

FUNCTIONAL COMPARISON BETWEEN THE CONSTITUTIONAL CHAMBER OF THE UNION SUPREME COURT OF THE UNITED ARAB EMIRATES AND THE CONSTITUTIONAL COUNCIL OF THE REPUBLIC OF KAZAKHSTAN IN THE CONSTITUTIONS OF THE TWO STATES¹

In article is carried out comparative analysis of constitutional and legal status between The Constitutional Chamber of the Union Supreme Court of the United Arab Emirates and The Constitutional Council of the Republic of Kazakhstan. Author compares two mentioned bodies of constitutional review in the scope of their functional role through the following aspects: appointment of the members, the competence, immunities of the members, the power and effectiveness of decisions and provisions.

Keywords: the Union Supreme Court of the United Arab Emirates, The Constitutional Council of the Republic of Kazakhstan, Constitution, constitutional review, body of constitutional review, court, law, legislation, constitutional guarantees, judicial chamber.

There are many legal and judicial systems in the world, countries are different in taking of one of these systems as the basis of its system. But there is an agreed amount of judicial joint that without them, the judicial system is incomplete and unfair.

Among these joints, to establish an authority or a body caring of the control on the commitment of the State and it's body of the constitution and its provisions, regarding that the constitution is the supreme law or it's the main law, the law of the laws which all the legislations and laws of the State should subject to its provisions.

The States are different to call this authority or body and its scope of Jurisdiction, composition and dependency and the nature of its decisions and sentences. The Republic of Kazakhstan prefers to call it «The Constitutional Council», whether the UAE prefers this body to be a pure Judicial Chamber within the Chambers of the Federal Supreme Court.

This paper compares between the UAE and Kazakh body in the scope of their functional role through the following aspects:

- First: Appointment of the members of the two bodies.
- Second: The competence of the two bodies.
- Third: Immunities of the members of the bodies.
- Fourth: The power and effectiveness of decisions and provisions of the two bodies.

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FIRST: THE APPOINTMENT OF THE HEAD AND MEMBERS OF THE TWO BODIES

The constitutional council in the Republic of Kazakhstan consists of appointed members. The permanent members are the former presidents of the Republic while the appointed members are seven members including the head of the council, they are appointed as the following: two of them are appointed by the president and another two appointed by the senate, two appointed by the house of the representatives (Majilis) with a notice that the Kazakhstani parliament is consisting of the two chambers. However, the head of constitutional council is appointed by the President of the Republic of Kazakhstan.

The membership period for the appointed council members is six years, renewal for half of them every three years except the head of the constitutional council whose is extended for a full six years.

- For the constitutional Chamber in the federal court, which is adopted as a constitution court, it is mentioned clearly in the law of the establishment of the Court. The Constitutional Chamber is consists of the main judges of the court and it may not more than one judge for the alternative judges.

The appointment of judges of the Federal Supreme Court, including the judges of the constitutional Chamber is in nomination of the Supreme Council of the Federal jurisdiction after the ratification of the Federal Supreme Council which is adopted as the highest political body in the State as it is consists of the seven rulers of the Emirates. After the ratification of the Supreme Council for the nomination, a Federal Decree should be issued from the President of the Union. The mandate of the judges including the judges of the constitution Chamber except for any mentioned reason exclusively in the Constitution. The formation of the Constitutional Chamber is a pure judicial formation. The President of the Chamber is the President of the Court and may be replaced by the oldest judge, if the President of the Court has a physical or legal objection.

SECOND: THE COMPETENCE OF THE TWO BODIES

The competence of the Courts and the Constitutional Council is identified in the Constitution or issued by a Constitutional or general law. To the contained extend, in the Constitution of the Republic of Kazakhstan, the competence of the Constitutional Council of the Republic is as follows:

1. To hear and determine the appeals against the presidential election,

the Parliaments election and to run the referendum.

2. The previous Constitutional control on the laws approved by the Parliament before the signing by the President of the Republic.
3. Consideration of the consistence with Constitution of the International treaties and agreement before the adoption.
4. A request to interpretation of the Constitution.
5. Consideration the Constitutionality of laws if this question was raised by the courts of the State during the hearing of a case before it.
6. To issue reports in cases of relief of the President from his position for his illness or when he is accused of a treason felony.
7. To inform the Parliament annually about the situation of constitutional legality in the Republic.

** Regarding to the competence of the Constitutional Chamber at the Union Supreme Court according to the Constitution of the Federal State, as follows:

1. Study the Constitutionality of the Federal laws.
2. Study the Constitutionality of the litigations issued by one of the Emirates for violating the constitution of the union or the federal laws.
3. Study the Constitutionality of the laws, legislation and regulation in general and if the request referred from any court in the country during the hearing of a case before it.
4. Explain the provisions of the Constitution.
5. Determine in the submitted objection of the Union Supreme Council on the administrative agreements which is conducted by the Emirates of the Union with the countries nearby.
6. Determine in the submitted objection of the Emirates of the Union on any agreement or treaty conducted by the federal authority and the Emirate considers it touches its own status.
7. Determine in the objection issues between the federal laws with the local laws and constitution.

THIRD: THE IMMUNITIES OF THE MEMBERS OF THE BODIES

The Kazakhstani constitution mentions the basic immunity for the President and members of the Constitutional Council in the Constitution.

The Constitutional guarantees of the members of the Constitutional Council provided in the Constitution:

1. Ban the combination between the position of the President or member of the Constitutional Council and the position of the Attorney General of the Republic.
2. Ban having any position for a financial income except for working in teaching in the university, scientific and another research.
3. Ban the practice of any commercial activity or membership of Board of Directors or control on a commercial institution.
4. The inadmissibility of arresting the President of the Constitutional Council or any of its members, detain, keep in custody, execute administrative detention procedures, involve them in a judicial dispute or criminal liability without the consent of the Parliament. Except in the cases of flagrante delicto or committing a serious crime.

** The Constitution of the UAE has included three main guarantees, letting the Federal law to explain the other guarantees, the procedures of practice and execution.

The mentioned guarantees exclusively in the Federal Constitution:



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1. A clear mention that the judges are independent and they are not subject to any authority in the line of performing their duty except for the law and their conscience.
2. Ban the removal the President and judges of the Union Supreme Court from office including the judges of the Constitutional Chamber during their term of judiciary.
3. Restrain the cases of ending the competence of the President and judges of the Union Supreme Court.

In 1973, the law on establishment of the court, it has mentioned that some legal guarantees in relation to the rights and obligations of the President and judges of the Union Supreme Court and procedures of accountability and prosecute them criminally and disciplinary in a wide range that can't be explained in details right now, including the inadmissibility of arrest them or keep in custody only after the permission of the disciplining judges Council of the judges except for the cases of flagrante delicto.

FOURTH: THE POWER AND EFFECTIVENESS OF DECISIONS AND PROVISIONS OF THE TWO BODIES

The Constitution of the two countries usually contains texts to decide the finalized and mandatory of the decisions and sentences of its Supreme Courts and Constitutional Chamber. The Federal Constitution of the United Arab Emirates as well as the Constitution of the Republic of Kazakhstan follows the same rule.

Article 101/1 of the Constitution of the Federal country States: «the sentences of the Union Supreme Court settled in the diligence of its multi- departments, it means by «final» the inability of its sentences to be appealed or review it in appeal.

As they are «mandatory for all» it means that the State and all its powers, agencies, nationals and all on its air, sea and land territory have to be subject to the provisions of the Union Supreme Court without literally limitation of the principle of «comparative judicial ruling and its implications». That principle which shortens the effect

of the judicial sentence and its impact – as a general basis – on the dispute parties which the sentence was issued for them only and their successors without the others, except in special and exceptional cases.

The Constitution was assured that comprehensive mandatory for all, for the determinates of the Constitutional Chamber in the second paragraph of article 101/2 above. It states that: «if the court decided while determining of the Constitutionality of laws, legislation and regulations that a federal legislation was contrary to the Constitution or the legislation or the local regulation of the hearing contain a contrary of the constitution or a federal law, the authority has to take the required measures to remove the constitutional contrary or correct it».

The Constitution of the Republic of Kazakhstan, has pointed to the strength mandatory and finalized of the decisions of the Constitutional Council of the Republic, as is clear from the analysis of article (74/3) of the Constitution.

The decisions of the Council with effect from the date of approval, and these decisions have strength on the territory of the Republic; they are final and cannot be appealed. Contrary to the Constitution of the State of the Union, which did not give the Supreme Council of the Federation or the President of the Union the power to object on the decisions and the provisions of the Constitutional Chamber. The Constitution of the Republic of Kazakhstan gives the President the power to object to the decisions of the Constitutional Chamber in whole or in part.

But this objection can be rejected by a vote of two thirds of the total number of deputies of the Constitutional Chamber. As if the objection did not rejected by the Chamber, it shall be regard that the Constitutional Council's decision rejected.

At the conclusion of this paper, it should be noted that the comparison relied on the provisions contained in the Constitution of the two States, without the details contained in the laws. And the preparing of this paper was based on the Arabic translation of the Constitution of the Republic which is referendum in 30.8.1995.

Абдул Уаһаб Абдул: Біріккен Араб Әмірліктерінің Жоғарғы Сотының Конституциялық Палатасы мен Қазақстан Республикасының Конституциялық Кеңесін екі елдің Конституциялары арқылы функционалды салыстыру.

Мақалада Біріккен Араб Әмірліктерінің Жоғарғы Сотының Конституциялық Палатасының және Қазақстан Республикасының Конституциялық Кеңесінің конституциялық және құқықтық мәртебелеріне салыстырмалы талдау жасалған. Автор аталған конституциялық бақылау органдарын олардың функционалдық рөлдері шегінде келесі аспектілер арқылы салыстырады: мүшелердің тағайындалу тәртібі және олардың иммунитеті, құзыреттілігі, шешімдер және қаулылардың заңдық күші мен тиімділігі.

Түйінді сөздер: Біріккен Араб Әмірліктерінің Жоғарғы Соты, Қазақстан Республикасының Конституциялық Кеңесі, Конституция, конституциялық бақылау, конституциялық бақылау органы, сот, құқық, заңнама, конституциялық кепілдер, сот палатасы.

Абдул Уаһаб Абдул: Функциональное сравнение между Конституционной Палатой Верховного Суда Объединенных Арабских Эмиратов и Конституционным Советом Республики Казахстан посредством Конституций двух стран.

В статье дан сравнительный анализ конституционного и правового статуса Конституционной Палаты Верховного Суда Объединенных Арабских Эмиратов и Конституционного Совета Республики Казахстан. Автор сравнивает два упомянутых органа конституционного контроля в пределах их функциональных ролей посредством следующих аспектов: порядок назначения членов и их иммунитет, компетентность, юридическая сила и эффективность решений и постановлений.

Ключевые слова: Верховный суд Объединенных Арабских Эмиратов, Конституционный Совет Республики Казахстан, Конституция, конституционный надзор, орган конституционного контроля, суд, право, законодательство, конституционные гарантии, судебная палата.

NEW BOOKS

Kazakhstan trend: from Totalitarianism to Democratic and Legal State (View from the Outside)/ Collection of articles. Executive editor and author of the introduction Doctor of Law, professor, Honored worker of the Republic of Kazakhstan I.I. Rogov, Astana, 2015. – 234 p.

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Constitution of the Republic of Kazakhstan, drafted on the initiative and under the direct supervision of the President of the Republic of Kazakhstan – Leader of the Nation N.A. Nazarbayev, adopted on the nationwide referendum on 30 August 1995, has become a stable political and legal foundation of the state and society, dialectical combination of the best achievements of the world constitutional idea with Kazakhstan values, of the formation of unified constitutional and legal policy and practice, of gradual assertion of real constitutionalism.

This publication includes articles, reflecting the opinions of foreign experts on the significance of the Constitution of the Republic of Kazakhstan in the deep and comprehensive reformation of Kazakhstan, its transformation into a modern, strong, successful and prosperous state. The collection also includes analytical comparative materials on the experience of Kazakhstani law and state institutions in comparison with similar branches and institutions of other countries.

Among the authors are the representatives of authoritative international organizations, famous politicians, heads of state agencies, world-known scientists from various fields of human knowledge.

Publication is interesting and useful for politicians, legislators and law enforcers, academics and wide audience.

