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**TO THE QUESTION OF THE PARTICIPATION OF THE PRESIDENT
OF THE REPUBLIC OF KAZAKHSTAN TO THE CONSTITUTIONAL
PRODUCTION OF THE CONSTITUTIONAL COUNCIL**

Annatation. Article is devoted to a research of questions of the appeal of the President of Kazakhstan to the Constitutional council, the peculiarities of consideration and procedure of constitutional proceedings. Raises issues associated with the cases to the Constitutional Council and ways to improve the interaction Institute President of Kazakhstan with the body of the constitutional control. On the basis of specific references to the Constitutional Council shows the shape and attributes the appeal of the President of the Republic of Kazakhstan of the Constitutional Council.

Key words: Constitution, Constitutional Council, constitutional control, President

Introduction. The President of the Republic of Kazakhstan takes a special place in the system of separation of powers, providing coordinated functioning of all branches of government and responsibility of authorities in front of the people. One of its activities is its interaction with the Constitutional Council of Kazakhstan. This interaction is the powers of the President: the President appoints a chairman and two members of the Constitutional Council, he is the subject of the appeal to the authority of the constitutional control, may make objections to the decisions of the Constitutional Council.

Constitutional proceedings – the procedure of consideration of cases in the constitutional Council, the form of implementation within its competence. As noted by G. S. Sapargaliyev, "it's not judicial proceedings, and the kind of public production, reflecting the characteristics of the Constitutional Council in the system of state bodies" which, "being part of the state mechanism" does not relate and is not drawn to any of the branches of government [1]. Unlike the constitutional courts, where consideration of the unconstitutionality of the acts takes place according to the rules of civil procedure, in the Constitutional Council the process proceeds according to the system of dossiers on the basis of the study of written materials [2].

Along with the head of state by participants of the constitutional proceedings it is recognized other officials and authorities, and on their appeals constitutional proceedings were instituted (the presidents of the Chambers of Parliament; members of Parliament consisting of not less than one-fifth of the total; the Prime Minister and the courts of the Republic), as well as state bodies and officials, the constitutionality of the acts which it is examined.

Research methods. If the acts of the President are considered by the Constitutional Council on the subject of infringement of constitutional rights and freedoms of man and citizen according to the appeal of courts, then he also becomes a participant of constitutional proceedings, but on the other hand from public bodies and officials, and the constitutionality of the acts is examined. This process takes place in the form of subsequent constitutional control [3].

In accordance with paragraph 2 of article 20 of the constitutional law from December 29, 1995 in case of need the participants of constitutional proceedings may have their representatives in the Constitutional Council and their powers shall be formulated in the manner prescribed by civil procedural legislation.

Some researchers focus on the timelines for appeal to the Constitutional Council for this group of questions [4]. In particular, B. Phan proposes to establish a two-week period on the question of the correctness of a referendum. The message of the outcome, in his opinion, must be communicated to the mass media not earlier than the designated period, and only in the absence of treatment by authorized entities [5].

In accordance with the Constitutional law "On elections in the Republic of Kazakhstan" the Central Election Commission on the basis of protocols of territorial election commissions sets the results of the elections of the President, adopts an appropriate decision and registers the elected President not later than within seven days after the election. The results of the elections of deputies of Senate and Majilis are also installed not later than within seven days from the date of the elections. But the timing of the registration of candidates for deputies in the constitutional law is not fixed. The appeals to the Constitutional Council according to articles 68, 84 and 100 of this constitutional

act may be submitted to the Constitutional Council within ten days after summarizing of elections. In this case, the inauguration of the President, registration of the elected deputies of the Senate and Majilis are suspended [6].

However, since the timing for registration of the deputies is not established by law, it is theoretically possible that they could be registered immediately after the results of the election or on the second or third day, but before the expiration of the ten days stipulated for making appeals to the authority of the constitutional control. Especially this situation is probable when elections are held not only in the composition of the Senate or Majilis, and the individual deputies instead of the retired. In addition, protesting against the results of presidential elections at the stage of inauguration of the newly elected head of state may cause a political crisis, especially in the case of recognizing the elections as not relevant according to the Constitution. Therefore it would be useful to determine a later date for the registration of the elected President, at least after the ten-day deadline for making applications to the Constitutional Council on this issue. This means that the results of presidential elections can be appealed at the Constitutional Council not during inauguration, but at the stage of registration.

Results of a research. If to speak about appeals to the body of the constitutional justice about the validity of the national referendum, the time for their submission are generally not installed. The results of the referendum must be published in mass media not later than seven days after the event [7]. But the use of the words "not later than" is not equivalent to the phrase "no earlier". Consequently, the Central Referendum Commission can summarize the results of referendum and publish them before the expiration of seven days, for example, three days after the vote. Publication of the results of the national voting is tantamount to giving binding legal force to law or any decision adopted at a referendum.

The powers of the President as a participant of constitutional proceedings, and thus its members can be divided into three groups. The first group covers the general powers of all participants in constitutional proceedings:

- 1) to get acquainted with materials of proceedings, to make extracts and take copies;
- 2) to present evidences, to participate in their study and to prove the circumstances on which they refer as the basis of their appeals and objections;
- 3) to express arguments and considerations on all matters that arise in the course of constitutional proceedings to the Constitutional Council;
- 4) submit petitions and express opinion on the stated applications;
- 5) give oral and written explanations to the Constitutional Council.

The second group includes specific powers of the President as the initiator of constitutional proceedings: the right before the meeting of the Constitutional Council, at which accepted the final decision is accepted, to change the basis of the application, to increase or decrease its volume, to refuse treatment.

The third group combines the special powers of the head of state, if according to his acts constitutional proceedings are instituted: the right to recognize the requirements stated in the petition fully or partially or to object against them. Because presidential acts are only allowed to the test of constitutionality in follow-up control these powers take effect only in the presence of the appeal of court, faced in the enforcement process with the infringement of the constitutional rights and freedoms of man and citizen.

Responsibilities for all participants of the constitutional proceedings are common:

- 1) to use their rights conscientiously. The message of false information or failure to submit requested by the Constitutional Council documents, materials and other information to the Constitutional Council is considered as disregard to the Constitutional Council and punishable by law
- 2) to respect the Constitution, the Constitutional Council, its compliance and procedures accepted by the Constitutional Council;
- 3) to obey the instructions of chairman on keeping order of the meeting.

The procedure of consideration of issues is affirmed not only by the Constitutional law of December 29, 1995, but by the rules of the Constitutional Council [8].

Received appeal is submitted to the Constitutional Council by the President of the Constitutional Council, whose meeting is held within three days from the date of its receipt. The Constitutional Council, having checked up appeal rejects the appeal to the production and returns it with called circumstances:

- the constitutionality of issue specified in the appeal has already been checked by the Constitutional Council and the decision of the constitutional Council has a retaining legal force;
- the issue stated in the appeal was not resolved in the Constitution;
- the act whose constitutionality disputed, is cancelled or expired.

The materials on the adopted circulation to the production by order of the Chairman of the Constitutional Council are prepared by one member or several members of the Constitutional Council. To do this they shall have a range of powers: identify the participants of the constitutional proceedings, explain their rights and obligations to them; claims the necessary documents and other information relating to the subject of handling; if necessary interviews appropriate officials, attracts scientists, practitioners as specialists, experts; charges the production of inspections, studies, examinations; prepares project of decisions of the Constitutional Council, etc.

Consideration of addresses by the Constitutional Council is made in a meeting under representation of its Chairman in due time. The meeting consists of three parts:

- introductory in the course of which the quorum of members of council and an appearance of participants of the constitutional production is checked, the rights and an obligation are explained by them, are determined their petitions and so forth.

- the main in the course of which consideration of the question is carried out;

- final on which the decision of the Constitutional Council is made.

Discussion of results. The president or his representatives, in case of need, at own will or upon the demand of the Constitutional Council can participate in a meeting of the Constitutional Council at which the address accepted to production is considered. But, as practice shows, practically by consideration of any address of the head of state, his representatives are present at a meeting. If necessary can be listened explanations and performances of participants of the constitutional production, experts, specialists and other invited persons .

The constitutional production can be stopped at any stage, but before pronouncement of the final decision in cases:

1) refusal of the subject of the address declared to them;

2) cancellations or losses of a legal force of the act which constitutionality is challenged;

3) not jurisdictions of the declared address to the Constitutional Council.

The decision of the Constitutional Council about the termination of the constitutional production according to the declared address deprives of the subject of the address of an opportunity to address repeatedly to the Constitutional Council for the same bases.

The constitution and the Constitutional law of December 29, 1995 fix general and special terms for consideration of addresses and pronouncement of decisions of the Constitutional Council. Aggregate term for pronouncement of the final decision - within a month from the date of receipt of the address. Special term assumes the expedited review procedure for a question and constitutes 10 days. Entering of the reduced term is allowed only upon the demand of the President, which stated in writing, and also if the question doesn't suffer delay.

However neither the Constitution, nor the Constitutional law of December 29, 1995, nor Regulations of the Constitutional Council provide consequences of violation by body of the constitutional control of terms of consideration of addresses and pronouncement of the final (final) decision. For example, the Constitutional Council exceeded monthly term for decision according to the address of deputies group of Mazhilis about official interpretation of points 1 and 3 of article 41 and point 1 of article 94 of the Constitution. The resolution of Council was accepted on August 19, 2005 and published in official publications (the "Kazakhstanskaya Pravda" and "Egemen Kazakhstan" newspapers on August 25, 2005 [9].

As for promulgation of the decision, in the Constitutional law of December 29, 1995 "About the Constitutional Council of the Republic of Kazakhstan" and its Regulations terms of publication of decisions of the Constitutional Council aren't established. At the same time terms (within two days) the directions of the made decisions to subjects of the address or their representatives, the President, Chambers of Parliament, the Supreme Court, the Attorney-General, the Minister of Justice (article 41) are legislatively provided. The same terms shall be snugged also for official publication of final decisions of Council. The political component of many resolutions of body for protection of the Constitution is so high that unreasonable tightening with promulgation of the made decisions excessively excites public opinion.

The constitution doesn't stipulate by what consideration of addresses the public official of the country has the right to demand the reduced term for decision by the Constitutional Council. In particular, whether it concerns the requirement of production of cases on the appeals of other subjects, including the courts?

It is represented, that as the Constitution or the Constitutional law establish general deadlines (no more than one month) for consideration of any categories of the proceedings initiated at the initiative of different subjects, and special term can be only one. Therefore the President has the right to require reducing term not only if he addressed personally, but also according to addresses of other subjects.

Here it is necessary , first, to fix the mechanism of addresses to the President from the subjects specified in article 72 of the Constitution. Chairmen of Chambers and deputies of Parliament, the Prime minister and courts have to acquire the right to address the President with the petition for reduction of term of pronouncement of the final decision of the Constitutional Council for their addresses. At the same time these subjects have to motivate the petition. This mechanism, in our opinion, should be reflected in the Regulations of the Constitutional Council, Parliament and Government, acts defining internal activity of the courts or in the Provision on Presidential Administration.

Conclusions. First, it is necessary to reveal criteria for the concept "the question doesn't suffer delay". In this case, of course, it is possible to call different circumstances. But, apparently, the main will be those from them which are connected with the rights and freedoms of citizens and normal functioning of authorities. In other words, such circumstances which can cause essential human rights violations with irreversible consequences, and also capable to

lead to violation of an operating procedure of appropriate authority and the conflicts between branches of the power will act as criteria of urgency.

We believe that the President, using the constitutional right, could address to the Constitutional Council with the petition to give official interpretation of paragraph 3 of article 73 of the Constitution regarding an explanation of this situation.

Besides, it is reasonable to add article 11 of the Constitutional law "About the President of the Republic of Kazakhstan" with a regulation about the right of the President to demand reducing term of consideration and pronouncement of decisions by the Constitutional Council. The specified article fixes other constitutional powers of the head of state concerning the body which providing rule of the Constitution more exhaustively, but the regulation for some reason specified wasn't included in the Constitutional law.

It is also necessary to define a form (name) of the act with which the President addresses to the Constitutional Council about reduction of term: "requirement", "letter", "instruction" or other name. So far this question isn't settled and remains to the discretion of the President.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫ ПРЕЗИДЕНТІНІҢ КОНСТИТУЦИЯЛЫҚ КЕҢЕСТІҢ КОНСТИТУЦИЯЛЫҚ ӨНДІРІСІНЕ ҚАТЫСУЫ ТУРАЛЫ СҰРАҚТАР

Аннотация. Бұл мақалада Қазақстан Республикасы Президентінің Конституциялық Кеңеске жолдану институтын зерттеу мәселелері қарастырылған, сондай-ақ конституциялық өндірістің қаралу ерекшеліктері зерттелген. Конституциялық Кеңеске жолдау мәселелері баян етіліп, Қазақстан Республикасы Президентінің конституциялық бақылау органдарымен арақатынасы институтын жетілдіру жолдары ұсынылған. Нақты жолданулар негізінде Президенттің Конституциялық Кеңеске жолдану нысаны мен белгілері сипатталған.

Тірек сөздер: Конституция, Конституциялық Кеңес; конституциялық бақылау; Президент.

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К ВОПРОСУ ОБ УЧАСТИИ ПРЕЗИДЕНТА РЕСПУБЛИКИ КАЗАХСТАН В КОНСТИТУЦИОННОМ ПРОИЗВОДСТВЕ КОНСТИТУЦИОННОГО СОВЕТА

Аннотация: В статье рассматриваются проблемы взаимодействия Президента и Конституционного Совета Республики Казахстан, основные направления их деятельности. В связи с участием главы государства в конституционном производстве в законодательстве имеются определенные пробелы. Предлагаются меры по совершенствованию законодательства во взаимодействии Президента с органом конституционного контроля.

Ключевые слова: Конституция, Конституционный Совет, конституционный контроль, Президент.