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**Ensuring the relationship
between national and
international law by the
Constitutional Council**

In recent years, almost in all countries of the CIS and Baltic bodies of constitutional control are institutionalized. These bodies are increasingly spreading their activities in the sphere of international law. Enhancing the role of the body of constitutional control in the implementation of the norms of international law is a relatively new phenomenon and very complex. In fact the body of constitutional control plays an important role in the development of legislation, and strengthening of cooperation between national and international legal systems. The Constitution, clearly prescribing issues of the Constitutional Council of the Republic of Kazakhstan, establishes the validity and the legal consequences of its final decisions. The resolution of issues, relating to the establishment and ensuring the relationship and the constitutional balance between national and international law, is included the sphere of the Constitutional Council.

Key words: Constitution, the Constitutional Council, international law, national law.

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**Ұлттық және халықаралық
құқықтардың Конституциялық
Кеңес аясында қамтамасыз
етілуі**

Соңғы уақытта барлық ТМД және Балтық елдері конституциялық бақылау органдары институционалданған. Халықаралық құқық саласында бұл органдар өз қызметтерін белсенді түрде таратуда. Халықаралық құқық нормаларын іске асыруда конституциялық бақылау органының рөлін жоғарлауы – салыстырмалы жаңа және өте күрделі құбылыс. Конституциялық бақылау органы Республика заңнамаларын дамытуда маңызды рөл атқарады, сондай-ақ, Ұлттық және халықаралық құқық арасындағы өзара әрекеттерді нығайтуда – ол айқындалған факт болып келеді. Конституция, Қазақстан Республикасы Конституциялық Кеңесінің қызметін анық айқындап, оның қорытынды шешімдерінің құқықтық салдарын және заңи күшін бекітеді. Конституциялық Кеңестің қызметінің аясында ұлттық және халықаралық құқық арасындағы конституциялық тепе-теңдікті және байланысты қамтамасыз етуге қатысты мәселелерді шешу кіреді.

Түйін сөздер: Конституция, Конституциялық Кеңесі, халықаралық құқық, ұлттық құқық.

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**Обеспечение
Конституционным Советом
взаимосвязи национального и
международного права**

За последнее время все органы индустриализованы почти во всех странах СНГ и Балтии. Данные органы конституционного контроля с большой активностью распространяют свою деятельность на сферу международного права. Повышение роли этого органа в реализации норм международного права – это явление сравнительно новое и, конечно же, весьма сложное. Очевиден тот факт, что орган конституционного контроля играет немаловажную роль в развитии законодательства Республики Казахстан, а также в укреплении взаимодействия между национальной и международной правовыми системами. Конституция, которая четко прописывает все вопросы деятельности Конституционного Совета Республики, устанавливает юридическую силу и правовые последствия его итоговых решений. В сферу деятельности Конституционного Совета входит разрешение вопросов, которые касаются установления и обеспечения взаимосвязи, а также конституционного баланса между национальным и международным правом.

Ключевые слова: Конституция, Конституционный Совет, международное право, национальное право.

**ENSURING THE
RELATIONSHIP
BETWEEN NATIONAL
AND INTERNATIONAL
LAW BY THE
CONSTITUTIONAL
COUNCIL**

Analysis of the legislation and practices of state bodies of the Republic of Kazakhstan gives grounds to say that the country is improving domestic mechanisms ratio standards of international law and national legislation. In considering the relation of the Constitution and international treaties, Doctor of Law, Professor A.K. Kotov points out that international law, embodying the trends of integration and universalization of the globalizing world, and the applicable national law, which embodies the political, economic and cultural autonomy and self-determination of the peoples of the world are inextricably linked. The author emphasizes due to the constitution it may exist the interaction between the national legal system and modern international law. The transmission function of the Constitution stems from the nature of its rule throughout the independent country and mandatory compliance with the elements of the current national law constitutional norms [1].

According to O.N. Safonov, the impact of international law on the right of the Republic of Kazakhstan is expressed mainly in new rules in the Kazakhstan legislation, on the contrary, the exclusion of certain existing rules which don't correspond to the basic principles of international law. The author also marks that the subject of regulation in international and national law partially overlaps, because the same questions can be regulated by norms and international and domestic law, while the methods of regulation are different [2].

The organization and activities of the state to ensure that the ratio of national and international law in the Republic of Kazakhstan are regulated by the Constitution and current legislation [3], according to which it should take place the relationship, tool penetration, implementation, adaptation and implementation of international law on the sovereign territory of the country [4].

In this multi-functional work the Constitutional Council of the Republic of Kazakhstan plays an important role and provides linkages with national and international law from the perspective of their compliance with the Basic Law of the Republic and the procedural conditions established by the Constitutional Law «On the Constitutional Council of the Republic of Kazakhstan» dated December 29, 1995 [5], the Regulations approved by the decision of the Constitutional Council of 19 April 2002 number 1.

Thus, in accordance with the Constitution and the Constitutional Law «On the Constitutional Council of the Republic of Kazakhstan» one of its main tasks is to review for compliance with the Constitution, international treaties of the Republic, subject to ratification. It should be noted that the role of the Constitutional Council to ensure cooperation between the national and international legal systems is not limited to the stage of ratification of the international legal norms.

The Constitutional Council, indirectly provides the interconnection of national and international legal systems by an official interpretation of the provisions of the Basic Law; consideration of the constitutionality of international treaties.

Significant growing role of constitutional control in the political, legal and legislative activities in different countries needs being improved more between the practice of dispute resolution in accordance with national and international law, as well as the introduction of new methods and technologies.

Analysis of the practice of constitutional justice shows that at the moment the relationship of national and international law are provided at the constitutional level extensively through the use of conventional forms of control such as the preliminary and subsequent, as well as by giving an official interpretation of the constitutional imperatives.

In the activities of the constitutional review checking the constitutionality of acts of international law is a common form of security relationship between acts of national and international law.

As already noted, in Kazakhstan, the main method of constitutional harmonization and coordination of national and international law is the authority of the Constitutional Council for review prior to the ratification of international treaties of the Republic for their conformity with the Constitution, under subparagraph 3 of paragraph 1 of Article 72 of the Basic Law, which permits to avoid conflicts between national law and international obligations of the package.

The legal implications of the Commissioner and the Council's consideration of the subjects of the international treaty with the Constitution prior to ratification are set out in paragraph 2 of Article 73 and paragraph 1 of article 74 of the Basic Law of the Republic. In the case of appeal to the Constitutional Council for the preliminary control stream the period of ratification of the relevant acts shall be suspended. International treaties, which don't correspond to the Constitution, are not regarded as a subject to ratification.

In this context, the constitutional questions may arise and can be related to the constitutional procedure and the legislative process. First, at what stage of the legislative process of a treaty may be subject to review by the Council. Second, the object of consideration is the law adopted by the Parliament on the ratification of the treaty ratified in either position. In the legislative practice of Kazakhstan ratification is carried out by successive approval of the Mazhilis and the Senate of the Parliament of the law on the ratification of or accession to those or other international agreements of the Republic. However, the ratification process is considered complete only after the signing of the Head of State. Accordingly, the international agreement may be subject to preliminary control in the interval of initiate ratification of an international agreement and its signing by the President of the Republic. We reckon that the law on ratification signed by the President cannot be subject to prior consideration by the Constitutional Council.

Review for compliance with international treaties of the Republic with the Constitution prior to their ratification has several advantages. One of them is to prevent the undesirable consequences that may conflict with the interests of society and its citizens, and most importantly, the constitutional principles and norms [6].

Constitutional recognition of the existing law of treaties and other obligations of the Republic of Kazakhstan extends the field of activity of the Constitutional Council on the implementation of controls in relation to such acts. The Constitutional Council has the right to review the constitutionality of ratified international treaties and other international instruments relating to representations of courts in order of following control.

The form of the relationship to ensure national and international law can be regarded as an additional justification for the norms of international agreements of final decisions of the Constitutional Council. So when we consider the appeals, which are not a subject to international treaties themselves, the Constitutional Council often finds a contradiction, on the contrary, compliance the contested provisions of national law with generally recognized principles and norms of international law. It shows that the Constitutional Council applies international principles and norms as standard in a practice, as well as an additional argument in favor of its legal position, produced on the basis of the Constitution.

Arguing all these cases it is vital to mark, that the Constitutional Council gives its decision some extra significance and shows that the norms of

international law are an important criterion for the constitutional and legal system of the Republic of Kazakhstan.

If we interpret the Article 8 of the Constitution, we will notice, that the Constitutional Council established that the rate of the pointed article of the Constitution of the Republic to respect the principles and norms of international law is its desire to take into account these principles while creating the national law. At the same time, the existing law of the Republic of Kazakhstan must comply with the Constitution, and only international treaties ratified by the Republic have priority over the other laws.

In conclusion, the Constitutional Council of the Republic of Kazakhstan, ensuring the supremacy of the Constitution of the Republic, resorts to the implementation of the principles of international law and international obligations of the Republic for the argumentation and support their positions in practice.

The norms of international treaties, which are the subject of ratification, and which is the current law of the Republic, in the case of treatment of authorized entities on their compliance with the Constitution, become the objects of constitutional proceedings. Detection of contradictions between the Constitution and international law does not mean automatic exclusion of such a rule from

the structure of an international legal instrument. For the subsequent (further) implementation of the national legal system of such an international instrument, from our perspectives, it is necessary to adhere to the legal mechanism regarded by Vienna Convention, namely in case of conflict between the two sides of treaties they are able to resolve it by conciliation and the adoption of other measures to overcome collision.

In general, the activity of the Constitutional Council plays a positive role in the formation of democratic institutions of society and the rule of law, also in the implementation of the constitutional principle of respect for the rights and freedoms of man and citizen, in achievements of international legal standards in this area. Strategy to the Constitutional Council may be the orientation of the generally recognized principles and norms of international law as a concentrated expression of the legal achievements of progress in global social development.

The implementation of international law in constitutional proceedings, also additional justification of the outcome of the Constitutional Council may be a constitutional technology, promoting the application of generally accepted principles and norms of international law in the Republic of Kazakhstan.

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