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## THE PLACE AND ROLE OF DECISIONS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KAZAKHSTAN IN THE SYSTEM OF SOURCES OF CONSTITUTIONAL LAW

The article examines the significance and relevance of decisions made by the Constitutional Court of Kazakhstan within the context of the country's constitutional legal system.

This topic's theoretical and practical significance is determined by the revival of the constitutional control institution in the Republic of Kazakhstan, which is an important factor in changing the country's legal system. This allows us to consider the role of constitutional justice decisions as a source of law and their legal force and scope.

The decisions of the Constitutional Court of the Republic of Kazakhstan play a significant role in the legal regulation of public affairs. Certain categories of decisions by the Constitutional Court, such as those that address compliance with the Kazakhstani Constitution, laws, and other regulatory legal acts, as well as those issued in response to complaints from citizens or requests from courts regarding the constitutionality of specific laws, are considered part of the system of constitutional law in Kazakhstan. These decisions serve to clarify and interpret the provisions of the Kazakh Constitution.

The issue of the role of decisions by the Constitutional Court as a source of constitutional law is an important one, as there are two opposing approaches to this issue. According to the first approach, the Constitutional Courts are law enforcement agencies that do not create new legal norms. However, according to the other approach, along with their law enforcement role, the Constitutional Courts also engage in law-making, and many of their decisions have a normative significance, making them a source of law, including constitutional law.

The authors of the article discuss the special status of the Constitutional Court as an institution of constitutional review, the importance of the decisions it makes, their unique legal characteristics, as well as their position and role within the system of sources of constitutional law.

**Key words:** Constitutional Court, source of law, source of constitutional law, system of sources of constitutional law, normative legal act, judicial precedent, hierarchy of normative legal acts.

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### Қазақстан Республикасы Конституциялық Соты шешімдерінің конституциялық құқықтың қайнар көздері жүйесіндегі орны мен рөлі

Мақала Қазақстан Республикасының конституциялық құқық көздері жүйесіндегі ҚР Конституциялық Соты шешімдерінің орны мен рөлін зерттеуге арналған.

Тақырыптың теориялық және практикалық маңыздылығы Қазақстан Республикасында конституциялық бақылау институтын жаңғырту ұлттық құқықтық жүйені өзгертудегі маңызды фактор болып табылатындығымен айқындалады, бұл Конституциялық Сот төрелігі органдары шешімдерінің құқық көзі ретіндегі рөлі туралы, сондай-ақ олардың заңдық күші мен қолданылу аясы туралы мәселе қоюға мүмкіндік береді.

Конституциялық сот шешімдерінің конституциялық құқықтың қайнар көзі ретіндегі рөлі мәселесі өзекті болып табылады, өйткені аталған мәселеге қолданыстағы тәсілдер күрт қарама-қайшы болып табылады: бірінші тәсілге сәйкес Конституциялық соттар – бұл құқықтың жаңа нормаларын жасамайтын құқық қорғау органдары; екіншісіне сәйкес, Конституциялық соттар құқық шығарумен қатар заң шығарумен де айналысады, яғни олардың көптеген шешімдері нормативтік мәнге ие, құқықтың, оның ішінде конституциялық құқықтың қайнар көздеріне айналады.

Мақала авторлары Конституциялық Соттың конституциялық бақылау органы ретіндегі ерекше мәртебесін, ол қабылдаған актілердің маңыздылығын, олардың ерекше құқықтық қасиеттерін, сондай-ақ конституциялық құқық көздері жүйесіндегі оның шешімдерінің орны мен рөлін қарастырады.

**Түйін сөздер:** Конституциялық Сот, құқықтың қайнар көзі, конституциялық құқықтың қайнар көзі, конституциялық құқық көздерінің жүйесі, нормативтік құқықтық акт, сот прецеденті, нормативтік құқықтық актілердің иерархиясы.

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### **Место и роль решений Конституционного суда Республики Казахстан в системе источников конституционного права**

Статья посвящена изучению места и роли решений Конституционного Суда РК в системе источников конституционного права Республики Казахстан.

Теоретическая и практическая значимость темы определяется тем, что возрождение в Республике Казахстан института конституционного контроля является важным фактором в изменении национальной правовой системы, что позволяет поставить вопрос о роли решений органов конституционного правосудия как источника права, а также об их юридической силе и сфере действия.

Решения Конституционного Суда Республики Казахстан играют большую роль в правовом регулировании общественных отношений. Отдельные виды постановлений Конституционного Суда РК (содержащие положения о соответствии Конституции РК законов, иных нормативных правовых актов; вынесенные на основании проверки конституционности законов, примененных в конкретном деле по жалобам граждан или по запросам судов, а также содержащие разъяснение и толкование норм Конституции РК), как разновидность решений, относятся к системе источников конституционного права РК.

Проблема роли решений Конституционного Суда как источников конституционного права является актуальной, так как существующие подходы к указанной проблеме являются резко противоположными: согласно первому подходу, конституционные суды – это органы правоприменения, не создающие новых норм права; согласно второму, наряду с правоприменением конституционные суды занимаются также правотворчеством, т.е. многие их решения имеют нормативное значение, становятся источниками права, в том числе и конституционного права.

Авторы рассматривают особый статус Конституционного Суда как органа конституционного контроля, значение принимаемых им актов, их особые юридические свойства, а также их место и роли его решений в системе источников конституционного права.

**Ключевые слова:** Конституционный Суд, источник права, источник конституционного права, система источников конституционного права, нормативно-правовой акт, судебный прецедент, иерархия нормативно-правовых актов.

## **Introduction**

The constitutional reform that took place in Kazakhstan in 2022 reinstated the activities of the Constitutional Court of the Republic of Kazakhstan, which had been suspended after the adoption of the Constitution in 1995. The court resumed its operations on January 1st, 2023 (<https://akorda.kz/ru/o-provedenii-5-iyunya-2022-goda-respublikanskogo-referenduma-545131>).

As noted by the renowned Kazakh scientist Aitkhozhin K.K., the main feature of the current constitutional process is the fact that legislation is designed to reflect the fundamental goals and characteristics of the transformed Kazakh society, in accordance with the provisions of the Basic Law, and to actively contribute to the formation of a democratic and law-based state ([https://online.zakon.kz/Document/?doc\\_id=1005029](https://online.zakon.kz/Document/?doc_id=1005029)).

The legal status of the Constitutional Court is defined in Section VI of the Constitution of the Republic of Kazakhstan ([https://online.zakon.kz/Document/?doc\\_id=39441762](https://online.zakon.kz/Document/?doc_id=39441762)), as well as in the Constitutional Law of the Republic of Kazakhstan on the Constitutional Court, dated November 5, 2022, No. 153-VII ([https://online.zakon.kz/Document/?doc\\_id=39441762](https://online.zakon.kz/Document/?doc_id=39441762)).

Currently, the Constitutional Court is one of the most significant components of the judicial system and state power in the Republic of Kazakhstan.

The restoration of the constitutional justice institution is an important factor that influences the legal system of the state.

At the same time, there is no unified approach among domestic legal scholars in understanding the legal nature of the decisions of the Constitutional Court and in conducting conceptual studies on the place and role of these decisions in the system of

sources of constitutional law in the Republic of Kazakhstan.

In our view, in the context of establishing the rule of law in Kazakhstan and developing civil society, it is important to study a new type of source of constitutional law – the acts of the Constitutional Court – and their place within the system of constitutional law.

The national legislation of the country sets out the procedure for the issuance of regulatory legal acts, amendments, additions and their cancellation. According to Yu.A. Tikhomirov, this process of law-making takes place within predetermined legal parameters, reflecting the unity and diversity of legal acts and their interrelationships with each other (Tikhomirov 2010: 73).

In accordance with Article 4 of the Constitution of the Republic of Kazakhstan, the current legislation in the country is based on the provisions of the Constitution, relevant laws, other regulatory legal acts, international treaty obligations and other commitments of the Republic, as well as decisions of the Constitutional and Supreme Courts ([https://online.zakon.kz/Document/?doc\\_id=1005029](https://online.zakon.kz/Document/?doc_id=1005029)).

Russian scientists, including S. A. Avakyan, N. V. Vitruk, O. E. Kutafin, S. A. Karapetyan, N. V. Svechnikova, V. V. Zakharov, and K. V. Demchenkov, have all addressed issues related to the decisions of the Constitutional Court as a source of constitutional law.

In Russian legal scholarship, the study of sources of national legislation is not a novel topic – some aspects of it have been addressed in a number of academic articles, monographs, and textbooks, although mainly in relation to the implementation of statutory legal acts. The studies of M.T. Baymakhanov, S.Z. Zimanov, S.N. Sabikenov, V.A. Kim, G.S. Sapargaliev, A.K. Kotov, O.K. Kopabaev, E.B. Abdrasulov, S. Uzbekuly, S.A. Tabanov, V.A. Malinovsky, K.K. Aitkhozhin, A.A. Chernyakova, S.K. Amandykova, Yu.V. Maltseva, R.T. Okusheva, Zh.U. Tlembayeva and K.B. Ertuganova have highlighted the problems of formation and development of certain types of constitutional law sources in the Republic of Kazakhstan.

However, unfortunately, the issues related to the nature and content of decisions of the Constitutional Court of the Republic of Kazakhstan as a source of constitutional law in the Republic have not been adequately studied in Russian legal literature.

The lack of clarity in understanding the legal basis for the decisions of the Constitutional Court

could have a negative impact on the entire law enforcement system as a whole and hinder the development of a coherent approach to law enforcement.

We believe that this is due to the relatively short duration of the functioning of the constitutional justice institution in our country. Since there is no unified approach towards understanding the essence of this institution and its decisions, and due to the importance of the issue under consideration, as well as the fact that legislation on the Constitutional Court of the Republic of Kazakhstan is being periodically amended, we believe that discussing this topic is timely and relevant.

In this regard, I would like to agree with the opinion of Russian scientist V.E. Chirkin, who states that «unduly delaying the process of establishing a new system of constitutional law sources, as has occurred in Russia since the adoption of the 1993 Constitution, does not contribute to enhancing constitutional stability and legal certainty, nor does it create a state governed by rule of law» (V.E. Chirkin 1996:60).

Based on this, it is necessary to determine the place and role of the decisions of the Constitutional Court of the Republic of Kazakhstan within the system of sources of constitutional law and their position in the hierarchy of regulatory legal acts in the Republic of Kazakhstan, in view of the expansion of powers of the constitutional review body under consideration and the increasing importance of acts adopted by it within the mechanism of legal regulation of public relations.

## Results and discussion

The sources of constitutional law are legal documents that establish and give legal force to constitutional and legal norms that regulate public relations and are the subject matter of constitutional law.

In this regard, I would like to agree with the opinion of Russian scholar N.V. Vitruk, who states that «the decisions and legal positions of the Constitutional Court of the Russian Federation are a source of constitutional law and complement its content» (Vitruk 2001:89).

According to O.E. Kutafin, sources of constitutional law serve three main functions. Firstly, they represent the decisions of law-making bodies that create, amend, or repeal constitutional law norms. Secondly, they provide the form in which these norms appear in real life and from which knowledge about current constitutional law

can be derived. Thirdly, they establish the basis for the content and form of legal sources for all other branches of law (Kutafin 2002:18-19).

To understand the system of sources of constitutional law, it is necessary to know: a) what components this system comprises and b) how these components are interrelated.

The concept of a «system» can be defined as a «bounded set» of interconnected elements that form an integrated whole. Each element is an integral part of this system and contributes to its overall function (Alekseev 2003: 341).

Thus, a system can be described as a whole composed of parts, or a group of elements that interact and interconnect with each other to form a cohesive whole (Philosophical Encyclopedic Dictionary 1983: 610).

The system of sources of constitutional law should be analyzed according to the following criteria:

- 1) the composition of the sources;
- 2) the ratio of sources by legal force;
- 3) subjects of legal expression of will;
- 4) the prospects of historically formed sources of law for the development of the national legal system.

Let's take a look at the place of rulings from the Constitutional Court of Kazakhstan in the system of sources of constitutional law.

According to Article 55 of the «Law on the Constitutional Court of the Republic of Kazakhstan», the decision of the Court is an act that is adopted at its meetings ([https://online.zakon.kz/Document/?doc\\_id=39441762](https://online.zakon.kz/Document/?doc_id=39441762)).

The decisions of the Constitutional Court can be divided into two categories: final decisions that exercise the court's constitutional powers, and other decisions that exercise other powers. These decisions are an important part of the system of sources for constitutional law in Kazakhstan and need to be understood within the context of the overall system.

When discussing the decisions of the Kazakh Constitutional Court as a source of constitutional law, it is important to understand their role within the broader system and how they relate to other components.

There are two ways to view the decisions of the Kazakhstan Constitutional Court: broadly, as a type of legal source, or more specifically, as a specific type of decision that exercises certain powers.

*In a broad sense*, decisions made by the Constitutional Court of Kazakhstan can be considered a type of act. In a narrower sense, these decisions

include only those related to organizational matters of the court's operations, as per Article 55 of the «Law on the Constitutional Court of Kazakhstan».

*While these decisions* cannot be classified as a source of law in a strict sense, they do play a significant role in the functioning of the court. The formal legal definition of sources of law includes forms of expression for legal norms, which are not present in decisions concerning organizational matters. Instead, these decisions have a specific target audience and address specific situations.

*In a broad sense*, the decisions of the Constitutional Court of the Republic of Kazakhstan can be divided into several categories:

1. Regulatory resolutions that are an integral part of the current law of the Republic of Kazakhstan;
2. Messages;
3. Conclusions;
4. Resolutions

*Normative resolutions, conclusions, and messages refer to the final decisions of the Constitutional Court.*

*Messages from the Constitutional Court:* In accordance with paragraph 6 of Article 53 of the Constitution, the Constitutional Court, based on the results of its analysis of constitutional proceedings, sends an annual message to Parliament regarding the state of constitutional law in the country. During the preparation of this message, the Court may request the necessary documents and information from relevant government agencies and officials.

After reviewing the draft message at a meeting, the text is finalized and approved by the Constitutional Court. The conclusion of the Constitutional Court of the Republic of Kazakhstan on the matter is its final decision regarding the compliance with the constitutional procedures in cases provided for in Articles 47(1) and (2) of the Constitution. Before the Parliament of the Republic can decide on the early removal of the President, the Court has made a final decision on whether or not to remove the President from office. The definitions in the Law «On the Constitutional Court of the Republic of Kazakhstan» do not apply to final decisions. However, in paragraph 2 of Article 55, they are referred to as «other decisions» that exercise other powers of the Constitutional Court.

*The content of these definitions* mainly relates to procedural matters. At the same time, some definitions may be significant for ensuring the legality and creating conditions for the smooth implementation of constitutional and legal principles.



*A unique aspect* of the definitions is that, in cases where an appeal is refused or proceedings are terminated in a particular case, they provide detailed information about the legal positions taken by the Constitutional Court in previous resolutions and rulings on similar matters.

The decisions of the Constitutional Court provide legal interpretations not only in procedural matters, but also in substantive ones (Lazarev 2003: 52).

Based on the features that are characteristic of the acts adopted by the Constitutional Court of Kazakhstan, we can conclude that resolutions have the qualities of a source of law.

This is supported by the competence of the court as established in Article 23 of the «On the Constitutional Court of the Republic of Kazakhstan» law, which allows the court to adopt decisions on various issues with different legal natures.

Therefore, the problem of classifying each type of decision as a source of constitutional law must be solved on a case-by-case basis. The special position of decisions of the Constitutional Court in the system of sources of constitutional law primarily stems from the fact that it is the only body authorized to officially interpret the provisions of the Constitution in accordance with Paragraphs 4 and 5 of Article 72 of the Basic Law.

In this regard, I would agree with According to E.B. Abdrasulov, procedures for the interpretation of legal norms should be understood as a set of actions performed by a specific subject in a strict sequence and system. These actions are appropriately designed and presented to the addressees of legal regulations. The interpretation process is not just a simple set of steps, but it is often formalized by legislation, either directly or indirectly, through the provision of a causal interpretation of legal and constitutional norms in the context of various constitutional control functions ([https://online.zakon.kz/Document/?doc\\_id=1030734](https://online.zakon.kz/Document/?doc_id=1030734)).

The powers of the Constitutional Court of the Republic of Kazakhstan include reviewing laws adopted by the Parliament, resolutions of the Parliament before they are signed by the President, and international treaties before their ratification to ensure compliance with the Constitution of the Republic. The court also gives an opinion in cases specified in Article 47, paragraphs 1 and 2, of the Constitution.

*At the request of the President of the Republic of Kazakhstan and the Chairmen of the Senate and Mazhilis, as well as at least 1/5th of the total*

*number of deputies in the Parliament, and the Prime Minister and the Constitutional Court:*

1. In case of any dispute regarding the correctness of elections of the President of the Republic or deputies of Parliament, or the holding of a republican referendum, this body will resolve it.

2. It will also consider appeals from the President of the Republic in matters specified in paragraph 10-1 of Article 44 of the Constitution, as well as from the courts in matters covered by Article 78 of the same document.

As K.Mami points out, the study of the practice of constitutional reform over the past decade has shown that there has been an international trend towards expanding citizens' access to constitutional controls in order to protect their rights against the application of laws that conflict with the Constitution. This has been done both by granting individuals and legal entities the right of direct appeal to constitutional justice bodies, and by providing for indirect appeals through courts, ombudsmen, the Prosecutor General, and other entities. These approaches have also been implemented in Kazakhstan (Mami 2022: 3).

*According to the complaints of citizens,* the Constitutional Court reviews the compliance of the normative legal acts of the Republic of Kazakhstan that directly affect their rights and freedoms, which are enshrined in the Constitution, with the provisions of the Constitution.

*Based on the requests of the Prosecutor General of the Republic,* the court considers the issues specified in paragraphs 3) and 4) of paragraph 1 of Article 72 of the Constitution of the Republic of Kazakhstan as well as the regulatory legal acts of the country for their conformity with the main law of the state.

Furthermore, the court reviews regulatory legal acts that affect the rights and freedoms of human and citizens enshrined in the Constitution in order to ensure their compliance with the principles of the Constitution of the Republic.

The decision of the Constitutional Court, adopted in response to a complaint regarding the violation of citizens' constitutional rights and freedoms, is binding on the parties to the dispute itself. It will also be binding on other relevant parties who may be affected by this decision in the future. That is, other parties who were not involved in the original case will be required to take the Constitutional Court's decision into account in their own legal proceedings.

As the Chairman of the Constitutional Court, E. Asimova notes that by appealing to the court, citizens contribute to the restoration of justice and

legality (<https://www.gov.kz/memleket/entities/ksrk/press/news/details/577716?lang=ru>).

Thus, these powers make the Constitutional Court an institution whose decisions are of great importance, as they cannot be challenged by other state authorities and apply throughout the entire territory of the Republic of Kazakhstan.

The Constitutional Court of the Republic of Kazakhstan carries out the official interpretation of the Constitution, making decisions that are essential to the completeness of the text. Other state bodies are not allowed to interpret constitutional norms that have already been interpreted by the Constitutional Court.

According to Article 74 of the Constitution of the Republic of Kazakhstan, laws and international treaties that are inconsistent with the constitution of the country cannot be signed or ratified. These laws and other legal acts that are recognized as unconstitutional, including those that infringe on the rights and freedoms enshrined in the constitution, are canceled and not subject to application after the Constitutional Court has issued a decision or the date specified by it.

The Constitutional Court has adopted a resolution concerning the inconsistency of a legal act with the Constitution of the Republic of Kazakhstan and the violation of the constitutional rights and freedoms of citizens. As a result, the unconstitutional act has been canceled.

The Constitutional Court is not able to independently amend such acts. However, the competent State bodies have an obligation to do so. Until the relevant changes are made to the legislation, the decision of the Constitutional Court will serve as the legal basis for decision-making in that specific area of public affairs.

## Conclusion

The role of the Constitutional Court in the system of sources of constitutional law can be understood in two ways: first, by considering the nature of this institution; and second, by analyzing the specifics of the decision-making process and the legal significance of its decisions.

Let's take a look at the system of sources of constitutional law in the Republic of Kazakhstan.

The Constitution of the Republic of Kazakhstan, adopted in 1995, is the most important legal document in our country.

We believe that the special status of the Constitutional Court, as a body responsible for

ensuring the constitutionality of acts, the importance of the decisions it makes, their unique legal properties, including their binding, final, immediate, and irreversible nature, and the legal implications of their application, justify placing them above the Constitution of the Republic of Kazakhstan and the Law on Amendments and Additions to the Constitution of Kazakhstan.

In accordance with paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan, ratified international treaties take precedence over national laws. The procedures and conditions for the implementation of international treaties on the territory of Kazakhstan, which the country is a party to, are determined by its legislation.

Article 72 of the Constitution of the Republic of Kazakhstan provides for the right to review international treaties before they are ratified in order to ensure their compliance with the country's Constitution. According to Article 74, international treaties that are found to be inconsistent with the Kazakhstani Constitution may not be signed or ratified, and therefore, cannot be put into effect ([https://online.zakon.kz/Document/?doc\\_id=1005029](https://online.zakon.kz/Document/?doc_id=1005029)).

Thus, since the Constitutional Court of the Republic of Kazakhstan may recognize a ratified international treaty to be inconsistent with the country's Constitution, the legal force of its decision may be higher than that of other national laws. At the same time, internationally recognized legal documents such as the Universal Declaration of Human Rights and the International Covenants on Human Rights have a special status and always take precedence over national legislation, including the country's constitution.

As for constitutional laws, the legal status of the Constitutional Court is established by the Kazakhstan Law «On the Constitutional Court of the Republic of Kazakhstan». Articles 23 and 72 of this law, as well as the Constitution of the Republic of Kazakhstan, do not provide for the possibility of checking the compliance of constitutional laws with the constitution of the country. Instead, the Constitutional Court examines laws passed by Parliament for compliance with the constitution before they are signed by the president. Based on this understanding, all kinds of laws are included in the term «laws».

Consequently, the constitutional law itself establishes the possibility for the Constitutional Court of the Republic of Kazakhstan to block the enforcement of laws that are in conflict with the

Constitution. This confirms the supreme legal authority of the decisions of the Constitutional Court over other laws in the country.

Based on this, we believe that the system of sources of constitutional law can be summarized as follows:

1. Declaration of State Sovereignty of the Kazakh SSR
2. The Constitution of the Republic of Kazakhstan of 1995
3. The law amending and supplementing the Constitution
4. Normative resolutions of the Constitutional Court of the Republic of Kazakhstan
5. Ratified international treaties of the Republic of Kazakhstan regulating constitutional and legal relations
6. Constitutional laws of the Republic of Kazakhstan
7. Consolidated laws, laws of the Republic of Kazakhstan, temporary resolutions of the Government of the Republic of Kazakhstan having the force of law
8. Resolutions of the Parliament of the Republic of Kazakhstan and its Chambers
9. Decrees of the President of the Republic of Kazakhstan
10. Resolutions of the Government of the Republic of Kazakhstan
11. Resolutions of the Central Election Commission of the Republic of Kazakhstan
12. Decisions of maslikhats, resolutions of akimats, decisions of akims.

The Declaration of State Sovereignty of the Kazakh Soviet Socialist Republic has historical significance and occupies a special place among the sources of constitutional law [20].

In constitutional law, a «declaration» is a solemn and political legal act that emphasizes its importance for the state and its people.

A specific feature of these declarations is the broad nature of the provisions they contain, which necessitate additional legislative regulation.

The constitutional significance of the 1990 Declaration was first highlighted in 1991 by G.S. Sapargaliyev. He stressed that it is an important source of the legal system in the republic. The scientist also emphasized the special significance of this document as a source of constitutional law. Although the Declaration was adopted during the existence of the Soviet Union, it proclaimed principles of sovereignty that were later enshrined

in the Constitutional Law on State Independence of Kazakhstan (1991) and the Constitutions of 1993 and 1995, among other constitutional acts (Sapargaliyev 2002: 4).

The historical significance of the 1990 Declaration lies primarily in the fact that it designated the statehood of Kazakhstan, which has a centuries-long history, culture, and established state and legal traditions. This declaration was adopted in order to consolidate and guarantee the sovereign rights of Kazakhstan in all spheres of society and ensure the full-fledged political, socio-economic, and spiritual development of its people (Avakian 2010: 25).

It should be noted that current legislation in the Republic of Kazakhstan does not include this type of regulatory legal act. The Declaration of 1990 is the only such document adopted in Kazakhstan at the beginning of a new stage of its development and it is not included in the list of sources of current law in the Republic contained in paragraph 1 of Article 4 of the Constitution of Kazakhstan.

The Law of the Republic of Kazakhstan «On Legal Acts» does not mention the declaration within the hierarchy of regulatory legal acts in the Republic of Kazakhstan ([https://online.zakon.kz/Document/?doc\\_id=37312788](https://online.zakon.kz/Document/?doc_id=37312788)).

Declarations, although they are legal documents, act mainly as declaratory documents. They are similar to the preambles of constitutional acts in many ways. Even when a regulatory function is assigned to a declaration, its implementation is usually short-lived, as the declaration is either incorporated into the text of the constitution or another legislative act, or it is replaced by another constitutional act. In these cases, possible simultaneous reference to both the norms of the constitution (or another act) and the provisions of the declaration may be ineffective.

Declarations can serve as sources of constitutional and legal theory, as they allow us to trace how the political objectives of the state, as stated in these documents, are implemented in its normative activities.

Thus, the decisions of the Constitutional Court of the Republic of Kazakhstan play an important role in the legal regulation of public relations. Some types of decisions by the Constitutional Court (containing provisions on compliance with the Constitution with laws and other regulatory legal acts; issued based on checking the constitutionality of laws applied in a particular case upon complaints from citizens or upon request of courts, as well as providing explanation and interpretation of the norms of the

Constitution), as a type of decision, can be attributed to the system of sources of constitutional law in the Republic of Kazakhstan. At the same time, in terms of their position in the hierarchy of sources of constitutional law, these documents will be placed below the Constitution of the Republic of Kazakhstan and the Law on Amending and Supplementing the Constitution of the Republic of Kazakhstan, while being above all other sources of constitutional law.

In this regard, I would like to agree with the opinion of S.A. Karapetyan that the decisions of the Constitutional Court serve as a special national source of constitutional law (Karapetyan 1998).

Sapargaliev G.S., emphasizing that the sources of national law in Kazakhstan include the normative legal acts listed in paragraph 1 of Article 4 of the Constitution of the Republic of Kazakhstan, notes that not all types of these acts are considered to be sources of constitutional law (Sapargaliev 2002: 6).

Considering the place of the normative decisions of the Constitutional Court within the national legal system of the Republic of Kazakhstan, the following should be noted.

The types of sources of national law in Kazakhstan are defined in the Constitution of the country and the Law on Legal Acts, which was adopted on April 6, 2016 (No. 480-V). This law establishes the hierarchy of legal acts and optimizes the procedures for their adoption and entry into force. Normative resolutions of the Constitutional Court are not included in the hierarchy of normative legal acts defined by Article 10 of this law ([https://online.zakon.kz/Document/?doc\\_id=37312788](https://online.zakon.kz/Document/?doc_id=37312788)).

In this regard, we would like to draw your attention to the fact that, despite the potential for new legal norms to be seen in decisions of the Constitutional Court interpreting the Constitution of the Republic of Kazakhstan, the overall characteristics of these decisions do not allow them to be considered as normative acts.

Thus, in accordance with Article 1 of the Law of the Republic of Kazakhstan «On Legal Acts», a regulatory legal act is a written, official document of a prescribed form, adopted by a republican referendum or an authorized body, that establishes, amends, supplements, terminates or suspends the effect of legal norms ([https://online.zakon.kz/Document/?doc\\_id=37312788](https://online.zakon.kz/Document/?doc_id=37312788)).

Thus, the following features are characteristic of the normative legal act:

- 1) it acts as a source of law aimed at establishing, repealing or changing legal norms;
- 2) it is a form of existence of legal norms.

We believe that the decision of the Constitutional Court of the Republic of Kazakhstan, which finds the rule of law unconstitutional, although it meets the basic criteria for a normative act (the uncertainty of the addressee, the possibility of repeated application, and action regardless of changes or termination of individual legal relations), cannot be considered a normative act, as such a decision by the Constitutional Court in all cases is not intended to regulate social relations but rather has a protective nature. The purpose of the Constitutional Court is to invalidate unconstitutional norms. The decision in question invalidates the specific norm, but it does not create new «positive» regulatory legal norms. In cases where there is a gap in the legislation, the Constitution of the Republic of Kazakhstan serves as the direct regulator after the decision has been made.

The Constitutional Court does not have the authority to make decisions on its own initiative, which is not typical of bodies that issue normative acts. Instead, the activity of the Constitutional Court is derived, and it requires a subject to verify its decisions.

The purpose of a regulatory act is to apply it to specific circumstances or situations. The decision of the Constitutional Court may be insufficient to resolve a particular situation, as it may not provide the necessary regulatory norms. In addition, the decision does not formally cancel the act, but rather contributes to its invalidation, not only of a specific legal rule, but also of a norm with certain content. Therefore, the scope of its impact differs from that of an act that repeals a specific provision.

The recognition of the nature of regulatory acts through court decisions directly contradicts the principle of separation of powers. The decision of the Constitutional Court is based on a specific individual case, which is not related to a legislative initiative.

The decision is made by the Constitutional Court in a specialized procedure. The entry into force of the decision does not depend on the moment of publication. As a result of this decision, it is possible to invalidate normative acts at various levels. However, this does not mean that the legal force of the decision changes in each specific case.

Thus, it can be concluded that the legislator's decision not to include decisions of the Constitutional Court in the existing hierarchy of normative acts, as established in Article 10 of the Law of the Republic of Kazakhstan «On Legal Acts», is correct. The acts of the Constitutional Court should not be considered



as a single-level, because the system of normative acts has a hierarchical structure. Including acts of the Constitutional Court in this system would violate its necessary integrity and unity.

The correctness of this conclusion can be supported by the findings of the Russian scholar Avakian S.A., who argues that the decisions of constitutional courts do not follow the typical process of formalizing legal norms as seen in modern legal systems. Therefore, it is unlikely that the typology of regulatory measures for public relations can be applied to the rulings of constitutional courts. As a result, a decision of the Constitutional Court may not have the same formal characteristics as a law, such as articles, paragraphs, chapters, or sections (Avakian 2010: 383).

The Constitutional Court of the Republic of Kazakhstan is not a court of general jurisdiction. Like other judicial bodies, it is an enforcement agency. It cannot perform the functions of a legislative body, which fall within the jurisdiction of the Parliament of the Republic.

In this regard, we can also cite the Constitutional Court of the Russian Federation as an example. As N.V. Svechnikova points out, the court is not a legislator per se, but when it has to recognize that the provisions of a law being considered do not comply with the Constitution of the Russian Federation and thus terminate their operation, it creates a gap in the legislation.

In such situations, the Constitutional Court, by issuing its legal opinion, partially fills the gap until the relevant legislation is adopted. While the court does not replace legislators, it actively participates in the

legislative process and contributes to the formation of positive constitutional law (Svechnikova 2009).

The decisions of the Constitutional Court of Kazakhstan, which establish the unconstitutionality of certain legal norms, cannot be considered as judicial precedents. They cannot replace the law when resolving specific cases and cannot justify court decisions exclusively, as is the case with the institution of precedent in countries with an Anglo-Saxon legal system. A judicial precedent is a binding decision on a particular case that must be followed by courts of the same or lower jurisdiction when deciding similar cases.

Thus, we can see a mixture of features from other sources of law in the decisions of the Constitutional Court. In this regard, it is worth noting that in the legal literature, there are often discussions about the place of court decisions in the system of sources of law as a whole, without considering the essential specifics of individual types. Russian scholar A.S. Pigolkin (Pigolkin 1998: 70) suggests identifying a special type of interpretation acts that exist alongside normative and individual acts. We agree with this view, as these acts are closest to the sources of law in nature, yet they are not the same. In the decisions of the Constitutional Court of Kazakhstan, we can find some features of other national law sources, but we think that these individual features are not enough to classify court decisions as belonging to a specific type of national law source.

Based on the above information, it can be concluded that the national law of the Republic of Kazakhstan includes a special source of law in the form of decisions of the Constitutional Court.

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