

*Opening speech of the  
Chairperson of the Constitutional Court  
of the Republic of Kazakhstan  
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*at the 1st International Forum of Chief Justices,  
"Strengthening Democracy through  
Constitutional Jurisdictions: Past, Present and Future"  
Session 1 "The Evolving Role of Constitutional  
Jurisdictions  
in Upholding Democracy Throughout History"*

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*13.55 Jakarta time*

***Dear participants of the International Forum,  
Dear Mr Chairman, colleagues and guests!***

On behalf of the Constitutional Court of the Republic of Kazakhstan, I extend warm greetings to everyone.

Thank you, **Mr. Anwar Usman**, for inviting me to the conference. Congratulations on the 20th anniversary of the Constitutional Court of the Republic of Indonesia.

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In my speech today, I will emphasize the significance of the rule of law in achieving lasting peace and security, echoing UN Secretary-General António Guterres' wise words. The principle of the rule of law serves as the cornerstone for preventing potential conflicts, preserving peace, upholding fairness and impartiality, and protecting vulnerable civilians during times of crisis and post-conflict scenarios. Guterres strongly advocates for a new vision of the rule of law, whereby the reinforcement of rule of law institutions places people at the forefront of the justice system.

The 75th anniversary of the Universal Declaration of Human Rights is being celebrated this year, with its powerful message of 'Dignity, freedom, and justice for all' serving as the cornerstone principle for constitutional review bodies. It is crucial to keep in mind the important role that constitutional courts play in considering appeals from both citizens and legal entities, always striving to uphold this fundamental motto.

Respect for human rights is a fundamental principle of a fair and democratic society and constitutional review is crucial in ensuring their protection. In this context, a state's constitutional review body can be seen as an integral part of democracy, the promotion of human rights and the rule of law.

The constitutional reforms that Kazakhstan has undergone in 2022 have been vital in establishing the legal framework for the modernization of society and the state. These reforms have also facilitated political

transformation and reinforced the social role of the state, thereby enhancing the capacity of human rights.

It should be noted the historic evaluation of the constitutional control body in the Republic of Kazakhstan. There was already a Constitutional Court in the history of independent Kazakhstan, which operated from 1991 to 1995. Following the implementation of the new Constitution in 1995, a Constitutional Council was established to oversee and regulate constitutional affairs within the country.

Over the years of its activity, the Constitutional Council has adopted many decisions aimed at realising the potential of the Constitution. This is evidenced by the rich practice of official interpretation, which touches upon the most important aspects of the political and socio-economic life of Kazakhstan's society.

At a time when the legal development of the state has accumulated many problems, it is necessary to reflect on and evaluate these challenges scientifically. This is especially true in light of new tasks associated with contemporary challenges, which require the evolution of the role of constitutional jurisdictions.

Unfortunately, the previous model of the constitutional review body was characterised by the lack of direct access of citizens to constitutional justice. Citizens could appeal to the Constitutional Council indirectly and only through the courts. This mechanism demonstrated low efficiency. After all, the effectiveness of constitutional review depends to a certain extent on the activity of the subjects of appeal.

In the pursuit of safeguarding the fundamental rights of citizens, a crucial measure has been taken to enhance the efficacy of the constitutional control body. This includes broadening the scope of appeal subjects and endowing citizens with the privilege of direct appeal to the Constitutional Court. Such a step marks a significant milestone in establishing robust mechanisms for upholding the protection of citizens' fundamental rights.

In this regard, an important step in putting in place effective mechanisms to strengthen the protection of fundamental rights of citizens was the transformation of the body of constitutional control with the expansion of the list of subjects of appeal and granting citizens the right of direct appeal to the Constitutional Court.

The reconstituted Constitutional Court started its work on 1 January 2023. Its main task is to ensure the supremacy of the Constitution throughout the country by verifying the conformity of the law with the norm of the Constitution on the example of a specific life situation. The Ombudsman and the Prosecutor General also have the right of appeal.

The subject of the appeal is an application to check the constitutionality of laws and other normative legal acts. Individuals are entitled to file an appeal in cases where a court has misapplied a legal norm or in situations involving a peremptory norm of law that pertains to human rights. This right ensures the protection of fundamental rights and upholds the principles of fairness and justice within the legal system.

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The beginning of the Constitutional Court's activity coincided with the 75th anniversary of the Universal Declaration of Human Rights, the motto of which reads: "Dignity, freedom and justice for all". Taking into account the tasks of constitutional courts considering appeals of citizens and legal entities, this motto can be confidently called the main principle of the Court's mission.

The Constitutional Court has succeeded in international and regional commitments, including through the World Conference on Constitutional Justice and the Association of Asian Constitutional Courts and Equivalent Institutions.

The Constitutional Court of Kazakhstan operates under a distinct section of the Constitution (VI) and a Constitutional Law that specifically outlines its responsibilities and activities. This governing framework ensures that the Court operates with a clear and defined mandate, allowing it to effectively fulfil its important role in the legal system of the country.

The Constitutional Court examines applications regardless of the nationality of the subject of the application. While retaining the general requirements for the subject of an application, such as legal capacity and majority, we nevertheless follow the principle of access to justice and equality before the law.

In the process of reviewing applications, the Constitutional Court upholds the paramountcy of the Constitution and guarantees the right to freedom of expression by thoroughly and meticulously analyzing pertinent matters. It is important to note that the Constitutional Court's jurisdiction is limited to legal matters and does not extend to assessments of factual situations.

The citizens of Kazakhstan hold a significant level of expectation for the Constitutional Court. **Only seven months of work since the beginning of its activity, the Constitutional Court has received about 4,000 appeals from citizens. Concerning the consideration of specific appeals, I note for comparison that during the 27 years of the existence of the Constitutional Council, to which only subjects of power could appeal, this body considered 140 cases, that is, on average about 5 cases per year. While the judges of the Constitutional Court have heard 23 cases in only 7 months of their work and about 20 cases are under study by the judges. This not only demonstrates the access of a particular citizen to the rule of law process through the example of his or her specific situation when faced with a violation of his or her rights. In other words, when a citizen appeals to the Constitutional Court to protect their rights, they are also contributing to the protection of their fellow citizens' rights and the strengthening of the rule of law.**

This particular undertaking clearly demonstrates the steadfast determination of individuals to uphold and safeguard constitutional rights, as well as the protection of fundamental human rights.

It is within the rights of citizens to voice their concerns regarding the constitutionality of certain provisions within the law. For example, in one of

its decisions, the Constitutional Court ruled that the imperative requirements set out in a Supreme Court ruling that a court should return a citizen's application for the adoption of a child if the results of a molecular genetic examination are not submitted as an annexe to the application to the court restrict access to justice, thereby violating the right of citizens to judicial protection of their rights and freedoms (article 13, paragraph 2, of the Constitution).

In addition, the Court has issued final judgements on access to public service, the protection of children's rights and their adoption, the use of human images in the media, the implementation of criminal justice, and others.

Based on the generalization of the practice of its work, the Constitutional Court is obliged to send an annual message to the Parliament on the state of constitutional legality. This approach allows the legislator and all actors involved in rulemaking to take into account the systemic findings and recommendations of constitutional proceedings.

Aside from its positive aspects, it should be acknowledged that the Court encounters certain challenges that are common among newly established or restructured constitutional control bodies.

This is related to the flexibility and rigidity of constitutional provisions, the inclusiveness of the constitutional process, the participation of citizens in decision-making, the need for a holistic concept of the country's political system, the system of checks and balances between the branches of government and the principle of inter-institutional co-operation.

The question of the consistency of the application of constitutional rights reasoning in different legal systems is one of the most important issues in all constitutional democracies. Judges and legislators are often faced with the problem of conflicting rights, which in some cases present a real constitutional or ethical dilemma.

Therefore, an equally important condition for effective constitutional review is the promotion of constitutionalism in society. This work can be productively carried out in partnership with the professional and academic legal community and young people.

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**In conclusion, I want to note our common task** - to find an optimal balance between the interests of the state, society and the individual. It is important to note that the Constitutional Court in the period of globalisation cannot solely pursue the triumph of justice; rather, it must ensure the establishment of a rule of law that effectively addresses the modern needs of individuals, society, and the state, while remaining grounded in reality.

Ensuring a state structure that prioritizes human interests is paramount for the successful implementation of constitutional oversight. By adhering to well-founded laws, one can avoid any infringement and undesirable outcomes, while fostering an environment of long-term growth and cooperation between citizens, civil society organizations, and government bodies.

I hold a strong belief that the distinguished attendees of this gathering will engage in productive dialogues concerning constitutional justice, and deliberate on strategies to promote the rule of law in the Asian region.

**Thank you for attention!**