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**JURIDICAL NATURE OF THE REGULATORY RULINGS
OF CONSTITUTIONAL COUNCIL IN THE SYSTEM
OF THE CURRENT LAW OF THE REPUBLIC OF KAZAKHSTAN**

Annatation. The article deals with the place of decisions of the Constitutional Council of the Republic of Kazakhstan in the system of sources of constitutional law. Examines the role of the Constitutional Council in the mechanism of State power as well as its competence for the interpretation of constitutional provisions. It is proposed to strengthen enforcement capacity of the Constitutional Council of the Republic of Kazakhstan by extending the powers of this body and the amendment of the constitutional acts. Based on a comparative analysis of the Constitution of Kazakhstan with constitutions of number of foreign countries necessity of the systematization and incorporation of the right provisions which are contained in resolutions of the Constitutional Council.

Key words: Constitution, Constitutional Council, state power, the political process.

Introduction. The regulatory rulings of Constitutional Council are an integral part of the current law of the Republic of Kazakhstan. Constitution of the Republic of Kazakhstan consolidated the fundamental principles of the Republic's activity, principles and norms related to human and citizen duties, obligations to the Kazakhstan society and main obligations to the global society consolidating independent duties of the nations of Kazakhstan. Current Constitution covers the legal aspects of the whole chain of social relations: «person – family – property relations – nation– sovereignty– international legal order».

These relations had been regulated by two basic paradigms of traditional practices in the global constitutionalism and objects of the regulations: freedom and human rights of people and citizen as a basic for civil society; the fundamental principles of the activity of the Republic are public concord and political stability; economic development for “the benefit of all the nation”; (p.2 art. 1 of Constitution), by democratic and pluralistic methods (p. 2 art. 1 and art. 5 of Constitution).

Naturally occurring in varying degrees in all countries, the alienation of government and society because of the objective of social and political contradictions between the public nature of state power and the need for a representative, professional implementation in the interest of the common good cannot be overcome in automatically only one Constitution. It is not a substitute for a diversified and multi-level system of the current law. The main thing is that the content of the Basic Law, its letter and spirit permeates the entire system of law and the legal possibility of "new interpretation" of the Constitution allowed to constantly find and maintain the dynamic balance of political interests.

The Constitutional Council of the Republic of Kazakhstan had been received a special role by this Constitution. In the regulatory decisions of the Constitutional Council may be found positions of right on various aspects of the official uniform understanding and application of the Constitution. The development and direct action will be found in this aspect.

The Constitutional Council of the Republic of Kazakhstan Council each year in accordance with subparagraph 11) of Article 53 of the Constitution, will send to the Parliament of the Republic a message about the state of the constitutional legality in the country. It is based on the results of the constitutional procedure for appeals to the Board of proper subjects and analyzing the data requested from various public bodies. As a rule, the Constitutional Council contains information about the structure and dynamics of violations of regulatory gaps in the legislation.

Research methods. It is impossible to recognize the true opinions of some colleagues that practically all the provisions of the Constitution and interpreted as a "soon there will be nothing to do." This is a wrong opinion. Firstly, in the Constitution of the Republic are less than hundred articles (98). But in each of them, also may contain two, three or more constitutional norms. The Constitutional Council as a state body which provides for the supremacy of the Constitution of the Republic of Kazakhstan in the entire territory of the Republic. The

Constitutional Council exercises its powers, guided by the Constitution of the Republic and this Constitutional Law, abstaining from establishing and examining any other issues in any other cases when those are under the jurisdiction of the Courts or any other state bodies being independent and separate from state bodies, organizations, official persons and citizens, subordinated only to the Constitution of the Republic and may not use political or any other motives when exercising its powers [1].

Today, no one, for example, has no doubt that the laws adopted by the Parliament sent to the President of the Republic only for the signature of the President of the Senate and the Mazhilis. However, until May 1997, due to the misinterpretation of the Prime Minister of paragraph 3 of Article 45 of the Constitution, the Government required the submission of the Parliament adopted on his initiative for laws of signature of the Prime Minister. Constitutional Council Decision of 29 May 1997, number 13/2 «On official interpretation of paragraph 3 of Article 45 and sub paragraph 2) of Article 44 of the Constitution of the Republic of Kazakhstan in the circle of officials who are obliged to attach their signatures Acts of Parliament re their signing by the President of the Republic,» to resolve the dispute in favor of the legislative power. [2] Legal provisions of the regulations are continuing to apply nowadays.

Thirdly, there is a whole scope of the constitutional-legal relations, the rules of regulation which do not affect or rarely been the subject of consideration by the Constitutional Council - this Constitution of the correct standards in general elections, referendums on local government or the rules of international treaties of the Republic before their ratification by Parliament for compliance Constitution.

Another thing, urgent necessity to systematize the incorporation of legal provisions and accumulated in the various decisions of the Constitutional Council, in a single set of constitutional case law. These activities are scientific advisory of bodies to systematize the Council, assuming will identify and resolve its decrees formal legal discrepancies that inevitably generated dialectical contradictions. As the beginning of this work can be considered adopted on 18 June 2004 on its own initiative, the Constitutional Council Resolution "On the review of the decision of the Constitutional Council of the Republic of Kazakhstan dated March 6, 1997 № 3 of the official interpretation of paragraph 1 of Article 79 of the Constitution of the Republic of Kazakhstan".

Results of a research. Resolutions of individual legal status of the Council were abolished, which can interfere with the regulation of the legislator jury trials in Kazakhstan set out in paragraph 2 of Article 75 of the Constitution. The official interpretation of paragraph 1 of Article 79 of the Constitutional Council before entering Parliament of amendments and additions to the Constitution of 7 October 1998, which affected the section 7 of the Basic Law - "The courts and justice."

It should be noted that in the emerging in our understanding of the legal position of the Constitutional Council as a binding precedent, inevitably there is some share of convention. This body of constitutional justice in Kazakhstan, though independent and subject only to the Constitution - the judicial body does not exist to protect it. The Council does not consider the claim in order at the appropriate adversarial component of the actual application of the constitutional norms and legislation. However, in practice it could not be always ignore the study of the case without prejudice to the objective, comprehensive and complete its consideration.

Preferred direction of activity of the Constitutional Council was formed and remains an authoritative interpretation of the Constitution, as well as evaluation for compliance with constitutional laws and laws on appeals of a limited range of appropriate subjects. Meanwhile, the unique call these kinds of activities of the Council or an abstract interpretation of a casual inspection that do not create constitutional precedents in its meaning beyond the specific applications; it would not be true yet.

The principle of "sufficient competence", established by the Constitution to ensure the supremacy of his authority independent of Justice ("quasi-judicial" as it is called), involves the development of constitutional precedent, which inevitably follows from the appearance of the direct action of the Constitution. At the same time, we noted, that this is not only possible conflicts of interests of participants of constitutional and legal relations, but also conflicts with constitutional principles. Also they both settled in Kazakhstan, often through an official interpretation of the Constitution. After all, the Council is competent to recognize different content in certain circumstances equal constitutional principles and the scope of one of these "trouble" to complete the implementation of the other. If a conflict of constitutional principles are living way resolved by the Constitutional Council in the collision under one principle will not be inferior to the other, then the conflict will deepen and be able to solve the "power".

Resolution of competency disputes between the subjects of constitutional and legal relationship through the official interpretation of the Constitution of the rules is confirmed by the fact that specific provision is interpreted by them as the situation in the operative part of judgments of the Constitutional Council to be understood "in relation to the subject of treatment." This suggests quasi-judicial nature of the activity of the body of constitutional justice in Kazakhstan, which cannot ignore the practice of law enforcement and the consequences for her own decisions. It is necessary rapidly changing and increasingly complex political and social life in the implementation of the provisions of the Constitution itself with the need to empower and improve the Constitutional Council responsible for ensuring a uniform understanding and application of the Basic Law of law making process.

Umbrella term "legal position" refers formulated in the form of law determination process, lawmaking and regulations, logical and legal basis and the conclusions of the Constitutional Council of the Republic of Kazakhstan, which he came in the established constitutional norms of production and adopted them in the form of legal regulations.

The legal position found its own completion of the official interpretation of provisions of the Constitution, full understanding of these standards by the Council and its judgment about them. The legal position is an expression of the unity of the constitutional words and thoughts of the Council with a projection proper constitutional action for the subjects of constitutional legal relations.

The legal position of the Constitutional Council contained in the statement of reasons and the operative part of the normative regulations. According to its legal purpose of the strength and effects of the Council of the legal position in one part of its regulatory decisions, and in the other - are the same, because of content cannot be separated from each other and constitute a single meaningful determination. Procedural, these parts are made in a uniform manner, in order "one after another" and the common decision of the Council.

Motivation and conclusion of the regulatory provisions concerning the official interpretation of the norms of the Constitution of the Constitutional Council can not contradict each other and are not legally exist (not used), one without the other, or in disagreement with it. Although, of course, they differ in legal form, integrity and style of the presentation. The legal position of the reasoning part has legally registered the Board's arguments; legal positions of the operative part - the constitutional Council conclusions. Revision of the individual decisions of the Council shall entail the change of each of its parts, as you cannot change the item without specifying the resolution or withdrawal motivation, which led to the resolution of the Council of the composition and so determined by them [3].

This relationship is evident in the Constitutional Council decision of 18 June 2004 № 7 "On the review of the decision of the Constitutional Council of the Republic of Kazakhstan dated March 6, 1997 № 3 of the official interpretation of paragraph 1 of Article 79 of the Constitution of the Republic of Kazakhstan." In it, first of all, it was repealed provisions of the Constitutional Council on March 6, 1997 №3 regarding official interpretation of paragraph 1 of Article 79 of the Constitution of the Republic of Kazakhstan on the establishment "of the jury institution."

Secondly, «declared null and»:

Second and third paragraphs of paragraph 7 of the reasoning part of the Constitutional Council of the Republic of Kazakhstan dated March 6, 1997 № 3;

Paragraph 7 of the Constitutional Council of the Republic of Kazakhstan dated March 6, 1997 № 3" [4].

Meanwhile, perhaps, there would be no point in introducing the theory and practice of a new category of "legal position" if worthwhile for her appearance completely coincide with the concept of the Constitutional Council's decision as a legal act of the authorized body. Differentiation between them occurs, we believe, not only on grounds of form and content, which are interdependent and relate to both the right and the law. But also because the "legal position" has autonomous meaning legal provisions, the role of which is beyond the scope of specific applications. In one decision may contain several legal position as legal determined and law-nature, which apply not only to the participants of the constitutional procedure for the adoption of decisions, but also other actors in subsequent similar situations, as well as in the legislative process. The descriptive part of the decisions of the Constitutional Council does not matter. Due to changes the legal position of the Constitutional Council necessarily implies the abolition of all decisions as a single source of law.

In their legal positions of the Constitutional Council Sequence allows us to develop and take concerted decision of the body of constitutional review, to adhere to a common sense and spirit of the Constitution, in the ideal degree of combining the right and the law. In a broader sense, the legal position of the body of constitutional justice is a stage of knowledge and shape positive spirit and the letter of the Basic Law. The legal position intersects the similarities and differences of legal family "common" and "written" rights. The essence of phenomena had been successfully noticed by V.D. Zorkin. The legal position in the decision of the body of constitutional review, he said, "... actually reflect his special kind of law-making process"[5].

Decisions of the Constitutional Council, as the organ of the constitutional control of acts containing legal positions and non-statutory regulations, have their inherent nature, specific features. They have a special legal effect, are final and not subject to appeal; produced and made collectively as a result of the constitutional proceedings; They act in a certain prescribed by the Constitution and by the Council of the order; revision of regulations is allowed only by the Constitutional Council in rigidly stipulated constitutional norms circumstances; Presidential objections to certain legal positions of the Constitutional Council, expressed it in the regulations can be overcome by a qualified majority of its members.

Legal positions of the Constitutional Council resolutions and the norms of the Constitution of the Republic of Kazakhstan are in the ontological relationship, in which relate to the category of the phenomenon and the essence in dialectical logic. The sequences of the origin determine the continuity of the legal positions of the Council and the norms of the Constitution.

It should be noted that in some decisions of the Council to refuse to accept the production of the courts of appeals and the termination of constitutional proceedings may contain substantiation proving and developing the legal position of final decisions of the Constitutional Council. However, the legal validity of them is different, since such decisions are not permanent and the actions do not have to regulatory decisions.

Summary of the legal position of the Constitutional Council should be logically built on the subject of legal regulation, internally consistent. Becoming an integral complement of the current Constitution, the Code is duly legitimized, will provide an opportunity to apply its provisions in close connection with the relevant sections of its articles and legal provisions of the Constitutional Council of the Republic of Kazakhstan.

It is interesting that during the time of the Constitution of the United States action was proposed more than 10-thousand amendments to it. In reality, only 27 were adopted, the latter of which, more than thirty years ago, concerning the establishment of the total for the country and states base the citizen's right to vote - the age of 18. However, it is known that the US Supreme Court issued about 600 volumes of official clarification of the text of the Constitution of 1787.

The capacity of the constitutional values of the Basic Law of Kazakhstan, including democracy and separation of powers, the status of the head of state as the guarantor of the Constitution, the consent of their interaction, does not exclude the possibility of "point" changes and additions to the rules of the Constitution, establishing parliamentary and extending representative democracy, including the development of mechanisms of formation of the Government taking into account the position of the parliamentary majority and guarantees the majority opinion [6].

However, being open to the official interpretation of the Constitutional Council, these values allow developing and implementing the Constitution without impulsive invasion of its living tissue, preserving the inviolability of the constitutional order and the stability of the constitutional regulation of social relations. Containing in the reasoning and the operative part of judgments of the Constitutional Council's legal status fills "silence" of the Basic Law. In a judgment of 9 April 2004 №5 on the constitutionality of the law "On amendments and additions to the Constitutional Law of the Republic of Kazakhstan" On Elections in the Republic of Kazakhstan "with the Constitution, the Council also examined the completeness of accounting legislator legal positions of the previous decisions of the Constitutional Council relating to electoral rights [7]. This Constitutional Law they had been consolidated in the form of new legal norms that settle the appropriate official interpretation of the Constitution of the rules, rights and obligations of participants in the electoral process.

Conclusions. Council objectively could not be subject to the interpretation of laws, which make constitutional amendments as their content becomes internal, essential part. So, legal bounding determination was the character of the decision of the Council of 4 December 1998, "On the official interpretation of subparagraph 1) of Article 53 and paragraph 1 of Article 91 of the Constitution of the Republic of Kazakhstan, in terms of norms relating to effect the Parliament of the Republic of Kazakhstan of amendments and additions to the Constitution" [8].

For greater consistency of norms of the Constitution and the rules that continue (to develop and complement) the content of the Constitution outside its proper textual expression, it would make sense to give the right of the Constitutional Council of the official interpretation of constitutional laws and acts them equal legal force. Moreover, it would be considered on the basis of compliance with the letter and spirit of the Constitution, to integrate a single constitutional and legal framework within the limits of constitutional case law.

"Conventional" laws that contain about 80 percent of the array of legislative acts should be precise. Often the doubt in terms of the current legislations is a veiled form of interest to reinterpret its provisions for corporate purposes. The possibilities of mediating direct action laws comply with the Constitution, to opportunistic misapplications seriously impede uniform enforcement. The law is not subject to official interpretation, but can be changed or canceled by the legislator. Possibility official causal explanations of laws for law enforcement practices in Kazakhstan overcome the prosecutor's office and courts are required explanations on the results of generalization of practice gives the Supreme Court in the normative regulations [9].

Considering the action of strengthening the enforcement capacity of the Constitutional Council, we consider that this is necessary to supplement its jurisdiction (Art. 72 of the Constitution), the official interpretation of constitutional laws and acts equal to them void, and must express an opinion on the conformity of draft amendments and the Constitution norms supplements Article 91 of the Basic Law (on the order of they are made, and the immutability of the unitary of the territorial integrity and shape of the board), and paragraphs 2 and 3 of article 39 of the Constitution (on the recognition of unconstitutional any actions capable of upsetting inter-ethnic concord, and on the inadmissibility of restrictions on the rights and freedoms of citizens for political reasons). Acts published in the order of delegated legislation should be submitted to the Constitutional Council to verify for compliance with the Constitution.

Thus, the regulatory decisions of the Constitutional Council, combining the characteristic features of "written" and "case law" of the law, together with the Constitution appears basic constitutional rights and constitutionalism practice in Kazakhstan.

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**КОНСТИТУЦИОННО-ПРАВОВОЙ РОЛЬ
КАЗАХСТАН РЕСПУБЛИКАСЫНЫҢ ӘРЕКЕТ ЕТУШІ ҚҰҚЫҒЫНЫҢ ЖҮЙЕСІНДЕГІ
ЗАҢИ ТАБИҒАТЫ**

Annotation. Мақала ҚР Конституциялық Кеңесінің шешімдерінің конституциялық құқық қайнар-көздері ретіндегі құқықтық табиғатына арналған. Конституциялық Кеңестің мемлекеттік билік тетігіндегі рөлі және оның конституциялық нормаларды түсіндіру құзыреті ашып қарастырылған. Конституциялық актілерге өзгерістер енгізу арқылы, өкілеттіктерін кеңейту арқылы Конституциялық Кеңестің қорғау құқыққабылеттілігін арттыру ұсынылған. Қазақстан Республикасы Конституциясы мен бір қатар шет мемлекеттердің конституцияларына салыстырмалы талдау жасау негізінде Конституциялық Кеңестің қаулыларында мазмұндалған конституциялық ережелерді инкорпорациялаудың және жүйелеудің өзектілігі көрсетілген.

Тірек сөздер: Конституция, Конституциялық Кеңес, мемлекеттік билік, саяси үдеріс.

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**ЮРИДИЧЕСКАЯ ПРИРОДА НОРМАТИВНЫХ ПОСТАНОВЛЕНИЙ КОНСТИТУЦИОННОГО
СОВЕТА В СИСТЕМЕ ДЕЙСТВУЮЩЕГО ПРАВА РЕСПУБЛИКИ КАЗАХСТАН**

Аннотация. Статья посвящена юридической природе решений Конституционного Совета в системе источников конституционного права. Раскрывается роль Конституционного совета в механизме государственной власти, а также его компетенция по толкованию конституционных норм. Предлагается усиление охранительной правоспособности Конституционного совета Республики Казахстан путем расширения полномочий данного органа и внесением изменений в конституционные акты. На основе сравнительного анализа Конституции Казахстана с конституциями ряда зарубежных стран актуализируется необходимость систематизации и инкорпорации конституционных положений, содержащихся в постановлениях Конституционного Совета.

Ключевые слова: Конституция, Конституционный Совет, государственная власть, политический процесс.