



DOI: 10.54919/physics/55.2024.272ay9

Comparative characteristics of constitutional and judicial law-making (on the example of Republic of Kazakhstan and USA)

Gulnar Sagynbekova*

Eurasian Technological University

050000, 109b Tole bi Str., Almaty, Republic of Kazakhstan

Aigul Ibraeva

Aktobe Law Institute of the Ministry of Internal Affairs of the Republic of Kazakhstan named after M. Bukenbaev

030011, 1 Kursant Highway, Aktobe, Republic of Kazakhstan

Aidar Saitbekov

Almaty Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Makan Esbulatov

050060, 29 Utepov Str., Almaty, Republic of Kazakhstan

Soledad Dyussebaliyeva

Kh. Dosmukhamedov Atyrau University

060011, 1 Studenchesky Ave., Atyrau, Republic of Kazakhstan

Dauren Makhambetsaliyev

Al-Farabi Kazakh National University

050040, 71 al-Farabi Ave., Almaty, Republic of Kazakhstan

Abstract

Relevance. The Republic of Kazakhstan experienced an authoritarian regime that shaped a bureaucratic approach to the rule of law. Therefore, the application of positive experience in the formation of a democratic society, the study of the constitutional law of the USA, should serve as a criterion for the formation of one's own constitutional traditions.

Purpose. The purpose of the work is to identify the main tasks, ways and methods of law-making of the judicial branch of government in the law-making of the legal state of the Republic of Kazakhstan in comparison with the USA.

Methodology. With the help of methods of analysis and synthesis, the main functions of the country's judiciary within the framework of constitutional law, which determine the vector of development of the constitutional state, were determined. Using a comparative analysis, the relevant aspects of the formation of a democratic state were considered.

Results. In the course of the study, examples of court decisions that created judicial practice and deepened experience in the field of judicial control over the constitutionality of laws in general and judicial control over amendments to the Constitution were considered. On the basis of common features, the main regularities of the evolution of law-making with the participation of the judiciary have been determined. The issue of the need to improve the mechanisms of courts' participation in the processes of development of the institution of constitutionalism was raised.

Suggested Citation:

Sagynbekova G, Ibraeva A, Saitbekov A, Dyussebaliyeva S, Makhambetsaliyev D. Comparative characteristics of constitutional and judicial law-making (on the example of Republic of Kazakhstan and USA). *Sci Herald Uzhhorod Univ Ser Phys.* 2024;(55):2729-2740. DOI: 10.54919/physics/55.2024.272ay9

*Corresponding author



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

Conclusions. The practical significance of the study lies in the identification of new forms of state regulation in the law-making system with the direct participation of courts of various branches of the Republic of Kazakhstan, as well as in the identification of shortcomings in the Constitution in terms of the regulation of court activities and their influence on the formation of legislative documents.

Keywords: rule of law; judicial power; constitutional system; legal practise; institution of constitutionalism.

Introduction

The democratic direction of the development of society is a priority in the conditions of the development of constitutional processes, in which the judicial branch of power plays an important role. An example of the judicial system of the USA is important for Kazakhstan, which is a guarantee of the effective functioning of all state mechanisms. Correspondence and inconsistency of the realities of life to the basic laws gives rise to the concept of real and fictitious constitutionalism. The first Constitution of the USA can be called unique in this sense. It serves as an example of how it is possible to ensure economic, intellectual, and religious freedom, while creating universal living conditions for various layers of the population.

According to B. Tyshchuk [1], the significance of the Constitution of the USA lies in the fact that at a time when in Europe there were mainly such forms of government as monarchies, the presidential form of the republic was proclaimed in the states, which provided for the creation of such a mechanism within which each branch of government should act only within its powers. The Constitution of the country gives the Supreme Court the power of constitutional supervision over any legal acts. Judges of the Supreme Court, in turn, can be removed by impeachment. The adoption of such a Constitution had progressive significance for the entire world society. M. Rosenfeld [2] analysed the constitutional judiciary of the USA and singled out certain features of the country's Supreme Court that emphasize its uniqueness. It consists in the tendency to resolve all important controversial political and social issues by transferring constitutional powers to the Supreme Court of the country, which will further influence the formation of basic human rights. Examples include the same-sex marriage court cases of *Hollingsworth v. Perry* and *US v. Windsor*. Such cases have no regularity and cannot be compared with other constitutional or higher courts in most common and civil law countries. However, the example of the USA provides a vector for solving similar problems of society at the highest level. V. Rechytskyi [3] singled out the concept of informal constitutionalism. Thus, in the case of an unsuccessfully constructed basic law, national constitutionalism may be ineffective. In his understanding, the concept of an attractive, successful and happy life is embodied in the form of an individual's motivation for creative activity without the pressure and influence of the state, which is successfully reinforced in the US Constitution by the rights and freedoms proclaimed in the US Declaration of Independence of 1776 and the Bill of Rights of 1791. B.A. Taitorina *et al.* [4] believe that the bodies empowered to check the constitutionality of norms should perform the functions of control, which is manifested in the provision of orders to eliminate deficiencies and bring to administrative responsibility persons guilty of such violations. To perform such

functions, a clear definition of legal concepts, principles, and terms is necessary in the normative act of constitutional norms. Great efficiency in the system of state control is demonstrated by the system of checks and balances of all branches of government in society.

In the Republic of Kazakhstan, the Constitution was adopted by a national referendum on August 30, 1995. It defines the foundations of the state system of the country. The evolution of the basic law is an example of the integration of the state into the system of world constitutionalism. Elements of international law are effectively incorporated into national legislation. A feature of the constitutional control of the Republic of Kazakhstan is that the control structure does not belong to any of the branches of government. The latest constitutional changes led to the transformation of the body of the Constitutional Council into the body of the Constitutional Court. A number of Kazakh authors claim that such transformations should ensure the direct participation of citizens in the formation of constitutional legislation [5]. G.K. Beisbekova *et al.* [6] in their work examine issues related to unity in the specification of legal norms in the national legislation of the Republic of Kazakhstan. In particular, the lack of terminological consistency in jurisprudence requires scientific research and the search for ways to improve legal regulation. The processes of development of the legal system necessitate a detailed study of world experience in the field of public legal activity. Improvement of existing legislation should be the main idea of reforms.

A. Turlayev & N. Akhmetova [7] claim that in the nomadic Kazakh society, judicial power often stood above the power of the khan himself. Historically, such justice was based on truth and justice. Martial justice is a standard of legality and justice for the Kazakh people. Therefore, honesty, impartiality, knowledge of customs and their correct application should be the main characteristics of a judge and a guarantor of the execution of a court decision. S. Yessetova [8] investigated the problems of the judicial and legal sphere in the Republic of Kazakhstan from the point of view of youth migration to permanent residence in neighbouring countries, Europe and the USA. Such a process is a threat to the country's development. As a result of the conducted sociological studies, it was established that such processes are caused by the impossibility of realizing one's rights and freedoms, which are prescribed in normative legal acts. Citizens of the country, looking for a fair, legal court, express their distrust of justice. Therefore, the improvement of the judicial system is relevant both for the needs of legal practice and judicial protection of human rights. U.M. Musaev [9] claims that the effective functioning of the judicial system in the country determines its vector of development in the democratic direction. Today, ensuring the fair punishment of persons who have committed crimes is a guarantee of the state's observance of basic human rights and the goal

of judicial reform. The purpose of the study is to determine, based on the analysis of the Constitution of the USA and the activities of the Supreme Court of the USA, their role in the formation of law-making by the judicial branch of the Republic of Kazakhstan. The task of the research is to identify the main factors that should activate the court's law-making in the conditions of the development of a democratic society.

Materials and Methods

For a deep and comprehensive study of the topic, an analysis of a number of scientific articles published in magazines and collections on the subject of the constitutional activity of the judicial branch of government in the USA and the Republic of Kazakhstan and the direct participation of courts in the process of state formation was conducted. The main documents of the Republic of Kazakhstan, which are fundamental in the formation of the state and political system of the country, such as the Constitution of the Republic of Kazakhstan [10], were also familiarized with. Law of the Republic of Kazakhstan dated June 5, 1992 No. 1378-XII "About the Constitutional Court of the Republic of Kazakhstan" [11]; Constitution of the Republic of Kazakhstan [12] including all amendments up to 2011; Constitutional Law of the Republic of Kazakhstan No. 2737 "On the Constitutional Council of the Republic of Kazakhstan" [13], Constitutional Law of the Republic of Kazakhstan of 7 December 2015 No. 438-V "On ASTANA International Financial Center" [14].

The research was based on the study of issues of judicial practice, its role and significance in the processes that took place from the moment of statehood to the present day. Using the comparative legal method, legislative acts and legal norms were studied that regulate the work of judicial systems in countries and as a whole and determine the activities of the Supreme Court of the USA and the Constitutional Court of the Republic of Kazakhstan. A comparison of the practical aspects of the participation of the highest echelon of courts in the processes of law-making and building a democratic state of the two states was carried out using real examples. With the help of historical analysis, the dynamics of the development and formation of constitutionalism in the USA and the Republic of Kazakhstan were traced. Using the concretization method, an introduction was made to judicial practice, which had an impact on law-making processes and became the subject of study by many scientists. Interpretation of the content of constitutional norms and precedent decisions, which can be called a source of law, was carried out using a logical method. Individual works by authors who have examined the question of the involvement of courts in national law-making have also been taken into account. On the basis of the dialectical and systemic method, the main principles and mechanisms of judicial supervision of compliance with constitutional norms during the adoption of normative acts by state authorities are determined. Using the sociological method, the peculiarities of the judicial systems of the two states and the peculiarities of the courts' consideration of cases at different stages of their consideration were studied. With the help of synthesis, the main functions and principles of the work of the Constitutional and Supreme Court are defined in

accordance with the powers granted by the constitutions of the countries. The main methods and approaches in the involvement of courts in the law-making of states are defined. Using the method of analogy, the constitutions of the USA and the Republic of Kazakhstan and the participation in law-making of the judicial systems of both countries were studied, which made it possible to compare the nature of law-making and the formation of democracy in a country that is an example of world constitutionalism and in a country that is only on the way to becoming a democratic state. To achieve the goal of this study, historical, systematic, generalizing and comparative legal methods were used. The analytical method was applied to study the position of modern constitutionalism regarding the legal value of court decisions.

Results and Discussion

Comparative characteristics of constitutional and judicial law-making in the USA and the Republic of Kazakhstan

More than two centuries have passed since the adoption of the Constitution of the USA, but it still functions and remains relevant to this day. Initially, it embodied formal requirements for the creation and uniform application of laws. Faced with the challenges of real life, amendments were made to the basic law, which were supposed to uphold the principles of the rule of law and act in conjunction with the general basic human rights, to balance state powers to protect the interests of the majority of the population and the rights of the minority, to ensure the freedoms, rights, equality of all citizens and the activities of the federal and state governments of the country. Given the diversity of the country's population and the peculiarity of the state structure, the continued commitment of Americans to the rule of law depended on the flexibility of the norms of the American constitution. One constitution is not enough.

It is necessary to carry out constant supervision of the fulfilment of the requirements of the constitution by the authorities. In the USA, the Supreme Court is vested with this authority. To date, the country has developed a judicial practice of supervising the constitutionality of laws in general and judicial control of amendments to the Constitution [15]. According to the effective Constitution of the USA, the legislative power belongs to the Congress, and the judicial power – to the Supreme Court. The constitutional legal system and judicial control in this area are closely related. The judicial branch of government has the final authority in determining the constitutionality of legislative norms and executive documents. This means that the executive and legislative branches of government are obliged to perform their functions exclusively in accordance with constitutional principles. The legitimacy of judicial review was established in the Constitution's Supremacy Clause, which requires that all laws passed in the US be consistent with the Federal Constitution. Courts are empowered to determine the legality of acts of the executive and legislative branches of government [16]. In order to ensure such control, the judicial branch of power should not depend on political sentiments or special interests of the political elite and is obliged to interpret laws and actions of the executive power in accordance with the Constitution (Table 1).

Table 1. Principles and powers of the US Supreme Court

Principles	Powers
The highest court in the country, which ensures the proper judicial procedure for consideration of cases and their review	Interpretation of the law – the judiciary is constitutionally empowered to interpret laws passed by legislative bodies and evaluate them from the point of view of suitability for implementation by the executive branch
It plays an important role in ensuring the functioning of various branches of government within the limits of their constitutional powers	Impartiality – the judiciary is not influenced by political and public opinion, which allows it to supervise other branches of government
Ensures protection of rights and freedoms by repealing laws that violate the constitution	Supremacy clause – the judiciary declares the constitution and all legal documents created in accordance with it to be the supreme law of the land. It has the authority to evaluate the conformity of executive and legislative acts
Sets limits on government abuse of power	A system of checks and balances – the judiciary is authorized to review legislative acts in opposition to the broad powers granted to it

Source: [17].

The constitution is the basic law of any country. Therefore, the preservation of the basic law is of great importance for the stability of the entire legal system. The practice of judicial review is a constitutional mechanism used in the USA to determine the constitutionality of federal, state legislative acts, and presidential decisions. The judiciary is entrusted with the function of supervising the constitutionality of decisions made by other government departments [18]. The high status of the Supreme Court of the US was formed thanks to the creation of a system of supervision and interpretation of the Constitution of the US. The main purpose of the US Supreme Court is to hear cases as the highest court of appeals. Appellate jurisdiction of the US Supreme Court is exercised in the order of the appeal itself, in the order of

returning cases from the lower court, in the order of certification based on the explanations of the decisions of the federal appeals courts on specific topics. Thus, the decision of the US Supreme Court is a source of law and may become a precedent for solving similar cases in the future. For example, in *Brown v. Department of Education*, the segregation of black and white students was found to be unconstitutional. This decision became an important event in the fight against discrimination against blacks and became a precedent in similar cases [19]. Decisions of the Supreme Court of the Republic of Kazakhstan are normative legal acts and have their own characteristics. In particular, they are formed in the form of model decisions or plenary interpretations of judicial practice with proposals for improving the legislation (Table 2).

Table 2. Peculiarities of constitutional control by the courts of the USA and the Republic of Kazakhstan

	USA	Republic of Kazakhstan
Subjects of review of decisions	There is no specialized body, all cases, regardless of their nature, are decided by courts of general jurisdiction	Exemplary decisions of the Supreme Court based on the results of appellate and cassation reviews contain a detailed analysis of the issues
Subject of consideration	The subject of constitutional control are laws, other normative legal acts and orders of all levels of state power	Apply to an indefinite and very wide range of subjects. The Supreme Court develops legal positions and forms high-quality, convincing precedents.
Control function	Constitutional issues can be touched upon in any disputed cases and do not require special consideration	The Plenum of the Supreme Court makes regulatory decisions, provides clarifications on judicial practice and makes proposals for improving the legislation
The function of interpretation of legal acts	Abstract constitutional review is not part of the Supreme Court's authority, that is, lower courts do not refer to the US Supreme Court on a specific case, but independently decide on the constitutionality of a law. Courts interpret the unconstitutional norm as non-existent and do not take it into account when making the appropriate decision on the merits of the dispute. At the same time, there is no specific act or mandatory procedure for the cancellation of an unconstitutional norm according to the American model of constitutional control	The Plenum of the Supreme Court makes regulatory decisions, provides clarifications on judicial practice and makes proposals for improving the legislation

Procedure for constitutional review	In the US, there is no special institution of an individual constitutional complaint that can be filed with the Supreme Court, so citizens have the right to seek protection of their subjective rights in lower courts	If the court recognizes that the law or other normative legal act, which is subject to application, violates the rights and freedoms of a person and a citizen enshrined in the Constitution, it is obliged to stop the proceedings in the case and file a motion to declare this act unconstitutional.
-------------------------------------	---	---

Source: [8; 19].

The US Supreme Court rules on cases that come from lower federal courts in each of the 50 states. In the system of common law, courts not only make decisions concerning the parties in a case, but are also authorized to create rules of a general nature that can be used in similar future cases. However, only the judge, taking into account the similarity of the facts and circumstances of the cases, decides to apply a precedent or create a new rule. Therefore, the judicial branch of government in the US legal system has the ability to create legal norms and the courts to work in a system based on precedents. The country's constitution does not contain direct norms regarding the structure and powers of the judiciary, but it stipulates that it functions within the framework of the federal government in accordance with the rules of customary law [20].

As a result of the work of the Supreme Court, judicial practice has developed, which can be called a precedent for use by courts not only in the US. So, for example, in the Supreme Court case on the power to remove officials and limit their power in the case of *Seila Law v. Consumer Financial Protection Bureau*, a new principle was laid out: significant executive power cannot be concentrated in one person of the executive branch of government, unless that person can be removed at will by the President. For the first time, the Court considered whether Congress can condition the removal of an official with the consent of the Senate and whether the President has the exclusive right to dismiss officials appointed with the consent of the Senate [21].

Based on the decision of the Supreme Court Essay on *Seila Law*, the court concluded that Congress cannot create an independent agency with significant regulatory powers headed by a single director; the president does not have the power of presidential control over independent agencies; it is more difficult for the president to manage many independent agencies than independent agencies headed by individual officials, which gave rise to the invalidation of the entire form of independent agency [22]. In *Hollingsworth v. Virginia*, the court reviewed the constitutionality of the 11th Amendment to the US Federal Constitution, considered the first US Supreme Court amendment censorship precedent, the facts of which are briefly summarized. The gist of the case is that a native of Pennsylvania named *Hollingsworth* was involved in a lawsuit against the state of Virginia. A federal court in the state (Virginia) argued that the federal court system lacked jurisdiction over this dispute because the plaintiff must be a resident of the state [23]. The role of courts in the system of rule of law is considered as a possibility that the supremacy of courts in the constitution is a form of judicial supremacy. In this sense, the rule of law loses its meaning because the power of the court over other branches of government imposes restrictions on the way courts justify and make decisions [24].

Modern trends in the activity of the Constitutional Court of the Republic of Kazakhstan

Today, the legal system of the Republic of Kazakhstan is built on the principles of the Romano-Germanic legal family, in which judicial precedent is not recognized as an independent source of law, and judges in the country are not limited by the decisions of higher courts. The main sources of law in the state are the Constitution, international treaties, codes, laws, by-laws and additional sources of law. Globalization processes in world society affect all spheres of the Republic of Kazakhstan. The need to attract foreign investment required the management to create a special legal regime. The result of this was the adoption of the so-called Constitutional Law of the Republic of Kazakhstan of 7 December 2015 No. 438-V "On ASTANA International Financial Center" [14], which establishes a special legal regime for financial spheres of activity. The consequence of such an innovation is that the principles and precedents of English common law will be applied along with the current legislation of the Republic of Kazakhstan. There is a tendency to increase the role of the Constitutional and Supreme Court in the country's legal system. However, this was not always the case [25]. Kazakhstan's case can be traced to the process of seizing the constitutional court as a strategy to control dictators over ever-changing legal norms and to legitimize their continued tenure. After the declaration of independence in 1991, the Constitutional Court of Kazakhstan was established. It was reformed in 1995 into the Constitutional Council as a body that was more susceptible to executive power capture, while remaining formally independent. This gave the then effective President *Nazarbayev* the opportunity to control the legislative power for a certain time [26].

On November 5, 2022, the President of the Republic of Kazakhstan signed a law that restores the constitutional court that existed in Kazakhstan until 1995, when it was replaced by the Constitutional Council. Since the beginning of the court's work, separate decisions have been made on issues of constitutional and international law, which determine the principles of the work of the Constitutional Court of the Republic. According to the stated legal positions, constitutionality in the country should be ensured not only by the Constitutional Court, but also by all branches of state power. Following the presumption of constitutionality, a legal act is considered to be in accordance with the Constitution of Ukraine and has legal force until it is declared unconstitutional. At the request of the subjects, the court verifies the legal acts that concern exclusively their rights and freedoms. A legal act that a citizen submits to the court for compliance with the Constitution must have previously been applied in a specific court case involving this citizen [27]. One of the peculiarities of the judicial system of the Republic can be called the creation of administrative courts. They were

created to ensure the full functioning of legal norms during their application by executive authorities. From July 1, 2021, the new code of administrative proceedings entered into force. From the point of view of international relations, administrative courts perform the function of judicial supervision and are a positive point for foreign investors. They are the guarantor of compliance by state bodies with legal acts, including the country's constitution. The basis of their activity is the regulatory function of supervising the activities of public authorities. The Code of Administrative Procedure establishes such principles as legality, justice, protection of rights, freedoms, interests, proportionality, the principle of administrative discretion, protection of trust rights, limitation of abuse of formal requirements, presumption of probability, active role of the court [28].

In the conditions of the development of various forms of ownership and the market economy, state control plays a key role in compliance with constitutional norms. The government system must ensure the functioning of such control mechanisms in all sectors. In the legal system, there are numerous norms, which are divided into norms of

direct action and norms of indirect action. In the Constitution itself, state control is manifested in a diverse number of norms, which are divided into norms-principles, norms-goals, status and competence. The norms of the Constitution carry the functions of direct and indirect action. Direct norms apply in the absence of a corresponding legal act regulating the issue, the normative act regulating the issue contradicts the constitution itself, the provision of the constitution does not indicate the possibility of applying the norm when adopting a regulatory legal act, the provision of the constitution does not require additional regulation by adopting another normative act. In accordance with Article 63 of the Constitution of the Republic of Kazakhstan, the recognition of a law or other legal act or their individual provisions as inconsistent with the Constitution of the Republic of Kazakhstan is the basis for annulment in the established order of the provisions of other laws or other legal acts containing the same provisions that were recognized as unconstitutional, or based on such provisions or reproducing these provisions (Table 3).

Table 3. Consequences of adoption of final decisions by the Constitutional Court

1st	Laws and international treaties of the Republic of Kazakhstan, recognized as inconsistent with the Constitution of the Republic of Kazakhstan, cannot be signed or accordingly ratified and put into effect.
2nd	Amendments and additions to the Constitution of the Republic of Kazakhstan, recognized as not meeting the requirements established by Clause 2 of Article 91 of the Constitution of the Republic of Kazakhstan, cannot be submitted to a republican referendum or consideration by the Parliament of the Republic of Kazakhstan.
3rd	Laws and other legal acts, their separate provisions, recognized as unconstitutional, including those that infringe on the rights and freedoms of a person and a citizen enshrined in the Constitution of the Republic of Kazakhstan, are cancelled and are not subject to application from the date of adoption of the decision by the Constitutional Court or the date established by it.
4th	In the event that a law or other legal act or some of their provisions are recognized as corresponding to the Constitution of the Republic of Kazakhstan in the interpretation given by the Constitutional Court, their other interpretation is excluded during their application, and the consequences of making such a decision are determined by paragraph 3 of this article, unless otherwise established by the Constitutional Court.

Source: [29].

Review of court decisions in the cassation procedure also has an element of law-making. In particular, the decision of the court of cassation in criminal cases has legal significance for judicial practice as a whole. The practice of courts of cassation determines the correctness of the actions and decisions of authorized persons, compliance with the law, the correctness of its application and arises as a result of the reasoning of its decision. In their activity, the

higher courts in the system of general courts use the main types of legal practice – law-making (normative, legislative), interpretative (legal interpretation) and law enforcement. Taking into account historical processes, legislation and directly decisions made by cassation courts, precedent decisions can be classified according to the content and form of their adoption (Table 4).

Table 4. Classification of precedent decisions

By law	a) the correct application of material legislation;
	b) correct application of procedural legislation.
According to the degree of stability	a) low degree (accepted in one proceeding regarding a separate legal issue);
	b) a high degree (accepted as a result of reviewing a number of proceedings in which the same legal issue is resolved differently).
According to the legislative consolidation of the legal meaning	a) normative as a result of reviewing a specific case;
	b) doctrinal (did not go through judicial review).
Mandatory	a) mandatory (found in legislative acts. In Kazakhstan, Part 1, Article 4 of the Constitution of the Republic of Kazakhstan stipulates that the applicable law is the norms of the Constitution, laws corresponding to it, other normative legal acts);
	b) recommendatory (normative-legal act containing the relevant rule of law on the recommendability of such resolutions for courts);

	c) non-binding (contain only agreement with the conclusions on the legal issue made by the courts of previous instances, but do not contain the interpretation of the law by the cassation court itself).
According to the entities to which they are distributed	a) specified (distributed to the participants of the proceedings in which a precedent decision was adopted);
	b) unspecified (distributed to all entities that apply the rule of law that was interpreted by the court of cassation).
According to the method of acceptance	a) judicial – ordinary (in the process of simple cassation) and extraordinary (legal requests);
	b) extrajudicial.
By way of expression	a) judgments and decisions of the US Supreme Court;
	b) legal generalization (normative resolutions of the plenum of the Supreme Court of Kazakhstan).

Source: [30].

In the USA, precedent decisions of the Court of Cassation, as the highest court in the system of courts of general jurisdiction, can be considered a regulatory document [30]. A.S. Sweet & M. Shapiro [31] in their article showed how in practice the cases of the US Supreme Court were considered, the result of which was the invalidation of laws. Such an example of judicial review of cases is a model of judicial law-making and shows that abstract review works in practice, in particular, it leads to the suspension of the application of laws until a decision is made on their constitutionality.

World approaches to the study of constitutional and judicial law-making

The Constitution of the USA defined the main principles and directions of the organization, activity and competence of the judiciary in the country. The peculiarity of American courts is that they do not constitute a single judicial system or state structure. The US Constitution gave them the opportunity to take a creative approach to the formation and reform of the judicial system at the federal level, depending on the needs of society, without interfering with the basic law. The country has a historical tradition in the precedent practice of cassation courts. Ensuring the unity of judicial practice both between courts of the same level and courts of different instances, precedents of cassation courts eliminate gaps in legislation and resolve contradictions in the application of legal norms. In contrast to the USA, in Kazakhstan, the result of the Supreme Court hearing (decision) is published in the official printed edition and is included in the composition of effective legislation by specifying a reference under the norm that was interpreted. The consequence of such decisions is that from now on, all courts and state bodies must adhere to the conclusions set forth in the said decision [32; 33].

J.I. Colón-Ríos [34] in his article developed the theory of the social contract, in the context of which the state exists as an experiment in law-making. Considering the state as an experiment in the legal system, then all forms of law-making involve experimentation in a trial-and-error manner, which means that there are no universal solutions. This theory is confirmed by the existence of “failed” states where there are inequalities and insecurities. I believe that the author’s opinion about the experimental state is not entirely ethical, since the basis of a democratic state lies in freedom and equal rights of citizens. That is why, in order to minimize the negative consequences of unsuccessful

political or legal decisions, it is necessary to study the constitutional law of other countries [35].

In his work, C.M. Vázquez [36] presents the Constitution as a method of legal protection. In his opinion, the founders of the constitution envisioned an effective legal system with sufficient mechanisms of legal protection, in which constitutional guarantees will be implemented. These mechanisms include recognized forms of action at common law and equity. However, the large number of complex cases that arise in federal courts require new remedies. The Supremacy Clause is the most appropriate mechanism for a constitutional remedy law. The rule of law provision is a rule for federal judicial power to formulate remedies for constitutional violations that cannot be narrowed by Congress. This provision is the basis for the protection of legal protection against the invalidity of unconstitutional laws. Based on it, the Constitution empowers the federal courts to formulate the remedies necessary to ensure that the Constitution, limiting the powers of Congress and federal and state officials, is truly law and not merely a provision [37-39]. Considering the fact that not all norms of the Constitution have direct effect, questions often arise regarding the interpretation of national legislation and its compliance with constitutional norms. When granting powers to federal courts (local courts), it is necessary to observe the principle of the supremacy clause in order to prevent the courts from exceeding their powers [40].

B. Dickson [41] explains how rights are protected in Great Britain. Unlike the USA, judges do not allow themselves to declare acts of parliament invalid. Thus, they support the principle of the British Constitution on parliamentary sovereignty and the principle of the rule of law. This work raises the issue of the need to create a new Bill of Rights in order to expand the constitutional rights of legal subjects. Having read the author’s work, it can be concluded that despite the sufficiently stable political, social, and economic stability of Great Britain and the USA, the constitutional system of the states needs improvement. Author M. Loughlin [42] in his books notes that during the last decade, constitutional democratic dogmas have declined. This decline is characterized by the growth of regimes that retain the formal attributes of democracy while not adhering to the norms and values inherent in it. The crisis of democratic values needs to be resolved in all spheres of every state [43]. Unfortunately, it is impossible to disagree with the author of the article,

since formalism is a fairly widespread phenomenon in a democratic society. This approach to public administration carries the hidden danger of authorizing society.

C. Eggett [44] singled out constitutional processes of international law as an object of research. He explored a number of principles for which treaties and customs do not have answers within the framework of international constitutional law. Implementation of such principles as filling legal gaps and the principle of efficiency to balance the legal base is entrusted to the courts. The fulfilment of the function of filling the gaps in the law by the courts in the future may lead to an even greater role of the courts in the legal system and recognition of the role of the courts in determining norms that go beyond treaties and customs [45; 46]. Customary law occupies an important place in the national legal system. In this legal system, the Constitution as the main law cannot cover all spheres of life. It is the courts that can fill the gaps in the law.

F. Obeng-Odoom [47] explored the opinions of many leading judges of the Supreme Court and interesting interpretations of the Constitution based on the philosophies of traditionalism, populism or cosmopolitanism. In their opinion, the politicization of courts undermines their popularity among the population. When deciding cases, judges should be closer to people, listen to the parties in the case, involve more segments of the population to participate in court debates, taking into account freedom of speech and arguments [48]. Thus, it is necessary to direct all efforts to strengthen trust in the courts. When writing Constitutions, lawmakers adhere to classical philosophical dogmas. With such a formal approach, the interests of the average citizen often suffer. Courts are meant to be a mechanism for balancing state interests with the interests of each individual [49].

S. Alasti & A. Fakhravar [50] on the example of the creation of little-studied constitutions, conducted their analysis and evaluated them in comparison with the constitution of the USA. Without a doubt, its adoption is the most important asset, not only of America. It has a direct influence on the legislation of many states. However, it cannot be an inviolable postulate because for some countries, the adoption of the Constitution of the US, which reflects Western culture, is contrary to their traditions and customs. However, in any case, when developing a new constitution or editing an existing one, it is necessary to adhere to the principles of a democratic society. The US Constitution is a model of constitutional law-making for many countries, especially for those that are just on the way to becoming a democratic society [51; 52]. The unique history of the country is a confirmation of the successful management of a large, multinational state.

J. Waldron [24] investigated the process of seizure and legitimization of power in Kazakhstan after the declaration of independence. Despite the existence of a constitution and a constitutional court, the country was under the influence of the authoritarian regime of the first president for a long time. Constitutional changes and subsequent court rulings helped to concentrate power in the hands of the head of state, expanded his powers and gave him immunity from prosecution. The transformation of the Constitutional Court into the Constitutional Council created a precondition for the unlimited power of the president, formal institutional changes and made the court

susceptible to executive power capture [53; 54]. In such a regime, the function of the constitutional court consists only in certifying the balance of power in favour of the president. Recent events in the Republic of Kazakhstan once again confirm that the country is on the way to developing a democratic society. During the period of the authoritarian regime, many democratic values were lost. Despite this, the country is making up for lost time with confident steps.

S.M. Nurov [55] reported on the need to reform the judicial system of the Republic of Kazakhstan. Today, the judicial system is not fully formed and is at the stage of formation. Reforms include changes not only to legislative acts regulating justice, but also modernization of the entire judicial system. Changes to the institution of the judiciary also require an increase in the level of requirements for judges. As part of the institutional reforms "Plan-nation 100 steps "Modern society for all", most of the reforms are aimed at reforming the judicial system. The coordinated work of the courts is a guarantor of compliance with the Constitution by all power structures. The human factor is present in every sphere of state activity [56]. Within the framework of national reforms, the judicial system also needs significant changes. Accordingly, the changed society cannot coexist with the old system [57].

E.Yu. Lazorenko [30] investigated the criteria by which the courts should interpret the constitution. The question of its interpretation arose from the moment of its approval. It is the courts that are empowered to interpret the norms of the Basic Law. To this end, philosophies were developed that fell into two categories: originalism and living constitutionalism. Originality ensures stability and objectivity in the interpretation of the basic law. Living constitutionalism allows the Constitution to adapt to the times and remain relevant [58]. Despite the fact that researchers of constitutionalism interpret the Constitution according to different parameters, the main dogmas of interpretation remain unchanged. This means that the basic requirements for writing a document must be flexibly combined with the ability to evolve.

Reforms of constitutional courts have been introduced in the member states of the Council of Europe. They are aimed at weakening the influence of constitutional courts, by reducing expenses for the maintenance of judges, changing the criteria for accepting the position of a judge and limiting the scope of judicial proceedings. The European Commission for Democracy through Law or the Venice Commission, guided by the rule of law, prepares conclusions that aim to prevent the decline of European standards of democratic justice guided by the rule of law. The Council of Europe's advisory body on constitutional law or the Venice Commission does not have the authority to interfere in the law-making of countries, but every state that has chosen a democratic path of development listens to conclusions about the compliance of draft legislative acts with European standards and values. Therefore, the Constitution of each country, in particular, the Republic of Kazakhstan, is not only the main document that is designed to regulate all processes in the state. It helps the integration and adaptation of the country into the world society. Given the globalization of processes, it requires constant updating and improvement. The best experience of other countries should be an argument for improving civil and

parliamentary control in Kazakhstan with the participation of the judiciary. One of the directions may be the development of case law, which will strengthen the role of the court in improving the legislation of the Republic. At the same time, as the experience of foreign countries shows, it is the judicial bodies, facing various controversial issues every day, that have full information about the problems in the legislation.

Conclusions

Over the years, in the judicial system, judicial review of cases has gained significant importance not only within the framework of consideration of a separate case. The institute of co-constitutionalism, through reforms and political transformations, is designed to introduce norms of international law into the system of national legislation. Recently, there have been trends regarding the growing influence of the judiciary on various spheres of state activity, which puts the security of other institutions at risk. Using legal methods, the court can interfere with its decisions in spheres of activity that do not belong to their powers. However, in this case, there is a threat of politicization of the judiciary. Such trends can negatively affect the democratic principles of statehood and the rights and freedoms of legal subjects. The priority of the development of any democratic state is the development of civil society, integration into the world economy, which, as a result, should increase the welfare of the population. Through the function of the pre-emption clause, the court must set limits on the government's abuse of power. Every country that has chosen a democratic path of development has its own history of creating the basic law of the state. Despite the uniqueness of the state system of the United States of America, the constitution of this country is the basis for the state formation of other countries with a developed legal system that ensures compliance with the constitutional rights and freedoms of citizens. In order to meet all the requirements of modern society, it is necessary to create conditions for its development. The Constitution of the Republic of Kazakhstan is also developing.

The need for constitutional control is growing every time in connection with the country's need to comply with

all the principles laid down in the basic law of the republic, since their observance guarantees the country's future integration into the world economic space and will ensure its status as a democratic state. Today, in order to comply with the principles of freedom, democracy, separation of powers, human and citizen rights, the role of the court is becoming more and more important. For the effective functioning of the judicial system, it is necessary to ensure the independence of judges in decision-making at the legislative level, including the Constitutional Court and the Supreme Court of the Republic of Kazakhstan. For this, it is necessary to clearly define the principles and powers of their activity in the system of state bodies and to establish them at the legislative level. Despite the fact that court decisions are not a source of law in the Republic of Kazakhstan, it is still important to study precedent decisions of the Supreme Court, as the country's constitution needs constant development and improvement.

Today, the system of parliamentary control in Kazakhstan is rapidly changing, adapting to new realities. Expanding the law-making role of courts in the Republic of Kazakhstan is a real need. However, this should be done gradually, taking into account the best experience of countries and national characteristics. In order to improve the effectiveness of the control functions assigned to it, for the implementation of joint management, it is necessary to establish civil control as a right of the population at the highest legislative level. The presence of many forms and types of parliamentary control in the world allows to conclude that it is necessary to study them in order to improve the model operating in Kazakhstan. Therefore, this topic will remain relevant for further research.

Acknowledgements

None.

Conflict of Interest

None.

References

- [1] Tyschchyk B. Constitution of the United States of America 1787 – The first active constitution in the world (to the 230th anniversary of the main law of the USA). *Visn Lviv Univ Ser Law*. 2017;65:56–65.
- [2] Bell J, Paris ML, editors. *Rights-Based Constitutional Review*. Cheltenham: Edward Elgar Publishing; 2016. Chapter 1, Rosenfeld M, The United States of America; p. 29–62.
- [3] Rechytyskyi V. Informal constitutionalism, the US effect [Internet]. Kharkiv Human Rights Protection Group; 2019 [updated 2019 Oct. 4; cited 2024 Feb. 18]. Available from: <https://khpg.org/1570181149>.
- [4] Taitorina BA, Baisalova GT, Assanova AA, Bogatyreva LB. State control: Issues of constitutional and legal regulation. *Bull Karaganda Univ Ser Law*. 2020;1(97):6–11.
- [5] Baktybekov MB, Kaibzhanov MZh, Yessenzhlov NE, Seidanov AB, Nurlin AK, Shagiyeva GT. Changes Impact assessment on national legislation development in international law. *Balt J Law Politics*. 2022;15(1):1763–74.
- [6] Beisbekova GK, Konussova VT, Ismagulov KE, Saktaganova I, Mukasheva AA. Problems of concretization of legal norms in Kazakhstan. *J Adv Res Law Econ*. 2019;39:52–7.
- [7] Turlayev A, Akhmetova N. The role and principles importance of the biys court activity as an institution of Kazakh customary law for modern legal relations. *Bull Karaganda Univ Ser Law*. 2020;1(97):44–50.
- [8] Yessetova S. Improvement of the law-making role of courts as a factor of youth immigration from the Republic of Kazakhstan. *PalArch J Archaeol Egypt/Egyptol*. 2020;17(7):8862–77.
- [9] Musaev UM. The role of court decisions as a legal source in the criminal legislation of foreign countries. *Am J Political Sci Law Criminol*. 2022;4(4):7–10. DOI: 10.37547/tajpslc/Volume04Issue04-02.

- [10] Parliament of the Republic of Kazakhstan. Constitution of the Republic of Kazakhstan [Internet]. 1993 [cited 2024 Feb. 18]. 1993 January 28. Available from: <https://adilet.zan.kz/rus/docs/K930001000>.
- [11] President of the Republic of Kazakhstan. “About the Constitutional Court of the Republic of Kazakhstan” [Internet]. 1992 [cited 2024 Feb. 18]. Law No. 1378-XII. 1992 June 5. Available from: https://online.zakon.kz/Document/?doc_id=1001172.
- [12] Parliament of the Republic of Kazakhstan. Constitution of the Republic of Kazakhstan [Internet]. 1995 [cited 2024 Feb. 18]. 1995 August 30. Available from: <https://adilet.zan.kz/rus/docs/K950001000>.
- [13] President of the Republic of Kazakhstan. “On the Constitutional Council of the Republic of Kazakhstan” [Internet]. 1995 [cited 2024 Feb. 18]. Constitutional Law No. 2737. 1995 December 29. Available from: <https://adilet.zan.kz/rus/docs/U950002737>.
- [14] Parliament of the Republic of Kazakhstan. “On ASTANA International Financial Center” [Internet]. 2015 [cited 2024 Feb. 18]. Constitutional Law No. 438-V. 2015 July 12. Available from: <https://adilet.zan.kz/eng/docs/Z1500000438>.
- [15] Silkenat JR, Hickey JE Jr, Barenboim PD, editors. The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat). Cham: Springer; 2014. Chapter 16; Charlow R; American constitutional analysis and a substantive understanding of the rule of law; p. 251-266. DOI: 10.1007/978-3-319-05585-5_16.
- [16] Jihad ARA. Amendments to the Constitution and the extent to which the constitutional judiciary has power over them. *Soc Sci J*. 2023;13(2):4735–51.
- [17] Rubin AB. Judicial review in the United States. *La Law Rev*. 1979;40(1):67–82.
- [18] Makogon BV, Markhgeym MV, Novikova AE, Nikonova LI, Stus NV. Constitutional justice in circumstances of public authority limits. *J Hist Cult Art Res*. 2018;7(2):722–8.
- [19] Aryn AA. The role of the US Supreme Court in the legal system. *J Act Probl Jurisprud*. 2020;4(96):110–9.
- [20] Florczak-Wątor M. Constitutional law and precedent: International perspectives on case-based reasoning. London: Routledge; 2022.
- [21] Boutilier SW. Simplistic structure and history in Seila Law. *NYU Law Rev*. 2021;96:1582.
- [22] Beerman JM. Seila Law: Is there a there there? Chicago: University of Chicago Law School; 2022.
- [23] Hollingsworth, et al. v. Virginia [Internet]. U.S. Supreme Court; 1978. [cited 2024 Feb. 19]. Available from: <https://www.law.cornell.edu/supremecourt/text/3/378>.
- [24] Waldron J. The rule of law and the role of courts. *Global Constitut*. 2021;10(1):91–105.
- [25] Akhmetova NS, Starozhilova NP. Development of the system of sources of Kazakh law. *Bull Karaganda Univ Ser Law*. 2020;4(100):25–38.
- [26] Williams NW, Hanson M. Captured courts and legitimized autocrats: Transforming Kazakhstan’s Constitutional Court. *Law Soc Inquiry*. 2022;47(4):1201–33. DOI: 10.1017/lsi.2021.85.
- [27] Abaydeldinov Y. Constitutional Court of the Republic of Kazakhstan: Continuity and innovation. *Bull LN Gumilyov Eurasian Natl Univ Ser Law*. 2023;142(1):11–9.
- [28] Akhmetov YB, Abdrasulov YB. What we talk about when we talk about the principle of the active role of the court in administrative procedure. *Krytyka Prawa*. 2023;15:81-100.
- [29] Parliament of the Republic of Kazakhstan. “On the Constitutional Court of the Republic of Kazakhstan” [Internet]. 2022 [cited 2024 Feb. 19]. Constitutional Law No. 153-VII ZRK. 2022 November 05. Available from: <https://adilet.zan.kz/rus/docs/Z2200000153>.
- [30] Lazorenko EYu. Precedent decisions of the court of cassation in criminal jurisdiction: Types and significance (Comparative-legal characteristics). *Act Probl Native Jurisprud*. 2022;4:167–75.
- [31] Sweet AS, Shapiro M. On Law, Politics, and Judicialization. Oxford: Oxford University Press; 2002. Chapter 6, Abstract and concrete review in the United States; p. 347-375. DOI: 10.1093/0199256489.001.0001.
- [32] Pankevich OZ. State law foreign countries. Lviv: Lviv State University of Internal Affairs; 2018.
- [33] Piera MA, Buil R, Ginters E. State space analysis for model plausability validation in multi agent system simulation of urban policies. In: *25th European Modeling and Simulation Symposium, EMSS 2013* (pp. 504–9). 25-27 September, Athens, Greece; 2013.
- [34] Colón-Ríos JI. Constitutional experimentation. *Int J Constitut Law*. 2021;19(3):970–3.
- [35] Piera MA, Buil R, Ginters E. State space analysis for model plausibility validation in multi-agent system simulation of urban policies. *J Simul*. 2016;10(3):216–26.
- [36] Vázquez CM. The Constitution as a source of remedial law. *Yale Law J*. 2023;132:1061–85.
- [37] Kerimkhulle S, Koishybayeva M, Alimova Z, Baizakov N, Azieva G. Created and Realization of a Demographic Population Model for a Small City. *Proceed Engin Sci*. 2023;5(3):383–90 DOI: 10.24874/PES05.03.003.
- [38] Pavlov SV, Sander SV, Kozlovskaya TI, Kaminsky AS, Wojcik W, Junisbekov MS. Laser photoplethysmography in integrated evaluation of collateral circulation of lower extremities. *Proceed SPIE - Int Soc Optic Engin*. 2013;8698:869808. DOI: 10.1117/12.2019336.
- [39] Kerimkhulle S, Dildebayeva Z, Tokhmetov A, Amirova A, Tussupov J, Makhazhanova U, Adalbek A, Taberkhan R, Zakirova A, Salykbayeva A. Fuzzy Logic and Its Application in the Assessment of Information Security Risk of Industrial Internet of Things. *Symmetry*. 2023;15(10):1958. DOI: 10.3390/sym15101958.
- [40] Buil R, Piera MA, Ginters E. Multi-agent system simulation for urban policy design: Open space land use change problem. *Int J Model, Simul, Sci Comp*. 2016;7(2):1642002. DOI: 10.1142/S1793962316420022.

- [41] Dickson B. Writing the United Kingdom Constitution. Manchester: Manchester University Press; 2020. Chapter 4, The protection of rights and a written Constitution; p. 55-73. DOI: 10.7765/9781526158734.
- [42] Loughlin M. The contemporary crisis of constitutional democracy. *Oxf J Legal Stud.* 2019;39(2):435–54.
- [43] Ginters E, Mezitis M, Aizstrauta D. Sustainability simulation and assessment of bicycle network design and maintenance environment. In: *2018 International Conference on Intelligent and Innovative Computing Applications, ICONIC 2018* (article number: 8601225). Plaine Magnien: Institute of Electrical and Electronics Engineers; 2018. DOI: 10.1109/ICONIC.2018.8601225.
- [44] Eggett C. The role of principles and general principles in the “Constitutional processes” of international law. *Neth Int Law Rev.* 2019;66:197–217. DOI: 10.1007/s40802-019-00139-1.
- [45] Buil R, Piera MA, Gusev M, Ginters E, Aizstrauts A. Mas simulation for decision making in urban policy design: Bicycle infrastructure. In: *International Conference on Harbour, Maritime and Multimodal Logistics Modelling and Simulation* (pp. 95–102). Bergeggi: I3M Conference; 2015.
- [46] Kukharchuk VV, Kazyv SS, Bykovsky SA, Wójcik W, Kotyra A, Akhmetova A, Bazarova M, Weryńska-Bieniasz R. Discrete wavelet transformation in spectral analysis of vibration processes at hydropower units. *Przegł Elektrotechn.* 2017;93(3):65–8. DOI: 10.15199/48.2017.03.16.
- [47] Obeng-Odoom F. The purpose of constitutional political economy. *Challenge.* 2022;65(3-4):106–12.
- [48] Osadchuk AV, Osadchuk VS. Radiomeasuring microelectronic transducers of physical quantities. In: *2015 International Siberian Conference on Control and Communications, SIBCON 2015 - Proceedings* (article number: 7147167). Omsk: Institute of Electrical and Electronics Engineers; 2015. DOI: 10.1109/SIBCON.2015.7147167.
- [49] Osadchuk AV, Osadchuk IA, Smolarz A, Kussambayeva N. Pressure transducer of the on the basis of reactive properties of transistor structure with negative resistance. *Proceed SPIE - Int Soc Optic Engin.* 2015;9816:98161C. DOI: 10.1117/12.2229211.
- [50] Alasti S, Fakhrafar A. Constitutional comparativism: How a flawed constitution can benefit from the U.S. Constitution. *Int Relat Dipl.* 2022;10(3):108–23. DOI: 10.17265/2328-2134/2022.03.002.
- [51] Timchenko LI, Pavlov SV, Kokryatskaya NI, Poplavskaya AA, Kobylanskaya IM, Burdenyuk II, Wójcik W, Uvaysova S, Orazbekov Z, Kashaganova G. Bio-inspired approach to multistage image processing. *Proceed SPIE - Int Soc Optic Engin.* 2017;10445:104453M. DOI: 10.1117/12.2280976.
- [52] Shahini S, Shahini E, Koni B, Shahini Z, Shahini E, Bërxolli A. Enhanced Tomato Yield via Bumblebee Pollination: A Case Study in Durres, Albania. *Int J Des Nat Ecodyn.* 2023;18(4):905–14. DOI: 10.18280/ijdene.180417.
- [53] Ginters E, Dimitrovs E. Latent Impacts on Digital Technologies Sustainability Assessment and Development. *Adv Intell Syst Comp.* 2021;1365 AIST:3–13. DOI: 10.1007/978-3-030-72657-7_1.
- [54] Aizstrauta D, Ginters E. Using Market Data of Technologies to Build a Dynamic Integrated Acceptance and Sustainability Assessment Model. *Proced Comp Sci.* 2016;104:501–8. DOI: 10.1016/j.procs.2017.01.165.
- [55] Nurov SM. National court system of the Republic of Kazakhstan on its path to reforms. *Probl Law Econ.* 2016;8(1):85–9.
- [56] Kerimkhulle S, Obrosova N, Shanenin A, Tokhmetov A. Young Duality for Variational Inequalities and Nonparametric Method of Demand Analysis in Input–Output Models with Inputs Substitution: Application for Kazakhstan Economy. *Math.* 2023;11(19):4216. DOI: 10.3390/math11194216.
- [57] Kerimkhulle S, Saliyeva A, Makhazhanova U, Kerimkulov Z, Adalbek A, Taberkhan R. The input-output analysis for the wholesale and retail trade industry of the Kazakhstan statistics. *E3S Web Conf.* 2023;376:05023. DOI: 10.1051/e3sconf/202337605023.
- [58] Leontyev A, Ketners K. The improvement of decision-making in the Latvian tax system: cases of irreducible incompatibility taking into account reliability, equity and efficiency criteria. *Intell Econ.* 2023;17(2):322–43. DOI: 10.13165/IE-23-17-2-04.

Порівняльна характеристика конституційної та судової правотворчості (на прикладі Республіки Казахстан та США)

Гульнар Сагинбекова

Євразійський технологічний університет
050000, вул. Толе бі, 109б, м. Алмати, Республіка Казахстан

Айгуль Ібраєва

Актюбінський юридичний інститут Міністерства внутрішніх справ Республіки Казахстан імені М. Букенбаєва
030011, Курсантське шосе, 1, м. Актюбе, Республіка Казахстан

Айдар Саїтбеков

Алматинська академія Міністерства внутрішніх справ Республіки Казахстан імені Макана Есбулатова
050060, вул. Утепова, 29, м. Алмати, Республіка Казахстан

Соледад Дюсебалієва

Атирауський університет імені Х. Досмухамедова
060011, просп. Студентський, 1, м. Атирау, Республіка Казахстан

Даурен Махамбетсалієв

Казахський національний університет імені Аль-Фарабі
050040, просп. Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Анотація

Актуальність. Республіка Казахстан пережила авторитарний режим, який сформував бюрократичний підхід до верховенства права. Тому застосування позитивного досвіду формування демократичного суспільства, вивчення конституційного права США, має слугувати критерієм для формування власних конституційних традицій.

Мета. Метою роботи є визначення основних завдань, шляхів і методів правотворчості судової гілки влади у правотворчості правової держави Республіки Казахстан у порівнянні з США.

Методологія. За допомогою методів аналізу та синтезу визначено основні функції судової влади країни в рамках конституційного права, які визначають вектор розвитку правової держави. За допомогою порівняльного аналізу розглянуто відповідні аспекти становлення демократичної держави.

Результати. У ході дослідження розглянуто приклади судових рішень, які створили судову практику та поглибили досвід у сфері судового контролю за конституційністю законів загалом та судового контролю за внесенням змін до Конституції. На основі спільних рис визначено основні закономірності еволюції правотворчості за участю судової влади. порушено питання про необхідність удосконалення механізмів участі судів у процесах розвитку інституту конституціоналізму.

Висновки. Практичне значення дослідження полягає у виявленні нових форм державного регулювання в системі правотворчості за безпосередньої участі судів різних гілок Республіки Казахстан, а також у виявленні недоліків Конституції в частині регулювання діяльності судів та їх впливу на формування законодавчих документів.

Ключові слова: верховенство права; судова влада; конституційна система; юридична практика; інститут конституціоналізму.