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## **SPECIFICS OF DECISIONS OF THE CONSTITUTIONAL COUNCIL OF THE REPUBLIC OF KAZAKHSTAN THAT AFFECT THE FOUNDATIONS OF THE CONSTITUTIONAL SYSTEM**

This article reveals the specifics of the activities of the constitutional Council of the Republic of Kazakhstan, as the main body responsible for monitoring the implementation of the main legal act of the state of the Constitution. The constitutional Council of the Republic of Kazakhstan, when exercising its powers, is independent and independent from state bodies, organizations, officials and citizens, is subject only to the Constitution of the Republic and cannot proceed from political or other motives, and also exercises its powers in accordance with the current legislation.

One of the institutional components of developing constitutionalism in sovereign Kazakhstan, the most important element of the mechanism for protecting the Constitution, ensuring compliance with it of all legal acts in the Republic of Kazakhstan is the constitutional Council – the body of constitutional control. Improvement of its activity is considered as one of the directions of building a legal, democratic, social state. The question of whether the decisions of the constitutional control body are among the sources of law, whether the decisions of the constitutional Council and the constitutional courts of other States are normative in nature, is debatable in the literature.

In the course of writing, research methods were applied: General methods-analysis, synthesis, dialectical method, historical method, structural and functional method, sociological method, statistical method.

**Key words:** Constitution, normative act, legal act, rights, obligations, state body.

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### **Конституциялық құрылыс негіздерін қозғайтын ҚР Конституциялық кеңесі шешімдерінің ерекшелігі**

Мақала мемлекетіміздің ең негізгі құқықтық актісі Конституция нормаларының жүзеге асырылуын қадағалайтын негізгі орган ретінде Қазақстан Республикасы Конституциялық Кеңесі қызметінің ерекшелігіне көңіл бөлінген. Қазақстан Республикасының Конституциялық Кеңесі өз өкілеттігін жүзеге асыру кезінде дербес және мемлекеттік органдарға, ұйымдарға, лауазымды адамдар мен азаматтарға тәуелсіз, Республика Конституциясына ғана бағынады әрі саяси және өзге себептерді негізге ала алмайды, сондай-ақ қолданылып жүрген заңдарды басшылыққа ала отырып, өз өкілеттігін жүзеге асырады.

Егемен Қазақстанда дамып келе жатқан конституционализмнің институционалдық компоненттерінің бірі, Конституцияны қорғау тетігінің, Қазақстан Республикасындағы барлық құқықтық актілердің оған сәйкестігін қамтамасыз етудің маңызды элементі Конституциялық Кеңес – конституциялық бақылау органы болып табылады. Оның қызметін жетілдіру құқықтық, демократиялық, әлеуметтік мемлекет құрудың бір бағыты ретінде қарастырылады. Конституциялық бақылау органының шешімдері құқық көздерінің қатарына жататындығы, Конституциялық Кеңестің және басқа мемлекеттердің конституциялық соттарының қаулылары нормативтік сипатта бола ма деген мәселе әдебиетте пікірталас болып табылады.

Мақаланы орындау барысында ғылыми-зерттеу әдістері қолданылды: жалпы әдістер – талдау, синтез, диалектикалық әдіс, тарихи әдіс, құрылымдық-функционалдық әдіс, әлеуметтік әдіс, статистикалық әдіс.

**Түйін сөздер:** конституция, нормативтік акт, құқықтық акт, құқық, міндеттер, мемлекеттік орган.

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### **Специфика решений Конституционного Совета РК, затрагивающих основы конституционного строя**

Данная статья раскрывает специфику деятельности Конституционного Совета Республики Казахстан как основного органа, ведущего контроль над исполнением норм главного правового акта государства Конституции. Конституционный Совет Республики Казахстан при осуществлении своих полномочий самостоятелен и независим от государственных органов, организаций, должностных лиц и граждан, подчиняется только Конституции Республики и не может исходить из политических и иных мотивов, а также осуществляет свои полномочия, руководствуясь действующим законодательством.

Одним из институциональных компонентов развивающегося конституционализма в суверенном Казахстане, важнейшим элементом механизма защиты Конституции, обеспечения соответствия ей всех правовых актов в Республике Казахстан является Конституционный Совет – орган конституционного контроля. Совершенствование его деятельности рассматривается как одно из направлений построения правового, демократического, социального государства. Вопрос о том, относятся ли решения органа конституционного контроля к числу источников права, носят ли постановления Конституционного Совета и конституционных судов других государств нормативный характер, является в литературе дискуссионным.

В ходе написания были применены методы исследования: общие методы – анализ, синтез, диалектический метод, исторический метод, структурно-функциональный метод, социологический метод, статистический метод.

**Ключевые слова:** конституция, нормативный акт, правовой акт, права, обязанности, государственный орган.

## **Introduction**

2019 was a turning point for Kazakhstan in its trajectory. As noted in the Message of the constitutional Council of RK “On state constitutional legality in the Republic of Kazakhstan”, “Kazakhstan took place a smooth process of transfer of Supreme authority” (<http://akorda.kz>) from the First President of Kazakhstan – Leader of nation N. Nazarbayev to the President of the Senate K-Zh. Tokayev, who was elected President of the Republic of Kazakhstan in early elections on June 9, 2019. As Kasym-Zhomart Tokayev has repeatedly emphasized, the main vector of his policy as the country’s President is to continue the course of the First President of Kazakhstan, Elbasy N. A. Nazarbayev, to conduct large-scale economic, political, and social transformations of all aspects of the life of Kazakhstan’s society, caused by the requirements of the modern world. In the Address of the Head of state Kassym-Jomart Tokayev to the people of Ka-

zakhstan “Constructive public dialogue is the basis of stability and prosperity of Kazakhstan”, special emphasis was placed: “Our fundamental principle: successful economic reforms are no longer possible without the modernization of the country’s social and political life. “A strong President – an influential Parliament – an accountable Government.” This is not a fait accompli, but a goal to which we must move at an accelerated pace” (<http://akorda.kz>).

Both the first President of Kazakhstan – Elbasy N. A. Nazarbayev, and the current President of Kazakhstan K-Zh. Tokayev in his speeches and writings repeatedly stressed that Kazakhstan is building a legal state based on the principle of legality and the supremacy of the Constitution of the Republic of Kazakhstan. As the well-known Kazakh scientist-statesman I. I. Rogov confirms, the regulatory potential of the current Constitution is far from being exhausted. The foundations of the constitutional system of the Republic of Kazakhstan, human and civil rights and freedoms, and forms of ownership

set out in the Constitution take into account the long-term needs and historical development trends of our country. National legislation functions on its basis, and state and public institutions are being created and developed. And in this continuous process, it is very important to create all the necessary conditions for the formation of constitutional practice that meets the letter and spirit of the basic Law, to ensure the real operation of constitutional norms and their uniform application (Rogov 2015a: 18).

### Main part

One of the institutional components of developing constitutionalism in sovereign Kazakhstan, the most important element of the mechanism for protecting the Constitution, ensuring compliance with it of all legal acts in the Republic of Kazakhstan is the constitutional Council – the body of constitutional control. Improvement of its activity is considered as one of the directions of building a legal, democratic, social state. Therefore, the study of the nature, specifics and features of acts of the constitutional Council of the Republic of Kazakhstan is of considerable scientific and practical interest (Rogov 2015b: 98-99). No less important, in our opinion, is the analysis of the decisions of the constitutional Council of the Republic of Kazakhstan on the basics of the constitutional system, human and civil rights and freedoms, and other issues.

The question of whether the decisions of the constitutional control body are among the sources of law, whether the decisions of the constitutional Council and the constitutional courts of other States are normative in nature, is debatable in the literature.

As noted by the well-known Russian constitutionalist Avakian S. A., the existing approaches to this problem are diametrically opposite: according to one approach, constitutional courts are only law enforcement bodies that do not create new norms of law; according to another, along with law enforcement, constitutional courts are also engaged in law – making, i.e. many of their decisions have normative significance, become sources of law, including constitutional law. In this regard, the famous Russian researcher N. V. Vitruk with all certainty notes: “Decisions and legal positions of the constitutional Court of the Russian Federation contained in them are the source of constitutional law and Supplement its content” (Vytruk 2001: 167).

The second approach is more rational because in General, the implementation of law enforcement tasks by legal entities does not exclude their law-making activities (Avakian 2010: 382).

V. A. Kryazhkov emphasizes: “The decisions of the constitutional Court occupy a specific place in the system of legal acts. They cannot be attributed either to law-enforcement or norm-setting acts; they combine the qualities of both” (Kryazhkov 1998: 227).

Justifying his position on this issue, Professor Avakian S. A. notes that the assessment of the role of constitutional courts as creators of law (i.e., new legal norms) can not disagree. But much, of course, is connected with the methods and external design of this function of the constitutional courts. At the meeting of Bulgarian and Russian practitioners and scientists in Sofia within the framework of the Bulgarian-Russian law club in November 2003, in his report, the well-known Bulgarian scientist N. Nenovsky rightly noted that the decisions of the constitutional courts are not typical of the way of drafting regulations adopted in modern legal systems. Probably, the typology of normative regulation of public relations cannot be extended to acts of the constitutional courts. Therefore, an act of the constitutional court cannot look like a law with its formal internal characteristics – articles, paragraphs, chapters, sections, etc. And the purpose of the act of constitutional justice is different, however, this does not change much in principle.

Apparently, it must be conducted on the other – about the normative, and in this respect on a constructive the value of the acts of constitutional courts, their influence on the development of social relations, because after the decision of the constitutional court, these relationships will arise on the basis of not only normative acts of the bodies issuing them, but also the acts of the constitutional court. Moreover, the norms formulated by the constitutional court can either remain an independent Foundation of public relations, or will be implemented in the amendments made by the relevant body to its normative act (Avakian 2010: 383).

In the Republic of Kazakhstan, article 4 of the Constitution stipulates that the current law in the Republic of Kazakhstan is the norms of the Constitution, relevant laws, other normative legal acts, international Treaty and other obligations of the Republic, as well as normative decisions of the constitutional Council and the Supreme Court of the Republic (<http://adilet.kz>).

Kazakhstan authors in spite of this provision of the Constitution, was also not unanimous on the question of whether to include among the sources of constitutional law the regulatory resolution of the constitutional Council of Kazakhstan. According to Abdrasulov E. B., a positive solution to this issue

means identifying the results of the interpretation of the Constitution with the Constitution itself. This approach «comes into some contradiction with the theory and definition of normative legal acts and the interpretation of law, according to which acts of official interpretation cannot be applied independently without legal acts explained by them» (Abdrasulov 2002: 3-4).

Kazakh researcher Beibitov M. S. draws attention to the fact that from the point of view of the legal nature of the decisions of the constitutional Council can be divided into two groups: normative and individual. A normative legal act that expresses the will of the state is aimed at establishing, changing, canceling legal norms or changing the scope of the latter, which is characterized by General obligation, the possibility of repeated application, and the preservation of the effect of the order regardless of its execution. Normative acts of the constitutional Council are the authoritative statements of the constitutional Council that make changes to the system of existing legal norms, developed in a certain order in the process of implementing the tasks and functions of constitutional control in the Republic of Kazakhstan on the basis of and in compliance with the Constitution, laws and acting in the form of resolutions.

The qualification of decisions of the constitutional Council as normative legal acts does not mean that by their nature they are acts that are completely identical to classical parliamentary laws. Their specifics are as follows:

- these are acts of a kind of «negative» legislation;
- they are limited in the choice of subject, object;
- these are acts of activity auxiliary to the legislation implemented by the Parliament (Beibitov 2005: 247).

This point of view seems to deserve attention.

In the study of this problem for understanding the nature and specificity of the normative decisions of the constitutional Council of Kazakhstan and their role in the system of sources of law, in our opinion, the interest of academic debate known domestic experts Kotov A. K. and Gateway HP

As noted last interesting position in the determination of regulations of the constitutional Council Republic of Kazakhstan in the system of sources of law expressed Kotov, who said that the decision of the constitutional Council may carry diverse nature of this normatively, depending on lawmaking in them. In his view, the constitutional Council's decisions on the official interpretation of constitutional norms are of a law-explaining nature. The legal qualities are those that establish inconsistencies

with the norms of the Constitution of specific laws before they are signed by the Head of state, or recognize unconstitutional norms of laws and other normative acts that infringe on constitutional rights and freedoms of a person and citizen. The law-forming provisions, «concretizing the norm of the Constitution, only manifest and objectify the mechanism of disposition, that is, prescribe the legal implementation of powers within the same constitutional norm» (Kotov 2002: 5-6).

Judgments about the versatile, but unconditional normatively of the constitutional Council's decision led the author to the idea that «mandatory precedents for understanding and applying constitutional norms contained in the decisions of the constitutional Council in the form of various legal provisions gradually form the necessary sub – branch of constitutional law-case constitutional law, which by its inherent methods of regulation significantly facilitates the direct operation of the Constitution» (Kotov 2002: 7).

The idea of forming a case-law constitutional law in the context of the functioning of the constitutional Council of the Republic of Kazakhstan looks untenable for the reason that the activities of the constitutional control body and the final acts adopted on its results have fundamental differences from the activities of the justice bodies to resolve specific legal cases (Zhakayeva 2006: 266 – 267).

In this position Gateway HP, in our opinion, it is true, decisions of the constitutional Council cannot be recognized as precedents, because otherwise no visible difference between the implementation of courts of justice and the function of constitutional control by the Constitutional Council. We fully agree with Zhakayeva L. S. emphasizing that, first, the fundamental differences between the constitutional control body and the judicial authorities in many respects, established by the constitutional and legal legislation of Kazakhstan, do not allow us to draw an analogy between the control activities and the administration of justice and, ultimately, between the final acts of the relevant bodies. Consequently, the idea of judicial precedent as a source of law, which has found application and development in the countries of the Anglo-Saxon legal system, in principle cannot be adapted to the conditions of our state.

Secondly, the decisions of the constitutional Council as acts of official interpretation of the norms of the Constitution are not a «precedent» in the proper sense of the word or a «precedent for understanding and applying constitutional norms», for the reason that, being the final result of establishing



the meaning of a constitutional norm or their totality, they contain an explanation of the norms implemented in the future by other subjects of specific legal relations, including judicial bodies, that is, these decisions of the constitutional Council cannot serve as an example (model) of law enforcement.

Normative decisions of the constitutional Council are acts of official delegated interpretation with all the consequences that follow from this. They contain rules of conduct detailing the original rules—the provisions established by the constitutional norm are generally binding, designed for a wide range of subjects of legal relations, for repeated application (Zhakayeva 2006: 269).

In the special literature on the activities of constitutional control bodies, the issue of so-called constitutional precedents is raised repeatedly. This aspect in their works concerned N. V. Vitruk, Nersesyants V. S., Luchin V. O., Bogdanova N. A.

In accordance with article 32 of the constitutional Law «On constitutional Council of Kazakhstan» from December 29, 1995 decision of the constitutional Council was adopted in the form of : 1) decrees, including regulatory decrees which are a constituent part of the current law of the Republic of Kazakhstan; 2) reports; 3) messages (Шеретов 2013).

The decision of the constitutional Council accepts the official interpretation of provisions of the Constitution, on the constitutionality of laws and international agreements on the recognition of laws and other regulatory legal acts infringing on the rights guaranteed by the Constitution and freedoms of man and citizen. These final decisions are designed to be applied repeatedly by analogy to an indefinite number of cases. The legal consequences of the adoption of resolutions indicate that the Constitution gives such final decisions of the constitutional Council the properties of a normative act, since they are aimed not only at establishing, but also at changing and canceling legal norms (Beibitov 2005: 249).

It seems necessary to focus on the following circumstance: can we say that the normative decisions of the constitutional Council have a novelty, create new «expansive» norms?

As the Kazakh researcher Zhakayeva L.S. emphasizes, the most difficult issue in the discussion about the normativity of decisions of the constitutional Council (as well as any acts of interpretation) is whether the interpretative norms of these acts can have novelty.

On the one hand, an affirmative answer to this question means that the Constitutional Council recognizes the powers of the legislative body,

which contradicts its position in the system of state bodies, as defined by the constitutional legislation of Kazakhstan.

On the other hand, the denial of normative novelty acts of interpretation of the Constitution does not reflect the reality of constitutional-legal practice, since in the course of interpretation of the Constitution there is a danger of a tacit «transformation» of its contents without formal modification of the text of the basic law within the constitutional procedures... The law «On normative legal acts» States that «the regulatory resolution of the constitutional Council of Kazakhstan based on the Constitution and all other regulations can't contradict» (clause 6, article 4). Thus, indirectly (through the ordinary law), the prerogative of normative acts of the constitutional control body over acts of the legislative body (Parliament), over acts of the President equated to constitutional and ordinary laws and acts (constitutional and ordinary laws) adopted as a result of a Republican referendum is recognized. In essence, the norms of interpretation of the Constitution are endowed with the force of the norms of the Constitution itself, which confirms the idea of indirect delegation of legislative powers to the Constitutional Council (Zhakayeva 2006: 269-270).

This position seems too extreme and harsh. In our opinion, we cannot talk about the «prerogative» of acts of the constitutional Council over acts of Parliament, and, moreover, about the direct or indirect delegation of legislative powers of the Parliament to the Constitutional Council.

Normative resolutions of the constitutional Council often contain interpretations of the norms of the Constitution of the Republic of Kazakhstan. In this aspect, the problems of limits of interpretation and the possibility of broad interpretation of constitutional norms are important. It is difficult not to agree with the point of view expressed by the famous Russian researchers khabrieva T. Ya. and Chirkin V. E.

They note that one of the main provisions of the theory of law is that the subject of interpretation does not make anything new to the rule being explained, but only seeks to understand its actual meaning and content by known methods and means. It is necessary to focus attention on this, because especially when interpreting the Constitution (because many of its rules are very General), there is a great temptation to put in the norm the content that is not provided by the legislator. In practice, the formation of new legal norms under the guise of interpretation cannot contribute to the improvement of legislation and the

stabilization of the rule of law. The constitutional court can do a lot, but not everything. It cannot decide questions for the legislator, even if the legislator himself insists on it (for example, when the legislature makes a request to the constitutional court).

In the study of the limits of interpretation of legal, including constitutional, norms, it should be assumed that the interpretation is inseparable from the content of the legal norm being explained, it reflects the state will expressed in it. This means that when referring to a legal norm, it must also be interpreted in accordance with existing official interpretations (Habrieva 2005).

When deciding on the possibility of an extended interpretation of the Constitution by the Constitutional Council, it is necessary to rely on the explanations given by the Constitutional Council itself in one of its resolutions:

«The official interpretation of the norms of the Constitution is a normative interpretation that is given by the Constitutional Council in accordance with the meaning of the verbal expression of the norms of the Constitution by various means of understanding and extracting their meaning. The scope of interpretation cannot be determined in advance. The constitutional Council is bound to choose scientific legal methods of official interpretation of the Constitution only by the Constitution itself. It takes into account the logical relationship and interfacing of the norms of the Constitution with its General provisions and principles. Normative decisions of the constitutional Council, creating precedents for the interpretation of the norms of the Constitution exclusively on issues of subjects of appeal, fill in the semantic understanding of these norms for direct constitutional regulation. At the same time, the legal positions of the constitutional Council, which follow from the norms of the Constitution, correspond to the Constitution itself. The constitutional Council of the Republic of Kazakhstan does not draw conclusions that do not directly follow from the meaning of the Constitution, its norms, General provisions and principles. When interpreting the norms of the Constitution, the Council does not go beyond the subject of constitutional regulation» (<http://akorda.kz>).

Normative decisions of the constitutional Council of the Republic of Kazakhstan, as already mentioned above, have all the features of normativity, come into force from the date of their adoption, are generally binding throughout the Republic, final and are not subject to appeal. As B. S. Sapargaliev emphasizes, the decision of the constitutional Council has the force of a norm of the

Constitution and is among the constitutional norms (Sapargaliev 1997: 36).

About the validity of the decisions of the constitutional Council of the Republic of Kazakhstan evidenced by the facts: first, in some cases, the decision of the constitutional Council was the basis of the overall adoption of new laws; secondly, there are known cases of adoption, based on the decisions of the constitutional Council decrees of the President of the Republic of Kazakhstan; third, the courts have applied the decision of the constitutional Council in specific cases; fourthly, the decisions of the constitutional Council of the Republic of Kazakhstan based its activities the prosecutors of all ranks, etc. (Beibitov 2005: 248).

Summing up the above, in our opinion, it should be emphasized that the normative resolutions of the constitutional Council of the Republic of Kazakhstan are the current law, have all the features of normatively. These features of normatively are inherent in all decisions of the constitutional Council, some of them to a greater extent (acts of interpretation and decisions on specific cases that have generated large consequences, that is, had a significant impact on the development and regulation of public relations), some to a lesser extent (decisions on specific cases that had less significant consequences).

The resolutions of the constitutional Council reflect its legal positions. Without going into the discussion about the concept of «legal positions of the constitutional Council», in our opinion, it should be noted the correctness of the position of the well-known Kazakh constitutionalist A.K.Kotov, who notes that the generalizing term «legal positions» refers to the logical and legal justifications and conclusions of the constitutional Council of the Republic of Kazakhstan, which it came to in the course of the proceedings established by constitutional norms, and adopted by it in the form of normative resolutions. In legal positions, the official interpretation of the norms of the Constitution is completed, filled with the Council's understanding of these norms and its judgment on them (Kotov 2005). The above-quoted opinion of Professor Kotov A. K., it is true and justified.

Resolutions and decisions of the constitutional Council of the Republic of Kazakhstan are adopted on various issues. It seems that one of the most important decisions are those that affect the foundations of the constitutional system of the Republic of Kazakhstan.

The concept of the constitutional system in the science of constitutional law is debatable. Russian

researchers E. I. Kozlova and O. E. Kutafin emphasize that the constitutional system is a form or way of organizing a state that ensures its subordination to law and characterizes it as a constitutional state (Kozlova 1996).

Kazakh scientist-constitutionalist V. A. Kim, studying the definition of the constitutional system, considers it somewhat broader, noting that the concept of «constitutional system» includes the entire system of rights and freedoms, duties of citizens, organization of civil society and the state... We believe that the constitutional system – this is a system of the most important social relations and basic state-legal institutions, basic human and civil rights and freedoms enshrined in the Constitution and protected by it, including the idea of subordination of the state to the Constitution, or a system of constitutional institutions that enshrine all this (Kim 1998: 26-27). The position of prof. V. A. Kim is correct and justified, as it is based on the analysis of the provisions of the Constitution.

The constitutional system is a broad concept, since it covers a wide range of public relations and all branches of national law participate in its regulation. However, the norms of the Constitution are of crucial importance in securing the constitutional system, since they secure the foundations of the constitutional system. The latter represent the most important, fundamental, basic elements and foundations of the state, the principles underlying its organization. Prominent Kazakh statesmen A.T. Ascheulov and O. K. Kopabayev note that the components of the foundations of the constitutional system of the Republic of Kazakhstan are its economic, political, social and spiritual and cultural relations, the constitutional regulation of which has a certain system-it reflects the structure and nature of society with the mandatory inclusion in the Constitution of provisions based on universal values and ideals of social justice (Ascheulov 2001).

As noted above, the constitutional Council of the Republic of Kazakhstan has repeatedly made decisions that affect the foundations of the constitutional system. In our opinion, we can offer the following classification of decisions of the constitutional Council on the basis of the constitutional system:

\* Decisions on building a democratic, secular, legal, social, sovereign, unitary state with a presidential form of government;

\* Decisions on strengthening the mechanism for ensuring, guaranteeing and protecting human and civil rights and freedoms;

\* Decisions on the development of the economic base of the Republic of Kazakhstan;

\* Decisions on strengthening the status of the state language;

\* Decisions on strengthening the status of state symbols of the Republic.

Since February 1996, the constitutional Council has received more than 200 appeals: 23 from the Head of state, 77 from the presidents of the Chambers of Parliament and its deputies, 27 from the Prime Minister of the Republic, and 69 from the courts. the Constitutional Council has adopted about 150 normative decisions, including 6 on additional interpretation of its decisions. Due to amendments to the Basic Law (in 1998, 2007 and 2017) The constitutional Council made decisions to review some of its acts (in 2004, 2007, 2008, 2011 and 2017) (Mami 2019: 52).

Examples of decisions on the issues of building a democratic, secular, legal, social, sovereign, unitary state with a presidential form of government can be called:

– The decision of the constitutional Council of the Republic of Kazakhstan from October 28, 1996 №6/2 «About official interpretation of item 1 of article 4 and paragraph 2 of article 12 of the Constitution of the Republic of Kazakhstan»

– Normative resolution of the constitutional Council of Kazakhstan of 31 January 2011 №2 “About verification of the Law of RK “About modification and additions in the Constitution of the Republic of Kazakhstan” on compliance of the Constitution of the Republic of Kazakhstan;

– Normative decision of the constitutional Council of the Republic of Kazakhstan from March 9, 2017 No. 1 “About check of the Law “On amendments and additions to the Constitution of the Republic of Kazakhstan” on compliance of the Constitution of the Republic of Kazakhstan.

– Examples of decisions of the constitutional Council on strengthening the mechanism for ensuring, guaranteeing and protecting human and civil rights and freedoms include:

– The decision of the constitutional Council of the Republic of Kazakhstan of 9 April 2004 No. 5 “On verification of conformity of the constitutional law RK “About modification and additions in the constitutional Law of Kazakhstan “On elections in RK” in compliance with the Constitution of the Republic of Kazakhstan»;

– Normative resolution of the constitutional Council of the Republic of Kazakhstan dated February 28, 2008 No. 2 “ on checking the constitutionality of parts one and four of article 361 of the Criminal

code of the Republic of Kazakhstan on the appeal of the Kapchagay city court of Almaty region»;

– Additional decision of the constitutional Council of the Republic of Kazakhstan dated 6 January 2012 # 1 “the interpretation of decisions of the constitutional Council of Kazakhstan of 9 April 2004 No. 5” On verification of conformity of the constitutional law RK “About modification and additions in the constitutional Law of Kazakhstan “On elections in RK” in compliance with the Constitution of the Republic of Kazakhstan”.

As an example, decisions on the development of the economic basis of the Republic of Kazakhstan can result in a regulatory decision of the constitutional Council of the Republic of Kazakhstan from April 23, 2008 No. 4 “On verification the constitutionality of paragraph 3 of article 9 and subparagraph 6) of paragraph 1 of article 25 of the Law of RK dated July 26, 2007 №310-III “On state registration of rights to immovable property and transactions with it” on appeal of the court №2 of Kostanay Kostanay region.

As an example of the decision on strengthening the status of state language can be noted the decision of the constitutional Council of the Republic of Kazakhstan from May 8, 1997 of No. 10/2 “About the address of the President of Kazakhstan about compliance of the Constitution of Kazakhstan presented to the President of the RK Law “On languages in the Republic of Kazakhstan”, adopted by the Parliament on 12 March 1997.

The subject of the decision of the constitutional Council of the Republic of Kazakhstan of May 28, 2007 No. 6 “On the termination of constitutional proceedings in the appeal of group of deputies of the Parliament of Kazakhstan about consideration about compliance of the Constitution of Kazakhstan the constitutional Law of RK “On state symbols of the Republic of Kazakhstan”, adopted by the Parliament on 26 April 2007,” focuses on strengthening the status of the state symbols of the Republic.

Decisions of the constitutional Council of the Republic of Kazakhstan on the basics of the constitutional system affect the most important aspects of the life of sovereign Kazakhstan and reflect the specifics of the current moment in its history. It is clearly seen from the analysis of the regulatory resolution of the constitutional Council of the Republic of Kazakhstan from March 9, 2017 No. 1 “About check of the Law “On amendments and additions to the Constitution of the Republic of Kazakhstan” on compliance of the Constitution of the Republic of Kazakhstan, which was adopted at the request of the First President Republic of Kazakhstan N.A. Nazarbayev.

This resolution of the constitutional Council notes that the amendments and additions made by the Law to the Constitution give new content to the constitutional values and fundamental principles of the Republic’s activity. It is unacceptable to change the independence of the state established by the Constitution and the fundamental principles of the Republic’s activity. It is mandatory to obtain the opinion of the constitutional Council on amendments to the Constitution before they are submitted to a national referendum or for consideration by the Parliament. The protection of human and civil rights and freedoms is being enhanced by granting the President of the country the right to appeal to the constitutional Council in relation to a law or other legal act that has entered into force, as well as by granting constitutional status to the institution of the Commissioner for human rights, and by further improving the judicial system and the Prosecutor’s office. The public consent and political stability is additionally guaranteed by the recognition of the unconstitutionality of any actions capable of upsetting inter-religious peace and understanding. Increasing the role of the legislative branch of government strengthens the principle of resolving the most important issues of public life by democratic methods, including voting in Parliament. Strengthening of parliamentary control over the government, as well as the institution of constitutional control, is an indispensable trend in the development of a democratic and legal state, evidence of the Republic’s commitment to the idea of the rule of law. According to the constitutional Council, the redistribution of powers between the branches of government does not affect the basis of the presidential form of government... An initiative of the President of the Republic of Kazakhstan – Elbasy constitutional reform corresponds to the logic of the historical evolution of the country and provides a further embodiment of democracy, greater accountability of Parliament and Government in the immutability of the presidential form of government (Mami 2019: 560-561).

The constitutional Council of the Republic of Kazakhstan in this resolution disclosed and investigated that the changes provided for by the Law will not affect the unitarity, territorial integrity of the state and the form of government. Consequently, this decision of the constitutional Council, adopted on the basis of the constitutional system, was of historical significance.

Another important decision of the constitutional Council on the constitutional order can be called the conclusion of the constitutional Council of



Kazakhstan from March 20, 2019 No. 2 “On the audit of the draft Law “On amendments to the Constitution of Kazakhstan” on compliance of the Constitution of the Republic of Kazakhstan”. In this case, it was about renaming the capital of Kazakhstan Astana to Nur-Sultan.

This question did not arise by chance. In 1997, on the initiative of the President of Kazakhstan N.A. Nazarbayev, the capital of the country was moved from Almaty to Akmola. This decision was dictated by the important geopolitical location of the city – in the center of Kazakhstan and the Eurasian continent, the availability of the necessary transport and communication infrastructure. A special role in choosing the new capital was played by the availability of free land for the development of the city. The decision to move the capital from Almaty to Astana was strategically justified, due to economic, environmental, and geographical expediency. In 1998, it was decided to rename the new capital – “Astana”, which means” capital “ in Kazakh.

## Conclusion

In conclusion, the constitutional Council of 20 March 2019, it is noted that insertion in the Constitution changes relating to the renaming of the capital of the Republic of Kazakhstan “Astana” in “Nur-Sultan”, associated with the recognition

of the historical role and perpetuation of the merits of the First President RK to the people of Kazakhstan will not affect the independence of the state, territorial integrity of the Republic, forms of government, and the fundamental principles of the Republic established by the Founder of independent Kazakhstan, the First President of the Republic of Kazakhstan – Elbasy, and do not contradict the requirements of paragraph 3 of article 91 of the Basic Law [26]. This decision of the constitutional Council strengthened the foundations of the constitutional system of the Republic of Kazakhstan.

The constitutional Council of the Republic of Kazakhstan is a body whose activities are aimed at protecting the Constitution. In the context of new constitutional realities, it is necessary to further raise the authority of the Basic Law and continue to form a state of constitutional patriotism. Its main principles are the rule of law and the rule of law, universal law-abiding and security, freedom and responsibility. Further development of constitutional values in legislation and organizational and practical activities of state bodies will contribute to the sustainable and consistent strengthening of the state independence of the Republic of Kazakhstan [1]. Making decisions related to strengthening the foundations of the constitutional system of the Republic of Kazakhstan contributes to the achievement of this main goal.

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