



Constitutional and Administrative Justice and Human Rights Protection: Global Experience and the Case of Kazakhstan

Ernar Adam¹, Leila Zhanuzakova², Binur Taitorina^{3,4},
Kabdulsamikh Aitkhozhin⁵, Zhazira Omirali⁶

Abstract

The Kazakh judicial system has undergone significant changes in recent years aimed at increasing its independence, transparency and efficiency. The aim of the study is to analyze contemporary approaches to adjudicating disputes regarding the conformity of normative legal acts with the national Constitution and laws in the constitutional and administrative courts of Kazakhstan, identify issues, and propose solutions to ensure the effective operation of judicial bodies and the protection of citizens' rights. This comparative analysis has revealed contradictions, gaps, inaccuracies, and other deficiencies in the legal framework governing the activities of the Constitutional Court and administrative courts of Kazakhstan, and has developed recommendations for addressing these issues. The results of the study focus on changes in a number of approaches to the activities of the courts, the criteria and principles of delimitation of powers of the courts of constitutional, administrative and civil jurisdiction.

Keywords

Administrative Court, Appeal to the Constitutional Review Body, Challenge, Constitutional Justice, Constitutional Review

¹ Tashkent State Law University, Sayilgoh str. 35, 100047 Tashkent, Republic of Uzbekistan.
E-mail: ernar.adam75@gmail.com.

² Turan University, st. Satpaeva 16a, 050013 Almaty, Republic of Kazakhstan; Institute of Legislation and Legal Information of the Republic of Kazakhstan, Astana, Republic of Kazakhstan. E-mail: zhanleila@mail.ru.

³ Kazakh National Pedagogical University named after Abai, Dostyk ave. 13, 050010 Almaty, Republic of Kazakhstan. E-mail: binurtaitorina4@alibag1.com, binur.a@mail.ru.

⁴ Corresponding author.

⁵ Kunaev University, Kurmangazy str. 107, 050022 Almaty, Republic of Kazakhstan.
E-mail: Kabdulsamikh@mail.ru.

⁶ Kunaev University, Kurmangazy str. 107, 050022 Almaty, Republic of Kazakhstan.
E-mail: Zhaziraomirali@mail.ru.

I. Introduction

The institution of constitutional review in global theory and practice of constitutionalism emerged in 1803 within the framework of judicial precedent in the case of *Marbury v. Madison*, when, for the first time in legal history, the Supreme Court of the United States declared the Act of Judiciary unconstitutional, establishing its conflict with the American Constitution. Chief Justice John Marshall articulated the essence of this new legal institution: “it is the judiciary’s duty to declare what the law is” (Favoreu, 1996). Considering the pre-constitutional period of world history, it is noteworthy that the genesis of constitutional review can be traced back to the early seventeenth century in Great Britain, in the activities of the Privy Council which invalidated legislative acts of British colonies that were contrary to English parliamentary laws (Chernilovsky, 1982). The politico-legal phenomenon of constitutional review is of great interest to contemporary researchers. The tradition of constitutional review is rapidly evolving and spreading worldwide. Transforming from the initial American model of judicial constitutional review conducted by general jurisdiction courts into the Austrian and French varieties of the European model of specialized constitutional review, and into various hybrid models, constitutional review as a politico-legal institution has become essential for virtually all countries, both established and emerging democracies. According to contemporary scholars, constitutional review bodies act as “negative legislators” in the practice of constitutionalism, invalidating unconstitutional acts and annulling subordinate legislation (Ostapovich, 2015).

The literature supports the view that “constitutional review bodies can be seen as institutions that prevent other state authorities from expanding at the expense of constitutional values, rights, and individual freedoms” (Zalesny, 2019). Delving into the analysis of normative acts and specific situations, it is noted that “in their analysis of the constitution’s content, constitutional review bodies are inevitably bound to consider all elements of the situation prevailing at the time of case review – economic, social, political, and international” (Udarcev, 2015). It is natural that the evolution of constitutional review is characterized by an increased intensity of its use by states, influenced by changes in global political systems. Typically, the essence of constitutional review is revealed in two ways: first, through the relationship between categories of power, and second, through the concept of legal protection of the constitution (Beibitov, 2005). It is substantiated that “courts exercising powers to review the constitution, i.e., the authority to invalidate legislative and executive actions based on conflicts with constitutional norms, ... significantly shape the political landscape” (Vanberg, 2015). In the contemporary period – during the third wave of democratization – there is a notable increase in the number of constitutional courts worldwide, marking an important element of the new constitutionalism (Brouard and Hönnige, 2017). Indeed, in virtually all states of Western Europe, Asia, Africa, and Latin America, the institution of constitutional review is perceived as a democratic arsenal against authoritarianism in the era of neo-constitutionalism.

In the latter half of the 20th century, Western countries observed a trend toward the establishment of administrative justice institutions. Administrative justice refers to a system of specialized judicial bodies that exercise judicial oversight in the sphere of public administration and ensure the protection of citizens' rights and freedoms from unlawful decisions and actions of state administration. Its main goal is the fair resolution of conflicts between private individuals and public authorities.

Historically, Western countries have developed two primary systems of administrative justice: the continental (Roman-Germanic) system and the Anglo-American (Anglo-Saxon) system. The former is characterized by the existence of specialized courts that are separate from the general judicial system. In this system, administrative courts operate on the basis of universal jurisdiction, allowing them to address any complaints regarding unlawful activities of public administration. In the latter model, European-type administrative courts are generally absent; however, specialized judicial bodies (such as police, tax, labor courts, etc.) may be established within the unified judicial system. General jurisdiction courts possess broad competence to resolve administrative disputes, while specialized courts address only disputes within their specific, narrowly specialized areas.

It should be noted that Kazakhstan, like other former Soviet countries, was for a long time within the orbit of the second model, where all disputes arising from public law relations were resolved within the framework of civil procedure in the general jurisdiction court system. Even when separate administrative courts were established, their functions were limited to handling cases of administrative offenses. It was only at the beginning of the 21st century that administrative justice began to gradually evolve towards the European system.

The phenomenon of constitutional review has continuously garnered significant interest since its inception and remains a subject of ongoing debate within the global constitutionalist scholarly community. Typically, the relevance of constitutional and administrative justice as the most effective mechanisms for protecting human rights becomes particularly salient during periods of shifts in socio-political and geopolitical contexts in various countries and globally. This mechanism becomes especially crucial in response to new challenges, such as the expansion of authoritarian tendencies and the proliferation of corruption risks. Since both forms of justice – constitutional and administrative – aim to safeguard citizens' rights and freedoms and given that normative legal acts may infringe upon these rights, mechanisms for challenging such acts must be effectively integrated into both types of justice. Consequently, the role of constitutional and administrative justice in identifying and invalidating acts that violate citizens' constitutional rights is aimed at both revising such acts and improving legislation, as well as advancing doctrinal postulates.

The institution of constitutional review is not static; it is continually evolving as it is intrinsically designed to uphold the supremacy of the Constitution and protect human rights. This fact is evidenced primarily by the transformation of constitutional review models worldwide, from static judicial to specialized judicial and quasi-judicial varieties. Moreover, recent political and legal history provides numerous examples of different constitutional review models tested by countries with emerging democracies, each with varying competencies. A notable example is the Republic of Kazakhstan, which emerged

as an independent state following the dissolution of the USSR. Since gaining sovereignty in 1991, Kazakhstan has successfully experimented with the Austrian model of a specialized constitutional court (1993–1995), then transitioned to a specialized quasi-judicial model of a constitutional council akin to that of France, albeit with a significant reduction in the scope of petitioners and constitutional review mechanisms (1996–2022). In 2023, Kazakhstan reestablished a variant of the Constitutional Court.

The issues surrounding the imperfections of Kazakhstan's current legislation governing public relations related to the organization of constitutional and administrative court proceedings, as well as ensuring effective practice, underscore the need for a critical analysis of contemporary legal frameworks.

II. Literature Review

In preparing this article, the research drew on scientific works by both international and Kazakh scholars in the fields of constitutional and administrative law and procedure, which formed the theoretical foundation of the study. The topic of the constitutional review institution and administrative justice, which is increasingly trending towards universalization, has been examined from various perspectives by scholars around the world.

Contemporary European scholars address issues related to the status and powers of constitutional courts, including their authority to review the constitutionality of normative legal acts issued by state organs (Garlicki, 2007; Markhgeym et al., 2019; Tanchev, 2015). They also discuss the application of European law norms by national constitutional and administrative justice bodies, including the review of the constitutionality and legality of normative legal acts of state organs, and the integration of European legal norms by these national bodies (Depp, 2014; Kustra-Rogatka, 2019). Furthermore, they tackle the issue of the complex relationship between international law and national constitutional law, which does not fit neatly into a single hierarchical framework (Mathieu, 2021). Scholars generally agree that “the institution of annulment of administrative acts is necessary to adapt to changes in factual or legal situations or to correct mistakes” (Briede, 2013).

Kazakh researchers have examined issues related to the competence of constitutional review bodies in assessing the conformity of laws and other normative legal acts with the Constitution, including in the realm of human rights protection, the legal nature of normative resolutions by constitutional justice bodies and the Supreme Court, and their place within the existing legal system (Abylassimov and Musin, 2015; Podoprigora, 2014; Zhanuzakova 2018). They have also explored the prospects for the development of administrative courts in this regard (Sarpekov, 2020; Zhanuzakova 2022).

The works of several Asian scholars investigate the competence of administrative courts and the role of administrative justice in maintaining a balance between the individual and the state, as well as the role of the judiciary in restraining unlawful legislative actions by the executive branch (Ahdout, 2022; Putrijanti, 2020; Simanjuntak, 2020).

Legal literature also defines theoretical approaches to distinguishing the powers of commercial, civil, and administrative courts (Demchenko et al., 2022). These issues have been addressed by many scholars from Kazakhstan and other countries in the fields of constitutional and administrative law and procedure.

The theoretical foundation of this research comprises doctrinal sources – scientific works by specialists in constitutional and administrative justice.

III. Methods

To achieve the goal of this research, the study aims to analyze contemporary approaches to adjudicating disputes regarding the conformity of normative legal acts with the national Constitution and laws in constitutional and administrative courts, identify problematic areas, and propose solutions to ensure the effective functioning of judicial bodies and the protection of citizens' rights. A comprehensive set of scientific methods has been employed in this process. The resolution of research tasks relies on the application of specialized scientific methods.

The analysis of the contemporary phenomenon of judicial review of the constitutionality and legality of normative legal acts is based on historical-legal analysis, systematization, and generalization of a broad range of constitutional, legislative, and other normative legal acts from a significant number of countries.

The application of the historical method enabled the exploration of the genesis and evolution of the institution of constitutional and administrative adjudication. The structural-functional method used in this study is based on examining the internal structure of specific legal provisions and the legal norms contained within them, focusing on their functional and purposive roles. The comparative-legal method facilitated a comparative analysis of the legislation of the Republic of Kazakhstan and several foreign states to identify deficiencies in legal regulation, study positive foreign experiences, and prepare recommendations for improving national legislation. The method of legal modeling allows for the development and presentation of regulatory models addressing the issues identified during the research. In the context of comparative analysis, the experiences of global practices were utilized. Jurisdictions including the United States, France, Germany, Asian countries, and post-Soviet republics were selected to analyze the development of these legal institutions. The aim is to create a model of constitutional and administrative justice in the Republic of Kazakhstan that meets contemporary requirements and effectively protects human rights. To develop such a model, the study critically analyzed the current constitutional, administrative procedural, and civil procedural legislation of Kazakhstan and other countries, as well as its application. The selection of jurisdictions is determined by their belonging to the two prevailing legal systems (continental and common law system). Structurally, the work is divided into several semantic blocks devoted, respectively, to the issues of a) the modern role of constitutional and administrative justice in the Republic of Kazakhstan, b) issues of constitutional control in the Republic of Kazakhstan within the framework of constitutional reforms c) the problem of challenging regulatory legal acts d) analysis of the problem of the institution of challenging regulatory legal acts

through the prism of subjects of challenging regulatory legal acts in the Republic of Kazakhstan e) constitutional identity and the right of integration associations. Based on the normative method, recommendations were formulated for amending the provisions governing the activities of the Constitutional and administrative courts to enhance their effectiveness within the framework of Kazakhstan's national law. The comprehensive use of specialized scientific methods has laid the groundwork for creating an effective model of legal regulation of constitutional and administrative justice that incorporates both best global practices and the national characteristics of the Republic.

IV. Results and Discussion

The Contemporary Role of Constitutional and Administrative Justice in the Republic of Kazakhstan

Currently, the adjudication of cases arising from public law disputes, where one party is the state represented by its organs and organizations endowed with authority, and the other party comprises individuals and legal entities whose rights and interests have been violated by unlawful decisions and actions of the state administration, including normative legal acts, is conducted through constitutional, administrative, or civil proceedings.

While constitutional courts review normative legal acts primarily for their compliance with the constitution, in civil or administrative proceedings, normative acts are assessed for their conformity with all higher-level acts, including laws, except for cases within the jurisdiction of constitutional courts. This primarily concerns subordinate normative legal acts.

For instance, according to Article 15 of the Administrative Procedure Code of the Kyrgyz Republic, administrative proceedings address cases involving the invalidation of subordinate normative legal acts issued by administrative bodies or representative local self-government authorities (Zakon KZ, 2023). Meanwhile, the constitutionality of laws and other normative legal acts in this country is determined by the Constitutional Court (CBD Minjust, 2023).

Until recently, this approach was characteristic of many former Soviet states. However, at present, almost all of these countries have established administrative and constitutional courts, with the exception of the Republic of Belarus, where administrative justice as a separate form of adjudication is absent.

In Kazakhstan, the review of the constitutionality of normative legal acts falls under the jurisdiction of the Constitutional Court, while the legality of normative legal acts is assessed through civil proceedings. Nonetheless, disputes concerning the legality of decisions and actions by state organs are the prerogative of administrative courts.

This situation underscores the need for a clear delineation of the competencies of administrative, constitutional, and other courts in Kazakhstan's legislation concerning the legality of normative legal acts issued by authorities. Citizens and organizations may have their rights infringed not only by individual acts of state bodies but also through the enactment of laws and subordinate acts.

Contemporary legislation in democratic legal states is founded on the principle of the rule of law and the unconditional recognition of human rights and freedoms. This principle

is reflected in national constitutions and laws, as well as enshrined in international legal norms. The primary role in ensuring its implementation belongs to the judiciary, including constitutional and administrative courts, as well as general jurisdiction courts, which are tasked with resolving legal conflicts based on the application of the constitution and laws. Today, alongside general jurisdiction courts that handle criminal and civil cases, most countries have established and successfully operate constitutional and administrative courts that address legal disputes related to the compliance of normative legal acts with the constitution and laws (Veresha, 2016). As noted previously, in countries adhering to the Anglo-Saxon legal system or “common law” system, constitutional courts are not established; instead, their functions are assumed by the supreme or other higher general jurisdiction courts. Administrative courts, if established, often have a more specialized focus (e.g., tax courts) and are integrated into the general judicial system. In contrast, in some European countries (such as France and Germany), administrative courts represent an independent branch of the judiciary.

In the Republic of Kazakhstan, as in other post-Soviet countries, the study and analysis of the activities of constitutional and administrative justice bodies are of significant importance due to the introduction of such courts into the legal systems of these states only in the early 1990s. In contrast, this legal institution has been developing in countries abroad for over two centuries. The Constitution of the Republic of Kazakhstan designates the primary role of the judiciary as the protection of the rights, freedoms, and legitimate interests of citizens and organizations, as well as the enforcement of the Constitution, laws, and other normative legal acts (Adilet, 2022a). Judicial power is exercised through various forms of adjudication, including constitutional and administrative proceedings.

In contemporary states, the conformity of normative legal acts with the Constitution and laws plays a key role in ensuring legal stability and impacts the entire legal system of the country. The examination of disputes on this matter in constitutional and administrative courts is particularly significant. As evidenced by international experience, these courts are where individuals and legal entities receive protection for their violated rights resulting from unlawful decisions and actions by public authorities. This category of cases falls under public law disputes and, consequently, is addressed within the framework of administrative or constitutional adjudication. However, the adjudication process for such cases can be complex and protracted, requiring a high level of expertise and competence from lawyers and judges. The focus of our research is on the challenges that arise in the resolution of these disputes, as well as the methods and approaches employed by constitutional and administrative courts in the Republic of Kazakhstan and abroad to address them.

Certain aspects of this issue have previously been explored in the scientific works of the authors involved in this research (Adam 2023; Aitkhozhin 2022; Omirali 2019; Taitorina 2011; Zhanuzakova 2016). However, in recent years, Kazakhstan has been undertaking reforms aimed at establishing a more effective judicial system that adequately protects citizens' rights from unlawful decisions and actions by public administration. In 2020, the Republic adopted the Administrative Procedural Code, designed to provide a legal framework for the operation of a comprehensive administrative justice institution, including cases arising from public law relations under the jurisdiction of administrative courts. In 2022,

as part of a constitutional reform, the Constitutional Court was reestablished, granting the right to appeal not only to the highest state officials and courts but also to citizens themselves, for the protection of their violated constitutional rights and freedoms.

The Questions Concerning Constitutional Control in the Republic of Kazakhstan within the Framework of Constitutional Reforms

The study of the evolution of constitutional review as a phenomenon in global theory and practice reveals the specifics of existing models – American, European, and mixed. Within the paradigm of the powers of judicial and specialized constitutional review bodies, the authority to review laws and other normative legal acts for compliance with the Constitution is prominently distinguished. Various jurisdictions have specific legislative methods to ensure that the current legislation adheres to the Constitution. In the post-Soviet legal systems, there is a dominant tradition of adopting the Austrian model of constitutional review, in which constitutional review is carried out by specialized constitutional courts that are part of the highest state organs within the constitutional separation of powers system. The protection of constitutional rights and freedoms and the maintenance of constitutional supremacy in the legal system are priority tasks for all constitutional justice bodies, regardless of the chosen model of constitutional review.

An important outcome of the comparative analysis of global practices for enhancing the institution of constitutional review in the Republic of Kazakhstan is the justification of proposals for expanding the powers of the Republic's Constitutional Court by granting the specialized constitutional review body the right to review new constitutional laws and amendments for compliance with the Constitution through a mandatory procedure, and for restricting the President's authority to challenge any existing legal acts in the Constitutional Court. It appears necessary to expand the framework of the democratization of the constitutional review institution at the legislative level, granting petitioners the right to submit requests to the Constitutional Court for reviewing the compliance of existing normative legal acts of the highest state bodies and central ministries with the Constitution and constitutional laws. There is also an objective need to endow the Constitutional Court of the Republic of Kazakhstan with the authority to review the compliance of existing international treaties of the Republic of Kazakhstan with the Constitution.

A significant achievement of the 2022 constitutional reform in the Republic of Kazakhstan is the restoration of citizens' rights to appeal to the Constitutional Court to challenge normative legal acts in cases of violations of constitutional human and civil rights. The study includes specific recommendations for improving this process, including a proposal to remove the alternative conditions for the admissibility of challenging normative legal acts by citizens by replacing the word "or" with "and" in paragraph 1 of part 2 of Article 45 of the Constitutional Law on the Constitutional Court. The revised text should read as follows: "2. A citizen's appeal is admissible if: 1) the challenged law or other normative legal act has been applied by the court or directly affects rights and freedoms in a specific case involving the citizen, and a judicial act on the case has been issued and has entered into legal force."

As demonstrated by global practice, a key function defining the purpose of the constitutional review institution is the power of official interpretation within the general hierarchy of laws, particularly constitutional laws. In this context, it is proposed to grant the Constitutional Court of the Republic of Kazakhstan the authority for the official interpretation of constitutional laws and to endow the Supreme Court of the Republic with the right to refer such matters to it.

The analysis of international experience has highlighted the advantages of specialized administrative courts, including the high level of professionalism and expertise of judges, consistency in judicial practice regarding administrative matters, and increased accessibility and procedural efficiency. The most effective global practices in specialized administrative adjudication ultimately demonstrate the efficacy of legal mechanisms in protecting citizens' rights and, consequently, foster a higher level of public trust in the judiciary. Integrating and developing international practices of specialized administrative adjudication into the national practice of the Republic of Kazakhstan is a pressing issue, primarily due to the complete lack of public confidence in the judicial system. Additionally, Kazakhstan lacks a fully-fledged administrative court system, with insufficiently developed legislative frameworks, and a notable shortage of resources and infrastructure necessary for effective legal practice. This study substantiates the need to expand the powers of administrative courts by introducing necessary amendments and additions to the Administrative Procedural Code of the Republic of Kazakhstan. Extracting issues of legality of normative legal acts from civil law and transferring them to independent administrative courts aligns with best global standards and practices. It is widely accepted that judges in specialized courts are inherently more competent in public law matters and, therefore, are better equipped to professionally assess the constitutionality and legality of acts from state authorities at all levels. It appears essential to grant administrative courts the authority to refer matters to the Constitutional Court of the Republic of Kazakhstan for review of the constitutionality of laws and other normative legal acts, not only on their own initiative but also at the request of citizens.

The Problem of Challenging Normative Legal Acts: The Republic of Kazakhstan in the Paradigm of Global Theory and Practice in Human Rights Protection

In the academic literature concerning the challenge of normative legal acts, various opinions are expressed. Many scholars discuss issues related to the judicial review of laws and other normative legal acts for compliance with the constitution, and subordinate acts for compliance with laws, generally considering the differences among courts of different jurisdictions (Abylassimov and Musin, 2015; Podoprigora, 2014; Putrijanti, 2020; Simanjuntak, 2020).

Currently, there is a substantial volume of subordinate acts, often referred to as “regulatory rule-making” (Ahdout, 2022), primarily generated by the executive branch. This often undermines the provisions of constitutions and laws. This issue is particularly pronounced in the normative practices of authoritarian states, including many that emerged after the dissolution of the USSR. These states have established extensive bureaucratic apparatuses

within executive bodies endowed with broad powers, impacting all areas of political, economic, social, and cultural life, frequently disregarding public opinion. A crucial role in mitigating this negative trend is played by the judiciary and its judicial review mechanisms. In the legislation of Kazakhstan and other countries, these issues are addressed in various ways. In many European Union states (such as Germany – Deutscher Bundestag (2022), Italy – Quirinale (1947), and Lithuania – World Constitutions (1992)), Asian countries (like South Korea – KLRI (1987)), and post-Soviet countries (including Kazakhstan – Adilet (2022a), Kyrgyzstan – Constsot (2021), Armenia – President AM (2015), and Azerbaijan – Spinform (1995)) constitutional courts or other oversight bodies (such as the Constitutional Council in France) have been established to review the constitutionality of current laws and other normative legal acts. In some cases, their jurisdiction includes the review of acts that have not yet come into force (for example, in Tajikistan, the Constitutional Court reviews draft amendments to the Constitution and draft laws submitted for a national referendum) (Venice COE, 2015). In other instances, such bodies are absent, or their functions are transferred to general jurisdiction courts. Many European (France, Germany, Netherlands, Austria, Poland, among others) and post-Soviet states (Armenia, Azerbaijan, Lithuania, and others) have established specialized administrative courts to review the legality of normative legal acts issued by executive authorities and local government bodies. In some countries (Georgia, Kyrgyzstan, Uzbekistan), administrative justice is recognized as an independent form but is administered by general jurisdiction courts (LEX, 2018; Matsne, 2022; Zakon KZ, 2022, 2023).

Considering that many post-Soviet states have yet to establish an independent judicial system, the search for optimal models of constitutional and administrative justice remains a pressing issue in the development of constitutional law, administrative law, and procedural practices.

In recent years, this issue has also received significant attention from the legal communities in Bulgaria, Moldova, Kazakhstan, Ukraine, and several other countries emerging from totalitarian regimes. The scholarly activity concerning the creation and enhancement of constitutional and administrative courts continues to be vigorous. Discussions focus on expanding the powers of administrative courts to handle public law disputes, as well as on the role of constitutional courts or other constitutional oversight bodies in reviewing normative legal acts of state administration for constitutionality through both preliminary and subsequent review processes. Additionally, there are ongoing debates about the delineation of their competencies among themselves and with other courts, as well as the refinement of legal regulations governing their operations (Demchenko et al., 2022; Markhgeym et al., 2019; Podoprigora, 2014; Tanchev, 2015).

Legislation in many countries establishes the powers for normative control within administrative and constitutional processes. For instance, in Azerbaijan, Armenia, Kyrgyzstan, Lithuania, and Ukraine, constitutional courts review laws and normative legal acts of higher state authorities (such as the president, parliament, and government) for compliance with the national constitution. In some of these countries, this review extends to acts of local government authorities. In the presence of autonomous regions, the constitutionality of acts from their highest authorities is also examined. The review of subordinate normative legal

acts for compliance with laws, and in some cases with higher-level acts, falls within the jurisdiction of administrative courts. Alternatively, this power may be distributed among constitutional courts, administrative courts, or general jurisdiction courts operating within the framework of administrative proceedings (Arlis, 2013; Constsot, 2021; Continent, 2024; Online Zakon, 2019; President AM, 2015; Seimas, 2020; Spinform, 1995; World Constitutions, 1992; Zakon KZ, 2022, 2023). For example, in Germany, the authority to review the constitutionality and legality of normative legal acts of federal states (Länder) is divided between the state constitutional court and its Higher Administrative Court (§ 47 of the German Administrative Procedure Code) (Gesetze, 2010).

In other words, in the aforementioned countries, judicial normative control is exercised not only over acts of executive authorities but also over representative bodies, the head of state, and local government authorities. Moreover, the right to appeal to these judicial bodies is granted not only to the highest state officials and members of national parliaments but also to courts, prosecutors, members of oversight bodies, as well as other institutions, officials, and both natural and legal persons. The consequences of decisions by constitutional and administrative courts, when a normative act is found to be contrary to the constitution or law, include the recognition of the act as wholly or partially invalid, which results in its prohibition or annulment.

In Kazakhstan, with the adoption of the Administrative Procedural Code in 2020 (Adilet, 2020), the functions of specialized administrative courts have been expanded. In addition to adjudicating administrative offenses, these courts now review the legality of decisions and actions of public authorities. In other words, administrative courts now handle public law disputes, where one party is always an authority endowed with state power. Administrative justice, which was facilitated in Kazakhstan and other Central Asian countries by German jurists, is aimed at protecting citizens from potential excessive abuse of power by state bodies and officials. In this context, considering the introduction of administrative proceedings as a full-fledged procedural form of judicial activity, it would be appropriate to mention it alongside civil and criminal proceedings in Article 75 of the Constitution of the Republic of Kazakhstan.

In the Republic of Kazakhstan, the review of cases challenging the legality of normative legal acts remains within the jurisdiction of general courts in accordance with civil procedural rules, despite the public-law nature of such cases. Physical and legal entities, as well as the prosecutor – if their protest is rejected by the relevant authority – have the right to approach the court to declare such an act unlawful (Article 298 of the Civil Procedure Code of the Republic of Kazakhstan) (Adilet, 2015).

A court's recognition of a subordinate normative legal act as conflicting with the law results in its invalidation and prohibition of its application. Given the public-law nature of this category of cases, where the parties are in an unequal position, it is not advisable to review them according to civil procedural rules; rather, this authority should be transferred to administrative courts. Such practices exist and have proven effective in many countries. For example, according to Article 122 of the Administrative Procedure Code of Azerbaijan, claims challenging normative acts of state and municipal authorities are submitted to administrative courts (Adilet, 2020).

The Civil Procedure Code (CPC) of the Republic of Kazakhstan does not specify which normative legal acts may be challenged in civil court. However, as the issue pertains to declaring such acts as contrary to the law, it is implicitly understood that subordinate acts are included. Furthermore, physical and legal entities have the right to approach the court if an act infringes not only their rights established by laws but also those provided by the Constitution of the Republic of Kazakhstan (Paragraph 1, Article 298 of the CPC) (Adilet, 2015).

Consequently, subordinate normative legal acts can be reviewed by general jurisdiction courts for their constitutionality. However, the court cannot declare such acts unconstitutional. Article 78 of the Kazakhstan Constitution prohibits the application of laws and other normative legal acts that infringe upon the rights and freedoms guaranteed by the Constitution and requires the suspension of proceedings and referral to the Constitutional Court for a declaration of unconstitutionality (Adilet, 2022a). Thus, when deciding a case involving a law or other legal act (like a presidential decree or local authority resolution), the court must determine whether to apply the act and whether it conflicts with the Constitution, in which case it should refer the issue to the Constitutional Court.

On the other hand, the court independently adjudicates disputes regarding the legality of normative legal acts. The concept of “legality” encompasses not only the verification of a subordinate normative legal act’s compliance with the law but also, in practice, its adherence to all higher normative legal acts. Article 10 of the Law of the Republic of Kazakhstan “On Legal Acts” dated April 6, 2016, establishes the hierarchy of normative legal acts, which reflects the relationship of legal force among normative legal acts other than the Constitution of the Republic of Kazakhstan, arranged in descending order (Adilet, 2016). The Constitution itself possesses the highest legal authority, followed by other normative legal acts in a vertical hierarchy. According to this article, each normative legal act of a lower level must not contradict normative legal acts of higher levels (Adilet, 2016). It is important to note that the aforementioned Law of April 6, 2016, in addition to the Constitution, defines five other types of laws and one normative legal act with the force of law. These include, in descending hierarchical order: 1) laws amending and supplementing the Constitution; 2) constitutional laws; 3) codes; 4) consolidated laws, and laws and temporary resolutions of the Government of the Republic of Kazakhstan with the force of law (Adilet, 2016).

The three types of acts listed in the fourth position hold equal legal force and must comply with the first three types of laws and, of course, the Constitution. Each act positioned in the second and third ranks must adhere to the acts above them. Paradoxically, laws amending and supplementing the Constitution must also comply with the Constitution, specifically with those constitutional norms that are immutable. Norms such as those in Article 91, paragraph 2, of the Constitution of Kazakhstan, which establish the independence of the state, its unitary nature, territorial integrity, the form of government, fundamental principles of the Republic’s functioning, and stipulate that the President is elected for a seven-year term and may not be elected more than once, remain unchanged (Adilet, 2022a).

This hierarchy of laws implies that, within the framework of civil proceedings, the court may examine not only the compliance of subordinate acts with higher-level acts (where there is

also a hierarchy, for instance, normative legal decrees of the President take precedence over normative legal resolutions of the Government), but also various types of laws, excluding the law amending the Constitution. The latter must comply solely with the Constitution in terms of prohibiting alterations to immutable norms. Such checks are carried out by the Constitutional Court of the Republic. Specifically, the Constitutional Court of the Republic of Kazakhstan reviews presidential requests for opinions on laws amending and supplementing the Constitution with regard to their compliance with the requirements of Article 91, paragraph 2, which establishes the unchangeable norms. Paragraph 3 of the same article states that amendments and additions to the Constitution must be submitted to a national referendum or the Parliament of the Republic, subject to a Constitutional Court opinion affirming their compliance with the requirements outlined in paragraph 2 of this article (Adilet, 2022a).

Analysis of the Issue of the Normative Act Challenge Mechanism through the Prism of the Challenging Entities in the Republic of Kazakhstan

The contemporary period of the evolutionary process of the constitutional control institution, which began at the turn of the 1980s and 1990s, is characterized by the intensification of the reception of experience from developed jurisdictions by emerging states. Existing models of constitutional justice are subject to substantive adaptations, and hybrid varieties are emerging. The Austrian variant of the European model of constitutional control is the most widespread globally. Among the post-Soviet states that have adopted the Austrian model of constitutional justice, the Republic of Kazakhstan stands out. Since gaining sovereignty following the dissolution of the USSR, Kazakhstan has actively experimented with the main varieties of the European model of constitutional justice. The Constitutional Supervision Committee, established in 1989, was transformed into the Constitutional Court (Austrian model) in 1992. In 1995, Kazakhstan adopted the quasi-judicial French model, modeled after the French Constitutional Council, and in January 2023, following the 2022 constitutional reforms, a specialized judicial constitutional control body – the Constitutional Court – was reestablished, with its legal status regulated by the Constitution and the Constitutional Law of November 5, 2022. The President, the Chairpersons of the Chambers, and deputies of Parliament amounting to at least one-fifth of the total number, as well as the Prime Minister, have the right to petition the Court for a review of the constitutionality of laws before their presidential signing, as well as the resolutions of Parliament and its Chambers (Adilet, 2022a).

The review of draft laws at the final stage is carried out as part of preliminary constitutional control, i.e., before they come into force, to prevent potential violations of the Constitution. The Constitutional Court is authorized to review the constitutionality of draft laws only upon receiving petitions submitted by the aforementioned entities on their own initiative. However, in some countries, constitutional review is conducted as a mandatory procedure. For instance, according to Article 61 of the French Constitution, “Organic laws before their promulgation, legislative proposals provided for in Article 11 before being put to a referendum, and regulations of the parliamentary chambers before their implementation

must be submitted to the Constitutional Council, which issues an opinion on their compliance with the Constitution”. Organic laws in France regulate the status of the highest authorities and other crucial matters. Specifically, the French Constitution stipulates the adoption of organic laws in several articles (Namely, articles 6, 7, 13, 23, 25, 27, 34-1, 39, 46, 57, 61, 63-65, 68, 68-2, 71, 71-1, 72-2, 72-4, 73, 74, 77, 88-3), which are related to the status, powers, and procedures of the President, the Government and its members, Parliament and its deputies, the Constitutional Council, the courts, the High Council of Magistracy, the High Court of Justice, and the Justice Chamber, as well as matters concerning taxes, elections, and overseas territories (Conseil Constitutionnel, 2008).

In Kazakhstan, constitutional laws directly derived from the norms of the Constitution regulate the status of the President, Parliament, Government, Constitutional Court, Prosecutor’s Office, judiciary, Commissioner for Human Rights, as well as the procedures for elections and republican referenda, and state symbols. Within the hierarchy of normative legal acts, these laws rank below those amending or supplementing the Constitution. According to the hierarchy of the national legislative system, all other laws and subordinate normative legal acts must comply not only with the Constitution but also with constitutional laws. Therefore, we argue that the constitutional laws of Kazakhstan, along with their amendments and additions, should also be subject to mandatory constitutional review. The Constitutional Court should be empowered to verify the compliance of laws with the norms of constitutional laws.

Petitions to the Constitutional Court can also be made regarding the constitutionality of other acts issued by the parliament, such as decrees of the Parliament and its Chambers. These acts regulate the internal procedures of the legislative body, for example, by approving the regulations of the Parliament, the Senate, and the Mazhilis (Chambers). They are of a subordinate nature. According to Article 62, Clause 7 of the Constitution of Kazakhstan, decrees of the Parliament and its Chambers must not contradict the laws (Adilet, 2022a). Unlike laws, which come into force only after being signed by the President, who has the right to object, the chairs of the parliamentary chambers – the Senate and the Mazhilis – do not have such a right. Therefore, decrees passed by the majority of deputies of the respective Chamber or the Parliament as a whole must be signed by the leaders of the Senate and the Mazhilis unconditionally. Consequently, these acts can be reviewed by the Constitutional Court under subsequent control, i.e., after they have already come into force. The Constitution of the Republic of Kazakhstan and the Constitutional Law regulating the activities of the Constitutional Court do not specify which parliamentary decrees may be subject to review. The Parliament and its Chambers issue both decrees containing legal norms and those of an individual nature. Consequently, constitutional legislation governing constitutional review requires clarification in the relevant articles of the Kazakhstan Constitution and the Constitutional Law on the Constitutional Court, specifically regarding the scope of normative decrees.

Another category of entities entitled to address the Constitutional Court includes the judiciary. This encompasses both general jurisdiction courts and specialized courts (such as administrative and juvenile courts). The Constitution of Kazakhstan does not restrict which courts and at what level (district, regional, or Supreme Court) may approach the

Constitutional Court. Courts may challenge both existing laws and subordinate normative legal acts in the Constitutional Court if they believe that such acts violate constitutional rights and freedoms (Article 78 of the Constitution of Kazakhstan) (Adilet, 2022a). Only the constitutional review authority has the power to declare a law or subordinate normative legal act unconstitutional, which results in the subsequent annulment of the act in its entirety or in part.

An analysis of the petitions submitted to the Constitutional Council of the Republic of Kazakhstan, which operated from 1996 to 2022 prior to the establishment of the Constitutional Court in 2023, revealed that these primarily concerned laws. Over the 25 years of its operation, the Constitutional Council received 71 submissions from the courts. Of these, 40 were accepted for consideration, 31 were rejected, and 9 were subsequently discontinued. In 10 cases, certain legal norms were found to be inconsistent with the Constitution, while in 21 cases, the legal norms were deemed to be in compliance with the Constitution, albeit with identified deficiencies and recommendations for their improvement (Nurmukhanov, 2021).

Subordinate normative legal acts rarely become the subject of court petitions. Among the petitions regarding the constitutionality of subordinate normative legal acts were Government resolutions and acts of the National Bank (such as the Rules for Calculating the Annual Effective Interest Rate on Loan Agreements) (Nurmukhanov, 2021); however, these were isolated cases. Since the establishment of the Constitutional Court in 2023, no such petitions from the courts have been recorded. This can largely be attributed to the lack of judicial independence, which results in courts overlooking constitutional violations in normative decisions made by higher, central, and local authorities.

As previously noted, civil courts possess the authority to adjudicate disputes concerning the legality of normative legal acts that infringe upon constitutional rights and freedoms. Courts may annul subordinate acts that are inconsistent with laws and higher-level normative acts. However, if these acts are found to contradict the Constitution, the courts themselves cannot annul the subordinate act but must instead suspend the proceedings and refer the matter to the Constitutional Court with the appropriate petition. This situation creates a certain conflict between the Constitution, the Constitutional Law on the Constitutional Court, and the Civil Procedure Code. Additionally, it is necessary to consider the relatively limited capacity of the Constitutional Court to handle disputes due to the relatively small number of its judges and the size of its staff.

In this regard, it is essential to clearly delineate the competencies of the Constitutional Court and the administrative court, to which it would be appropriate to delegate the authority to review the constitutionality and legality of subordinate normative legal acts. The Constitutional Court should be empowered to assess the conformity of normative legal acts issued by the highest state authorities (the President, Parliament, and Government) and certain central agencies (the Central Election Commission, the National Bank, the General Prosecutor, the Human Rights Ombudsman, and the Supreme Audit Chamber) with the Constitution of the Republic of Kazakhstan and constitutional laws. These bodies wield political power and make decisions, including through normative legal acts, which significantly shape and implement the country's socio-economic, cultural, and legal policies,

impact the quality of life of its citizens, and ensure the effective protection of their rights and freedoms.

The Constitutional Court consists of highly qualified jurists, has its own apparatus, and enjoys greater independence compared to other courts. It is established jointly by the President and the Chambers of Parliament and is neither subordinate to nor accountable to any other authority. Moreover, the ability to petition the Constitutional Court on this matter should be extended not only to the President but also to other petitioners, including citizens. It is advisable to assign the authority for the independent review of the constitutionality and legality of acts issued by other central and local representative and executive bodies to administrative courts. This delegation of powers is justified firstly by the public-law nature of such cases, and secondly by the practical accessibility for citizens to file complaints in administrative courts regarding the legality and constitutionality of normative legal acts of these bodies, compared to the Constitutional Court, which requires adherence to specific admissibility criteria for submissions. It is important to note that the scope of the Constitutional Court's competence is confined by the framework of a special constitutional law.

Another entity with the right to petition the Constitutional Court regarding the constitutionality of laws is the President of the Republic of Kazakhstan. The President has the authority to challenge existing laws or other legal acts before the Constitutional Court on the grounds of their constitutionality. Specifically, in order to protect human rights and freedoms, and to ensure national security, sovereignty, and territorial integrity, the President may submit a request to the Constitutional Court for a review of the constitutionality of a law or other legal act that has come into effect, as stipulated in paragraph 10-1 of Article 44 of the Constitution of the Republic of Kazakhstan (Adilet, 2022a). The Constitution and the Constitutional Law on the Constitutional Court do not specify which legal acts, other than laws, may be subject to such review. The Law of the Republic of Kazakhstan "On Legal Acts" encompasses both normative legal acts and non-normative acts (including acts of individual application, acts of state planning, and acts of official interpretation of normative legal acts) (Adilet, 2016).

Thus, the President has the authority to challenge any acts of all state bodies, whether normative or non-normative, including departmental and local acts, as well as normative resolutions of the Constitutional Court and the Supreme Court, which we believe are erroneously included within the system of normative legal acts. This broadening of the President's powers is excessive. It amplifies the vertical dependency of state organs, which belong to different branches of power, as well as local government bodies, on the head of state, contradicting the concept of transitioning from a super-presidential republic to a presidential one (Akorda, 2022). Instead, it leads to an excessive concentration of political power in a single individual and proves to be inefficient.

The President may unilaterally annul individual acts issued by subordinate organs. However, regarding legislative and judicial acts, the principle of separation of powers applies. Therefore, when challenging existing legal acts, it is advisable for the President to limit such challenges to laws and the aforementioned normative legal acts.

The head of state is granted the authority to submit a request to the Constitutional Court for an opinion on the compliance of proposed amendments and additions to the country's fundamental law with the requirements of Paragraph 2 of Article 91 of the Constitution. This provision stipulates the immutability of the principles enshrined therein, including the independence of the state, its unitary nature and territorial integrity, the form of government, fundamental principles of the Republic's operation, the seven-year term of the President's office, and the prohibition of re-election to this position (Adilet, 2022a). The focus here is on a bill proposing amendments to the Constitution, which is examined for conformity with these requirements. It is irrelevant whether this draft is submitted to a national referendum or to Parliament. In other words, a violation of any of these provisions provides grounds for the constitutional control body – the Constitutional Court – to issue a negative opinion, which will result in the bill being neither submitted to a referendum nor presented to Parliament. The decision of the constitutional control body in this context serves a preventive function to avert potential violations of this constitutional procedure. In 2022, as a result of the latest constitutional reform, the General Prosecutor, the Ombudsman for Human Rights, and private individuals were granted the right to challenge the constitutionality of existing normative legal acts.

The General Prosecutor's right to submit such petitions is not subject to any substantive limitations. The General Prosecutor may refer any law or subordinate normative legal act to the Constitutional Court for a review of its compliance with the Constitution (the Clause 4 of Article 72 of the Constitution of the Republic of Kazakhstan) (Adilet, 2022a). It should be noted that both constitutional laws governing the status and powers of these entities do not specify the form of the General Prosecutor's petition but merely reiterate the provision of the Clause 4 of Article 72 of the Constitution and refer to it.

Meanwhile, Chapter 5 of the Constitutional Law "On the Prosecutor's Office" delineates the forms of acts of the prosecution, categorized into three groups: 1) acts of prosecutorial supervision (protests, sanctions, representations, etc.); 2) acts of prosecutorial response (petitions, statements, appeals, etc.); and 3) acts regulating organizational and operational matters of the prosecution authorities (orders, directives, etc.) (Adilet, 2022c). Petitions to the Constitutional Court can only be made in one of the forms specified in the first two groups, as these are issued following reviews of legality and assessments of existing acts, i.e., concerning the activities of the prosecution as the body responsible for overseeing legal compliance in the country. Among these, only representations (Article 36), petitions (Article 38), and appeals (Article 40) are, at least superficially, suitable for interaction with the constitutional control body. Let us examine these forms in more detail.

A representation is submitted concerning the rectification of violations of legality, the causes, and conditions contributing to the commission of criminal and other offenses, as well as in other instances specified by laws (Adilet, 2022c). If one interprets the term "legality" broadly, encompassing constitutional legality, i.e., the requirement to adhere to the entire body of national legislation, then this form seems appropriate for submission to the Constitutional Court. However, while it is possible to reference the provision concerning "other instances" specified in various laws, these are not explicitly defined within the constitutional control legislation.

Paragraph 2 of Article 36 negates the use of a representation as a form of appeal due to its imperative nature. It states that the relevant authority is not only required to consider the representation but also to take measures to rectify the cited violations of legality by the official or body within thirty calendar days. If irreversible consequences for human life and health or national security are at stake, the timeline for rectification is to be set by the prosecutor (Adilet, 2022c).

A petition as a form of appeal to the constitutional control body is also unsuitable, as it pertains to the review of judicial acts that have not yet entered into legal force and are submitted according to procedural legislation (Adilet, 2022c). This includes acts issued by courts in criminal, civil, administrative cases, and public-law disputes between individuals and the state.

Finally, an “appeal” as an act of prosecutorial response does not align with the analogous concept used in the Constitution and the Constitutional Law on the Constitutional Court, where it carries a broader connotation, equivalent to a request, speech, or plea to someone. In Article 40 of the analyzed law, the appeal is not restricted by either the range of submitting entities (any prosecutor has this right) or the range of addressees (it can be submitted to any state bodies, individuals, or legal entities), and is disseminated through media or other public means (Adilet, 2022c). The objectives of an appeal also do not align with those of an appeal to the Constitutional Court.

Thus, there is a legal gap that needs to be addressed. It is necessary to specify the form of the act by which the Prosecutor General addresses the Constitutional Court in the Constitutional Law “On the Prosecutor’s Office”. It would be prudent to use the representation as such a form, with corresponding amendments and additions made to Article 36.

The right of citizens to appeal to the Constitutional Court is a crucial instrument for the protection of their rights. However, the Constitutional Law sets specific criteria for the admissibility of such appeals. This is possible if:

- 1) The contested law or other normative legal acts have been applied by the court or directly affect the rights and freedoms in a specific case involving the citizen, and a judicial decision on the case has been rendered and has entered into legal force;
- 2) The appeal was filed no later than one year after the adoption of the judicial act;
- 3) Without appellate review of the judicial act – when there is an official clarification of the contested act in a normative decree by the Supreme Court, indicating the inadmissibility of alternative application of the act and thus the impossibility of preventing the violation of the citizen’s rights;
- 4) If the preliminary appeal by the citizen to the court did not result in a different application of the law directly affecting their rights, in a specific situation, due to the imperative nature of the relevant legal provisions (Article 45) (Adilet, 2022b).

Thus, an individual’s appeal to the Constitutional Court is permissible under the following conditions:

1. After a court has applied a specific normative legal act in a particular case concerning the individual;

2. If the act directly affects their constitutional rights;
3. After the judicial decision has entered into legal force (the individual must exhaust, if not all, at least the appeal to the appellate court);
4. The action is time-limited;
5. Without appellate review – if there is a normative decree by the Supreme Court that prescribes an unequivocal (and contested in this case) procedure for the application of the legal norm;
6. Without preliminary court appeal – due to the imperative nature of the legal norm, which does not allow for alternative application of the law (Adilet, 2022b).

The last two scenarios constitute exceptions to the general rules.

Attention should be drawn to a certain stylistic inaccuracy in item 1) of paragraph 2 of Article 45 of the Constitutional Law, which distorts the actual meaning of the provision. It states that a citizen may challenge a normative legal act if it has been applied by a court or directly affects their rights and freedoms. The use of the term “or” implies an alternativeness between these conditions: either the application of the act by the court or its direct impact on the constitutional rights of the individual in the specific case. If the second condition is used, it becomes unnecessary to have a judicial decision rendered in the case, which is an imperative norm. Conversely, if only the first condition is applicable, it contradicts the constitutional norm. Clause 3 of the Article 72 of the Constitution of the Republic of Kazakhstan explicitly provides for the examination of citizens’ appeals on this matter by the Constitutional Court only if the normative legal act directly affects their constitutional rights. This should be considered a lapse that needs correction.

In the event that cases challenging normative legal acts are transferred to administrative courts, the Administrative Procedural Code must establish mechanisms for decision-making in such cases. Furthermore, the court should be able to refer to the Constitutional Court not only on its own initiative but also at the request of a citizen whose case it is reviewing. Currently, the Constitutional Court is responsible for the official interpretation of the norms of the Constitution. The entities authorized to approach the Court on this matter include the President, the Prime Minister, the heads of the Chambers, and one-fifth of the members of Parliament. The subject of the interpretation of laws remains undefined. In the constitutions of developed democracies and even post-Soviet republics, the entities responsible for interpreting the fundamental law are typically specified, and such powers are generally vested in the constitutional control body. For instance, in the Republic of Uzbekistan, the Constitutional Court is tasked with the official interpretation of laws (Article 133 of the Constitution of the Republic of Uzbekistan) (Constitution UZ, 2023).

In most modern states, courts possess a significant degree of independence and, accordingly, ensure an objective interpretation of the Constitution. In the United Kingdom, which lacks a codified constitution in the classical sense, constitutional issues are resolved through judicial precedents and the interpretation of legislative acts, with key roles played by the legal positions of the Supreme Court of the United Kingdom (Dicey, 1982; Jowell and Oliver, 2015). In the United States, the Supreme Court is responsible for interpreting the Constitution and has the authority to review laws and executive actions for their

constitutionality (Kuanalieva et al., 2021). In European countries, constitutional control bodies are independent, autonomous, endowed with broad powers, and accessible to the public. For example, in France, the Constitutional Council (Conseil constitutionnel) not only reviews the constitutionality of laws before their promulgation but also provides their official interpretation. The Council issues clarifications on specific constitutional provisions and principles, thereby setting precedents for subsequent application and interpretation of the Constitution (Conseil Constitutionnel, 1958). The Federal Constitutional Court (Bundesverfassungsgericht) of Germany plays a crucial role in interpreting the Basic Law (Grundgesetz) and ensuring its supremacy through the review of constitutional complaints (Verfassungsbeschwerden), abstract and concrete judicial review of constitutionality, resolution of competency disputes between the federation and the Länder, and the interpretation of international law in relation to requests for the interpretation of international treaties (Deutscher Bundestag, 2022). The decisions of the Constitutional Court of Austria regarding the official interpretation of constitutional provisions shape legal practice, upon which other courts and state institutions rely (BKA, 2024).

In light of our position on granting the Constitutional Court the authority to review constitutional laws through a mandatory procedure, we believe that it should also be granted the right to provide official interpretations of constitutional laws, given their close relationship with the Constitution and their place in the hierarchy of legal sources. In our view, it is crucial to confer upon the Supreme Court the right to approach the Constitutional Court regarding the official interpretation of the norms of the Constitution and constitutional laws. The judiciary develops its practice in the application of constitutional norms, which sometimes raises concerns. Granting this right to the Supreme Court would serve as an additional means of protecting the constitutional rights of individuals.

Constitutional Identity and the Law of Integration Associations: On the Issue of Contesting Normative Acts of Supranational Bodies

Constitutional Identity pertains to the unique constitutional characteristics and principles that define the fundamental elements of state organization and national identity. These unique constitutional characteristics include the fundamental rights and freedoms of citizens, the foundations of the democratic structure of the state and society, and national historical and cultural features. The primary challenge lies in balancing respect for the constitutional identity of states with the demands of supranational law. In certain cases, states face conflicts when supranational norms contradict their constitutional principles. One such issue that has arisen from integration in the post-Soviet space is the question of the possibility of contesting normative acts of supranational bodies. Kazakhstan encountered this problem following its accession to the Eurasian Economic Union (EAEU). The Treaty on the Eurasian Economic Union was signed by the Presidents of Russia, Belarus, and Kazakhstan on May 29, 2014, and entered into force on January 1, 2015. In 2015, Armenia and Kyrgyzstan joined the Treaty. The Treaty serves as the legal foundation for the functioning of the EAEU, ensuring the free movement of goods, services, capital, and labor, as well as the implementation of coordinated or harmonized policies (Taitorina et al. 2016).

Pursuant to constitutional provisions establishing the primacy of international law over national legislation, normative legal acts of EAEU bodies possess a higher legal authority than domestic laws. For instance, by Decision No. 80 of the Eurasian Economic Commission Council dated September 14, 2021, the Unified Commodity Nomenclature for Foreign Economic Activity and the Unified Customs Tariff of the Eurasian Economic Union were approved (Zakon KZ, 2021).

Consequently, acts of supranational bodies are not subject to review for compliance with the laws of EAEU member states; however, they do not take precedence over the constitutions of these states. Article 4 of the Constitution of the Republic of Kazakhstan states: “The current law in the Republic of Kazakhstan consists of the norms of the Constitution, as well as international treaties and other obligations of the Republic in accordance with it” (Adilet, 2022a). Nevertheless, the prerogative of the Constitutional Court is to review only those international treaties that have not yet been ratified, i.e., those not yet in force. Constitutional courts of other post-Soviet states hold similar powers

Current international treaties are not subject to constitutional review. There exists a possibility that normative legal acts adopted by collective bodies, which may infringe upon the rights and legitimate interests of citizens and legal entities of Kazakhstan, as well as normative decisions of state bodies based on these acts, may conflict with the Constitution of the country.

The EAEU member states are in an unequal position when making decisions, with the Russian Federation informally dominating, often resulting in Eurasian body acts that contradict Kazakhstan’s interests and the rights of its citizens, despite the Constitution’s recognition of human rights as the highest value of the state. A notable example is the EEC decision imposing high tariffs on customs and environmental fees for vehicles imported into Kazakhstan from Armenia and Kyrgyzstan under preferential rates set for these countries during a transitional period (KGD, 2023). According to the Treaty on the Eurasian Economic Union (EAEU) of May 29, 2014, transitional periods are established for the Republic of Armenia and the Kyrgyz Republic, during which customs duties and taxes for vehicles imported from third countries into Armenia and Kyrgyzstan are paid in accordance with the legislation of these countries (Consultant, 2024). The proposed fees for budgetary payments are 2–3 times higher than the cost of the vehicles themselves, causing significant outrage among motorists. In contrast to the EAEU, the European Union (EU) does not require re-registration of vehicles imported into member states at uniform tariffs if they are registered in another EU country.

At the same time, constitutional courts in EU member states have varying powers to review EU laws, with different approaches to the exercise of their authority. The “environment of powers and procedures” established by national legislators somewhat determines the approach of each constitutional court to the application of EU law. Even if the regulator sets sufficiently narrow parameters for issues, the constitutional court may extend them through functional interpretation (Kustra-Rogatka, 2019).

In April 2024, the Parliament of the Republic of Kazakhstan ratified the Agreement on Mutual Recognition of Academic Degree Documents in the Member States of the Eurasian Economic Union. According to this agreement, doctoral degrees such as PhD, Doctor

of Profile, and Candidate of Sciences are recognized as equivalent (comparable) in the state of employment without undergoing national recognition procedures, except in cases provided for by Article 6 of the Agreement. Article 6 stipulates that national recognition procedures for academic degree documents may be applied by member states in accordance with the legislation of the employment state when holders of such documents apply for allowances and/or benefits for their academic degree, which are funded by the budget of the employment state (Adilet, 2024).

In other words, citizens of EAEU member states who hold academic degrees can come to Kazakhstan and work within the framework of labor migration, and they will be automatically recognized as having doctoral or candidate degrees. However, they will not receive the special allowance for academic degrees provided by the legislation of the Republic. This Agreement only applies to citizens of these countries coming to another EAEU state but does not address Kazakhstan citizens who obtained their candidate or doctoral degrees in these countries after 2010, when traditional dissertation councils were closed and Kazakhstan transitioned to the Bologna system, which awards degrees of Doctor of Philosophy (PhD) and Doctor of Profile. For dissertation defense under this system, the state has introduced strict publication requirements, including mandatory articles in journals with non-zero impact factors of 1.2 or those in the third quartile. Due to financial constraints, lack of proficiency in English or other foreign languages, and limited access to foreign literature, not all candidates can meet these requirements. Moreover, the specialized topics of domestic dissertations by legal scholars and other social sciences may not always interest high-ranking journals. Consequently, many citizens who prepared their dissertations before 2010 but were unable to defend them in national universities and research institutions were compelled to go abroad for defense but could not achieve recognition of their diplomas upon return. The Agreement, which they had high hopes for, places them at a distinct disadvantage compared to foreign citizens from EAEU countries. This directly contravenes the principle of legal equality enshrined in Article 14 of the Constitution of the Republic of Kazakhstan, including the prohibition of discrimination on any grounds (Adilet, 2022a). In this context, it appears that holding Kazakhstani citizenship has become a basis for discrimination. Therefore, the issue of expanding the Constitutional Court's jurisdiction regarding the review of the constitutionality of international treaties of the Republic requires thorough consideration and legislative action.

Such practices are already present in the post-Soviet space. For instance, the Constitutional Court of Ukraine, upon the request of the President of Ukraine, at least forty-five members of the Verkhovna Rada of Ukraine, or the Cabinet of Ministers of Ukraine, issues opinions on the conformity of international treaties with the Constitution of Ukraine. This includes both existing international treaties and those pending ratification by the Verkhovna Rada of Ukraine (Article 151 of the Constitution of Ukraine) (Online Zakon, 2019). In other words, this pertains not only to international treaties that are yet to be ratified but also to those already in effect.

An examination of the practice of the Constitutional Court of Kazakhstan reveals its significant productivity even within its brief period of operation. During its first year of activity in 2023, the Court issued 39 normative rulings, of which 36 were related to the

conformity of normative legal acts with the Constitution, 2 concerned the approval of the Court's Regulations and the official interpretation of the Constitution. An additional ruling addressed the interpretation of a previously issued decision of the Constitutional Council and the official interpretation of the Constitution.

Of the 36 normative rulings issued by the Court regarding the review of normative legal acts, 8 involved constitutional laws, 22 concerned codes, 13 addressed ordinary laws, and 4 pertained to normative resolutions of the Supreme Court. In some instances, the constitutionality of various acts was considered simultaneously in response to specific petitions. In 28 cases, the normative legal acts were found to comply with the Constitution. However, in certain instances, the Court's interpretation deemed 5 acts unconstitutional, while in 3 cases, only some provisions of the contested acts were found to be constitutional (Constitutional Court of the Republic of Kazakhstan, 2023).

Thus, the Court's activities were predominantly focused on the protection of constitutional human and citizen rights. It is noteworthy that, apart from the President, other entities did not exercise their right to appeal to the Court. This is particularly significant for the Attorney General, the Ombudsman, and the judiciary – institutions that are inherently expected to safeguard the rights and interests of citizens.

It is also noteworthy that, compared to the Constitutional Council, which operated from 1995 to 2022 and primarily conducted preliminary review of acts not yet in force, the authorized entities have not approached the Constitutional Court, despite the retention of this function. The ability to determine the constitutionality of laws before their presidential signing and international treaties before their ratification could have prevented potential violations of the rights and legal interests of individuals and legal entities, as well as the state itself. In this regard, the Constitutional Court could have used its report on the state of constitutional legality to draw special attention from the President, Parliament, Government, and other bodies.

This article does not address the practice of administrative courts in Kazakhstan, as cases challenging normative legal acts remain within the purview of civil litigation.

V. Conclusion

The analysis of the process of reviewing regulatory legal acts for compliance with the Constitution and laws carried out in the work, allowed to identify the main aspects of this process, including the methodological approaches used by the courts, as well as the practice of making decisions on such cases.

Despite the fact that numerous constitutional reforms have been carried out in the Republic of Kazakhstan, there are still gaps in the Constitution that require filling with specific legal provisions. For example, this study substantiates the need to specify Article 75 of the Constitution of the Republic of Kazakhstan (regarding the order of judicial power exercising) by adding the clause determining the powers of administrative courts on the constitutional level. Particularly this covers the issues of constitutional oversight and control. The ability to determine the constitutionality of laws before their presidential signing and international treaties before their ratification could have prevented potential violations of

the rights and legal interests of individuals and legal entities, as well as the state itself. In this regard, the Constitutional Court could have used its report on the state of constitutional legality to draw special attention from the President, Parliament, Government, and other bodies.

This article does not address the practice of administrative courts in Kazakhstan, as cases challenging normative legal acts remain within the purview of civil litigation.

To enhance the efficiency of the process for reviewing normative legal acts for compliance with the Constitution and laws within the courts of the Republic, this article proposes the several measures. Primarily it covers the need of the revision of certain approaches to judicial activities, including the criteria and principles for delineating the powers of the constitutional, administrative, and civil jurisdictions. The second includes addressing gaps in national legislation concerning the form of acts that the Prosecutor General and the Commissioner for Human Rights may present to the Constitutional Court. Third – granting the Supreme Court the authority to refer issues of official interpretation of constitutional norms and constitutional laws to the Constitutional Court. The fourth implies empowering administrative courts to independently review the constitutionality and legality of acts issued by other central and local representative and executive bodies.

The establishment of comprehensive and independent institutions of constitutional and administrative justice in Kazakhstan, along with the expansion and clarification of their powers and the establishment of clear procedural forms for their activities, will ensure more effective protection of human and citizen rights, freedoms, and lawful interests, including protection against unlawful decisions and actions by public administration authorities. The limitations of this study are due to the comparative and formal-legal approach. From the perspective of the further research, it would be important to apply the method of expert assessments, taking into account the dynamics of legislative changes.

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