



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 2 (2022)
ISSN 2029-0454



Cite: *Baltic Journal of Law & Politics* 15:2 (2022): 615-630
DOI: 10.2478/bjlp-2022-001038

Features and prospects of the constitutional control body activity on constitutionalism formation in the Republic of Kazakhstan

Mukhtar Baktybekov

Senior Lecturer of the Department of State and Legal Disciplines; Alikhan Bokeikhan University, Faculty of Law, Department of State and Legal Disciplines. Address: 071400, Republic of Kazakhstan, Semey, Mangilik el st. 11. ORCID: 0000-0001-9297-4846, E-mail: mukhtar-79@mail.ru

Assel Sakabaykyzy

Master of Law, Department of International Law, Kazakh Ablai Khan University of International Relations and World Languages, E-mail: assel_taldik@mail.ru

Maigul Matayeva

Doctor of Law, Alikhan Bokeikhan University, Faculty of Law, Department of State and Legal Disciplines. Address: 071400, Republic of Kazakhstan, Semey, Mangilik el st. 11. ORCID: 0000-0003-4347-0128, E-mail: maigulm@mail.ru

Eldana Maishekina

Head of the Department of State Legal Disciplines, PhD, Alikhan Bokeikhan University, Faculty of Law, Department of State and Legal Disciplines. Address: 071400, Republic of Kazakhstan, Semey, Mangilik el st. 11. ORCID: 0000-0003-1289-7890, E-mail: Eldana_18@mail.ru

Aidos Zhumadilov

Senior Lecturer of the Department of State and Legal Disciplines; Alikhan Bokeikhan University, Faculty of Law, Department of State and Legal Disciplines. Address: 071400, Republic of Kazakhstan, Semey, Mangilik el st. 11. ORCID: 0000-0001-9439-620X, E-mail: aidos_2010@bk.ru

Aliya Koshkinbayeva

PhD, Jurisprudence and International Law Department, Turan University, Republic of Kazakhstan, Almaty, ORCID: 0000-0002-9327-9869, E-mail: ankin2008@bk.ru

Bolatbek Tleulov

Head of the Department of State Legal Disciplines, Candidate of Pedagogical Sciences, M. Auezov South KAZAKHSTAN University. Shymkent, Tauke khan avenue, 5. E-mail: 3136363@mail.ru

Received: July 24, 2022; reviews: 2; accepted: October 26, 2022.

Abstract

Constitutional development and ensuring the supremacy of the Constitution will be one of the main issues today. At the same time, a special place is occupied by the activities of the Constitutional Council of the Republic of Kazakhstan. As a result of subsequent constitutional reforms, he will have advantages in forming constitutionalism within his powers and will continue to theoretically and practically ensure the protection of the Constitution. Analysis, interpretation, verification of constitutional norms, separation of powers between authorities, and constitutional conclusions on important Council events will shape the constitutional process, law enforcement practice and orientation in the country, form legal institutions and development mechanisms of the Republic of Kazakhstan as a democratic, legal state and legislative framework. The research will reveal the function and significance of the constitutional control body based on the principles and values of constitutionalism, which is our goal. In particular, the experience and importance of the Constitutional Council in the formation of constitutional legislation in the country based on universal constitutional values and Kazakh values are described.

Keywords

constitutionalism, constitutional values and principles, the rule of law, institute of constitutional control, Constitutional Council of the Republic of Kazakhstan, normative resolutions of the Constitutional Council, legal positions

Introduction

In the current era of globalization, with the formation of civilizations and each state's constitutional development, establishing a regime of "constitutionalism" is essential. Constitutionalism is a conceptual, theoretical idea that considers the development of the state in a sustainable, evolutionary way. The category of "constitutionalism" is a cumulative value that is theoretically and practically enriched in terms of content, requires actual implementation in practice, creates mutual harmony between the state and the individual, and is constantly dynamic. The legal doctrine of "constitutionalism" consists of the theory and idea of constitutionalism and the practice of its implementation. The theory of constitutionalism consists of knowledge about the theories of the Constitution, constitutional evolution, constitutional reform and important democratic values in Kazakhstan. Suppose constitutional ideas are expressed through values and constitutional statements. In that case, the practice of constitutionalism is given as an actual historical experience of the implementation of democratic norms in a certain period of the constitutional development of Kazakhstan [1; 54-55].

At the same time, constitutionalism is represented in the action and development of constitutional norms, relations, institutions, and structures in a generalized form.

In the system of current law in the state, the main tasks include the formation of a unified system of the Constitution and normative acts formed on its basis, effective constitutional legislation and the practice of their implementation

and application, “constantly improving and preparing mechanisms for the introduction of constitutional norms and principles, ideas and values into a living system of public practice is the task of jurisprudence” [2; page 5]

In Kazakh constitutionalism’s process, constitutional justice and control function is particular.

The doctrinal and legal positions of the constitutional control body of the Republic of Kazakhstan on the interpretation of the norms of the Constitution, resolution of constitutional and legal disputes between state authorities, substantive enrichment of constitutional norms, messages and proposals related to constitutional practice on the application of constitutional norms, constitutional and legal decisions and conclusions are essential for constitutionalism and the constitutional process (development) of the country.

The Constitutional Council of the Republic of Kazakhstan, acting within its powers as the only body ensuring the supremacy and control of the Constitution, has formed a regime of constitutionalism and paved the way for the realization of the right to protection and development. The Constitution and constitutional values, with their deep scientific foundations, effective institutions and mechanisms, theory and practice of constitutional control in the Republic of Kazakhstan, establish its primacy, and they allow us to be among the developed countries in the conditions of modern globalization, overcoming external and internal threats and risks.

Methods

General scientific and individual methods of objective reality cognition were used to study the topic. From the point of view of metaphysics, by general philosophical methods, constitutionalism looks at the state and principles as values that should exist. From the point of view of dialectics, it gives dynamic concepts full of contradictory changes. In particular, constitutionalism and other categories close to it develop based on contradictions.

At the same time, the meaning and content of objects studied by general scientific methods according to modern knowledge are revealed through synthesis, and the general goal of systematization of values in constitutionalism through constitutional control is shown (the content of constitutional control is disclosed).

Systemic methods of constitutional control reach their level when they are closely related to other elements (constitutional norms, principles, institutions, jurisprudence, culture, tradition), and functional methods reveal the institutional capabilities and legal experience of the constitutional control body of the Republic of Kazakhstan.

In the same way, different scientific methods were used. Using historical methods, objective conclusions are drawn with an in-depth analysis of past situations, the historical development of constitutional and legal phenomena is considered, and the continuity and trend of the development of constitutional regulation are studied. Similarly, with the system-structural method, each legal institution has its structure and is part of the general science. Based on comparative methods, a theoretical

comparison of the national foundations of constitutionalism and constitutional control with the world trend and the connections of these objects in the system of law in other branches of law are considered. It is shown that the interrelationships between them through system and integrity coexist with constitutionalism and constitutional control, which are complementary, necessary values.

Discussion

The method of constitutional development, or constitutionalism, is based primarily on constitutional thinking, constitutional theory, and constitutional doctrine. Secondly, it includes the experience of the actual implementation of constitutional legislation in life. The closer these two aspects are to each other, the maintenance of a close relationship will reflect true constitutionalism. The political and socio-economic situation of countries that have reached a high level of constitutional development will develop. At the same time, in the conditions of the rapid progress of globalization and integration, the relevance of universal values and modern trends, the priorities of world constitutionalism are accepted by States as universal values (universal benefits).

The concept of constitutionalism was first formed in American theory as a concept asserting the dominance in the society of the written fundamental law of the state - the Constitution. As a result, it regulated, recognized and preserved all relationships as the highest value in society. In the same way, it is considered to reveal the primary importance of constitutionalism in the development of human thought, in political and legal thought, in the development of the state and society, as a mechanism for limiting the power of the monarch, the state of power, as well as the concept of a state limited by human rights (Muller & de Klerk, 2020).

It can be concluded that constitutionalism is a process (direction) of recognizing and realizing relevant and essential values for humanity in the course of the historical development of humanity (constitutional and historical development). The essence of all these positions is establishing the rule of law. It can be said that in the Anglo-Saxon legal system, the concept of the "rule of law" by A. Dicey is similar to the "rule of the constitution".

Currently, the activities of constitutional justice are carried out by the Constitutional Council of the Republic of Kazakhstan to ensure the supremacy of the fundamental law as much as possible, to form meaningful constitutional opinions and thinking based on its values and principles, to maximize its potential, to determine the closest legal positions between natural law and positive law and to ensure constitutional practice (Rachman, 2021).

Ignoring the achievements of theoretical ideas in the field of legal construction leads to the omission of what is essential from the point of view of human well-being and society. One of the forms of such theoretical reflections is the problem of legal interpretation. They are aimed at legal recognition and determination of the necessary content. One of the most necessary conditions for implementing the law is its understanding, comprehension, judgment,

understanding of its meaningful meaning and achieving its meaning in regulation. This logical operation is called in science the interpretation of the law. It depends on the goals and interests of the participants at different levels, by different methods, depending on the clarity of the laws, intellectual and other levels of the subjects of cognition. Therefore, it is necessary to interpret the law at a high level of responsibility, intelligence and organization, academician S.Z. Zimanov points out [3; 6-7].

Modern problems of constitutionalism. Constitutionalism is a set of various ideas, principles, and concepts aimed at the development of the political and legal system of the state, aimed at the realization of human and civil rights and freedoms and, as a consequence, ensuring the rule of law [4]. Kazakh constitutionalism is at certain stages in the course of historical development in the formation of values (components of the state and society) aimed at democratic foundations. Under the Kazakh Khanate, property, family, and other legal issues were regulated based on customary law by such basic laws as the "Seven Regulations (Jeti jargı)", etc. The restriction of the tsar's omnipotence within tsarist Russia, the supremacy of the state's fundamental law, the establishment of self-determination of peoples within Russia, and the preservation of land ownership of the local population. During the Soviet period, the question of human rights and freedoms and the creation of state power in adopting and implementing Union constitutions. In the creation of independent Kazakhstan, democratic values acquired a new character, forming new formational values and forming branches of government in strengthening statehood, protection and recognition of human rights and freedoms, etc. The formation of values and ideas led to a new stage of social harmony, political stability, economic development based on the well-being of the people, and constitutional development based on Kazakh patriotism (Setiawan, Nasihien, & Masirin, 2021).

Researchers consider two aspects of the concept of constitutionalism: - one is objectively based on the general legal principles of the organization of public administration;

- in a subjective sense, it reflects the traditions and mentality of the political and legal culture of the state-forming society. Constitutionalism in the Western tradition is defined as a state power that restricts absolute power based on the norms of the Constitution or a democratic position that restricts the absolute regime.

Moral and ethical values in the history of Turkic and nomadic Kazakhs are based on the values of the Turkic and Kazakh khanates - homeland, native language, native culture, and tolerant attitude to other nationalities and religions. They continue with values such as conscience, based on the deep traditions of the Kazakh people, continuing the current presidential form of government in Kazakhstan, being the basis for the formation of the constitutional system [5; 20-21-p.]. They are not only legal statements but also become vital moral and ethical (value) principles of the younger generation. German researcher S. Voit notes that constitutionalism should not be understood only with the Constitution in force in

the state. As a normative concept, it gives a multi-level system that goes beyond the Constitution and even beyond the law, reflecting the way of life and the particular mentality of the people [6]. Therefore, the constitutional position put forward by "a strong executive power, a responsible parliament, a professional court" will become the norm of life for Kazakhstan's democracy and modern Kazakhstanis. It will be considered from the position of "a strong president- an influential parliament- an accountable government" and from the position of a "hearing state" in Kazakhstan's political and legal process to protect moral and ethical human criteria.

V. Malinovsky, a member of the Constitutional Council of the Republic of Kazakhstan, defines constitutionalism as consisting of classical canons and recommendations of international experts and of the importance of both visible and valuable domestic experience and the way of the state through natural relations. This shows that "a unique methodology and methodology for the development of constitutional processes are being formed in the domestic constitutional experience of our country [7]. Such constitutional values are the stabilizing, developing and guiding foundations of our state and society and continue to shape constitutionalism. It is essential not to look at the Constitution or its norms only as written documents but to understand its idea and deep content, as well as its axiological values, to form respect and culture among subjects for the provisions of the Constitution. It will allow the Constitution to be implemented at a high level.

The strengthening of the Constitution of the Republic of Kazakhstan as summing up the values of the basic ideas of the state and society, independent statehood, market economy, democracy, legal system, united Kazakh people, socio-political stability and peace, harmony is the result of the supremacy of the Constitution and the realization of its values and constitutional development how norms and principles are defined in the Constitution: the people of Kazakhstan, united by common historical destiny; the creation of statehood on the native Kazakh land; creation of a peaceful civil society based on freedom, equality and consent; becoming a worthy member of the world community; the right of the people to sovereignty [8]. Democratic, legal, secular, creation of a social state, human rights, freedom, life, recognition of the state and man as a shared value, and article 1, paragraph 2 of the Constitution of the Republic of Kazakhstan mentions social harmony and political stability, economic development for the benefit of the whole people, Kazakh patriotism, essential issues of the state, the basic principles of democratic decision-making, including a national referendum and Parliament, which will determine the effectiveness, strength and viability of the Constitution and strengthen the system of constitutionalism in the country.

The domestic scientist A.K. Kotov considered Kazakh constitutionalism based on the path of the rule of law and civil society; individual autonomy and economic freedom of society and democratic political regime; secular and republican phenomena based on national sovereignty, private property, economic freedom, separation of powers; inseparable rights and freedoms of man and citizen

[9; p.80-82]. According to Kazakh scientist A.T. Ascheulov, the supremacy of the Constitution and the creation of effective mechanisms for its implementation, which is, first of all, the protection of citizens from unlawful actions of state bodies with the Constitution, the creation of a sovereign, democratic secular state based on the principles of liberalism, individualism, statehood and private property [10; p.110]. Scientist S.K.Amandykova identifies such constitutional characteristics as the rule of law, popular consent (will), limited government, separation of powers, open civil society, personal inviolability, regulatory approval, equality, continuity, honesty [11; pp.27-64].

In the course of increasing global threats and tensions, the importance of constitutional values, which are the basis of constitutional development, increases, and there is a need for society to enrich them in a new way.

Constitutionalism is presented by researchers as a complex system of interrelated components with a system of fundamental values and ideas (principles). It is determined that acting in the unity of these principles, Kazakhstan's statehood will be the key and direction of conflict-free development and public welfare.

The Constitutional Council shows the importance of values and principles in Kazakhstan's constitutionalism in its resolutions defining their unique significance in the formation and evolution of man and citizen, society, and state in the new history of Kazakhstan. In its activities, the Constitutional Council relies on the values mentioned above in constitutional development, directs them and forms constitutional law on their basis. The core of our constitutional development will be constitutional values and principles adopted by our constitutional tradition based on national constitutional experience and mentality (social and cultural foundations). They are intensely perceived in society as moral and ethical values, increase the strength of the Constitution and constitutionalism, and ensure the integration of universal values with Kazakhstan's constitutional practice, constitutional structure and stability of the Republic of Kazakhstan.

On the one hand, the constitutional value of Kazakhstan reflects our past path (experience) and our future dreams and goals, and on the other hand, lays the foundations of the constitutional system that ensures the stability of our state and society and determines the meaning of life. The axiological foundations and methods presented in the development and theory of constitutionalism (constitutional and legal science) will serve as the basis for the development, stability, security and harmony of the state and society, will indicate ways to overcome obstacles, threats, and crises. The axiological or value-oriented framework, being both continuous and innovative, opens up new opportunities for the theory of constitutional law and constitutional law enforcement; and the "evaluative measurement" is an essential tool or method of constitutional legal practice for effective constitutional monitoring [12].

For constitutionalism, it is essential to adopt a legitimate and legitimate constitution with its effective implementation and, above all, to maintain a balance

between the legal Constitution (compliance with the letter and spirit of the fundamental law) and the actual Constitution (real life) [13; p.13]. One of the most critical processes is the correct understanding, interpretation, protection and implementation of the Constitution, constitutional values, norms and principles in society.

In recent years, the relevance of these bodies has increased, they carry out macro-regulation of the legal system, and their decisions are corrective in the implementation of the norms of the Constitution. The Constitutional Council of the Republic of Kazakhstan, checking the compliance of the current legislation with the Constitution, forms legal positions in the form of universal foundations and instruments of various forms that effectively affect the current law.

The decisions of the Constitutional Council of Kazakhstan contain a synthesis of legislation and legal doctrine. Legal positions are the unity of legal information of ideas and norms formed on various issues, logically completed, in the content of decisions of the constitutional control bodies. The legal position sets out assumptions and knowledge on legal policy, law, and the Constitution, and indicates the origins of issues, their results, work experience, and the collective legal consciousness of members of the Constitutional Council [14; pp.9-13]. Legal positions also retain a systematic knowledge of the content of the Constitution, legal policy and the system of legislation with the constitutional control body in a particular historical period, and also retain in the future a set of legal information and historical experience, their own decisions and amendments. The legal positions of the constitutional control bodies are also necessary to protect legal borders, legal and political-legal institutions, and legal relations. They hinder the development of public relations in unnecessary areas, recognize specific ideas and values, or contribute to the transformation of law, jurisprudence, and legal relations [15; p.11].

The legal positions approved and identified in the decision of the constitutional control body are stable, systematic, and logical sources in the interpretation of the Constitution norms, as well as a way and means of its protection and implementation. They are based on a general logical, value, political and legal theoretical position and reflect the logic of the argumentation of this state body and have motivational, prognostic and preventive value on legal issues. The legal positions of the Constitutional Council of Kazakhstan ensure the advance of legislation or the inhibition of public relations, influence legal policy and direct legislators and law enforcement practice in a particular direction. Therefore, legal positions in regulatory resolutions will continue to ensure the constitutional development of theory and practice with professional doctrinal logic in the implementation and supremacy of the Constitution. Therefore, it is necessary to take into account the importance of legal positions not only in the conclusions but also in the descriptive (analytical) part of the normative resolutions of the Constitutional Council of Kazakhstan. Unfortunately, in practice, it turns out that the leading positions are not fully applied in the implementation of specific provisions of the legislation.

After the adoption of the Law "On Amendments and Additions to the

Constitution of the Republic of Kazakhstan” concerning constitutional reforms by the Parliament in 2017, it was sent to the Constitutional Council by the President of the Republic of Kazakhstan to verify “compliance with the values and basic principles of the republic established by the Constitution” [16]. As a new initiative of the third constitutional reform, essential changes and additions for our country were aimed at ensuring the supremacy of the Constitution in the current legal system and its unconditional implementation and enforcement throughout the country, improving public administration, strengthening constitutional rights and freedoms of citizens and fulfilling duties. Also, this constitutional law determined the priority of ratified international treaties over the laws of the Republic, the application of international treaties to which Kazakhstan is a party [17]. The Constitutional Council of the Republic of Kazakhstan confirms that amendments and additions to the Constitution of the Republic are made under the basic principles of the Republic, such as independence and unity of the state, its form of government and under paragraph 2 of Article 91 of the Constitution. It is determined that “it is aimed at ensuring the supremacy of the existing legal system and its unconditional implementation throughout the country, improving public administration, strengthening the protection of constitutional rights and freedoms of citizens” [18]. It means that the constitutional justice body ensures the constitutional process within its constitutional powers, checks the compliance of the law with the Constitution and ensures the legal system’s unity. Based on this, the way was paved to a new stage of the state’s constitutional development.

In the direction of democratic modernization of the presidential power in our country, several changes have been made to strengthen the role, independence and responsibility of the Parliament and the government, the reorganization of individual powers between the President, Parliament, and the government. To strengthen the status of the Parliament as the highest legislative body of the country, the powers of the Parliament were expanded with the rejection of the Head of State powers such as issuing laws and decrees, exercising legislative powers granted by the Parliament, the refusal of the authority to instruct the government to submit a bill to the Majilis of the Parliament [19], the President’s influence on the adoption of laws were preserved only in areas requiring urgent organization. At the same time, the powers of the Parliament over the government have been expanded, and the mechanisms of control and influence on the executive power of people’s representatives are being improved. The right to submit candidacies of members of the government to the Head of State after consultations with the Majilis, the right to terminate the powers of the government before the newly elected Majilis, the accountability and control of the Government before Parliament, the right to appeal to the President to dismiss members of the government by at least two-thirds of the votes of deputies, etc. The changes have defined new foundations for improving the efficiency of the branches of government.

These changes and constitutional values are the basis for the formation of independent Kazakhstan as a state with a powerful and developed civil society,

complementing the fundamental principles of the country, enriching its content and corresponding to the historical evolution of the country, further establishing democracy and preserving the government form of the President, strengthening the responsibilities of Parliament and government. Authorizing the President of the Republic to send the Constitutional Council submission on the verification of the constitutionality of a law or other legal act that entered into force based on subparagraph 3) of paragraph 6 of Article 1 of the Law (subparagraph 10-1 of Article 44 and paragraph 2 of Article 72 of the Constitution) and amendments and additions to the Constitution of the Republic, followed by paragraph 3 of Article 91 of the Constitution, issues of conclusion The Constitutional Council has increased the importance of the institution of constitutional control.

Along with constitutional principles, such as the power of the people and branches of government, the Constitutional Council of the Republic of Kazakhstan always pays attention to the basic principles of a person and his rights, freedoms and life, which are the property of the state. For example, freedom of expression (freedom of speech) is the foundation of pluralism and diversity, the foundation of democracy. Currently, these values are becoming the object of research on global constitutional control and are limited for reasons of human rights, national security, and public security [20; pp.122-127]. It is believed that the most progressive legal acts - constitutions sometimes lose their significance among the country's criminal laws and lose adequate guarantees of their supremacy. Applying a criminal law that does not comply with the Constitution is the most severe possible infringement on the rights of citizens. Ensuring the supremacy of the Constitution, including the supremacy in the field of criminal law, is very important [21; pp.131-137]. The Constitutional Council will ensure the constitutionality of specific provisions of the Criminal Code, and the direct application of the Constitution forms a positive practice of constitutional legislation by interpreting the basic legal norms of the Constitution. Such an approach to ensuring the supremacy of the Constitution means a guarantee of the inadmissibility of unconstitutional criminal legislation, protects against the existence of provisions that contradict the Constitution and affects the rights and interests of citizens.

In the proceedings on the recognition of unconstitutional Article 47, paragraph 5 of the Code of the Republic of Kazakhstan dated December 26, 2011 "On Marriage (Matrimony) and family" on establishing paternity, collecting alimony for the maintenance of a child, collecting funds for the maintenance of a child in the period before childbirth and before the child reaches the age of three, the Constitutional Council of Kazakhstan determined, that the Republic of Kazakhstan is a social state that provides people with a decent life, that it provides a decent life for its citizens. Taking care of children and their upbringing will be the main right and duty of parents, and in the international documents of the mother, before and after the birth of the child in cases where the child must be under special supervision, the recovery of funds for the maintenance of the father of the child to a woman, including an unmarried woman, in connection with her pregnancy and

childbirth to a common child, is the implementation of the constitutional provision on the protection of mother and child. The Constitutional Council concluded that the attribution of a woman's right to take care of herself during pregnancy, childbirth and after childbirth, the right to receive money from the father of the child, and the presence or absence of legal marital relations between them is related to the implementation of the state's obligations to protect the institution of the family based on marriage, and protects the institution of the family, which is one of the main values. Paragraph 5 of Article 47 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" does not discriminate and does not contradict paragraph 2 of Article 14 and paragraphs 1 and 2 of Article 27 of the Basic Law, since marriage and family, mother and child protection, as well as the constitutional duties of parents, have been defined as values of constitutional significance[22]. The values of the family and the mother and the unborn child were protected, the completeness of the implementation of the constitutional provisions related to them was explained, and systems of constitutional practice and law enforcement were formed.

In general, the Constitution and its values, rules, and fundamental principles will be the basis of the existence of the Republic of Kazakhstan. In this continuous development, the Constitutional Council of the Republic of Kazakhstan, in the course of its activities, will ensure the vitality and supremacy of the Constitution, interpret, transform and implement its norms with modern requirements. At the same time, in the process of the influence of international norms and supranational law on national law, it exists as a special body in determining national identity based on the principles and rules that are the basis of statehood. This constitutional peculiarity will ensure the conflict-free development of the constitutional system, the rule of law and the internal harmonization of the Constitution. Constitutional identity is formed by each country with its own special experience, it is not invented or changed by some arbitrary decisions or imposed from the outside. Identity is formed by a combination of historical, social and cultural factors in law. Such an identity is not a frozen situation, it is a dialogical process expressing the beliefs and ideas of each country in the historical past and reinterpreted in each new era [23; p.158]. At the same time, the Constitutional Council will ensure constitutional legality, which is the basic principle of law, protects the Constitution, checks the compliance of laws before they are signed by the President, gives an official interpretation, strengthens constitutional legality and reveals the possibilities of the Constitution by improving the current legislation.

With the decisions of the Constitutional Council on the official interpretation of the norms of the Constitution, the current legislation will rise to a new level without violating the foundations, spirit and institutions of the Constitution. The decisions of the Council occupy a place after the Constitution in the current law of the Republic, increase the possibilities of the current law and become the source of the official constitutional doctrine (constitutional custom), which is the basis of the law-making of the state [24; pp.51-55]. In addition, the Constitutional Council

determines the improvement of legislative regulation in certain areas to achieve the goals of strategic plans and the Constitution in the country. They contribute to the democratization of society and the state, ensure the active participation of citizens in the governance of the state, and serve as a body of constitutional justice.

Now the issues of expanding the subjects of appeal and citizens' access to constitutional control are being raised. The Venice Commission of the Council of Europe proposed to single out individual appeals of the parties to the Constitutional Council in the procedural codes, clarify the procedure for judicial review, confirm specific grounds for refusal, and support appeals to higher judicial instances [25]. This will improve the system of citizens' appeals to the constitutional justice system through the court. As a result, during the trial, the parties' petition on the constitutionality of the laws will be specially developed (investigated) by the court and will become an effective mechanism. Citizens' access to constitutional justice will be fully realized with a qualitative consideration by the court of an indirect appeal to the Constitutional Council through the court. Increasing the effectiveness of this mechanism activates the interests and actions of citizens related to the supremacy of the Constitution. As a result, not only state bodies, but also citizens will be active in strengthening constitutionalism in the state through constitutional justice.

In general, when forming the institution of constitutional control in the country, the Constitutional Council has functional capabilities, including the areas of rule-making, law enforcement, and human rights protection. As a source of law, it has the opportunity to adjust the content of legal acts, actively participate in the constitutionalization of the national legal system, interact with legislative bodies, and have the opportunity to influence the practice of law enforcement by basing general constitutional provisions in the content of its decisions on judicial cases [26; p. 285] are today's features of Kazakhstan's constitutional control.

The Venice Commission of the Council of Europe considers the execution of the final decisions of the constitutional justice bodies as the main indicator of the rule of law. Therefore, the implementation of the decisions of the Constitutional Council of the Republic of Kazakhstan will be an indicator of strengthening constitutionalism. At the same time, the interpretation of constitutional norms will contribute to the improvement of constitutional ideas, constitutional culture, knowledge and legal awareness, and constitutional practice. It constitutionalizes all spheres of society and the state, establishes the basic principles of the development of legislation, and develops a legal system based on universally recognized values [27; p.27]. The normative resolutions of the Constitutional Council enrich the current law with the spirit and ideas of the Constitution to further strengthen constitutionalism and ensure its supremacy. As a negative and positive legislator, he does not interfere with the powers of Parliament and other state bodies and acts as carefully as possible.

Results and Discussion

Constitutionalism is a political and legal regime or a multifaceted cumulative concept formed by establishing the supremacy of the Constitution. This is a

universal value. In revealing the essence of this idea, maximum harmony and democratic foundations for building political, legal and other relations between the state and the people will be formed. Due to the rule of law or the supremacy of the Constitution, the harmonious development of the state, society and man takes place. In this process, the Constitution, its provisions and its implementation are of particular importance.

In constitutional development based on the Constitution of the Republic of Kazakhstan, constitutional principles and values will be accepted by the society based on historical, cultural, and social values (morality) and will be the core of the development and stability of the state. When state values are adopted in harmony with universal civilizational values, conditions will be created for our country to become an equal member of the international community, and its citizens can enjoy advanced world achievements.

The Constitutional Council of the Republic of Kazakhstan, as a body of constitutional justice, ensures the rule of law, supremacy and direct application of the Constitution in constitutional theory and practice within its powers. The synthesis of the doctrine and practice of interpreting the norms of the Constitution, the legal positions of the Constitutional Council will allow the protection and interpret the Basic Law, guide the practice of law enforcement, form a "living" (true) constitutionalism, preserving the constitutional nature of the state structure.

Conclusion

Based on a deep scientific theory, including constitutional and theoretical provisions, will maximize the unity of the letter and spirit of the Constitution, and equal coverage. It is only thanks to high scientific judgments that constitutional norms and rules gain direction and are justified in constitutional practice, application and implementation.

As a body of constitutional justice, the Constitutional Council of the Republic of Kazakhstan ensures constitutional order and security, constitutional traditions, culture, supremacy and direct application of the Constitution, and interpretation of constitutional norms and rules in the development of the state.

Thanks to the activities of the Constitutional Council of the Republic of Kazakhstan, within its powers, a great contribution is made to the maximum strengthening of the concepts of "rule of law", "rule of law", and "constitutionalism".

References

1. Baymakhanova D.M. (2012) "Constitutionalism, its principles and their role in the development and protection of human and civil rights in the Republic of Kazakhstan" // Proceedings of the National Academy of Sciences of the Republic of Kazakhstan. No. 5, 54-60.
2. Sergazinov B.R. (2019) "Theoretical issues of application and interpretation of the Constitution of the Republic of Kazakhstan" // Almaty, 350.

3. Abdurasulov E.B. (2002) "Interpretation of the law and the norms of the Constitution: theory, experience, the procedure" // Monograph, Almaty: Orkeniyet, 400.
4. Nurmaganbetov A. The origins of Kazakh constitutionalism. <https://www.kazpravda.kz/articles/view/istoki-kazahstanskogo-konstitutsionalizma1> (accessed 10 November 2021)
5. Shapok U. (2020) "Constitution and the rule of law" // Collection of materials of the scientific and practical international conference "Formation and strengthening of professional legal culture of civil servants in the Republic of Kazakhstan in the light of modernization of public consciousness" dedicated to the 25th anniversary of the Constitution of the Republic of Kazakhstan – Nur-Sultan: L.N. Gumilev ENU, 373. <https://www.enu.kz/downloads/oktyabr-2020/1-sent-sbornik.pdf>
6. Amrebaev A. Constitutionalism as a choice of the people of Kazakhstan. https://inbusiness.kz/ru/author_news/konstitucionalizm-kak-vybor-naroda-kazahstana (accessed 10 November 2021)
7. Malinovsky V. Values of Kazakhstan constitutionalism. // Thought. <https://mysl.kazgazeta.kz/news/15466> (accessed 10 October 2021)
8. Constitution of the Republic of Kazakhstan. 30/07/1995. <https://adilet.zan.kz/kaz/docs/K950001000>
9. Kotov A. K. (1997) "Sovereign Kazakhstan: citizen, nation, population"// Almaty: Zheti zhargy, 1997, 287.
10. The constitutional law of the Republic of Kazakhstan (2001) Studentsbook / resp.editor M. S. Narikbayev. - Almaty: Zheti zhargy, 652.
11. Amandykova S.K. (2002) "Formation of the doctrine of constitutionalism in Kazakhstan" // Karaganda, 439.
12. Malinovsky V. Values of Kazakhstan constitutionalism. // Thought. <https://mysl.kazgazeta.kz/news/15466> (accessed 10 October 2021)
13. Constitutionalism is the basis of the state independence of the Republic of Kazakhstan. Malinovsky V.A.; Rogov I.I. Constitutional control in Kazakhstan: the doctrine and practice of the approval of constitutionalism: Monograph/Edited by I.I. Rogov., V.A. Malinovsky. Almaty: Rarity, -2015. page-384.
14. Udartsev S.F. (2015) "Phenomenon of legal positions of the constitutional control body" // Current state-legal problems. Issue 3. Collection of materials for the scientific conference. KazGUU. Astana: 126 p., pp.9-15.
15. Abdurasulov E.B. "Legal positions and legal principles of the Constitutional Council of the Republic of Kazakhstan and their role in the development and improvement of national legislation" // https://online.zakon.kz/Document/?doc_id=31396694 (accessed December 15, 2021)
16. Regulatory Resolution of the Constitutional Council of the Republic of Kazakhstan dated March 9, 2017 No. 1 on verification of compliance of the

- Law of the Republic of Kazakhstan with the Constitution of the Republic of Kazakhstan "On Amendments and additions to the Constitution of the Republic of Kazakhstan. Collection of normative resolutions of the Constitutional Council of the Republic of Kazakhstan. – Nur-Sultan, 2019. – 540 p. ISBN 978-601-7800-64-2 <https://ksrk.gov.kz/sites/default/files/books/2020-.pdf> (accessed December 15, 2021)
17. The Law of the Republic of Kazakhstan on amendments and additions to the Constitution of the Republic of Kazakhstan dated March 10, 2017. No. 51-VI KRZ. <https://adilet.zan.kz/kaz/docs/Z1700000051> (accessed 15 October 2021)
 18. Regulatory Resolution of the Constitutional Council of the Republic of Kazakhstan dated March 9, 2017 No. 1 on verification of compliance of the Law of the Republic of Kazakhstan "On Amendments and Additions to the Constitution of the Republic of Kazakhstan" with the Constitution of the Republic of Kazakhstan. Collection of normative resolutions of the Constitutional Council of the Republic of Kazakhstan. – Nur-Sultan, 2019. – 540 p. ISBN 978-601-7800-64-2 <https://ksrk.gov.kz/sites/default/files/books/2020-.pdf> (accessed October 15, 2021)
 19. The Law of the Republic of Kazakhstan on amendments and additions to the Constitution of the Republic of Kazakhstan dated March 10, 2017. No. 51-VI KRZ. <https://adilet.zan.kz/kaz/docs/Z1700000051> (accessed 15 October 2021)
 20. Zukhtu Arslan. Chairman of the Constitutional Court of Turkey. Freedom of speech, democracy, current issues. Kazakhstan's Way: Constitutionalism, man, peace and prosperity / Collection of articles. Ed. D.yu.n., K.A. Mami–Nur-Sultan, 2020 – page 384. <https://ksrk.gov.kz/sites/default/files/books/2020-09/%D0%BA%D0%B0%D0%B7.pdf> (accessed 10 December 2021)
 21. Velchev B. Constitutional foundations of the criminal law of the Republic of Kazakhstan. Kazakhstan's Way: Constitutionalism, man, peace and prosperity / Collection of articles. Ed. and the author of the preface – Doctor of Law, K.A.Mami –Nur-Sultan, 2020 – page 384. <https://ksrk.gov.kz/sites/default/files/books/2020-09/%D0%BA%D0%B0%D0%B7.pdf> (accessed 20 November 2021)
 22. Regulatory Resolution of the Constitutional Council of the Republic of Kazakhstan dated April 10, 2018 No. 3 on the verification of the constitutionality of Article 47, paragraph 5 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" on the proposal of the Specialized Interdistrict Juvenile Court of the Karaganda region.
 23. Zorkin V. (2020) "Constitutional identity in the conjugation of the national and interstate legal order. Kazakhstan's Way: Constitutionalism, man,

- peace and prosperity" // Collection of articles. Ed. and the author of the preface, Doctor of Law, Professor K.A. Mami–Nur-Sultan, 2020 – 384 p. (accessed 20 November 2021)
24. Kogamov M.Ch. (2015) "Constitutional Council: formation of the doctrine and practice of constitutional legality. Constitutional control in Kazakhstan: the doctrine and practice of the approval of constitutionalism" // Monograph/Edited by I.I. Rogov. , V.A. Malinovsky. Almaty: Rarity, 384.
 25. Message of the Constitutional Council of the Republic of Kazakhstan "On the state of constitutional law in the Republic of Kazakhstan" (published on June 21, 2021, at a joint meeting of the Chambers of the Parliament of the Republic of Kazakhstan) Message of the Constitutional Council of the Republic of Kazakhstan dated June 21, 2021
 26. Ostapovich I.Y. (2020) "Kazakhstan's way: constitutionalism, man, peace and prosperity" // Collection of articles. Ed. and the author of the preface, Doctor of Law, Professor K.A. Mami–Nur-Sultan, 384.
 27. Mami K.A. Constitutional control in the modern world: the experience of Kazakhstan. Constitutional Studies, Volume I. 2019 Constitutional Court of the Republic of Bulgaria. . 27-p. <https://ksrk.gov.kz/sites/default/files/books/2021-06/Constitutional%20Studies%20-%20Volume%20one.pdf> (accessed 20 November 2021)
 28. Muller, C., & de Klerk, N. (2020). Influence of design aesthetics and brand name on generation Y students' intention to use wearable activity-tracking devices. *International Journal of eBusiness and eGovernment Studies*, 12(2), 107-121. https://sobiad.org/eJOURNALS/journal_IJEBEG/archives/IJEBEG-2020_2/c-muller.pdf
 29. Rachman, A. (2021). The Influence of Transformational Leadership, Competence at Work, and Job Characteristics on the Employee Performance Through Organizational Commitment: A Social Exchange Perspective. *International Journal of eBusiness and eGovernment Studies*, 13(1), 179-201. <https://sobiad.org/menuscript/index.php/ijepeg/article/view/526/36>
 30. Setiawan, M. I., Nasihien, R. D., & Masirin, M. I. M. (2021). Development of eMobility Mobile App Based on Geographic Information Systems: Integrating Public Transportation, Regional Gdp, Regional Government Budget Revenues and Expenditures (APBD) in Indonesia. *International Journal of eBusiness and eGovernment Studies*, 13(1), 220-238. <https://sobiad.org/menuscript/index.php/ijepeg/article/view/652/56>