
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, Constitutional review, body of constitutional review, court, law, legislation, constitutional guarantees, judicial chamber.

H. E. Abdul Wahab Abdul
The President of the Union Supreme Court of the United Arab Emirates, Doctor Ph.D

First: The Appointment of the Head and Members of the Two Bodies

The Constitutional Chamber 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 Kazakhstan constitution 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 Federal 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 constitutional 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 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 consistency 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 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 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 Emirati Constitution provides 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 a 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 us to understand the other guarantees, the procedures of practice and execution.
The mentioned guarantees exclusively in the Federal Constitution.

First: The Immunities of the Federal Laws

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. Restrained 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 discriminating 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.

At the conclusion of this paper, it should be noted that the comparison with similar branches and institutions of other countries.

New Books


Dubai International Financial Centre Courts as an Example of Efficiency and International Acceptance

In article is carried out the short review of the Dubai international financial center. In particular, some factors of successful activity of the Court have been considered. In particular, there are mentioned such moments as doing legal case exclusively in English, choosing of Anglo-Saxon model of legal proceedings, recruiting experienced judges, creating comfortable conditions for foreign business.

Our success is based on some factors which may also be relevant for the success of the Astana International Financial Centre:

(a) We are attractive because we offer the choice for foreign business persons to do business in Dubai in an environment with which they are familiar, but, if they want to choose the local civil law Arabic-speaking environment, they can do so.

(b) Our laws are familiar to most international business persons because common law countries are where the strongest financial and commercial markets are located.

(c) We have a strong group of senior retired judges with significant experience in commercial law from a mixture of common law countries. In particular our judges come from centres which are acknowledged hubs for international business so these judges are familiar with problems arising from cross border transactions. We also have a few judges who are native, civil law trained former judges who have received training in common law and provide a valuable link to Dubai law as well as international law.

(d) Our priorities are efficiency and concern for users modelled on the English Commercial Court, the most famous commercial court.

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