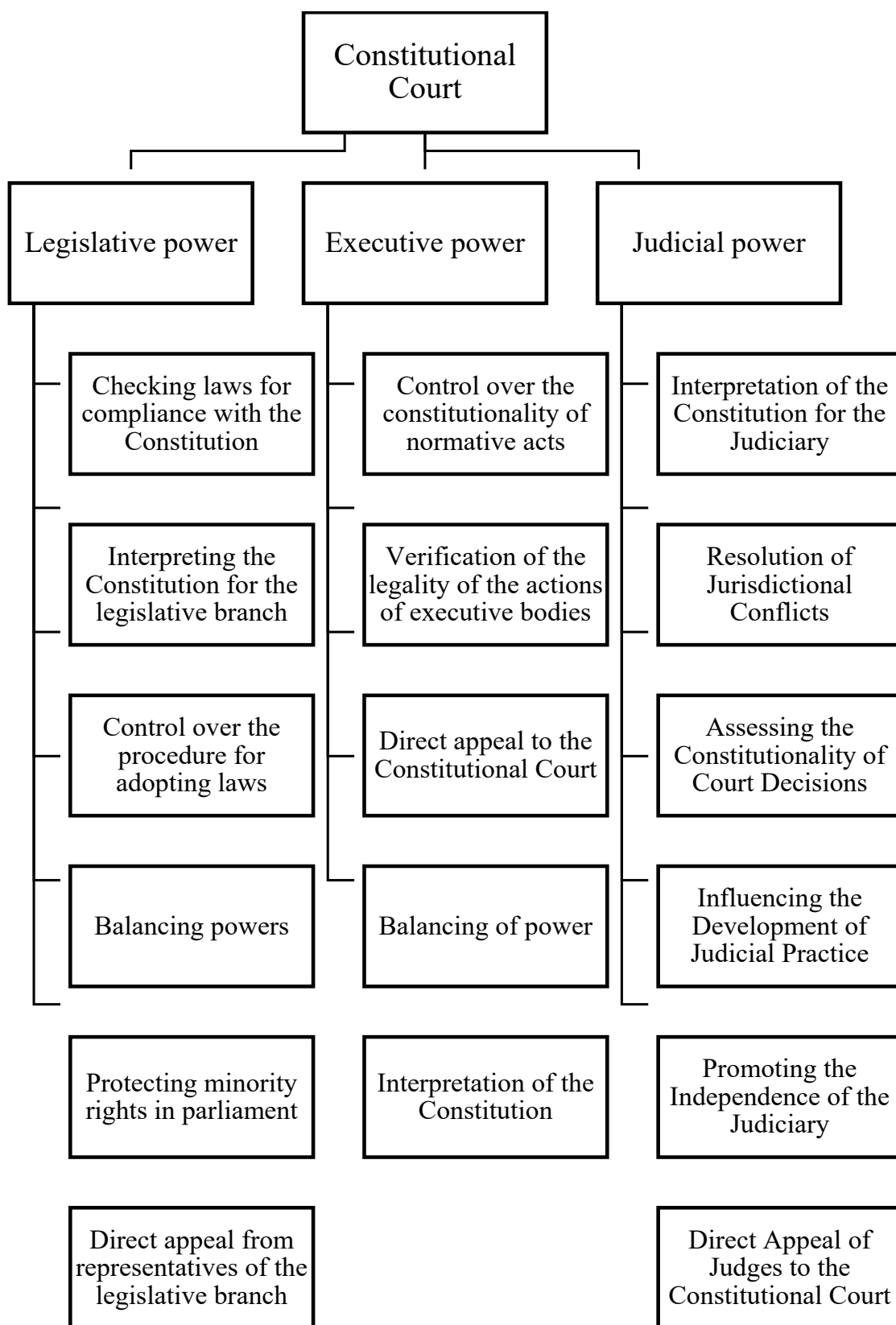


Figure 2. Powers of the Constitutional Court

Results

The activities of the Constitutional Court aimed, first, at eliminating gaps and ensuring effective protection of the Constitution. The new model of constitutional review assumes the supremacy of the Constitution. This paper analyzes judicial practice and its role in solving current problems of the socio-legal development of the country. Aspects of the importance of making a decision on the revival of the constitutional court are presented.

Constitutional Court (1992-1995)	Constitutional Council (1995- 2022)	Constitutional Court (since 2023)
<ul style="list-style-type: none"> •Independent judicial body •Broad powers •Limited number of judges with high qualifications •Limited number of judges with high qualifications •Mandatory decisions •Citizens can directly file complaints •Laid the foundations of constitutional justice in Kazakhstan. However, the activities of the Constitutional Court were complicated by a lack of institutional resources and experience. 	<ul style="list-style-type: none"> •Advisory body •Limited powers •Representatives of various government bodies and experts •Collegiality, subordination to legislation •Advisory •Accessibility limited for citizens •Limited influence 	<ul style="list-style-type: none"> •Independent judicial body •A wide range of powers •Professional judges with high qualifications •Judicial independence, impartiality •Are mandatory for all state bodies •Citizens can directly file complaints •Significant influence on the formation of the legal system

Figure 3. Specifics of constitutional institutions

Constitutional courts operate successfully in more than 70 countries around the world. In countries where constitutionality is delegated to other bodies, the legal system is ineffective. More detailed in Figure 4.

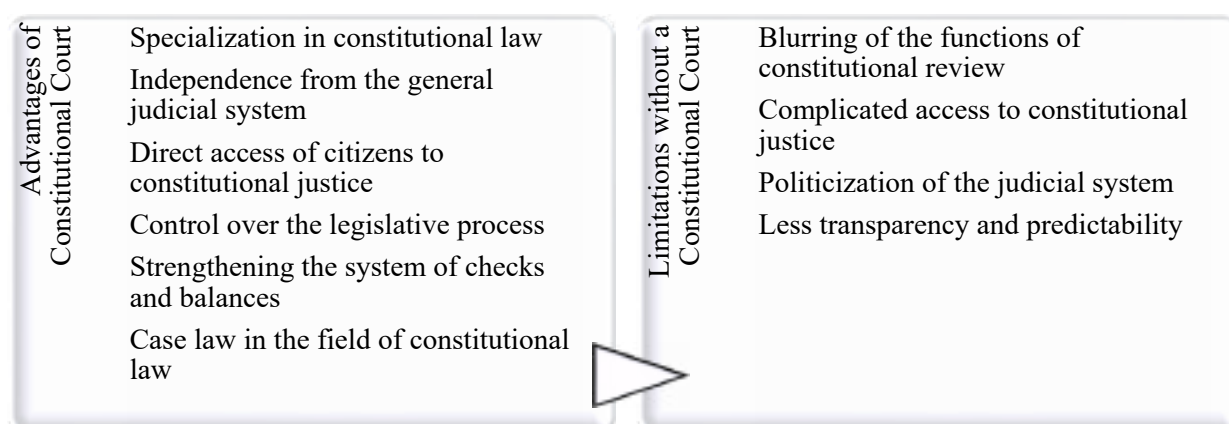


Figure 4. Comparative analysis: the presence and absence of the Constitutional Court

It is important that individuals can now directly file complaints with the Constitutional Court. At present, the Constitutional Court effectively recreated in a new capacity. The Court consists of 11 judges, appointed by the President of the country with the consent of the Senate. Unlike previous institutions, the current one has more powers that are extensive. All this strengthens the level of citizens' trust in the legal system.

Conclusion

The revival of the Constitutional Court has become a historically significant event for the Republic of Kazakhstan. The Constitutional Court is an independent institution; it plays a significant role in maintaining the supremacy of the Constitution and protecting the rights of citizens and performs many functions.

Functions	<u>Strengthen the protection of the rights and freedoms of citizens.</u>
	<u>Strengthen the supremacy of the Constitution.</u>
	<u>Stabilize the political system.</u>
	<u>Develop a legal culture.</u>
	<u>Improve legislation.</u>
	<u>Strengthen the international image of Kazakhstan.</u>
	<u>Flexibility and adaptation of the legal system.</u>

Figure 5. Functions of the Constitutional Court

Statistics on appeals to the Constitutional Court are extensive and accessible. As a result, the court issued 307 rulings, including 50 normative ones. The Constitutional Court has a positive effect on the legal basis of statehood, as shown in Figure 6.

Harmonization of legislation with the Constitution

- The Constitutional Court carefully analyzed the laws, identifying contradictions and suggesting ways to eliminate them. In particular, a comprehensive analysis of the Social Code and legislation on the return of illegally withdrawn assets was carried out.

Protection of citizens' rights and freedoms

- The Court considered many appeals from citizens, recognizing a number of legislative norms as unconstitutional and contributing to the removal of barriers to access to justice. Special attention was paid to the protection of the right to property, ensuring road safety and strengthening the status of the bar. The Court stressed the importance of the role of lawyers in protecting the rights of citizens, especially at the stage of execution of the sentence.

Clarification of law enforcement practice

- The Constitutional Court provided clarifications on controversial issues of legislation, contributing to the formation of a unified law enforcement practice.

Improvement of legislation

- The Court actively proposed legislative initiatives aimed at eliminating gaps in legislation and increasing its effectiveness.

Figure 6. Outcomes of the Constitutional Court's activities

In conclusion, it should be noted that:

1) The revival of the Constitutional Court is not just a return to the past, but a necessity dictated by modern realities. This step is due to the reforms of 2022.

2) The Constitutional Court primarily designed to strengthen the democratic and legal foundations of statehood, the protection of the rights and freedoms of citizens.

3) The Constitutional Court is necessary to verify the powers of other branches of government, ensuring that all actions remain within the framework of the Constitution.

It is major that in this context, the Court plays a pivotal role in interpreting the Constitution and resolving disputes between citizens and the state. The revival of the Constitutional Court is important for maintaining the rule of law and promoting the culture of constitutionalism.

The contribution of the authors:

D. Kalmaganbetova conducted a scientific study that meets all the criteria of scientific character, justified the concept of scientific research. In particular, formulated scientific ideas, research goals, and objectives to achieve them.

A. Yessentemirova collected literature on the research topic and analyzed it, summarized the data on the activities of the Constitutional Court, and summed up the results of the research.

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Конституциялық Сот Қазақстандағы құқықтық қорғаудың негізі ретінде

Андатпа: 2022 жыл Қазақстан Республикасы үшін құқықтық жүйені түбегейлі төңкерген айтулы жылға айналуға. Республиканың өзінде болып жатқан саяси оқиғалар Президент

Қ.Тоқаевты саяси реформалар бағытын өзгертуге итермеледі. 2023 жылы елімізде Конституциялық сот қайта жанданды.

Конституциялық сот – қазіргі заманғы шындықтан туындаған қажеттілік. Қазіргі Конституциялық Сот сабақтастықты сақтайтын және басқа елдердің тәжірибесіне және еліміздің бұрынғы конституциялық институттарына негізделген салыстырмалы түрде «жас» институт болып табылады.

Мақалада елімізде жұмыс істеген немесе жұмыс істеп тұрған барлық конституциялық институттар талданады. Бұл институттардың құрылуының тарихи алғы шарттары, олардың ерекшеліктері, ерекшеліктері және Конституциялық сот қызметінің артықшылықтары мен шектеріне салыстырмалы талдау. Конституциялық соттың рөлі айқындалып, оның қызметі талданды. Сонымен қатар, Конституциялық Сот қызметінің оң нәтижелері көрсетілген.

Конституциялық Соттың қызметі, ең алдымен, олқылықтарды жоюға және Конституцияның тиімді қорғалуын қамтамасыз етуге бағытталған. Конституциялық қадағалаудың жаңа моделі Конституцияның үстемдігін көздейді. Бұл жұмыста сот тәжірибесі мен оның елдің әлеуметтік-құқықтық дамуының өзекті мәселелерін шешудегі рөлі талданады.

Түйін сөздер: Конституция, Конституциялық сот, мемлекеттік билік, құқықтық мемлекет, адам құқықтары, конституционализм.

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Конституционный Суд как фундамент правовой защиты в Казахстане

Аннотация: 2022 год становится для Республики Казахстан знаковым, кардинально трансформируя правовую систему внося фундаментальные изменения. Политические события, произошедшие в самой республике, побудили Президента К. Токаева изменить курс политических реформ. В 2023 году в стране возрожден Конституционный суд.

Конституционный суд – необходимость, продиктованная современными реалиями. Действующий Конституционный суд – сравнительно «молодой» институт, сохраняющий преемственность и опирающийся на опыт других стран и предыдущих конституционных институтов страны.

В статье анализируются все конституционные институты, функционировавшие или действующие в стране. Указываются исторические предпосылки создания этих институтов, их особенности, специфика и сравнительный анализ преимуществ Конституционного суда и пределов отсутствия Конституционного суда. Была определена роль Конституционного суда и проанализирована его деятельность. Кроме того, указываются положительные результаты деятельности Конституционного суда.

Деятельность Конституционного суда направлена, прежде всего, на устранение пробелов и обеспечение эффективной защиты Конституции. Новая модель конституционного контроля предполагает верховенство Конституции. В статье анализируется судебная практика и ее роль в решении актуальных проблем социально-правового развития страны.

Ключевые слова: Конституция, Конституционный суд, государственная власть, правовое государство, права человека, конституционализм.

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