



**Конституциялық құқық. Әкімшілік құқық /Constitutional law.  
Administrative law/ Конституционное право. Административное право**

IRSTI 10.15.23

<https://doi.org/10.32523/2616-6844-2025-151-2-88-100>

Scientific article

**Constitutional justice as a principle of the rule of law**

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**Abstract:** The purpose of the article is to understand constitutional justice as necessary conditions and security forming principles in the Republic of Kazakhstan of the legal space, ensuring its rule of law and democratization of public relations through the mechanism of control over compliance with the provisions of the Constitution, which has proven its effectiveness in the world practice of the development of the constitutional process. The article examines the problems associated with understanding the substantive foundations of the principles of the rule of law; an analysis of the state of the process of using principles in the activities of the Constitutional Court of the Republic of Kazakhstan is carried out.

**Research methods.** The author relied on the methodology of constitutional and legal science, which is based on the principle of differential knowledge of constitutional processes in their relationship with the institutional support of constitutionalism in the process of working on the article. A method of cognition also used a systemic, logical method, as well as a method of systemic-structural analysis of normative legal acts, to disclose the problems raised in the article.

**Research results.** The rights of supremacy are a complex implementation of realities, a system of additional elements, in which the absence of at least one of them makes the functioning of the system impossible. Carrying out constitutional justice, the Constitutional Court of the Republic of Kazakhstan contributes to the preservation of constitutional legality, and the presence of constitutional justice should be considered one of the main directions of ensuring the supremacy in the country.

**Conclusions.** The mandatory implementation of constitutional justice in the Republic of Kazakhstan should be considered as the main principle of ensuring the supremacy of rights, taking office, in accordance with the fundamental significance of the Basic Law, consisting in its ability to ensure the development and functioning of national legislation based on constitutions, when this "compliance" itself is required in the Republic of Kazakhstan in the control by the constitutional justice bodies.

**Key words:** Constitution, constitutional justice, principle, supremacy of law, legality, equality, accessibility.

Received: 12.02.2025. Accepted: 12.06.2025. Available online: 30.06.2025.

## **Introduction**

Currently, issues covering the rights of supremacy are becoming especially relevant in the Republic of Kazakhstan in connection with the processes of state building and development of the state, which should lead to the emergence of a prosperous society based on a strong state. For achieving this goal, it is necessary to use all the material and creative resources of the Kazakh people, creating legal prerequisites for political reform, political liberalization, ensuring equal rights and opportunities for citizens of Kazakhstan [1].

The Constitution of the Republic of Kazakhstan, to determine the substantive foundations of the structure, adheres to the traditional set of constitutional formulations that characterize the directions of a civilized democratic, legal, secular state, in which, in the highest states, human life is limited, as well as his rights and freedoms (p. 1, ar. 1) [2].

The provision of the constitution, according to the provisions of the Republic of Kazakhstan, is a legal principle that becomes the starting formulation and principle of organizing political power and interaction, according to the provisions of the provisions, according to which the law itself, which is a fundamental value and a mechanism for ensuring the life of the state and the people, in its practical aspect, the Fundamentals are based on constitutional norms that provide for the highest degree of protection and implement direct legal impact on all processes occurring on the territory of the Republic, as well as on laws that do not contradict constitutional norms (p. 1, p. 2, ar.4). These constitutional provisions indicate that the principle of "supremacy of law" lies at the heart of national law enforcement and the development of the national legal system in Kazakhstan.

The importance of this basis in the development of Kazakhstan's statehood indicates that for the purpose of its practical implementation, the Republic is implementing the "Program for the Rule of Law in Kazakhstan (2020-2025)", which is aimed at developing society through the modernization of the modern system, increasing the efficiency of the state corps, increasing the independence and objectivity of case consideration [3], as well as the Action Plan in the field of human rights and the rule of law [4].

However, the application of the principle of the "rule of law", in terms of its provocation in the Republic of Kazakhstan, requires not only a program approach, but also theoretical understanding, as well as further expansion of its use due to the presence of obvious problems in this area [5].

First of all, this problem requires the development of a national constitutional justice system, which is the most important legal institution, the presence of which should be considered in the current fundamental state of ensuring the rights of the rule of law in Kazakhstan.

## **Research methodology**

The methodology used in the process of working on the article is based on the methodology of constitutional and legal science, based on the principle of dialectical cognition of constitutional processes in their relationship with the institutional support of constitutionalism. To disclose the problems raised in this article, the author used a systemic method of cognition, a logical method, as well as a method of systemic-structural analysis of normative legal acts. The materials for writing this article were the works of predecessors on the stated issues, as well as normative

legal acts; their analysis allows us to study the practical implementation of the constitutional principle of the rule of law, which is the basis of constitutional justice in Kazakhstan.

The materials of the study were scientific works in the field of legal theory and constitutional justice. In modern legal science, the rule of law is considered through its perception as a "fundamental value" [6], as well as through giving this principle an attributive meaning, which suggests that the rule of law is a sign of a democratic state, given that the subject of the rule of law is "the exercise of power and relations between the individual and the state" [7], a principle that forms the foundations of democracy, the principle of the rule of law, relating, among other things, to issues of the activities of government bodies, "a principle that is decisive for the constitutional order of the state, fundamental for the activity of constitutional justice" [8], "a set of interrelated principles that together form the core of the doctrine of constitutionalism and, therefore, is necessary for any democratic state" [9].

Thus, the given brief review of scientific approaches to defining the content of the foundations of the "rule of law" shows the classification of these definitions and its structural specificity, which is associated with the diversity of functions and tasks that are solved in the process of developing legal systems based on the principle of the "rule of law".

At the same time, our considering principle cannot exist in isolation from the principles of its provision, namely, in isolation from the principles, according to its rule of law to ensure the existence of bodies in state systems, whose powers include the practical implementation of these principles. In the modern system, justice bodies limit their power in ensuring the rule of law, and have constitutional justice bodies that ensure the status of rights as the highest basis for socio-political development [10].

I.Yu. Ostapovich points out that an objective assessment of the practice of implementing the principles of the "rule of law" in the legal realities of modern legal worldviews shows that the functioning of this fundamental basis of the cause of the system does not occur by itself, but only in connection with specific control bodies calling for verification of control over the preservation of the rule of law in a particular jurisdiction. Thus, the presence of constitutional control bodies is a security condition for the rights of supremacy in a democratic state [11].

The presence of constitutional control bodies "determines the legal procedure for the acquisition and implementation of the rights and obligations of all participants in legal relations for compliance with the constitution, and this is the essence of the "juridization" of social reality, striving for the dominance of law as a system for regulating the entire diversity of social relations" [11].

At the same time, it is also important to mention the position of A.A. Eleupova, according to which "the development of a democratic state in which the rule of law is recognized is not only the process of creating certain constitutional and legal provisions in which this principle is reflected, but also the practical activities of constitutional supervision bodies for the implementation and practical functioning of this principle" [8].

According to R.M. Myrzalimov, the idea of constitutional control in many countries has not worked to the full extent "due to the fact that the attitude to constitutional justice as one of the objects of political struggle, control over which ensures influence on political processes in the state, while ignoring the fact that in this way the role of constitutional control is limited only to the political sphere, and the principle of the "rule of law" itself becomes declarative and does not extend to other spheres of social relations in the state" [12].

It is also important to mention about the provision that the leading role of the principle of the rule of law is associated with the fact that it is thanks to the activities of constitutional justice bodies that the practical implementation of the concept of a legal state is achieved, which is based on the absolutization of legality [13].

Thus, we can conclude that the functioning of an independent system of constitutional justice is a necessary condition, as well as a principle of ensuring the rule of law in the territory of the Republic of Kazakhstan, and the study of the security role of constitutional justice is of scientific and practical interest in light of the innovations that characterize the activities of constitutional justice.

Thereby, *the purpose* of this article is to understand constitutional justice as a principle of ensuring the implementation of the rule of law in the Republic of Kazakhstan.

## Results and discussion

The modern approach to the organization of positive social relations in the state is based on the recognition of the fact that the main regulatory mechanism that ensures human rights, separation of powers, public order and political power is the law, which is an absolute authority and the most significant factor in social progress and economic development [3].

At the same time, if the first two foundations have been sufficiently studied in legal and political science literature, then the issues of the rule of law are not so widely disclosed and, in general, require additional specification.

According to T.A. Komarova, the rule of law is an interdependent process of development of the state and law, when the principle of legality, being formed and developing in the historical process, is elevated to the highest degree of state interest [14].

As it appears in this definition, there is a shift between the "rule of law" as a sectoral principle of national legislation and the "rule of law", which is a principle of a higher, constitutional level, determining, among other things, the rule of laws created and used in the practice of legal regulation [15]. In this regard, already in the middle of the twentieth century, there was an understanding that the rule of law reflects the semantic and ideological orientation and content of the legal system of the state, which is based on legal traditions and values that shape the legal consciousness of the nation [16].

According to [17], the rule of law is a principle that establishes the primacy of the law over political power. In our opinion, the last definition is very limited due to the fact that the boundaries of the use of the principle we are studying go beyond the boundaries of political interaction, since they concern, for example, the problems of equality of citizens before the law.

The documents of the European Union provide a broad interpretation of these principles, which reproduce absolute legality, i.e. prohibit any actions that do not comply with the rules of law, as well as the possibility of violating the violated right of justice, which ensures the observance of fundamental human rights, separation and equality of all citizens and authorities before the law [18].

At the same time, it should be noted that the Venice Commission believes that it is very difficult to give an unambiguous definition of the concept of "rule of law"; therefore, its interpretation can be based on the allocation of various elements that characterize the rule of law [19]. Among these elements, the Venice Electoral Commission contains these definitions, which provide for the systemic unity of the "rule of law" as a physical phenomenon and legal principles based on the activities of all subjects of legal interaction (Fig. 1).

Thus, the rule of law itself is a complex law of implementation, a system of cooperating elements, in which the absence of one of them makes the functioning of all systems impossible. In other words, for example, the absence of the right of openness indicates that a particular legal system cannot claim that the supremacy of law is observed in it.

In turn, M.K. Suleimenov determined that the supremacy of law is a legal doctrine according to which the highest law elevates the equality of all before the law, compliance with the legislative norms of the basic laws and the general focus of legislation on ensuring the protection of human dignity, freedom and rights [10]. Such a definition, as well as documents of international justice, allows us to say that the supremacy of law is a principle that finds its real embodiment in the activities of all subjects based on legal grounds in the decision-making process, regardless of the provisions of the hierarchy of state power.

In this regard, the activity of constitutional justice is aimed at ensuring the full functioning of rights, representing additional elements of the system that ensure its functioning. In this case, it can be assumed that the ensuring activity of the Constitutional Court in the field of compliance with the supremacy of rights includes, therefore, the maintenance of legislative control of regulation, which are strict conditions for ensuring this legal mechanism [20]. Thus, it seems appropriate to focus on the main aspects of the positive-legal (formal-legal) implementation of the supremacy of rights as the fundamental basis for the activities of the Constitutional Court of the Republic of Kazakhstan.

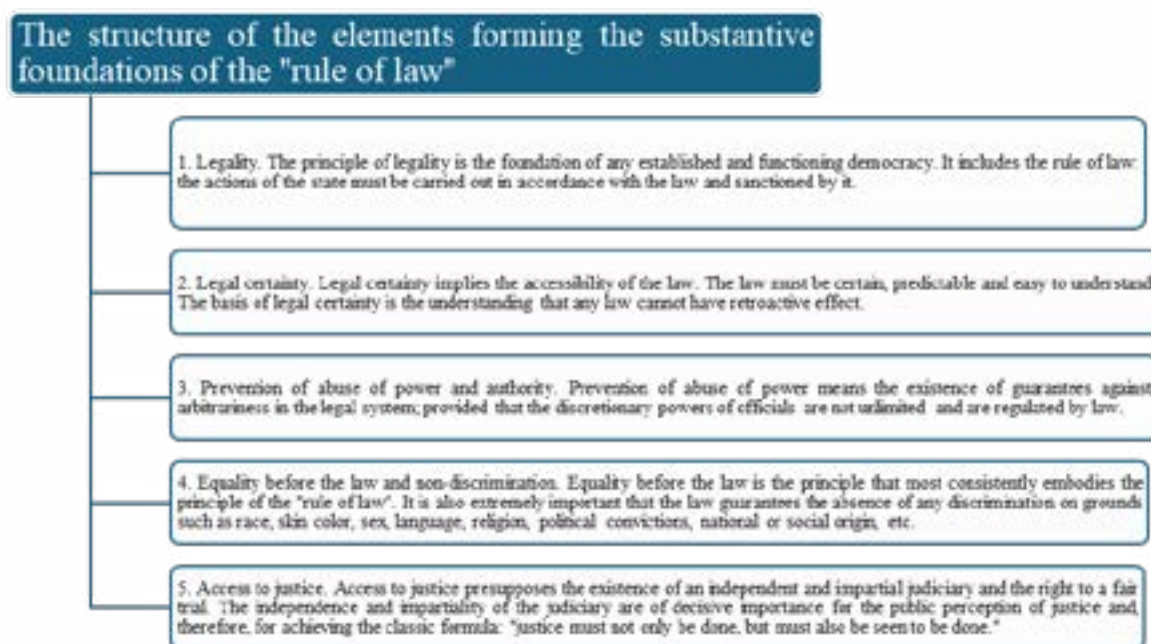


Figure 1 – The term "rule of law" in its structural and substantive aspect [19]

The first area of activity of the constitutional justice bodies is to ensure the supremacy of the Constitution of the Republic of Kazakhstan throughout the territory of the Republic of Kazakhstan (ar. 1 [21]), that is about the priority of constitutional and legal regulation in relation to other forms of legal regulation, which can be carried out based on by-laws, regulations, decisions of government bodies, various instructions, etc.

This function is implemented not only through the procedure for recognizing certain acts as unconstitutional (with the corresponding deprivation of their effect), but also by facilitating the bringing of all national legislation into line with the Constitution of the Republic of Kazakhstan, as well as by ensuring the obligation of everyone to comply with the Constitution and legislation of the Republic of Kazakhstan (Article 34 of the Constitution of the Republic of Kazakhstan [2]) with the help of the mechanism of constitutional proceedings (p. 1, ar. 29 [21]), which is carried out on the basis of the principle of the supremacy of the Constitution of the Republic of Kazakhstan (ar. 31 [21]).

This function is also implemented through the organizational and legal mechanisms for the protection of the Basic Law of the Republic of Kazakhstan. That is:

- the specifics of opening constitutional proceedings, in accordance with the established procedure, which is determined by the Constitution of the Republic of Kazakhstan, the Constitutional Law and the Rules of the Constitutional Court (p. 1, ar. 29 [21]);
- delineation of the spheres of constitutional proceedings (the Constitutional Court is authorized to make decisions on issues within its competence (p. 1, ar. 29 [21])) and other proceedings that ensure compliance with the law in the territory of the Republic of Kazakhstan;
- completeness of constitutional proceedings, taking into account the need for a full investigation of the circumstances of the appeal (ar. 32 [21]), as well as the equality of all participants in the proceedings (ar. 35 [21]);
- official explanation of the norms of the Constitution of the Republic of Kazakhstan (cl. 1 p. 3, ar. 23 [21]), recognition of the constitutionality or unconstitutionality of adopted legal acts (p. 2 ar. 57 [21]).

At the same time, the functioning of the mechanism of constitutional control aimed at ensuring the principle of the rule of law is ensured through control over other principles that determine the substantive foundations of the rule of law, including the principle of the supremacy of the Constitution (ar. 31); comprehensive, complete and objective investigation of the circumstances of the appeal (ar. 32), collegiality (ar. 33), publicity (ar. 34), equality of participants in constitutional proceedings (ar. 35); implementation of constitutional proceedings in two languages (ar. 36) [21].

The second direction of ensuring the principle of the rule of law by the Constitutional Court of the Republic of Kazakhstan is its participation in international legal cooperation with foreign constitutional justice bodies and, what is especially important, with various human rights organizations (ar. 21 [21]), which allows the Constitutional Court of the Republic to exercise constitutional control based on the study of the best world practices.

The third direction of ensuring the supremacy of law by the Constitutional Court of the Republic of Kazakhstan is its analytical, scientific and advisory activities carried out by a specially created body - the Scientific Advisory Council under the Constitutional Court (ar. 20 [21]), which prepares scientifically sound proposals and recommendations to ensure the supremacy of the Constitution and its direct effect on the territory of the Republic (cl. 1, p. 2 [21]).

By implementing these powers, the Constitutional Court of the Republic of Kazakhstan contributes to ensuring constitutional legality, and the existence of constitutional justice should be considered the most important fundamental provision of national law, which is aimed at truly ensuring the supremacy of law on the territory of the country. The fundamental nature of constitutional justice should be considered at present as the most important step of the

Republic of Kazakhstan towards achieving the rule of law and developing democracy, while constitutional justice itself should be considered as a stable system, ready to perceive the latest achievements of world constitutionalism, taking into account new possibilities of constitutional proceedings (for example, the electronic format of constitutional proceedings, art. 30 [21])

In this regard, it is relevant for further research to study the possibilities of increasing the effectiveness of constitutional justice in the Republic of Kazakhstan, taking into account the above-mentioned opportunities for its development [22].

## **Conclusions**

Thus, the conducted study allows us to generalize the obtained results:

1. Constitutional justice is an area of legal theory and practice that most fully reflects the principle of the rule of law, which underlies the formation of a legal state, the functioning of which is the content of constitutional justice, guaranteeing the rights and freedoms of man and citizen, equality of all before the law and the court. In a practical sense, the functioning of this principle is embodied in the fact that, when making a decision, the Constitutional Court of the Republic of Kazakhstan each time objectively demonstrates the same application of laws in relation to various authorities and citizens, as well as in the fact that the Constitutional Court ensures the legal equality of subjects of social relations who receive the right to the state to protect their legitimate interests and constitutional rights. In legislative acts regulating constitutional justice in the Republic of Kazakhstan, the principle of the rule of law is embodied, including through various areas of activity of the Constitutional Court, which becomes, in essence, the main guarantor of the practical implementation of this principle.

2. In the Republic of Kazakhstan, as well as in other democratic states, constitutional justice as the principle of the rule of law creates conditions for the development of constitutional justice, which is the most important regulator of social relations, ensuring the real embodiment of the principle of the rule of law, as well as facilitating the implementation of other constitutional provisions that determine the content of rule-making and law enforcement. At the same time, the supreme power of the Constitution and the supreme power of decisions taken within the framework of the functioning of constitutional justice determine the dualistic nature of this form of legal process, bearing in mind that, firstly, the Constitutional Court of the Republic of Kazakhstan guarantees legal order on the territory of the state; secondly, it ensures the primacy of the law over political power, which makes the Constitutional Court an absolutely unique body in the system of public administration. This unique status is expressed in the fact that, in fact, any decision of state authorities, regardless of its relevance in terms of ensuring management tasks in a specific socio-political situation, can be canceled by the Constitutional Court if this decision contradicts the provisions of the Constitution, violates the rights of citizens of Kazakhstan. Such an interpretation of the activities of constitutional justice bodies is a practical embodiment of the principle of the rule of law.

3. Speaking about the approval of the principle of the rule of law through the use of the mechanism of constitutional justice, it should also be noted that, despite its unique status, the activities of the Constitutional Court are not carried out arbitrarily and uncontrollably. This activity, as well as the activities of state authorities, are limited by the norms of the Constitution

and the law determining the powers of the Constitutional Court. Accordingly, the Constitutional Court is limited in the freedom of its activities, which guarantees its positive legal behavior and the impossibility of judicial arbitrariness. This conclusion allows us to say that ensuring constitutional order in the Republic of Kazakhstan requires special responsibility of persons involved in the constitutional legal process, their high professional qualifications, integrity and a high degree of morality. It is precisely the formation of a judicial corps capable of implementing constitutional justice that is, in our opinion, the modern problem of the development of national justice in the Republic.

4. Currently, the necessity of the existence and further development of constitutional justice in the Republic of Kazakhstan is beyond doubt, given the democratic and legal nature of the state, as well as taking into account the need for further development of the national legal system in order to meet the needs of the state and social development of the country.

5. Thus, the mandatory existence of constitutional justice should be considered as the main condition for the functioning of the principle of ensuring the rule of law, taking the position that the fundamental significance of the Basic Law consists in its ability to ensure the development and functioning of national legislation in accordance with and on the basis of the provisions of the Constitution, taking into account the democratic and legal nature of the state, as well as the need for further development of the national legal system to meet the needs of the state and social development of the country.

### **Contribution of the authors**

**Ongdashuly Y.** developed the conceptual framework of the research, formulated the objectives and tasks of the article, conducted the analysis of scholarly literature and legal sources, and prepared the introduction and conclusion sections.

**Baikenzheyev A.S.** provided the methodological justification, analyzed international practices and comparative aspects of constitutional justice in Central Asian countries, and contributed to writing the “Results and Discussion” section.

**Toksanova M.B.** prepared analytical materials on the practice of the Constitutional Court of the Republic of Kazakhstan, compiled the legal references, and participated in editing and finalizing the manuscript.

All authors have read and approved the final version of the manuscript.

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### **Конституциялық Сот әділдігі заң үстемдігінің принципі ретінде**

**Аңдатпа:** Мақаланың мақсаты Конституциялық сот төрелігін Конституциялық процесті дамытудың әлемдік практикасында өзінің тиімділігін дәлелдеген Конституция ережелерінің қолданылуын бақылау тетігін енгізу есебінен құқықтың үстемдігін және қоғамдық қатынастарды демократияландыруды қамтамасыз ететін Қазақстан Республикасында құқықтық кеңістікті қалыптастырудың қажетті шарты және қамтамасыз ету қағидаты ретінде түсіну болып табылады. Мақалада құқық үстемдігі принципінің мағыналы негіздерін түсінуге байланысты мәселелер қарастырылады; Қазақстан Республикасы Конституциялық сотының қызметінде принципті пайдалану процесінің жай-күйіне талдау жүргізілді. Зерттеу әдістері. Мақала бойынша жұмыс барысында автор конституциялық-құқықтық ғылымның әдіснамасына сүйенді, оның негізінде Конституциялық процестерді олардың конституционализмді институционалды қамтамасыз етумен өзара байланысында диалектикалық таным принципі жатыр. Мақалада көтерілген мәселелерді ашу үшін танымның жүйелік әдісі, логикалық әдіс, сондай-ақ нормативтік құқықтық актілерді жүйелік-құрылымдық талдау әдісі қолданылды. Зерттеу нәтижелері. Құқықтың үстемдігі-бұл күрделі құқықтық шындық, олардың біреуінің болмауы бүкіл жүйенің жұмыс істеуін мүмкін етпейтін өзара байланысты элементтер жүйесі. Конституциялық сот төрелігін жүзеге асыра отырып, ҚР Конституциялық Соты конституциялық заңдылықты қамтамасыз етуге ықпал етеді, ал Конституциялық сот төрелігінің болуы ел аумағында құқықтың үстемдігін қамтамасыз етудің негізгі қағидаттарының бірі болып саналуы тиіс. Қорытындылар. Қазақстан Республикасында Конституциялық сот төрелігінің міндетті түрде болуы құқықтың үстемдігін қамтамасыз етудің басты қағидаты ретінде қарастырылуы керек, оған сәйкес Негізгі Заңның іргелі мәні Конституцияның ережелері негізінде ұлттық заңнамалардың дамуы мен жұмыс істеуін қамтамасыз ету қабілетінде, бұл "сәйкестіктің" өзі конституциялық әділет органдары тарапынан бақылауды қажет етеді.

**Тірек сөздер:** Конституция, конституциялық сот төрелігі, қағида, құқық үстемдігі, заңдылық, теңдік, қолжетімділік.

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### **Конституционное правосудие как принцип верховенства права**

**Аннотация:** Целью статьи является осмысление конституционного правосудия как необходимого условия и обеспечительного принципа формирования в Республике Казахстан правового

пространства, обеспечивающего верховенство права и демократизацию общественных отношений за счет внедрения механизма контроля за действием положений Конституции, доказавшем свою эффективность в мировой практике развития конституционного процесса. В статье рассмотрены проблемы, связанные с осмыслением содержательных основ принципа верховенства права; проведен анализ состояния процесса использования принципа в деятельности Конституционного суда Республики Казахстан.

**Методы исследования.** В процессе работы над статьей автор опирался на методологию конституционно-правовой науки, в основе которой лежат принцип диалектического познания конституционных процессов в их взаимосвязи с институциональным обеспечением конституционализма. Для раскрытия поднятых в статье проблем использовались системный метод познания, логический метод, а также метод системно-структурного анализа нормативно-правовых актов.

**Результаты исследования.** Верховенство права является сложносоставной правовой реальностью, системой взаимосвязанных элементов, в которой отсутствие одного из них делает невозможным функционирование всей системы. Осуществляя конституционное правосудие, Конституционный Суд РК способствует обеспечению конституционной законности, а наличие конституционного правосудия следует считать одним из основных принципов обеспечения верховенства права на территории страны.

**Выводы.** Обязательное существование конституционного правосудия в Республике Казахстан следует рассматривать как главный принцип обеспечения верховенства права, принимая позицию, в соответствии с которой фундаментальное значение Основного Закона состоит в его способности обеспечивать развитие и функционирование национальных законодательств на основе положений Конституции, когда само данное «соответствие» нуждается в контроле со стороны органов конституционной юстиции.

**Ключевые слова:** Конституция, конституционное правосудие, принцип, верховенство права, законность, равенство, доступность.

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