

TENDENCIES AND PROSPECTS OF DEVELOPMENT OF NATIONAL LAW OF THE REPUBLIC OF KAZAKHSTAN IN THE FIELD OF JUDICIAL CONTROL

Toleubekova Bakhydzhan Kh ¹, Kalkayeva Nessibeli B²

¹Criminal and Legal Disciplines Chair of the Institute of the Law and Economics,

²Chair of Jurisprudence and Economics of the Institute of Magistracy,
Kazakh National Pedagogical University Almaty,
KAZAKHSTAN.

²nesibeli77@mail.ru

ABSTRACT

Since September, 2012 on the basis of the budgetary financing of the Ministry of Education and Science of the Republic of Kazakhstan the scientific project «Constitutional bases of judicial control implementation: concept and legal regulation» is being realized by the Institute of Law and Economics together with the Institute of Magistracy and PhD Doctoral studies of the Kazakh National Pedagogical University named after Abay. Research completion is planned for December, 2014.

The project «Constitutional bases of judicial control implementation: the concept and legal regulation» is focused on realization of a number of provisions of the Concept of Legal Policy of the Republic of Kazakhstan for the period since 2010 till 2020, confirmed by the Decree dated August 24, 2009 №. 858 of the President of the Republic of Kazakhstan related to new visions of national model of judicial control, its main concept, system, structure and legal mechanisms of its implementation.

The topicality is based on priorities of a state policy on radical modernization of administration of justice within the industry procedural legislation by methods and means of judicial control.

The theoretical and methodological basis of research is defined as a combination of the classical and innovative approaches leaning on the most effective research methods tested both in domestic and foreign legal science. The innovative understanding of methodology as a set of the methods selected by principles of their adequacy to solved tasks, scientific character, reliability and sufficiency is applied.

Results of research will be directed on satisfaction of inquiries of jurisprudence within production branch, practice of public administration, for completion of gaps in the general theory of Law and also to specification of official interpretation of provisions of the Art. 75-82 of the Constitution of the Republic of Kazakhstan, on enrichment of base of doctrinal interpretation of the relevant standards of the Constitutional and Judicial law.

Keywords: Judicial control, Constitutional control, Control function

INTRODUCTION

The basic scope of research covers: Constitutional law of the Republic of Kazakhstan; administrative process (hypothetical model); Civil Procedure Law; Criminal procedure Law.

Process of disintegration of the Soviet Union (Soviet Union) came to the end in 1991-1993. As a result independent sovereign states were formed. Among these states the Republic of

Kazakhstan appears. In 1992 the Constitutional Court was founded, and also a number of laws on the Constitutional court were passed. The first Constitution of sovereign Kazakhstan was adopted in 1993. This Constitution kept legal institute new to our state in represented by the Constitutional Court. The Constitutional courts are created and kept in such states of the former Soviet Union, as the Azerbaijan Republic, Republic of Belarus, the Republic of Tajikistan, the Russian Federation, Ukraine, the Republic of Moldova, the Kirghiz Republic, the Republic Georgia, Estonia and Lithuania.

The concept of judicial control is closely connected with concept of the constitutional control. The constitutional control is considered as the main function of constitutional court. Such ratio is approved by world legal practice.

In 1995 the Republic of Kazakhstan adopts the new Constitution where instead of the Constitutional Court the Constitutional Council is established. The settled structure of realization of the constitutional (judicial) control lost the importance and was subjected to a radical reform. The issue of existence forms of the constitutional (judicial) control realization in conditions of existence and activity of Kazakhstan within the Constitution of 1995 gained new value. At the same time, the social request for judicial control of observance of the rights, freedoms and legitimate interests of the person and the citizen in Kazakhstan is high.

The heart of refusal of Kazakhstan of the Constitutional Court forms lies in the idea of political and legal perception of model of the Constitution of France. In compliance with the legislation of France the highest form of the constitutional control in this country is carried out by the Constitutional Council. As specified by Z.M.Chernilovsky, the Constitutional Council was generation of «The fifth republic» of France which had reflected in its Constitution of 1958. The constitutional Council possesses a special role which consists in the solution of issues: a) legality of an election of the president, deputies and senators; b) legality of referenda; c) compliances of the Constitution with regulations adopted by parliament. Social and economic and political and legal preconditions of reaching the fifth republic of France are well-known. It is known by events in Algeria against a colonial policy. (V.M.Chernilovsky, 2001). Similar though some similar preconditions for transition from the Constitutional Court to the Constitutional Council are not seen in Kazakhstan. Moreover, incompleteness of the constitutional construction in Kazakhstan doesn't allow speaking about necessary level of the constitutional control, and also about the level of judicial control in the country within powers and functions of the Constitutional Council.

In the scientific article brought to your attention the attempts of authors to formulate separate provisions on improvement of the legislation of Kazakhstan in the sphere of judicial control are proved.

Topicality and the Importance of Research of Phenomenon of Judicial Control in the Conditions of the Republic of Kazakhstan

Need and the importance of independent special research of a phenomenon of Judicial control for modern conditions of existence and activity of the Republic of Kazakhstan are defined by the nation-wide course focused on radical modernization of judicial control system, mechanisms of its realization. As a whole the institutionalization of judicial control within national system of the law, theoretical and legal justification and regulation of the corresponding relations is in an initial stage of its formation. This circumstance allows for the first time to design hypothetical models of the content of judicial control under new conditions of the legal integration covering virtually all countries and continents.

Nowadays the opinion on essence of judicial control as legal phenomenon taking place only in pre-trial criminal trial is extended. Such idea of judicial control considerably narrows the legal prospects and possibilities not only in the sphere of administration of justice, but also as a whole – in system of unity of the government.

In our opinion, the reasons of the formed unilateral approach to the theory and practice of Judicial control are first, backwardness of the institute of judicial control in the conditions of Kazakhstan (process of an institutionalization is still far from being completed, not to mention its improvement); secondly, the crucial role was played by the provision of the Concept of Legal policy of the Republic of Kazakhstan for the period since 2010 till 2020 (hereinafter - the Concept) that the prospects of «developments of judicial system ... are connected with possibility of stage-by-stage expansion of limits of judicial control in pre-trial procedure»; thirdly, the actual introduction of procedure of judicial authorization of arrest at a stage of preliminary investigation began to be regarded as a solution of the problem of judicial control, thus out of a field of the legal analysis and regulation there were questions of revision of traditional idea of system and structure of a Criminal procedural law of the Republic of Kazakhstan while the concept of creation of legal system on the basis of a principle of not crossing of functions hadn't lose its topicality yet. The last legislative innovations in a considered part can be depicted only as a palliative and a tribute to separate provisions of the Concept. However integrated approach of a solved problem wasn't taken in attention which entailed emergence of a number of the contradictions which were even more aggravating difficulties of practical application of existing forms of judicial control.

Outside of legal regulation of judicial control there were such branches, as civil and procedural, administrative law; the regulation of judicial control in criminal trial isn't complete.

Influence of the obtained results on development of a science consists in completion of gaps in the general theory of law in a part concerning forms and mechanisms of judicial control, its interconditionality with a phenomenon of judicial authority, classification, and also modernization of structure and system of again formed institute of judicial control.

Expected social and economic effect is caused by reduction of temporary expenses for administration of justice, restoration of the violated right, reduction of the cost of legal proceedings and pre-trial procedure. Besides, all-legal socially significant effect consists in strengthening of the constitutional guarantees, observance of the rights protected by the law, freedoms and legitimate interests of the citizen and the person. Judicial control – an integral part of civil society, to construction and consolidation of which is aimed Kazakhstan.

Review of the previous scientific researches which have been carried out in the world, relating to a studied subject.

As a whole the institute of judicial control is rather developed in the countries of the classical capital and makes considerable impact on formation and consolidation of sense of justice of the citizens, universal education in people of legislative behavior that is adequately extrapolated in activity of legal entities.

Such scientists, as Baker L., Yang E., William Bernam (USA), Edji J. Viatr (Poland), G. Gabor (Hungary), P. Kirov (Bulgaria), S. Hugard (Norway), T.Sidnya (Great Britain), M.Kayzer, B. Lakebrink, H.Lyubbe, K.Shveytser (Germany) rather deeply and comprehensively investigated phenomena of judicial authority and judicial control.

As to a domestic legal science, it is divided into Soviet period and the present. For the Soviet period of development of law the special importance is represented by works of I.V. Vitruk, V. S. Nersesyants, M. N. Marchenko, L.A.Tikhomirov, G.F.Shershenevich, V.A.Tumanova, Safarov R.A., V.N. Kudryavtsev. Among the Kazakhstan researchers problems of judicial control were fragmentary considered by G. S. Sapargaliyev, S.Z. Zimanov, M.T.Baymakhanov, S. S. Sartayev, S. N. Sabikenov.

At this time in considered aspect the Kazakhstan science is presented by A.A.Matiukhin, L.T.Zhanuzakova, K.Kotova, A.A.Karayev, B.A.Taytorina's works, etc. At the same time, the phenomenon of «judicial control» in one of their works wasn't investigated independently. It was considered as a result or the tool of judicial authority and, as a rule, in a context of the government or the state control.

Questions of judicial authority were specially investigated in Zh.D.Busurmanov's works, T.K. Aytmukhambetova, B.Kh.Toleubekova. However problems of judicial control were mentioned fragmentary and weren't exposed to the deep analysis.

The interrelation with the real research is caused by unity of judicial authority and one of ways of its realization represented by judicial control. Conditionality of judicial authority and judicial control allow developing institute of judicial control on the basis of the settled categorical and conceptual device serving interests of branches of a procedural law, the general theory of law, Constitutional law.

RESEARCH OBJECTIVES

Research has the following purposes:

1. Development of a concept of judicial control institute.
2. Completion of gaps in law and the theory concerning judicial control.
3. Development of models of mechanisms of legal regulation of the relations in the sphere of judicial control.

METHODOLOGY AND RESEARCH METHODS

The choice of methodology and methods of research is an important factor in ensuring reliability of the received results, compliance of final conclusions to all courses of research and to a complex of arguments in favor of concrete conclusion.

The level of development of a legal science of Kazakhstan, and also achievement of a foreign science allow considering that:

1. Problems of the general theory of law, judicial authority, institutional aspects of a legal science, judicial control, their theoretical and legal contents are made by a part of methodology of law, thus methodology of scientific knowledge treats the sphere of fundamental knowledge and researches;
2. Formation of civil society, being a multivector complex task, assumes existence of effective judicial control. Formation and development of this institute, its efficiency directly mentions sense of justice of the person and the citizen which level is caused by intellectual potential of subjects of the corresponding legal relationship. From here, conditionality of expected results of research with positive impact on level of intellectual indicators of modern Kazakhstan society doesn't cause doubts.

Methods of research: logic, comparative, dialectic, historical, analytical and sociological. At application of these methods the following is supposed:

1. Establishment of interrelations and interdependence of phenomena of judicial authority, judicial control, justice, constitutional control; creation of their logic hierarchy; a formulation of the conclusive provisions following from logic of hypothetical model of a legal mechanism of judicial control realization;
2. Studying of legal experience of the countries of the foreign and neighboring countries on the basis of a comparative and legal method (comparative) with the subsequent identification of the most acceptable models offered for extrapolation in system of the national law;
3. Consideration of the legal phenomena in their dynamics, dialectic change from simple to difficult, from individual to the general with establishment of scientifically reasonable regularities influencing nature of development of legal relationship considered in research;
4. Research and forming in chronological sequence of processes of formation and establishment of institutes adjacent to judicial control with the subsequent formulation of the prognostic recommendations focused on leveling of possible negative consequences in law at introduction of developed model of judicial control realization in the Republic of Kazakhstan.

Interpretation of the Concepts "Control", «Constitutional Control», «Judicial Control»

Lexically the term "control" occurred from the German word "Kontrolle" and French «contrôle» (contre-rolé) and means: 1) check, supervision for the purpose of check; 2) a group of persons, service or the establishments authorized on carrying out inspections. (Big dictionary of foreign words, 2007)

From S.I.Ojegov's point of view the word "control" is interpreted as: 1) check, and also supervision for the purpose of check; 2) the establishment knowing such check; 3) persons, engaged in this business, controllers. (S.I.Ojegov 1968)

Encyclopedically constitutional control is understood as a special type of law-enforcement activity in the state, consisting in check of compliance of laws and other regulations of the constitution of this country. Control can be carried out by: a) all courts of law (for example: USA, Argentina, Denmark, Japan); b) The Supreme court being the highest judicial authority (for example: Australia, India / Canada, Switzerland); c) special constitutional courts for which the constitutional control is main functions (for example: Russian Federation, Austria, Federal Republic Germany, Italy); d) special body of not judicial character (for example: The constitutional Council in France) (A.M.Sukharev, V.E.Krutsikh, 2002).

As objects of the constitutional control Encyclopaedists name: usual laws, amendments to the constitution, the international contracts, regulations of chambers, regulations of executive bodies of the power (in those countries where there is no administrative justice). According to the contents the constitutional control can be: a) formal; b) material; c) abstract; d) concrete; e) preliminary; f) subsequent. Formal control assumes inspection of observance of the procedural rules established for adoption of laws and other regulations. Material control means verification of the contents of laws and other regulations from the point of view of compliance to their sense of the constitution. Abstract control consists in realization of an initiative any of authorized subjects without a concrete occasion. Concrete control of communication with any lawsuit. Preliminary control is carried out to the introduction of the checked act in validity. The subsequent control consists in check of observance of instructions of the law or other statutory act after their introduction in validity (A.M.Sukharev, V.E.Krutsikh, 2002).

The constitutional council by definition is special, "quasi-judicial authority" of the constitutional control. For example, it exists in France and a number of its former colonies and in the Republic of Kazakhstan. This body considers a question of constitutionality of this or that action by means of discussion of the report presented by one of members of council on the matter (procedure in a framework «file systems») (A.M.Sukharev, V.E.Krutsikh, 2002).

Reference of the constitutional council to "quasi-judicial authorities" demands more detailed consideration. The first part of a word "quasi" means: imaginary, artificial. This circumstance is necessary for considering at interrelation establishment between the constitutional control and judicial control in the Republic of Kazakhstan where there is no constitutional court.

Among researchers there is an opinion that the constitutional courts also treat category of quasi-judicial authorities. So, for example, P. Kirov specifies that in the Republic of Hungary, along with institutes of the public power the constitutional scheme contains quasi-judicial authority – the Constitutional court which is assigned the important functions connected with ensuring domination of the Constitution and the constitutional conformity to acts and actions of the constituent power. Judicial authority is carried out directly by courts of law. (P. Kirov, 2003)

Rather sharply there is a question of judicial control in the USA where each claimant has own legislation, own judicial authority. As specify L.Baker and E.Yang, existence of federal judicial authority and judicial authority within separately taken states generates so-called «double standard» in administration of justice and implementation of judicial control. The named researchers give reason for the thesis that the federalism is in a difficult situation because of a double standard, and supporters of judicial control in the sphere of federalism are perceived nominally.

As a conclusion L.Baker and E.Yang put forward the thesis that security in judicial competence, need for standard value of federalism – all this isn't enough for a justification of a double standard of judicial control over observance of a principle of federalism and other constitutional signs (Baker L., Yang E., 2001).

Generalizing the stated above, it is necessary to note that in a number of countries the structure of state bodies the constitutional courts function, being virtually quasi-judicial authority's function, show known features in system of their ratio with bodies of actually judicial authority. It is necessary in this regard to speak about function of judicial control within activity of the constitutional courts in those countries where such body exists, in our opinion, avoiding any extrapolations, - exclusively within the framework of features of the system of the national law of these countries.

Relying on William Bernam's (USA) researches, we will make an attempt of constitutional interpretation of concepts «constitutional control», «judicial control». William Bernam specifies that the constitutional interpretation is carried out in various forms. The following can be referred to these forms: a) textual; b) functional; c) structural (Baker L., Yang E., 2001). Textual interpretation is probable, similar to lexical interpretation which is widely applied in the theory of a Constitutional law in Kazakhstan. Functional and structural interpretation, from our point of view, have no independent character as structural is a reflection of external characteristics of instructions of the law; functional is higher level of generalization by that is textual interpretation. William Bernam is right confirming that «application of a concrete way of interpretation depends on clarity of the text of the Constitution: the text is clearer, the it is more than attention to its contents» (Baker L., Yang E., 2001).

The constitutional interpretation of concepts is expedient for preceding «the constitutional control» and «judicial control» the comparative table is presented below:

Provisions of the Constitution of the Republic of Kazakhstan			
		Section VI The Constitutional Council	Section VII Court and Justice
1	2	3	4
1.	Legal basis of regulation of organization and activity	Art.71, i. 6: - Constitutional Law	Art. 75, i.4: - Constitution of the Republic of Kazakhstan; Constitutional Law
2.	Legal power of acts	Art.74, i.3: - decisions of the Constitutional Council are of general effect on the whole territory of the Republic	Art. 76, i.3: - decisions, verdicts and other decrees of the courts have mandatory power on the whole territory of the Republic
3.	Categorical belonging of normative decrees	Art.4, i.1: - standards of decrees of the Constitutional Council belong to sources of effective law in the Republic of Kazakhstan	Art.4, i.1: - standards of decrees of the Supreme Court belong to sources of effective law in the Republic of Kazakhstan
4.	Limitations in holding an appointment	Art.71, i.4: - the position of the Chairman and the member of the Constitutional Council is incompatible with the deputy mandate, occupation of other paid positions, except teaching, scientific or other creative activity, implementation of business activity, entry into structure of governing body or the supervisory board of the commercial organization.	Art.79, i.4: - the position of the judge is incompatible with the deputy mandate, with occupation of other paid position, except teaching or other creative activity, implementation of business activity, entry into structure of governing body or the supervisory board of the commercial organization.
5.	Powers of bodies	Art.74, i.2: - laws and other regulatory legal acts recognized as unconstitutional, including impinging of the right and freedom of the person and the citizen fixed by the Constitution, are cancelled and aren't subject to application.	Art.78: - courts haven't the right to apply laws and other regulatory legal acts impinging the rights and freedoms of the person and the citizen fixed by the Constitution. If the court sees that the law or other regulatory legal act which is subject to application, impinges the rights and freedoms of the person and the citizen fixed by the Constitution, it is obliged to

6. Habeas corpus of authorized persons	Art.71, i.5: - The chairman and members of the Constitutional Council during term of the powers can't be arrested, subjected to detention, the measures of an official penalty imposed in a judicial order, are instituted criminal proceedings without the Parliament consent, except detention cases on a crime scene or commission of serious crimes.	suspend proceeding and to address in the Constitutional Council with idea of recognition of this act by the unconstitutional. Art.79, i.2: - The judge can't be arrested, be subjected to detention, the measures of an official penalty imposed in a judicial order, is instituted criminal proceedings without the consent of the President of the Republic of Kazakhstan based on the conclusion of the Supreme Judicial Council of the Republic, or in case of deprivation of habeas corpus of the Chairman and judges of the Supreme court of the Republic, - without the Senate consent, except detention cases on a crime scene or commission of serious crimes.
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Provisions of the Constitution of the Republic of Kazakhstan about the Constitutional Council, about courts and justice contain many similar instructions. However this community isn't limited to standards of the Constitution.

In the Constitutional law «About the Constitutional Council of the Republic of Kazakhstan» (The law is adopted by the Decree of the President of the Republic of Kazakhstan dated December 29, 1995 of №. 2737//Sheets of the Supreme Council of the Republic of Kazakhstan, 1995, №. 24, Art. 173), the Constitutional law «About judicial system and the status of judges of the Republic of Kazakhstan» (The law is adopted on December 25, 2000//Sheets of Parliament of the Republic of Kazakhstan, 2000, №. 23, Art. 410) a number of the constitutional provisions of the general character is in detail regulated with the account more valuably and the tasks reached and solved by called bodies. Among the instructions important for the present section, we see the following:

1. Guarantees of independence of the Chairman and members of the Constitutional Council, and also judge;
2. principle of habeas corpus and guarantee of its observance;
3. principle of independence and guarantee of its observance;
4. Submission of authorized persons of the Constitutional Council and judges only Constitutions, and judges – also to the law;
5. Execution of the functions established by the law, on behalf of the Republic of Kazakhstan.

Thus, quasi-judicial character of the Constitutional Council of the Republic of Kazakhstan doesn't contradict concept of the constitutional control in the conditions of absence of the Constitutional Court.

As specifies I.V.Vitruk, specific institute of providing and protection of action of the constitutional legality, the principle of supremacy serves the constitutional control (I.V.Vitruk, 2001).

Along with it, it is impossible to deem that in those countries where the constitutional court functions, other court hasn't the right to carry out the constitutional control. The constitutional court is included into judicial system of the state. Thus it isn't engaged in consideration of concrete civil, administrative, criminal and other cases. This activity is included into powers of courts of law. These courts at the level carry out the constitutional control within judicial control.

Interrelation of Institute of Judicial Authority and Judicial Control

Explanation of essence of judicial control institute out of institute of judicial authority has no prospects.

The analysis and identification of the main world tendencies in understanding of essence of judicial authority, its interpretation in modern conditions is represented as the major methodological basis as a whole in research of a phenomenon of judicial control within national system of the law. It is obvious that globalization processes objectively influence prospects of development of judicial authority in Kazakhstan. This circumstance is necessary for considering at research of tendencies and prospects of development of judicial control. With a view of an exception of irrational (mechanical) eclecticism, mass application of a method of an implementation the accounting of world tendencies should assume a corresponding levels of development of the public relations and an economic basis of Kazakhstan, and also other countries, being characterized by high degree of sense of justice of the people, true democratic character of political and social spheres and other estimated criteria underlying a paradigm of legal phenomena interesting us.

If judicial control within administrative, civil, criminal legal relationship is rather effectively carried out on the basis of the industry legislation, the special importance is gained by problems of realization of function of judicial control of executive power activity. Problems are indirectly connected with that all authorities (legislative, executive and judicial) function independently, a relationship system on the basis of a combination of methods of controls and counterbalances.

Investigating questions of judicial control of activity of executive power, A.T.Zelentsov within uniform jurisdiction allocates the following main models of judicial control:

- a) Exclusive jurisdiction of the general courts - actually (purely) judicial type of the control which is carried out only by the general courts without participation of any quasi-judicial authorities of an administrative jurisdiction;
- б) Anglo-Saxon model where along with the general court bodies of an administrative jurisdiction are created;
- в) Model which in the general courts so-called administrative presence are allocated (Spain, Madagascar, Mexico) (A.B.Zelentsov, 2002)

As a whole judicial control can be presented as a complex of the special procedures applied by court to inspect legitimacy of actions and decisions of subjects of the corresponding legal relationship in the course of judicial proceedings of disputes or offenses. Such idea of judicial control doesn't contradict opinion of the majority of researchers. In particular,

S.L.Degtyaryov writes that in a broad sense judicial control is inspection by judicial authority of observance of requirements of law rules by all law enforcement bodies owing to the absolute right to judicial protection. As inspection is possible only at commission of certain actions, with reference to judicial authority check can be carried out only within justice – exclusive activity of bodies of judicial authority. Thus, being a category "judicial authority" component, proceeding from a target orientation in activity, it is possible to define judicial control as one or several functions of judicial authority. As well as any classification, classification of types of judicial control is not absolute, but conditional that allows understanding essence of all classified legal category (S.L.Degtyaryov, 2007).

Classification of types of judicial control depends on methodological approaches and the specific objectives solved in research. According to Art. 75 (item 2) of the Constitution of the Republic of Kazakhstan judicial authority is carried out in civil and procedural, criminal and procedural and other forms provided by the law. From here, classification by a branch sign, with reference to the legislation of Kazakhstan, represents the following: a) judicial control of observance of norms of the civil law, carried out in a civil and procedural form; b) judicial control of observance of norms of the administrative law, carried out in an administrative and procedural form; c) in judicial control of observance of norms of the criminal law, carried out in a criminal and procedural form. The highest level of generalization is presented by the constitutional control which realization is based on procedures of the Constitutional Council. However, on sense of the Constitution, the Constitutional Council doesn't join in the list of subjects implementers of judicial authority in the Republic of Kazakhstan. Classification by a structurally functional sign is possible. Application of this sign is based on the auditing beginnings of revision of judgments of inferior courts by superior courts or instances (the appeal, the cassation, judicial supervision).

The duality of understanding of essence of judicial control in the conditions of modern Kazakhstan consists in the following:

- a. implementers of judicial authority are judges and jurors;
- b. Judicial control is function of judicial authority;
- c. Constitutional control and judicial control is two hierarchical steps as a whole in system of legal control;
- d. The constitutional Council - the independent body which is not relating to judicial authority, but solving constitutionality questions according to appeals of courts.

The developed ratio between the constitutional and judicial control once again testifies the need of further development of the institutes with the same name. The tendency to Europeanization of the national law, reflecting nation-wide legal policy of Kazakhstan, defines the main reference points of such development.

Judicial Control as Function of Judicial Authority

Public and legal character of judicial authority is shown in system of signs which underlie its delimitation from other branches of the power. These signs are: openness, publicity and wide availability of judicial authority, its legislatively established belonging to state, that is to public institutes, imperative nature of impact on subjects of the relations, acceptance by the Supreme Court of the standard resolutions being a component of the law effective in Kazakhstan.

Administration of justice is based on application of rules of law for the purpose of fair settlement of dispute or an offense. Thus choosing of the norms by the court which are subject to application, can occur at the various situations, typical circumstances when:

- a. The heart of legal (civil) dispute is initially incorrect (erroneous) understanding, interpretation and application of norms;
- b. The heart of legal dispute or an offense initially incorrect (erroneous) understanding, interpretation and application of rules of law of one of the process parties;
- c. The offense, including criminal, grows out of intended target impact on object of one of the parties;
- d. The offense grows out of diligent error of the parties or one of the parties.

Selecting of the norm by the court is subject to application, is a result of certain consecutive cogitative and analytical operations. At first it is necessary to familiarize with a resolved situation that is to receive about it the maximum information; it is necessary to analyze and state an objective assessment, to establish the reasons of the arisen conflict, a contradiction. And only after that the standard of the law which will lay down in a basis of disposition of case is selected.

In the generalized look law-enforcement activity, passing through legislatively established procedures and also being exposed at separate stages of cogitative analytical process, becomes control activity in a broad sense.

Thus, disposition of case by the court in essence is specific reflection of control function. However this statement isn't the basis for equal-sign statement between the concepts "administration of justice" and «judicial control». These are different functions of judicial authority, though interconnected. Thus judicial control can take place both in the course of administration of justice, and out of this process. Outside of process of administration of justice decisions and actions of court of control can take place: making sanctions on arrest of the person, suspected penal act (accused) of commission, at judicial stages of administration; on consideration and permission of complaints of participants of process to wrongful actions of bodies of criminal prosecution; by consideration of criminal, civil cases in a supervising order; at carrying out direct control actions at stages of the appeal to execution and actually executions of a sentence.

MAIN CONCLUSIONS

1. The national system of law of the Republic of Kazakhstan is at the initial stage of its formation. The experience of the judicial control gained during the Soviet period of development of law, a form of its legal regulation in modern conditions are valuable to Kazakhstan only as the historical and legal fact which does not have prospects for further application and development owing to a different state system.
2. Studying the experience of the classical capital countries concerning judicial control is obviously important also valuable to the solution of a question on a choice of model of such control with the subsequent implementation of the relevant standards in system of the national law of the Republic of Kazakhstan. However these processes demand the deep analysis of circumstances and features of national character with a view of prevention of rejection by national system of this or that model as unclaimed in social and legal sense in the conditions of Kazakhstan. Differently, leveling, polishing of elements of legal institute demands many years of searches of a theoretical concept and practical experience in legal space of the country. Applying of another's experience without features of Kazakhstan is capable to lead to negative result.
3. The phenomenon of the Constitutional Council is studied more not enough owing to insignificance of experience of its functioning in Kazakhstan. This circumstance is one

of the reasons of a poor development of forms of the judicial control being a specific component of the constitutional control.

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