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THE PROBLEMS OF THE CONSTITUTIONAL CONTROL IN THE REPUBLIC OF KAZAKHSTAN

Abstract. One of legal means of the protection of the constitutional system is the institute of the constitutional control, which functions in the condition of stability of the Supreme Law, creates necessary conditions for realization and adaptation of its provisions to public practice. In the modern legal doctrine, the institute of the constitutional control is considered as the most important component of the constitutional democratic state, the necessary step of advance of the state to the democratic law-abiding state with the rule of law, adoption of laws and other regulations to the constitution. At the same time, the contents of the legal safeguards are much wider and means the specialized constitutional control, carried out by the constitutional justice, include the activity of the supreme bodies of the government, judicial authorities and prosecutor's office, represent complete system of the protection of the Constitution. The institute of the constitutional control has gained wide recognition in the modern states of the world, including the Republic of Kazakhstan. Consideration of the constitutional control gives the chance to reveal the main regularities of its emergence, dynamic development, to show the place and the role in the modern political and legal system of our society.

Keywords: constitution, legality, constitutional council, constitutional security, international law, internal law, system of guarantees, constitutional system, constitutional legal consciousness, constitutional responsibility.

Legal supremacy of the constitution assumes control over its observance. There are specialized and non-specialized bodies which are obliged to prevent the application of laws and other acts contrary to the constitution, and in some countries - to prevent their publication. The constitutional control (supervision) is the most important way to protect the constitution by the legal means. There are several organs of the constitutional control: prosecutorial oversight of legality, the president's role as the guarantor of the Constitution, Parliament authorized activities (ombudsman, etc.).

However, exists non-legal ways to protect the constitution. During the constitutional control procedure does not only protect the constitutional norms, but their development in accordance with the changing situation. The most striking example of this - the United States, where the acting constitution was adopted in 1787, in an entirely different socio-economic and political conditions. Nearly two centuries of constitutional supervision (1803), the courts, and especially the U.S. Supreme Court, their interpretations have created almost a new "living" constitution.

On the other hand, the constitutional control is not always constitution protects it from violating the law. This is especially true in the countries, where supervision is carried out only after: the unconstitutional regulations (especially the acts of the executive authorities, in particular, taken in the order of delegated legislation) are sometimes decades, before the question of their constitutionality.

Finally, in the practice of constitutional bodies themselves, there are times when their decisions misinterpreted provisions in their constitutions. Indirectly evidenced dissenting opinions of members of constitutional courts, rather frequent decisions with minimal preponderance of votes. However, the institution of constitutional control (supervision) - the most important democratic institution [1, p. 17].

Proper operation, ensure observance of the basic law, which expresses the relation of the social forces in the society, and which is designed to maintain the required stability. Among the bodies exercising constitutional control, eating establishments and officials who are engaged in it, along with other duties, and there are specially created for the purpose of constitutional bodies.

In some countries, the different functions of the constitutional perform a president who, in accordance with the basic law, is the guarantor of the constitution. In some countries, the functions of the Constitutional Court perform specialized Chamber with the constitutional guarantees of constitutional justice, acting alone or as part of the Supreme Court.

In some countries combine both models the control of the general and special courts, if the judge in the process comes to a conclusion (usually by the statements of the parties) on the possible unconstitutionality of the applicable law, it appeals to the Constitutional Court.

Apply to the bodies of the constitutional control can be the supreme bodies of state officials and subjects of the federation, autonomous entities, a group of deputies and senators, courts, ombudsmen, citizens, if violated their constitutional rights (usually only after consideration of the case by the courts or other common). Finally, if you have exhausted all means of protecting constitutional rights in the country, citizens can appeal to international bodies and international courts.

In the different countries, the institution of constitutional control varies; almost it has unique features that relate to the time control, shape control, and mind. Constitutional control can be classified with a certain degree of conditionality, but the classification reveals some similarities control in various countries.

By the time of application of the constitutional control can be pre-and post. Determining in this case is the control point. During the pre - check act carried out prior to its entry into force, until the promulgation of the head of state. Follow-up - control after the entry into force of the Act. The first example can serve as a control in France, for instance: the second - in the U.S., Italy, Germany [2, p. 24].

Legal consequences of the constitutional control can be consultative and decides. The first can be called the control exercised by the State Council in Belgium and France, have the right to speak on the proposed to them by the acts in terms of their compliance with the fundamental law. Advisory control does not bind the requesters. Conclusion control authority in such cases has a moral rather than legal force. Decides to adopt such control, in which the competent authority shall decide whether the act of the basic law and this decision is binding. As a result of this decision an act declared unconstitutional or appropriate and in the latter case, therefore, invalid. Most often it refers to a constitutional operative control.

By its constitutional obligation to be compulsory and optional. In the first case, any act of mandatory regardless of one's faith must be tested for compliance with the basic law. So are subject to mandatory inspection organic laws and regulations of the parliamentary chambers in France. Optional control takes place when it depended on one's will: the body, the official or individual. Most often performed optional verification.

The shape of the constitutional control can be abstract and concrete (individual). Abstract control is in cases where compliance with the constitution is considered an act or part thereof is due to the specific circumstances. Adjudication confirms compliance with the constitution or annual act, and part of it. This kind of monitoring can be advanced.

Always follow a specific control and linked to circumstances that have arisen in the application of legal acts issued. Protesting against the act party asserts that the disputed fact has no legal power as a consequence of its contradiction with the Constitution. Often such control is exercised as a result of the specific case before the court. In some countries, the functions of the Constitutional Court perform specialized Chamber constitutional guarantees of constitutional justice, acting alone or as part of the Supreme Court.

Specific control unlike the abstract does not annual act or some of its provisions, the act or part "frozen", they do not act in time and space after the decision. In other words, a specific control is not absolute, as opposed to abstract control. In the latter, directly compared the challenged act and the constitution; specific control involves mediating link: case about which correlates specific act and the basic law. But the result is both abstract and concrete control one - contested and declared unconstitutional act would not apply.

Different bodies of the constitutional control in the western countries have the different names. Sometimes control is carried out bodies for which this function is just one of several sometimes super-

visory powers vested special bodies. Depending on the type of control can be divided into exercised by the Parliament and judicial or quasi-judicial bodies. Parliamentary control is undoubtedly the most democratic, despite the fact that it is complex in terms of legal technique.

It is now possible to speak two constitutional systems of control exercised by the judiciary: the traditional American and European or arising after the First World War in Austria. The traditional system, in addition to the United States [3, p. 58], there exists in Argentina, Japan, Brazil, Norway and several other countries.

It is based on the regular courts to consider the constitutionality of which - one of the functions. This same system includes cases constitutionality only supreme courts (for example, in Australia, India, and Malta). However, other courts do not have the right to constitutional control, but the Supreme Court cases come after consideration of individual cases in the national courts.

The second group of constitutional control, built on the so-called European model and spread first in Europe [4, p. 64], constitute a special institution with the purpose bodies. These are the constitutional council in France, and the Constitutional Chamber of the Supreme Court in Morocco.

The bodies of the constitutional control of the first group are simple. Members of the judiciary of general jurisdiction in the western countries are appointed by the head of state for life term, although there is an age limit at which a judge resigns. The bodies of the second group are more diverse. In the different countries, the term of office of members is quite different.

Important procedure for appointing members of the control bodies. In the courts of the first group - it is always a specially selected person from the ruling class or strata of the population, whose social position adjacent or fused with this class. In the second group, adhering to the European model, the order of appointment and qualification of judges often established by the constitutional law, which stresses the importance of the control body. Most acute in this case is the question of open or disguised political commitment of the members belonging to the control authority. One thing is certain - apolitical person cannot be appointed to these bodies. Matter how overtly officially recognized political "sympathy" appointees. Assessing the overall qualification of constitutional bodies should recognize the high level of training, education and experience of its members. But it does not affect the political nature of these bodies, regardless of the fact that these bodies can make positive decisions.

Particularly important is the question of the subjects with the right to appeal to the body of the constitutional control. In the countries where there is the traditional or the American system of constitutional control, have the right to request the subjects entitled to court. More difficult is the composition of the subjects in the system of constitutional control of the European standard. In some cases, the control body may review the constitutionality of laws on their own initiative.

Legal basis of a special body of constitutional control in Kazakhstan was founded in 1989 in addition to the Constitution of the Kazakh SSR, providing for the establishment of Constitutional Oversight Committee, which, however, has not been established. Then the Constitutional Law of the Republic of Kazakhstan of 16 December 1991 "On the State Independence of the Republic of Kazakhstan" was established that the highest judicial protection of the Constitution is the Constitutional Council of the Republic of Kazakhstan. This body was elected Supreme Council of 2 July 1992 and carried out by the constitutional control in October 1995.

The Constitution of the Republic of Kazakhstan, adopted in August 30, 1995 by a national referendum, has completed an important period of reform of public bodies independent Kazakhstan is a democratic, secular, legal and social state.

Section Six of the Constitution contains the fundamental rules establishing the constitutional control in the Republic, the implementation of which is assigned to the Constitutional Council. It is not part of the judicial system, is a government agency that provides the rule of the Constitution as the Basic Law of the State on the territory of Kazakhstan.

Constitutional Council consists of seven members. Chairman and two members are appointed by the President, two members appointed by the Speakers of the Senate and the Majilis of the Parliament for a term of six years. Half of the members of the Council updated every three years.

On the basis of the 1995 Constitution, the Constitutional Council of Kazakhstan was appointed in February 1996, was updated twice in 1999 and half in 2002. Today, as part of the Constitutional Council of three doctors and professors, one PhD, professor and two practicing lawyers with extensive experience in the judiciary and prosecutors.

The legal basis for the organization and activities of the Council is the Constitution of Kazakhstan and the Decree of the President of Kazakhstan, having the force of constitutional law "On the Constitutional Council of the Republic of Kazakhstan" dated December 29, 1996. According to constitutional status, the Council in exercising their powers of self-sufficient and independent of government agencies, organizations, officials and citizens, is subject only to the Constitution and cannot be based on political or other motives.

The Constitution established the terms of reference of the Constitutional Council, comprising: a decision in the case of dispute over the validity of the election of the President of the Republic, members of Parliament and of the republican referendum, consideration before the President signs laws adopted by the Parliament on their compliance with the Constitution, consideration to the ratification of international treaties of the Republic on their compliance with the Constitution, an authoritative interpretation of the Constitution; provision of an opinion in the case of consideration by Parliament on early dismissal of the President of the Republic of Kazakhstan to illness or removal from office in case of high treason.

Constitutional proceedings on given issues can only be initiated on the appeals of the President of Kazakhstan, Chairman of the Chamber of Parliament, at least one fifth of the total number of Members of Parliament, the Prime Minister.

Among the subjects of appeal to the Constitutional Council did not include citizens of the Republic. Their constitutional rights and freedoms can be protected in the courts of general jurisdiction and the Constitutional Council - in the cases and in the manner prescribed in Article 78 of the Constitution. If a court finds that a law or other normative legal act subject to application infringes on the rights and freedoms of man and citizen, it shall suspend the proceedings and ask the Constitutional Council with a proposal to declare the act unconstitutional.

Over the six-year period of the Constitutional Council considered more than 120 hits. Among them: 17 - on the constitutionality of laws passed by Parliament before being signed by the President (14 %), 54 - the official interpretation of the Constitution (43%), 45 - recognition of regulatory legal acts unconstitutional on representations of ships (37%). As for the subjects of circulation, in accordance with Article 72 of the Constitution to the Constitutional Council of the Republic of Kazakhstan has been accessed: President - 16 times (13%), Chairman of the Senate - 5 (4%), Chairman of the Majilis - 12 (10 %), 1/5 of deputies - 24 (20%), the Prime Minister - 14 (11 %), the courts of the Republic of Kazakhstan - 47 (39%).

In the conclusion we would like to say, that 17 laws enacted by the Parliament of the Republic and the Constitutional Council for compliance with the Constitution, eight unconstitutional. Among these laws: "On languages in the Republic of Kazakhstan", the Civil Code (special part), "On Chambers of Commerce", "On the rare and endangered species of animals", "On mandatory insurance of employer's liability for injury to the worker", "On amendments and additions to some legislative acts on issues of religious freedom and the activities of religious organizations".

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ КОНСТИТУЦИЯЛЫҚ БАҚЫЛАУ МӘСЕЛЕЛЕРІ

Аннотация. Конституциялық құрылысты қорғаудың құқықтық құралдарының бірі конституциялық бақылау институты болып табылады, оның қызметі. Негізгі заңның тұрақтылығын сақтап қана қоймай, оның ережелерін қоғамдық тәжірибеге енгізу және бейімдеу үшін қажетті жағдайларды жасайды. Заманауи құқықтық доктринада конституциялық бақылау институты мемлекетті демократиялық жағдайға алға басыуының маңызды сатысына өту үшін қажетті заң үстемдігін жүзеге асырып, Конституцияға қайшы келетін заңдар мен өзге де нормативтік құқықтық актілер қабылдануының жолын кесетін құқықтық демократиялық мемлекеттің маңызды құрамдас бөлігі ретінде қарастырылады. Сонымен бірге, құқықтық әдебиеттерді талдау көрсеткендей, құқықтық кепілдіктердің мазмұны конституциялық әділет органдарының мамандандырылған конституциялық бақылауынан басқа айтарлықтай кең, оның құрамына Конституцияны қорғаудың біртұтас жүйесінің (құрылыс, қорғаныс механизмі) жиынтығын қамтитын мемлекеттік биліктің жоғарғы органдарын, әділет органдары мен прокуратураның қызметін біріктіретін институционалдық біркелкі топтар кіреді. Конституциялық бақылау институты әлемнің көптеген заманауи мемлекеттерінде, оның ішінде Қазақстан Республикасында танымалдылыққа ие болды. Конституциялық бақылау мәселесін зерттеу оның пайда болуының негізгі үлгілерін анықтауға, даму динамикасын қадағалауға, қоғамның қазіргі саяси және құқықтық жүйесіндегі орны мен рөлін көрсетуге мүмкіндік береді.

Түйін сөздер: конституция, заңдылық, конституциялық кеңес, конституциялық қауіпсіздік, халықаралық құқық, мемлекетшілік құқық, кепілдіктер жүйесі, конституциялық құрылыс, конституциялық құқықтық сана, конституциялық жауапкершілік.

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ПРОБЛЕМЫ КОНСТИТУЦИОННОГО КОНТРОЛЯ В РЕСПУБЛИКЕ КАЗАХСТАН

Аннотация. Одним из юридических средств защиты конституционного строя является институт конституционного контроля, функционирование которого позволяет сохранять не только стабильность Основного закона, но создает необходимые условия для реализации и приспособления ее положений к общественной практике. В современной правовой доктрине институт конституционного контроля рассматривается как важнейший компонент правового демократического государства, необходимая ступень продвижения государства к демократическому состоянию, посредством которого обеспечивается господство права, пресекается принятие несоответствующих Конституции законов и других нормативных правовых актов. Вместе с тем, как показывает анализ юридической литературы, содержание юридических гарантий намного шире и кроме специализированного конституционного контроля, проводимого органами конституционной юстиции, в его состав включают институциональный пласт, объединяющий деятельность высших органов государственной власти, органов юстиции и прокуратуры, которые в совокупности представляют собой целостную систему (конструкцию, защитный механизм) охраны Конституции. Институт конституционного контроля получил широкое признание в большинстве современных государств мира, в том числе и в Республике Казахстан. Рассмотрение конституционного контроля дает возможность выявить основные закономерности его появления, проследить динамику развития, показать место и роль в современной политической и правовой системе общества.

Ключевые слова: конституция, законность, конституционный совет, конституционная безопасность, международное право, внутригосударственное право, система гарантий, конституционный строй, конституционное правосознание, конституционная ответственность.

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