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Historical stages of formation and development of the institution of constitutional review in Kazakhstan

The article examines the main milestones of the establishment and development of the institution of constitutional review in the Republic of Kazakhstan in the Soviet era and at the initial stage of the transition period of the development of this institution. The author focuses on the origin of the bodies of constitutional review and supervision, given the author's classification of the periods of the evolution of the constitutional review in Kazakhstan. In the article the questions of development of the constitutional bases of the legal status of bodies exercising the functions of constitutional review and supervision are disclosed. In particular, the original legal approaches to registration of their powers and activities, as well as subsequent changes are analyzed. At the same time, attention is drawn to the fact that, in accordance with the Constitutions of the Republic of Kazakhstan, the institution of constitutional review has been transformed, as well as legislative modernization of the legal foundations and status of bodies of constitutional review.

Keywords: Constitution of the Republic of Kazakhstan, constitutional review, constitutional supervision, judicial constitutional review, Constitutional Court of the Republic of Kazakhstan, bodies of constitutional review, powers.

The need for constitutional review is conditioned by the need to maintain the regime of constitutional legality in our state. It manages its society through the adoption of laws, by-laws, which contain the legal norms governing a variety of relationships. Effectiveness of legality lies in its full provision by all state bodies. However, a special institution of state power is required, ensuring the supremacy and direct effect of the norms of the Basic Law. Such an institution is constitutional review [1; 18].

The Institute of constitutional review is one of the most effective means of legal protection of the Constitution. It is a dynamic legal phenomenon that undergoes various transformations depending on the real historical conditions prevailing in the state. Identification of the legal regulation specifics of the constitutional review functioning in the country is possible on the basis of an analysis of the development of the constitutional process.

For almost three centuries Kazakhstan was a part of the Russian Empire and then the Soviet Union, therefore the development of the institution of constitutional review in the country is inseparably linked with the evolution of the legal systems of the metropolis, various legal institutions and mechanisms of state power

In general, the constitutional process shows that the Republic of Kazakhstan is not using the world's experience of constitutionalism blindly, but takes into account the national, cultural features of the state, that relies on the Constitution as the social and legal value of society.

The issues of the evolution and periodization of the development of constitutional review are the subject of study in the Kazakh legal literature. So, M.S. Beybitov distinguishes two historical stages in the formation and development of the institution of constitutional control in Kazakhstan: The first is the «Soviet» stage, the second is the stage in the formation of the constitutional review of a sovereign and independent state, beginning with the adoption of the Constitutional Law of December 16, 1991, and up to the present [2; 29]. «Soviet» period is characterized by the Kazakhstan scientists-lawyers by the presence of parliamentary constitutional review [2; 29]; by the existence of a specific constitutional-control system, in which the functions of constitutional control and supervision belonged to the highest organs of state power of the USSR [3; 12].

The origins of the constitutional foundations of the establishment of the institution of constitutional review in Kazakhstan date back to the Constitution (Basic Law) of the Russian Socialist Federative Soviet Republic (RSFSR) adopted by the V All-Russian Congress of Soviets of July 10, 1918 [4]. The body that exercised the supreme constitutional review was the All-Russian Congress of Soviets, which had supreme power in the country. Its competence included the adoption, amendment and addendum of the Constitution of the RSFSR, the abolition of regulations that are contrary to the Basic Law. In the period between the All-Russian Congresses of Soviets, the supervisory powers passed to the All-Russia Central Executive Committee of the Soviets (ARCEC), to the Presidium of the All-Russian Central Executive Committee, to the Council of People's Commissars of the RSFSR.

Thus, according to Article 31 of the Constitution of the RSFSR of 1918, the All-Russian Central Executive Committee of Soviets is the supreme legislative, administrative and supervisory body of the Russian Socialist Federative Soviet Republic.

In accordance with Art. 32 of the Basic Law of the RSFSR of 1918. The All-Russian Central Executive Committee of Soviets gives a general direction for the activities of the Workers 'and Peasants' Government and all organs of Soviet power in the country, unites and coordinates work on legislation and administration, and oversees the implementation of the Soviet Constitution, resolutions of the All-Russian Congresses of Soviets and Central bodies of Soviet power.

M.S. Beybitov outlines the following features of the constitutional review of this period. First, the transfer by the Central Executive Committee of the USSR and the Presidium of the Central Executive Committee of the USSR of certain functions of constitutional control to the Supreme Court of the USSR, which was enshrined in the Regulations of the USSR Central Executive Committee on the Supreme Court of the USSR of November 23, 1923 (constitutional control was a function of general supervision). Secondly, the prosecutor's supervision was established [2; 21].

In the first Constitution (Basic Law) of the USSR adopted by the Central Executive Committee of the USSR (CEC of the USSR) on July 6, 1923 and finally approved by the Second All-Union Congress of Soviets on January 31, 1924 [5], the function of constitutional review was also assigned to the highest state authorities - Congress of the Soviets of the USSR, Central Executive Committee of the USSR, Presidium of the Central Executive Committee of the USSR. At the same time, the Constitution of the USSR in 1924 contained Chapter VII «On the Supreme Court of the Union of Soviet Socialist Republics» [5].

The competence of the Supreme Court of the USSR, according to the Constitution of the USSR in 1924, included the following: giving the Supreme Courts of the Union Republics guidance on issues of all-Union legislation; consideration and protest against the Central Executive Committee of the USSR on the proposal of the prosecutor of the Supreme Court of the USSR resolutions, decisions, and sentences of the Supreme Courts of the Union republics for reasons of their contradictions with the all-Union legislation, or because they affect the interests of other republics; giving conclusions at the request of the Central Executive Committee of the USSR on the legality of certain resolutions of the Union republics in terms of compliance with the Constitution; resolution of judicial disputes between the union republics; consideration of cases on charges of senior Union officials in crimes by office [5]. Thus, the Basic Law of 1924 also established for the Supreme Court of the USSR the power to exercise constitutional control.

According to the Constitution of the USSR in 1936 the function of constitutional review was vested Presidium of the Supreme Soviet of the USSR. This function was fixed in such, for example, the powers of the Presidium of the Supreme Soviet of the USSR, as the control over the observance and fulfillment of the provisions of the Constitution of the USSR; ensuring compliance of the Constitutions of the Union Republics with the Constitution of the USSR; control over the observance and implementation of the provisions of the Constitutions of the Union Republics; control over the observance and implementation of the laws of the USSR, decrees and resolutions of the Presidium of the Supreme Soviet of the USSR; Interpretation of laws; consideration of citizens' complaints.

In 1936, Kazakhstan received the status of a union republic. Adopted by the X All-Kazakh Congress of Soviets on March 26, 1937, the Constitution (Basic Law) of the Kazakh Soviet Socialist Republic of 1937 [6], which legislatively enshrined the entry of the Kazakh Soviet Socialist Republic into the USSR, fully accepted the provisions on constitutional review embodied in the Constitution of the USSR in 1936, retaining even the form of their inclusion in the Basic Law.

The next stage in the history of the Soviet period of the institution of constitutional review is associated with the 1977 Constitution of the USSR adopted at the extraordinary seventh session of the Supreme Soviet of the USSR on October 7, 1977 [7]. As before, the Constitutional function of constitutional review was constitutionally reserved for the Presidium of the Supreme Soviet of the USSR.

According to Article 121 of the Basic Law of the USSR in 1977 to the major powers of the Supreme Soviet of the USSR in this area were the following: control over compliance with the provisions of the Constitution of the USSR; ensuring compliance of the Constitutions and laws of the Union Republics with the Constitution and laws of the USSR; interpretation of laws; abolition of resolutions and orders of the Council of Ministers of the USSR and the Council of Ministers of the Union Republics.

The Constitution (Basic Law) of the Kazakh Soviet Socialist Republic of 1978 was adopted at the extraordinary seventh session of the Supreme Council of the Kazakh SSR of the ninth convocation on April 20, 1978 [8]. The provisions of the Constitution of the USSR of 1977 were perceived by the Constitution of the

Kazakh SSR 1978. In Article 108 of the Constitution of the Kazakh Soviet Socialist Republic in 1978 supervisory powers of the Presidium of the Supreme Council of the Kazakh SSR were recorded, which were in many respects analogous to the powers of the Presidium of the Supreme Soviet of the USSR in this sphere. In particular, monitoring compliance with the provisions of the Constitution of the Kazakh SSR; interpretation of the laws of KazSSR; the abolition of resolutions and orders of the Council of Ministers of the Kazakh SSR, decisions of the regional Soviets of People's Deputies and the Alma-Ata City Council of People's Deputies - in cases of inconsistency with the law.

A significant event in the legal life of the USSR in 1988 was the introduction of amendments and additions to the Constitution of the USSR in 1977. They directly embodied the idea of creating a special body of constitutional review in the state. These novels provide for the first time in the history of the Soviet Union the creation of the Committee for Constitutional Supervision of the USSR.

The creation of a specialized body for the protection of the Constitution was an important step of the Soviet system towards liberal constitutionalism, because the scientific state legal doctrine of the USSR did not recognize either the principle of separation of powers, nor the idea of a state of law.

In the first years of Kazakhstan's independence, it should be noted that the Constitution of the Kazakh SSR of 1978 continued to operate, taking into account changes, additions and new historical conditions.

The next major milestone in the constitutional and legal development of the Republic of Kazakhstan was the adoption on December 16, 1991 of the Constitutional Law «On State Independence of the Republic of Kazakhstan», in article 1 of which the Republic of Kazakhstan was proclaimed as an independent, democratic and lawful state [9]. It has full authority on its territory, independently determines and conducts domestic and foreign policy.

Article 4 of the Constitutional Law of the Republic of Kazakhstan establishes a direct effect on the whole territory of the Republic of Kazakhstan of the Constitution and laws of the Republic of Kazakhstan, as well as the norms of international law recognized by it. The Constitutional Law regulates relations between the state and the individual (article 7). Article 9 proclaims the principle of separation of powers: state power in the Republic of Kazakhstan is built and implemented on the basis of the principle of its division into legislative, executive and judicial. The right to speak on behalf of the people of the Republic belongs to the Supreme Council and the President of the Republic of Kazakhstan. According to Article 10, legislative power is exercised by the Supreme Council of the Republic of Kazakhstan. The head of the Republic of Kazakhstan and its executive power is the President. The judicial power belongs to the Supreme Court and the Supreme Arbitration Court of the Republic of Kazakhstan.

In the initial period of the transitional stage of development of the institution of constitutional review in the Republic of Kazakhstan, a European model was adopted, under which control is carried out by the specifically created court or quasi-judicial body [10; 14].

For the first time in Kazakhstan, the Constitutional Court of the Republic of Kazakhstan was proclaimed the supreme body of judicial protection of the Constitution. Article 15 of the Constitutional Law grants the sovereign right of the Republic of Kazakhstan to take measures to protect its independence and strengthen national statehood [9].

Thus, the Constitutional Law «On State Independence of the Republic of Kazakhstan» of 1991 laid the basic principles and ideas for the formation of state power, as well as the legal foundations of the institution of constitutional review of independent Kazakhstan, which were further developed and consolidated in the Constitution of the Republic of Kazakhstan, adopted on January 28, 1993 after a nation-wide discussion.

The 1993 Constitution of the Republic of Kazakhstan [11], as one of the foundations of the constitutional system, enshrined the principle of the separation of state power into legislative, executive and judicial. In accordance with this principle, state bodies within their powers are independent, interact with each other, using a system of checks and balances. According to Article 62 of the Constitution, the only and supreme representative body of the Republic is the Supreme Soviet, which is elected for five years on the basis of universal, equal, direct suffrage and works on a professional basis.

The executive power of the republic, which was entrusted with the functions of state administration, consisted of the Cabinet of Ministers and local executive bodies (heads of administrations) and was headed by the President of the Republic of Kazakhstan (Articles 75, 84, 92 of the 1993 Constitution of the Republic of Kazakhstan). The Cabinet of Ministers answers to the President of the Republic of Kazakhstan, direct management of its activities is carried out by the Prime Minister. The Prime Minister, his deputies and some heads of ministries and departments are appointed by the President with the consent of the Supreme Council,

heads of administrations of the regional level are appointed personally by the President, heads of lower administrations are appointed by higher heads.

In accordance with the Basic Law, the judicial authority in the Republic of Kazakhstan belongs to the Constitutional Court, the Supreme Court, the Supreme Arbitration Court and lower courts, approved by law (Article 95 of the 1993 Constitution of the Republic of Kazakhstan).

The Constitutional Court is the supreme body of the judicial authority, which defends the Constitution of the Republic of Kazakhstan; The Supreme Court, the Supreme Arbitration Court are the highest bodies of the judiciary authorities, which carry out judicial supervision over lower courts. The term of office of judges determined in 10 years. Judges, according to the Constitution (Article 101), are independent and subject only to the Constitution and the laws of the republic. The court is not entitled to apply a law that is contrary to the Constitution. If a court finds such a contradiction, it suspends the proceedings and the appeal to the Constitutional Court with a proposal to declare that law unconstitutional [11].

The President of the Republic of Kazakhstan, elected by the people for five years, is the head of state and the head of the system of executive power same time. As a guarantor of observance of citizens' rights and freedoms, the Constitution and laws of the republic, the President takes the necessary measures to protect state sovereignty, constitutional order, security, territorial integrity of the republic, rights and freedoms of citizens. As head of the state, he signs laws with the right to veto, forms the Security Council and other consultative and advisory bodies, after consultation with the Supreme Council decides to hold a referendum, submits candidatures to the Supreme Council for positions of senior government officials [11].

One of the important features of the 1993 Constitution of the Republic of Kazakhstan is the constitutional fixation in Section IV of guarantees of compliance with the Basic Law. The Constitution included a separate chapter 21 devoted to ensuring the stability of the Constitution and the protection of its provisions.

It fundamentally defines the purpose and objectives of the activities of the Constitutional Court, the legal force and legal consequences of the decision of the constitutional justice body of Kazakhstan. In particular, Article 130 of the Basic Law of 1993 establishes that the judicial protection of the Constitution and ensuring its supremacy are entrusted to the Constitutional Court of the Republic of Kazakhstan, which considers claims on compliance with the Constitution of the Republic of Kazakhstan laws and other acts, international treaty obligations and other obligations of the Republic of Kazakhstan [11].

The first constitutional and legal acts of sovereign Kazakhstan enshrined the principle of the separation of state power into three branches, created a system of «checks and balances», one of the elements of which is the institution of constitutional review.

The first Constitution of the Republic of Kazakhstan 1993 declared the institution of constitutional review – the Constitutional Court – as part of the judiciary system of Kazakhstan.

In our opinion, the institution of constitutional review is not included in the structure of any branch of power, but is the most important and inalienable element of the system of «checks and balances», which allows to ensure not only the proper division of powers between different branches of power, but also their coordinated functioning [1; 18].

In the Constitution of the Republic of Kazakhstan and other laws, the main public and state interests of Kazakhstan are secured, general conditions for their provision are fixed. The institute of constitutional review is a state body for which the legal protection of the Constitution of the Republic of Kazakhstan constitutes the main, leading duty [1; 18].

The analysis of legal acts concerning the establishment and development of the institution of constitutional review in Kazakhstan shows that in the era of the Soviet constitutions a solid foundation was laid for the organization and activities of the bodies of constitutional review, which makes it possible to trace a certain continuity and trends in the further development of the constitutional and legal foundations of the institution of constitutional control.

The institute of constitutional review in Kazakhstan was formed under the influence of Russian, Soviet legislation of the pre-revolutionary era and the Soviet era. After gaining independence, a new milestone in the development of the institution of constitutional control began in the republic, in which a transitional stage is marked out, at which the gradual replacement of Soviet state and legal institutions took place; the fundamental legal acts of the new state were not yet adopted, and although acts of the Soviet era were in force, they were changed in accordance with new historical conditions.

Summarizing the analysis of the constitutional legislation, undertaken with the purpose of disclosing the features of historical periods of the formation and development of constitutional control in the Republic of Kazakhstan, we can identify several stages of the constitutional evolution of the institution of constitutional

review in Kazakhstan: the era of Soviet construction, the transitional stage, period of formation of constitutional bases of the Kazakhstan's model of constitutional review, and the current period of development of this institution.

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Ф.А. Ержанова

Қазақстандағы конституциялық бақылау институтының қалыптасуы мен дамуының тарихи кезеңдері

Мақалада кенестік кезеңдегі Қазақстан Республикасы конституциялық бақылау институтының дамуы, қалыптасуы, сондай-ақ аталған институттың дамуының өтпелі кезеңдері қарастырылған. Автор конституциялық бақылау және қадағалау органдарының қайта қалыптасуына назар аударып, Қазақстанда конституциялық бақылаудың эволюциялық даму кезеңдеріне авторлық жіктеу жүргізген. Мақалада конституциялық бақылау мен қадағалау функциясын жүзеге асыратын органдардың құқықтық мәртебесінің конституциялық негіздерінің даму мәселелері зерттелді. Атап айтқанда, бастапқыдағы олардың құзыреттері мен қызметтерін рәсімдеудің құқықтық қырлары талданды. Сонымен қатар Қазақстан Республикасының конституцияларына сәйкес конституциялық бақылау институтының қайта құрылуы болғандығына, конституциялық бақылау органдарының құқықтық негіздері мен мәртебесінің заңнамалық жаңғыруына көңіл бөлінген.

Кілт сөздер: Қазақстан Республикасының Конституциясы, конституциялық бақылау, конституциялық қадағалау, соттық конституциялық бақылау, Қазақстан Республикасының Конституциялық соты, конституциялық бақылау органдары, өкілеттілік.

Ф.А. Ержанова

Исторические этапы становления и развития института конституционного контроля в Казахстане

В статье рассмотрены основные вехи становления и развития института конституционного контроля в Республике Казахстан в советскую эпоху и на начальном этапе переходного периода развития данного института. Внимание акцентировано на зарождении органов конституционного контроля и надзора, дана авторская классификация периодов эволюции конституционного контроля

в Казахстане. Раскрыты вопросы развития конституционных основ правового статуса органов, осуществлявших функции конституционного контроля и надзора. В частности, проанализированы изначальные правовые подходы к оформлению их полномочий и деятельности, а также последующие изменения. При этом обращено внимание на то, что в соответствии с Конституциями Республики Казахстан происходили преобразование института конституционного контроля, а также законодательная модернизация правовых основ и статуса органов конституционного контроля.

Ключевые слова: Конституция Республики Казахстан, конституционный контроль, конституционный надзор, судебный конституционный контроль, Конституционный суд Республики Казахстан, органы конституционного контроля, полномочия.

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