

SECTION 2. CONSTITUTIONAL AND MUNICIPAL LAW

DOI <https://doi.org/10.30525/978-9934-26-636-2-4>

THE PRINCIPLE OF THE RULE OF LAW IN THE CONSTITUTIONAL AND LEGAL DOCTRINE AND PRACTICE OF CONSTITUTIONAL PROCEEDINGS IN THE REPUBLIC OF KAZAKHSTAN

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In recent years, the Republic of Kazakhstan has demonstrated an increasing commitment to modern democratic and legal standards. This, in particular, was reflected in the successful functioning of the administrative courts, which began their activities in 2021. It should be noted that the Institute of administrative Justice has gained a high level of trust among the population and the legal community. Thus, according to the chairman of the Judicial Board for Administrative Courts of the Supreme Court of the Republic of Kazakhstan, A. Tukiev, in 2023, the courts received more than 30 thousand lawsuits. At the same time, the growth compared to 2022 was almost 8%. 9,5 thousand decisions were made, of which 56% were in favor of the plaintiffs [1].

In addition, the Constitutional Court, which replaced the previously functioning Constitutional Council, has been operating in Kazakhstan for almost three years. Its activities were based on the Constitutional Law "On the Constitutional Court of the Republic of Kazakhstan", which significantly improved the legal framework for constitutional jurisdiction in the Republic. During the period of functioning of the Constitutional Court, it adopted 75 normative resolutions, which assessed the constitutionality of various normative legal acts.

It is impossible not to recall the large-scale constitutional reform that was carried out in Kazakhstan several years ago. Its main task is to clearly balance the powers of the various branches of government, including the powers of the President of the country.

These, as well as other transformations, require improvement of the provisions of the legal doctrine, which should be the basis for all law enforcement processes. In this regard, of course, the most important place is occupied by the principle of the rule of law, which is the basis for all the reforms mentioned above. In this regard, in my opinion, the legal community of Kazakhstan should focus its efforts on disclosing its content and implementing the relevant provisions.

The principle of the rule of law has not yet been legally (officially) enshrined in national legislation. Nothing is said about it either at the level of the Constitution or at the level of individual laws (codes).

However, despite this, the principle of the rule of law is often recalled by both top government officials and the Constitutional Court. For example, the President of the Republic of Kazakhstan, K.J. Tokayev, in his latest address to the people of Kazakhstan, "A just state. One nation. A prosperous society" noted: "It is necessary to ensure the rule of law and the quality of the administration of justice" [2].

As for the Constitutional Court, it states, in particular: "The Republic of Kazakhstan, in accordance with paragraph 1 of Article 1 of the Constitution, proclaims the highest values of the human state, its life, rights and freedoms, and asserts itself as a state governed by the rule of law, which implies strict observance of human and civil rights and freedoms, the rule of law, criteria for clarity, predictability and unambiguity of legal norms" [3].

At the same time, attention should be paid to the fact that in the provisions cited above there is no explanation of the rule of law principle, which, of course, complicates its understanding by an outside observer.

Legal scientists are trying to correct this situation, and they are trying to reveal the content of this principle on the pages of legal publications. So, J.S. Yelyubaev writes: "In theory, there are different approaches to understanding the term "rule of law." Some believe that this is a legal doctrine according to which no one can be above the law, everyone is equal before the law, and no one can be punished except in accordance with the procedure established by law and only for violating it. Others define the "rule of law" as a stable system of legislation, state and public institutions, principles and rules of community, ensuring the implementation of four universal principles: responsibility, fairness of laws, openness of governance, accessibility and impartiality of justice. There are other approaches, but their essence boils down to one thing: there should be "the rule of law" in a country, society, and interstate relations [4]. At the same time, as we can see, J.S. Yelyubaev does not formulate his own, complete definition of this category, nor does he explain what is meant by "the rule of law."

The approach cited above, as well as the positions of other authors that can be found in the literature [5; 6], show that there is still no unity on this issue in Kazakhstan.

In this regard, we would like to formulate some of our own initial positions on this issue, which, hopefully, will help improve the situation on this issue.

First of all, we would like to return to the issue of the normative consolidation of the rule of law principle in the legislation of Kazakhstan. It was noted above that this principle is not mentioned in the texts of normative legal acts. And this is indeed the case – as applied to the term itself. However, if you take a closer look at the text of the Constitution of Kazakhstan, then its (principle) manifestations can be found in its text. To confirm this conclusion, we suggest that we initially refer to the provision of Part 1 of art. 6 of the Code of Administrative Procedure of Ukraine, which defines (discloses the content of) the rule of law principle. Thus, according to the said norm, "When deciding a case, the court is guided by the principle of the rule of law, according to which, in particular, a person, his rights and freedoms are recognized as the highest values and determine the content and direction of the state's activities" [7].

Now let's turn to the Constitution of Kazakhstan and consider the content of two articles:

Paragraph 1 of Article 1: The Republic of Kazakhstan asserts itself as a democratic, secular, legal and social state, **the highest values of which are man, his life, rights and freedoms.**

Paragraph 2 of article 12: **Human rights and freedoms** belong to everyone from birth, are recognized as absolute and inalienable, **determine the content and application of laws and other normative legal acts.**

The highlighted fragments of the two cited norms of the Constitution of Kazakhstan, if put together in one sentence, can form a norm identical to the norm from the Ukrainian Code.

Based on this, we arrive at the position that although the principle of the rule of law has not found its official (legal) consolidation in the Constitution of Kazakhstan, this nevertheless does not prevent us from asserting its actual existence at the level of the Basic Law of the country.

The formulated conclusion, in our opinion, is crucial for the development of this principle, in particular, for its further doctrinal research. In addition, we note that our conclusion also opens up the possibility for a complete transfer to the Kazakh doctrinal and legal ground of those conclusions and recommendations that were made in relation to this principle at the European level. First of all, we are talking about the Venice Commission's report on the rule of law. In this part, unfortunately, we have to state that although this report is well-known in Kazakhstan, it is still treated very superficially,

which can be explained, allegedly, by the absence of the rule of law principle at the "official" level. But this, as noted above, is a misconception. The principle of the rule of law is a legal reality in Kazakhstan and all its further research should be carried out precisely from these positions.

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