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QUESTIONNAIRE

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

According to the Constitution of the Republic of Kazakhstan, adopted at the national referendum on 30 August 1995, the Republic of Kazakhstan proclaims itself a democratic, secular, legal and social state whose highest values are an individual, his life, rights and freedoms (article 1, paragraph 1). Applicable law in the Republic of Kazakhstan are the norms of the Constitution, relevant laws, other regulatory legal acts, international treaties and other obligations of the Republic, as well as regulatory decision of the Constitutional Council and the Supreme Court. The Constitution has the highest legal force and direct effect throughout the Republic. International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law (Article 4). Everyone must observe the Constitution, legislation of the Republic of Kazakhstan and respect the rights, freedoms, honor and dignity of other persons (Article 34).

2. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

Constitutional Council of the Republic of Kazakhstan has adopted a number of decisions on the application of international law in domestic legal system:

- The constitutional provision of Article 8 of the Republic of Kazakhstan shall respect principles and norms of international law, is striving to take into account when creating their domestic law (regulatory decisions of the CC of 23 April 2003 № 4 and May 18, 2006 № 2);

- Paragraph 3 of Article 4 of the Constitution stipulates that "International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law." This means that the Republic of Kazakhstan expresses its consent to override legal effect of those made by it of international

treaties over domestic legislation, which are ratified by the Parliament of the Republic by the adoption of the relevant law. Direct application of international treaties have precedence over domestic law, does not mean the abolition of the norms of existing laws. The priority over the laws and the direct application of international treaties ratified by the Republic suggest situational superiority standards such contracts in the event of conflict with the norms of law. Non-ratified international treaties take precedence over such laws of the Republic does not possess.

In the event that the established procedure of the international treaty of the Republic of Kazakhstan or its separate provisions contradicting the Constitution of the Republic, which has in accordance with paragraph 2 of Article 4 of the Basic Law of the highest legal force in the Republic, such treaty in whole or in part, declare unconstitutional, not enforceable (regulatory decision of the CC on October 11, 2000 № 18/2).

In the regulatory decision of the Constitutional Council of the Republic of Kazakhstan from May 7, 2001 № 6/2 confirmed the principle of supremacy of the Constitution in the Republic, is indicated to be bound by the corresponding international treaties.

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

Constitutional Council's decisions have an impact on the development of almost all branches of law. So, in an asset of the Constitutional Council has the final decision on some of the institutions of both General and Specific parts of the Criminal Code of the Republic of Kazakhstan of July 16, 1997 № 167-I, establishing legitimate approaches to understanding, defining the principles of relations between the state and citizens, the rules of composition design crimes and determination of criminal liability, strengthening mechanisms to ensure the human rights and freedoms. The Criminal Code of the Republic of Kazakhstan from July 3, 2014 for the first time legally defined place of regulatory decisions of the Constitutional Council in the criminal law. According to its Article 1 this Code is based on the Constitution of the Republic of Kazakhstan and the generally recognized principles and norms of international law. The Constitution of the Republic of Kazakhstan has the highest legal force and direct effect throughout the Republic. In case of conflict between the provisions of this Code and the Constitution of the Republic of Kazakhstan there are act the provisions of the Constitution. The provisions of this Code shall be deemed to be unconstitutional, as infringing enshrined in the Constitution of the Republic of Kazakhstan human rights and freedoms, lose their legal force and are not subject to the application. Regulatory decisions of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan are part of the criminal laws of the Republic of Kazakhstan.

In the area of civil law by the Constitutional Council made a number of legal positions, revealing the meaning of the constitutional right of ownership, the limits

there of, permissible limitations and guarantees of the legislative, judicial and other protection:

- The principles and norms of the Constitution proclaim and reinforce the security of property rights at all stages of its emergence, change and termination apply to all appropriate decision procedures of public authorities and officials, providing a stable and progressive development of society and the state, the inviolability of the human rights and freedoms (regulatory decision of the CC of 23 April 2008 № 4 and December 7, 2011 № 5);

- Paragraph 3 of Article 26 of the Constitution should be understood so that the expropriation of property is possible only with the mandatory compliance with the conditions mentioned in this norm: Firstly, for state needs, secondly, in exceptional cases stipulated by law, and thirdly, on condition of its equivalent compensation. These provisions provide guarantees for the protection of property rights, and shall be binding on the legislative and law enforcement officials in the exercise of its powers (decisions of the CC of 20 December 2000, № 21/2 and of July 1, 2005 № 4).

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7. Is there individual access to your Court (direct / indirect) against general acts /individual acts? Please briefly explain the modalities / procedures.

Citizens have no right of direct appeal to the Constitutional Council. This right they realize through the courts, that is, indirectly. In Kazakhstan, any court can appeal to the Constitutional Council in accordance with Article 78 of the Basic Law, according to which the courts shall have no right to apply laws and other regulatory legal acts infringing on the rights and liberties of an individual and a citizen established by the Constitution. If a court finds that a law or other regulatory legal act subject to application infringes on the rights and liberties of an individual and a citizen it shall suspend legal proceedings and address the Constitutional Council with a proposal to declare that law unconstitutional.

In reviewing the court of any civil, administrative, criminal and other cases, citizens can petition the court to suspend the proceedings and address the Constitutional Council, if they believe that the law or other regulatory legal act subject to application infringes on the rights and freedoms man and citizen. Practice shows that such claims be asserted by citizens and judges generally agree with their arguments. Over the years, the Constitutional Council received 66 appeals courts, many of which were initiated by citizens.

8. Do the decisions of your Court have binding force on other courts? Do other /ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

According to the Constitutional Law of the Republic of Kazakhstan dated December 29, 1995 № 2737 "On the Constitutional Council of the Republic of Kazakhstan," a final decision of the Constitutional Council shall enter into force

from the date of its adoption, it shall obligatory in the entire territory of the Republic, it shall be finally and it shall not be subject challenged. The procedure entering into force of any other decisions shall be defined by the Constitutional Council (Article 38, paragraph 1). Laws and other regulatory legal acts which are recognized unconstitutional, including restraining fixed Constitution of the rights and freedoms of individuals and citizens of this shall loose their legal force and they shall not be subject to application. The decision of courts and other law applying bodies based on such law or other regulatory legal acts shall not be subject to the implementation (Article 39, paragraph 2).

A criminal case shall be terminated in the event that the Constitutional Council of the Republic of Kazakhstan unconstitutional law or other regulatory legal act subject to application of the criminal case, which determines the characterization of an act as a criminal offense. Recognition of the Constitutional Council of the Republic of Kazakhstan unconstitutional law or other normative legal act, which has been applied by the court in making a judicial act, is one of the reasons for the resumption of production of newly discovered circumstances and quashing of sentences and court rulings in the criminal proceedings (claim 6 first part of article 35, article 499 Criminal Procedural Code).