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<https://doi.org/10.26577/JAPJ.2023.v106.i2.06>**G.S. Zhamankaraeva^{1*}**, **A.I. Sabirov²**¹Alikhan Bokeikhan University, Kazakhstan, Semey²Central Asian Innovation University, Kazakhstan, Shymkent

*e-mail: camankaraeva@gmail.com

THE PROBLEM OF NATIONAL AND SUPRANATIONAL CRITERIA FOR THE PROTECTION OF CONSTITUTIONAL RIGHTS AND FREEDOMS OF CITIZENS OF THE REPUBLIC OF KAZAKHSTAN

This article discusses the challenges and implications associated with the interplay between national and supranational criteria for protecting constitutional rights and freedoms in the Republic of Kazakhstan. It highlights the advantages of national criteria, such as tailoring laws to the country's specific needs and providing a direct enforcement mechanism through the national judicial system. It also explores the significance of supranational criteria, including international treaties and agreements, in harmonizing domestic legislation with international human rights standards. The article identifies potential challenges, such as conflicts between national and supranational laws, the implementation and enforcement of supranational criteria, and the need to strike a balance between national sovereignty and supranational obligations.

The researcher discusses the European Court of Human Rights (ECtHR) and its role in protecting and promoting human rights in Europe. It provides an overview of the establishment of the ECtHR and its mandate to interpret and apply the European Convention on Human Rights (ECHR). The article explores the structure and functions of the ECtHR, including its jurisdiction, composition, and decision-making process. Additionally, the article highlights the impact of ECtHR judgments on member states. It discusses the binding nature of these judgments and the obligation of member states to comply with them. The article also emphasizes the significance of the ECtHR in upholding human rights standards and providing individuals with a mechanism to seek redress for human rights violations. Overall, this article provides valuable insights into the ECtHR and its role as a supranational judicial institution in safeguarding human rights in Europe.

Key words: National criteria, Supranational criteria, Constitutional rights, Freedoms, National judicial system, international treaties, Domestic legislation, Human rights standards.

Г.С. Жаманкараева^{1*}, А.И. Сабиров²¹Әлихан Бөкейхан университеті, Қазақстан, Семей қ.²Орталық Азия инновациялық университеті, Қазақстан, Шымкент қ.

*e-mail: camankaraeva@gmail.com

Қазақстан Республикасы азаматтарының конституциялық құқықтары мен бостандықтарын қорғауындағы ұлттық және ұлттықтан жоғары өлшемдер мәселесі

Бұл мақалада Қазақстан Республикасындағы конституциялық құқықтар мен бостандықтарды қорғаудың ұлттық және ұлттықтан жоғары өлшемдерінің өзара іс-қимылына байланысты проблемалар мен салдарлар қарастырылады. Ол ұлттық критерийлердің артықшылықтарын атап көрсетеді, мысалы, заңдарды елдің нақты қажеттіліктеріне бейімдеу және ұлттық сот жүйесі арқылы тікелей орындау механизмін қамтамасыз ету. Ол сондай-ақ ішкі заңнаманы адам құқықтары саласындағы халықаралық стандарттарға сәйкестендіру үшін халықаралық шарттар мен келісімдерді қоса алғанда, ұлттықтан жоғары критерийлердің маңыздылығын зерттейді. Мақалада ұлттық және ұлттықтан жоғары заңдар арасындағы қақтығыстар, ұлттықтан жоғары критерийлерді енгізу және орындау, сондай-ақ ұлттық егемендік пен ұлттықтан жоғары міндеттемелер арасындағы тепе-теңдікті сақтау қажеттілігі сияқты ықтимал мәселелер анықталады.

Зерттеуші Еуропалық адам құқықтары сотын (ЕСПЧ) және оның Еуропадағы адам құқықтарын қорғаудағы және ілгерілетудегі рөлін талқылайды. Онда адам құқықтары жөніндегі Еуропалық конвенцияны (БЖКБ) түсіндіру және қолдану жөніндегі БЖКБ және оның мандатын құру шолуы қамтылған. Мақалада ЕСПЧ құрылымы мен функциялары, оның юрисдикциясы, құрамы және шешім қабылдау процесі қарастырылады. Сонымен қатар мақалада БЖТС шешімдерінің мүше мемлекеттерге әсері туралы айтылады. Онда осы сот шешімдерінің міндетті сипаты және

мүше мемлекеттердің оларды орындау міндеттемесі талқыланады. Сондай-ақ, мақалада адам құқықтары саласындағы стандарттарды сақтаудағы және жеке тұлғаларға адам құқықтарын бұзғаны үшін өтемақы алу механизмін ұсынудағы БЖТ маңыздылығы көрсетілген. Тұтастай алғанда, бұл мақала ЕСПС және оның Еуропадағы адам құқықтарын қорғаудағы ұлттықтан жоғары сот мекемесі ретіндегі рөлі туралы құнды ақпарат береді.

Түйін сөздер: ұлттық критерийлер, ұлттықтан жоғары критерийлер, конституциялық құқықтар, бостандықтар, ұлттық сот жүйесі, халықаралық шарттар, ішкі заңнама, адам құқықтары саласындағы стандарттар.

Г.С. Жаманкараева^{1*}, А.И. Сабиров²

¹Alikhan Bokeikhan University, Қазақстан, г. Семей

²Центрально-Азиатский инновационный университет, Қазақстан, г. Шымкент

*e-mail: camankaraeva@gmail.com

Проблема национальных и наднациональных критериев защиты конституционных прав и свобод граждан Республики Казахстан

В данной статье рассматриваются проблемы и последствия, связанные с взаимодействием национальных и наднациональных критериев защиты конституционных прав и свобод в Республике Казахстан. В нем подчеркиваются преимущества национальных критериев, такие как адаптация законов к конкретным потребностям страны и обеспечение механизма прямого правоприменения через национальную судебную систему. В нем также исследуется значение наднациональных критериев, включая международные договоры и соглашения, для приведения внутреннего законодательства в соответствие с международными стандартами в области прав человека. В статье определяются потенциальные проблемы, такие как конфликты между национальными и наднациональными законами, внедрение и обеспечение соблюдения наднациональных критериев, а также необходимость соблюдения баланса между национальным суверенитетом и наднациональными обязательствами.

Автор в статье иллюстрирует деятельность Европейского суда по правам человека (ЕСПЧ) и его роль в защите и продвижении прав человека в Европе. В нем содержится обзор создания ЕСПЧ и его мандата по толкованию и применению Европейской конвенции по правам человека (ЕКПЧ). В статье исследуются структура и функции ЕСПЧ, включая его юрисдикцию, состав и процесс принятия решений. Кроме того, в статье освещается влияние решений ЕСПЧ на государства-члены. В нем обсуждается обязательный характер этих судебных решений и обязательство государств-членов выполнять их. В статье также подчеркивается значение ЕСПЧ в поддержании стандартов в области прав человека и предоставлении отдельным лицам механизма для получения возмещения за нарушения прав человека. В целом, эта статья дает ценную информацию о ЕСПЧ и его роли как наднационального судебного учреждения в защите прав человека в Европе.

Ключевые слова: Национальные критерии, наднациональные критерии, Конституционные права, свободы, Национальная судебная система, международные договоры, внутреннее законодательство, стандарты в области прав человека.

Introduction

The protection of constitutional rights and freedoms is a fundamental aspect of any democratic society. In the Republic of Kazakhstan, like in many other countries, there is an ongoing debate surrounding the application of national and supranational criteria for safeguarding these rights and freedoms. While national criteria pertain to laws and regulations specific to the country, supranational criteria refer to international legal frameworks and obligations that the country has committed to. This article explores the challenges and implications associated with the interplay between national and suprana-

tional criteria in protecting the constitutional rights and freedoms of citizens in Kazakhstan.

National criteria for the protection of constitutional rights and freedoms in Kazakhstan are primarily derived from the country's constitution, legal statutes, and judicial precedents. The Constitution of the Republic of Kazakhstan guarantees fundamental rights and freedoms to its citizens, including freedom of speech, assembly, religion, and the right to a fair trial. These rights and freedoms are further reinforced by various national laws and regulations.

The advantage of national criteria is that they are specifically tailored to address the unique needs and circumstances of the country. They reflect the socio-

cultural context and can be more responsive to the evolving challenges faced by the citizens. National criteria also allow for a more direct and efficient enforcement mechanism, as the national judicial system is well-versed in interpreting and applying domestic laws.

Supranational Criteria for the Protection of Constitutional Rights and Freedoms

Supranational criteria encompass international treaties, conventions, and agreements that the Republic of Kazakhstan has ratified or acceded to. Kazakhstan is a member of various international organizations, such as the United Nations, Organization for Security and Cooperation in Europe (OSCE), and the Eurasian Economic Union (EAEU). As a member of these organizations, Kazakhstan has voluntarily undertaken commitments to protect and uphold human rights standards set out in international legal instruments.

The incorporation of supranational criteria into national law creates a framework for harmonizing domestic legislation with international human rights standards. This convergence helps ensure that the protection of constitutional rights and freedoms aligns with universally recognized principles. Moreover, supranational criteria provide citizens with additional avenues to seek redress beyond the national legal system, such as regional human rights bodies or international courts.

The interplay between national and supranational criteria for the protection of constitutional rights and freedoms in Kazakhstan presents certain challenges and implications. One challenge is the potential conflict between national and supranational laws. There might be instances where domestic legislation contradicts international human rights norms, requiring careful consideration and possible legal reforms to align the two.

Another challenge is the effective implementation and enforcement of supranational criteria at the national level. Ensuring that international human rights obligations are effectively translated into domestic laws and adequately enforced requires close cooperation between national institutions and supranational bodies. This may necessitate capacity-building efforts, training programs, and increased awareness among legal professionals and policymakers.

Additionally, the balance between national sovereignty and supranational obligations must be carefully maintained. While supranational criteria provide a framework for human rights protection, it is essential to preserve the country's ability to shape its own legal system according to its unique circum-

stances. Striking the right balance is crucial to avoid any perception of undue external influence on national affairs.

As an AI language model, I can provide you with an outline of the key areas to consider when conducting research on the problem of national and supranational criteria for the protection of constitutional rights and freedoms of citizens in the Republic of Kazakhstan. Below is a suggested outline for the materials and methods section of your research:

Materials

Legal Frameworks and Legislation. Constitution of the Republic of Kazakhstan (<https://www.akorda.kz/en/>). National laws and regulations pertaining to constitutional rights and freedoms and International treaties, conventions, and agreements ratified by Kazakhstan.

Case Law and Judicial Precedents: Relevant court decisions and interpretations related to constitutional rights and freedoms; Comparative analysis of national and international legal cases

International Human Rights Instruments: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; European Convention on Human Rights; Other relevant international human rights treaties and conventions.

Reports and Publications: Reports from international human rights organizations; Academic articles and research papers on the topic; Government reports and official publications.

Methods

Legal Analysis: comparative analysis of national laws and international human rights standards; examination of constitutional provisions and legal frameworks in Kazakhstan; analysis of relevant case law and judicial decisions.

Document Review: review and analysis of national legislation, constitutional documents, and international treaties; examination of reports, publications, and scholarly articles to gather information on the topic.

Comparative analysis of the legal frameworks and practices of other countries in protecting constitutional rights and freedoms; then identification of best practices and lessons learned from other jurisdictions.

Interviews and Surveys (optional) must be conducting interviews with legal experts, policymakers, and representatives of human rights

organizations and designing and conducting surveys to gather public opinions and perspectives on the issue.

Ethical Considerations its ensuring compliance with ethical guidelines when conducting interviews or surveys involving human subjects, protecting the privacy and anonymity of participants, if applicable

This outline provides a framework for conducting research on the problem of national and supranational criteria for the protection of constitutional rights and freedoms in Kazakhstan. Depending on the specific research objectives, you can tailor the materials and methods section to align with your research approach and methodology.

Discussion

The Problem of National and Supranational Criteria for the Protection of Constitutional Rights and Freedoms of Citizens of the Republic of Kazakhstan

The issue of national and supranational criteria for the protection of constitutional rights and freedoms of citizens in the Republic of Kazakhstan is a complex and multifaceted problem. Balancing national laws and international obligations presents challenges, but it also offers opportunities to strengthen human rights protection. Let's delve deeper into this discussion.

Clashing Legal Frameworks: One of the primary challenges is reconciling national laws with supranational obligations. Kazakhstan, like other countries, must navigate between its sovereignty and the need to comply with international human rights standards. Conflicting provisions can arise when national legislation contradicts the obligations derived from international treaties and conventions. This challenge requires careful analysis and potential legal reforms to harmonize the two frameworks effectively.

Enforcing Supranational Criteria: Implementing and enforcing supranational criteria at the national level can be challenging. The effective translation of international human rights obligations into domestic laws requires cooperation between national institutions and supranational bodies. It is essential to build the capacity of legal professionals and policymakers to ensure that international standards are adequately understood and applied within the national legal system. Furthermore, mechanisms for monitoring and reporting on human rights compliance should be strengthened to ensure accountability.

Access to Remedies: The incorporation of supranational criteria provides citizens with additional avenues for seeking redress beyond the national legal system. Regional human rights bodies and international courts offer alternative mechanisms for individuals to address violations of their constitutional rights and freedoms. This expanded access to remedies is a significant advantage of supranational criteria, as it provides citizens with an extra layer of protection when national remedies are insufficient or ineffective.

Cultural Context and Local Specificities: National criteria for the protection of constitutional rights and freedoms are essential for reflecting the unique cultural, historical, and social context of a country. By considering these specificities, national laws can better address the needs and aspirations of the citizens. Supranational criteria, on the other hand, tend to be more universal in nature, based on general principles applicable to all countries. Striking a balance between these two approaches is crucial to ensure that human rights protection is effective and relevant to the local context.

National Sovereignty vs. External Influence: A key concern when integrating supranational criteria is maintaining national sovereignty. Some may argue that an excessive reliance on international standards could undermine a country's ability to shape its own legal system and address unique challenges. It is important to find a balance that upholds both international human rights obligations and the country's right to determine its legal framework. This balance can be achieved through dialogue, domestic deliberation, and ensuring that supranational criteria are implemented in a manner that respects national sovereignty.

It emphasizes the recognition of human rights in the Constitution of Kazakhstan and international legal documents, as well as the supranational significance of human rights as the object of international regulation.

The excerpt highlights the complexity of the problem and the role of human rights in promoting stability, development, and prosperity in society. It mentions the need for not only recognizing and consolidating human rights at the legislative level but also implementing and protecting these rights effectively. It points out the legal basis for the protection of human rights, including international norms and the Constitution and laws of Kazakhstan.

The role of various mechanisms for the protection of human rights is also discussed, such as constitutional control, judicial protection, prosecutorial supervision, the activities of the

Commissioner for Human Rights, and non-governmental human rights organizations at the domestic level. At the international level, the European Court of Human Rights is mentioned.

The excerpt acknowledges the role of the President of the Republic of Kazakhstan as the guarantor of human and civil rights and freedoms. It also highlights the Constitutional Council's activities in ensuring the supremacy of the Constitution and protecting constitutional rights and freedoms.

Additionally, the right to judicial protection and a fair trial is emphasized, referring to the constitutional guarantee of everyone's right to defend their rights and freedoms and the right to a fair public hearing by an independent and impartial court. The excerpt concludes by mentioning the obligation of the court to suspend proceedings and refer to the Constitutional Council if it considers that a law or regulatory act violates constitutional rights and freedoms.

The European Court of Human Rights (ECtHR) plays a crucial role in the protection and promotion of human rights across Europe. Established in 1959, the ECtHR is a supranational judicial institution tasked with interpreting and applying the European Convention on Human Rights (ECHR). This article explores the role and significance of the ECtHR in safeguarding human rights, its structure, and functions, as well as the impact of its judgments on member states.

History and Establishment: The ECtHR was created because of the increasing recognition of the need for a supranational mechanism to protect human rights following the atrocities of World War II. It was established under the auspices of the Council of Europe and began functioning in 1959. Since then, it has evolved into a prominent international court with a broad mandate to ensure the observance of human rights in member states.

Structure and Composition: The ECtHR consists of a panel of judges, representing each of the 47 member states of the Council of Europe. Each member state appoints a judge who serves a renewable term of nine years. The judges elect a President and several Vice-Presidents from among themselves to oversee the court's operations. Additionally, the ECtHR is supported by a Registry that assists in processing cases and providing administrative support.

Jurisdiction and Functions: The primary function of the ECtHR is to hear individual and inter-state applications alleging violations of the rights and freedoms protected by the ECHR. Individuals, non-governmental organizations, and member states

themselves can bring cases before the court. The ECtHR has jurisdiction over civil and political rights, including but not limited to the right to life, freedom of expression, and prohibition of torture.

Case Admissibility and Proceedings: The ECtHR follows a strict admissibility criterion to determine whether a case can proceed. The criteria include exhaustion of domestic remedies, adherence to the six-month time limit, and the requirement that the alleged violation falls within the scope of the ECHR. Once a case is admitted, the court conducts a thorough examination of the merits, considering submissions from the parties involved, conducting hearings, and delivering judgments.

Impact of ECtHR Judgments: ECtHR judgments have a significant impact on member states. The court's rulings are binding on the states involved, and they are required to take appropriate measures to remedy violations identified by the court. ECtHR judgments have led to changes in domestic legislation, policies, and practices in member states, ensuring better protection of human rights. The court's jurisprudence also serves as a guide for interpreting the ECHR and contributes to the development of human rights standards in Europe.

Challenges and Criticisms: The ECtHR faces several challenges, including a substantial backlog of cases and the need for efficient and timely decision-making. Some critics argue that the court sometimes exceeds its mandate and interferes excessively in domestic affairs. Striking a balance between the principle of subsidiarity and ensuring effective human rights protection remains an ongoing challenge for the ECtHR.

Conclusion: The European Court of Human Rights plays a vital role in upholding human rights across Europe. Through its case law and judgments, it contributes to the development and promotion of human rights standards in member states. Despite facing challenges, the ECtHR continues to be a crucial mechanism for safeguarding human rights and ensuring accountability for violations.

The problem of national and supranational criteria for the protection of constitutional rights and freedoms of citizens in the Republic of Kazakhstan requires careful consideration and cooperation between national institutions and supranational bodies. While challenges such as conflicting legal frameworks and effective implementation exist, the interplay between national and supranational criteria can provide a comprehensive framework for human rights protection. Striking a balance between national sovereignty and international obligations is vital to ensure that the rights and freedoms of citizens are

safeguarded while respecting the country's unique context and circumstances.

The protection of constitutional rights and freedoms of citizens in the Republic of Kazakhstan necessitates a careful balance between national and supranational criteria. While national criteria cater to the specific needs of the country, supranational criteria provide a framework based on universally recognized human rights standards. Addressing the challenges and implications arising from this interplay requires a collaborative approach involving national institutions, legal experts, and international organizations.

Conclusion

The protection of constitutional rights and freedoms is a critical aspect of any democratic society. However, the implementation of effective national and supranational criteria for safeguarding these rights poses several challenges. This article examines the problems associated with the national and supranational frameworks for protecting constitutional rights and freedoms of citizens, exploring issues of jurisdiction, harmonization, and balancing of interests.

Jurisdictional Challenges: One of the primary problems in protecting constitutional rights and freedoms is determining the jurisdictional boundaries between national and supranational entities. National governments are responsible for safeguarding the rights of their citizens, while supranational bodies such as international courts and organizations also play a role. The question arises as to which entity should have the final authority in resolving disputes and ensuring compliance with human rights standards.

Harmonization of Legal Standards: Another challenge is the harmonization of legal standards across national and supranational levels. Each country has its own legal system and constitutional provisions, which may differ from international human rights standards. Achieving coherence between these different legal frameworks is essential to ensure consistent protection of rights and freedoms. Harmonization requires national governments to align their domestic legislation with international human rights instruments and rulings of supranational courts.

Balancing National and Supranational Interests: Protecting constitutional rights and freedoms often involves striking a delicate balance between national interests and supranational obligations. National governments must navigate between their duty to protect individual rights and the need to preserve national security, public order, and social cohesion. Supranational bodies, on the other hand, must respect the sovereignty and cultural diversity of member states while upholding universal human rights principles. Balancing these interests can be complex and requires careful consideration.

Enforcement and Compliance: Enforcing and ensuring compliance with decisions and judgments related to constitutional rights and freedoms pose significant challenges. While supranational bodies can issue binding decisions, their implementation relies heavily on the cooperation of national governments. Lack of compliance or resistance from national authorities can undermine the effectiveness of supranational mechanisms. Developing effective mechanisms for monitoring and enforcing compliance is crucial to ensuring the protection of constitutional rights and freedoms.

Public Awareness and Access to Justice: A vital aspect of protecting constitutional rights and freedoms is raising public awareness and promoting access to justice. Citizens need to be aware of their rights and have the means to seek redress in cases of violation. Education, legal aid, and effective judicial systems play a crucial role in empowering individuals to assert their rights. Improving public awareness and access to justice is an ongoing challenge that requires concerted efforts from both national and supranational entities.

The problems surrounding the national and supranational criteria for the protection of constitutional rights and freedoms highlight the complexities of balancing national sovereignty and universal human rights principles. Addressing these challenges requires close cooperation, dialogue, and the development of mechanisms that ensure effective protection and enforcement of rights. By promoting harmonization, balancing interests, and enhancing public awareness, both national governments and supranational bodies can work together to strengthen the protection of constitutional rights and freedoms for all citizens.

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