Kasetsart Journal of Social Sciences 42 (2021) 391–396

Kasetsart Journal of Social Sciences

journal homepage: http://kjss.kasetsart.org

The right of veto: International experience, problems and prospects of application

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Article Info

Article history:
Received 29 August 2019
Revised 25 September 2019
Accepted 24 October 2019
Available online 30 April 2021

Keywords:
blocking decisions,
overcoming the veto,
presidential veto,
UN veto,
veto power

Abstract

The relevance of the question of the use of the veto right is quite high both in constitutional and in international public law. The right of veto is an instrument for maintaining a balance of "checks and balances" both between branches of power within a single state and between participants in international organizations. The purpose of the research in the work is to examine the essence, historical and legal aspects of development, the current state, problems and prospects for the use of the veto right in both constitutional law and international public law. The main results that were achieved during the research were: determining the essence of the veto right, the historical aspects of the emergence and development of this right; the specific features of the use of the veto in international organizations. Prospects for further research: the development of the study in terms of the possibilities for reforming the UN Security Council, taking into account the current realities, the use of the veto by the permanent members of the UN Security Council, the change in the number of permanent members of the UN Security Council.

Introduction

The term "veto" (Latin veto, "prohibit") is a legal definition of an action, the powers of a certain person or group of persons to block decisions taken by the collegial or other authority. This term is used in the constitutional law of different countries (the veto of the head of state on the decision of the parliament in the presidential republics, for example, which, however, can be overcome), as well as in public international law (when it comes to the activities of international bodies that make general decisions and these decisions can be blocked by countries that do not agree with them, on the basis of their veto power). This definition came into the modern system of constitutional and international public law from Roman law, where it was used by such public authorities as people's tribunes, consuls and magistrates, and then – and by the emperor (right up to the transition to the absolute authority of the emperor). In ancient Rome, during the period of democracy, the right of veto was necessary for the formation of a system of "checks and balances", allowed not to allow some wrong or controversial (from different points of view) decisions that seemed to the majority or to one of the authorities correct. In the current Constitution of the Republic of Kazakhstan, the right of veto was established as part of the process of promulgation (signing by the President of the Republic of Kazakhstan of the laws passed by the Parliament), within the process of adopting a bill, that already were adopted by the Majilis, by the upper house of the Parliament of the Republic of Kazakhstan – the Senate (art. 61, para. The veto power of the Senate and the President of the Republic of Kazakhstan – is a "suspensive veto", which implies the transfer of the project legally for revision, or for

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https://doi.org/10.34044/j.kjss.2021.42.2.27
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a repeat vote allowing to overcome the right of veto. The veto power, in particular, was superimposed by the President of the Republic of Kazakhstan in 2015 on the law on civil service, and the law was returned for refinement to the Parliament.

In international law has a slightly different character. Its most topical application is in the UN Security Council (a permanent working UN body, which, in accordance with Article 24 of the UN Charter, must deal with ensuring the maintenance of international peace and security, and which is the six "main organs" of the UN). At the same time, Britain, China, Russia, the United States and France have such a right. It allows such countries to reject the draft of any meaningful UN resolution, regardless of its level of support. The right is enshrined in paragraph 3 of Art. 27 of the UN Charter, which states that decisions on all matters other than procedural matters are considered accepted if they are submitted for "the concurring votes of all permanent members of the Council" (UN Charter, 1945). At the same time, there are already proposals to limit this right of veto, especially if it is mass atrocities: genocide, crimes against humanity, war crimes on a massive scale. The attitude towards this initiative is clearly ambiguous. In particular, there are initiatives of Kazakhstan to reform the UN Security Council, its expansion and increase in the number of permanent members, including changes in the mechanism of using the veto right up to its abolition or limitation (Abikenova, Kubeyev, Bozhkarauly, Abdikeev, & Rustembekova, 2018; Yegorin, 2017).

In general, the mechanism for applying the veto both at the national and international levels is clearly ambiguous, unfeigned, and provokes considerable controversy about its effectiveness. That is why this topic is considered within the framework of the article. Within the framework of this study the formation of the veto right in public national and international law will be studied, both in the Republic of Kazakhstan and in foreign countries having extensive experience in the development of democratic institutions, as well as within the international community and such an important international organization as the UN Security Council.

Methodology

Within the framework of the study, the following materials were used as research materials:

1. national legal acts in the field of constitutional law, in particular, the constitutions of states (EU, USA, EAP countries);
2. international legal acts, in particular, the UN Charter, which regulates the activities of the UN Security Council, including the right of veto;
3. statistical materials related to the use of the veto right at the level of national constitutional law (in Kazakhstan and other countries);
4. current proposals on reforming the UN Security Council and the application of the veto by countries that are permanent members of the UN Security Council;
5. scientific articles, monographs and other scientific materials on the use of the veto right in constitutional law (including in historical retrospect), and in public international law.

Research methods used in this article: analysis (including analysis of legal acts, statistics, proposals and projects, opinions of different researchers), comparison (including opinions and suggestions), synthesis (based on analysis and comparison).

Results and Discussion

Currently, in the constitutional law of democratic states, the veto has complex constitutional formulations, since it is necessary to clearly define the limits of the participation of the head of state in the legislative process, not just giving it powers (which is especially important for presidential and presidential-parliamentary republics). The creators of modern constitutions prefer to form such constructions, which determine the right of the head of state's veto in the content part to avoid ambiguous interpretations on the content of this right (Gamso, 2019).

If we examine the provisions of the constitutions of European countries, then the veto in them is the discretionary power of the head of state. Signing the law or applying the right of veto to the law is the right of the head of state in countries such as Albania, Belgium, Belarus, Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Greece, Lithuania, Macedonia, Moldova, Norway, Poland, Portugal, Serbia, Slovakia, Ukraine, Finland, France, Czech Republic, Montenegro and Estonia. Also, in the countries with the presidential form of government, as the US and a number of Latin American countries, the application of the veto on the law is also a discretionary power of the head of state. However, in some European countries the head of state has no veto right, or this right is essentially limited. This includes, for example, Austria, Bosnia and Herzegovina, Iceland (in Iceland, the law may be rejected by the president, but it comes into force upon approval by a nationwide referendum), Spain, Luxembourg, Malta, the Netherlands, Slovenia, Croatia, Sweden. The situation is similar in Japan (Lin, 2019). There is also an "intermediate model" when the head of state can apply the right of veto on part of decisions or in observance of certain procedures, with the assignment of an important role to the government. So, in Ireland, if the head of state does not reach the State Council during consultations, the head of state can apply to the Supreme Court to decide on the constitutionality of the law. In Italy, in order to sign the law, the president needs mandatory counter expression of the prime minister.

A number of countries, nevertheless, provide opportunities for the head of state to go to court and decide on the constitutionality of the law. Estonia, Cyprus, Ireland, Poland, Portugal, Romania, Hungary, Finland and France are examples of this. In a few countries, the veto power of the head of state is absolute (Belgium, Liechtenstein, Great Britain, Cyprus, though not in all categories of laws, Norway). In most countries, however, the veto power of the head of state is of a suspensive nature, and the law can be re-examined by

the parliament, promulgated upon re-approval (Góngora-Mera, 2019).

As a kind of absolute veto, one can consider a "pocket veto" under the US Constitution. In accordance with this, the bill, which was approved by Congress in the last 10 days before the end of the session, will not come into force if the term that is allocated for signing it falls in the period when there are no sessions of Congress – the president then simply cannot sign and return the bill (Bogdziewicz, Żywiec, Espelta, McIntire, & Crone, 2019). This right was used for the first time by J. Madison (4th US President), and most recently by George W. Bush. In general, US vetoes were used by US presidents 2,560 times (including the right of "pocket veto" – 1,066 times, and most often by Franklin D. Roosevelt (263 times), Grover Cleveland (238 times), Dwight Eisenhower (108 times) (Kwon, Merchán-Pérez, Rial Verde, DeFelipe, & Yuste, 2019).

At the same time, to overcome the right of veto, the heads of state in a number of countries require a majority vote of parliamentarians (in particular, in Albania, Bulgaria, Greece, Lithuania, Macedonia, Portugal, Serbia, Czech Republic). However, in presidential republics, and even presidential-parliamentary republics (the United States, France, Poland, etc.) overcoming of the veto requires a qualified majority of 2/3 of the votes.

Khanko (2011) notes that in the Constitutions of all post-Soviet republics, the president has the right to veto laws passed by parliament (bills). In most countries, the right of veto is a suspensive right of veto. Okunkov (1998) identified the grounds associated with the use of the president's right of veto, which are also shared by Khanko (2011):

1. legal, which are related to the different interpretations by the parliament and the president of constitutional provisions and laws, of a legal and technical nature, as a result of negligence and lack of knowledge of the requirements of legislative machinery for law makers;

2. political and socio-economic, which are related, inter alia, to the political struggle of different political groups, which include the president and the parliamentary majority;

3. procedural and technological, which are connected with imperfect law-making process;

4. organizational and managerial, which arise in the absence of control over the preparation of bills, low responsibility for the implementation of control.

In the constitutional law of Kazakhstan, the right of veto is enshrined in the 1995 Constitution, which is subject to amendments (Constitution of the Republic of Kazakhstan, 1995) and the Constitutional Act of December 26, 1995 "On the President of the Republic of Kazakhstan". Among the rights of the President of the Republic of Kazakhstan, the right to sign laws passed by the Parliament, as well as making objections to them (the right of veto, moreover, the suspensive one) is given. The Constitutional Amendments of May 21, 2007 increased the maximum time allowed for the President to sign from 15 working days to the calendar month, which is due to an increase in the number of laws passed by the Parliament, the complication of tasks and functions assigned to the President himself, Zhanuzakova (2016). The veto power of the President of the Republic of Kazakhstan does not concern those laws adopted at the republican referendum. In general, in over 20 years of work of the Parliament, the President introduced only 19 objections to the laws, in particular, under the Land Code, the laws "On Public Associations", "On Public Service", "On Housing Relations". Obviously, a small number of vetoes in Kazakhstan is due to the absence of effective opposition in the Parliament to the head of state. It is noted that the consequences of the failure to overcome the right of veto (objections) of the President of the Republic of Kazakhstan, even in one of the chambers of the Parliament of the RK, do not necessarily lead to the rejection of the law as a whole, but to adoption in the edition proposed by the President of the RK. On the whole, it is difficult to assess how much such a norm positively or negatively affects the development of legislation in the Republic of Kazakhstan: on the one hand, it gives the opportunity to include the President of the Republic of Kazakhstan in the legislative process, contributing, among other things, to the growth of the quality of lawmaking activity (Zhanuzakova, 2016) the President of the Republic powerfully influencing the Parliament (Amandykova & Amandykova, 2014); on the other hand, it infringes the rights of the legislative body (Khanko, 2011).

At the same time, the complexity of the application of the veto right in the constitutional law is much less problematic than in international public law. The reason is that in international public law, international organizations, whose members (states) often have equal rights (with some exceptions) are formed, regardless of size, economic development and political regime. Therefore, when solving some common important issues, the use of the veto (if it is established), on the one hand, protects the rights of one-member state, but on the other hand can block important processes that others need (including a great number of countries).

For example, in the EU there is a principle of "mandatory unanimity" in the EU Council of Ministers (for the adoption of key decisions it requires the consent of all participants from the EU countries, and disagreement of one is in fact a veto on the decision.) However, the Treaty of Lisbon (2007) says that the heads of state can (unanimously) decide on the introduction of the principle of the majority in the common foreign policy, but in 2015 this principle became the "basis" of the decision of the EU interior ministers related to quotas on the distribution of migrants seeking asylum in the EU. And, the decision of the four countries that voted against the decision were blocked.

An even more difficult problem is the use of the veto in such an organ as the UN Security Council (hereinafter UNSC). If we take into account the historical retrospective, then there was another international organization – the League of Nations (1920–1946). This organization was created to maintain peace, as well as to address a number of other global challenges. The right of veto for law enforcement decisions in the organization was shared by all participating states, which as a result, blocked many important decisions, preventing them from being implemented in the period

between the two world wars (Moon, 2019). By the end of the 1930s, the League of Nations made meaningful political decisions in connection with the right of veto on them from any participant (McCulloch, 2019).

Therefore, only permanent members can use the veto in the UN Security Council. Since the founding of the UN and the Security Council as its main body, only the victorious countries in the Second World War have the right of veto for decision-making by this body: The United States, Great Britain, the USSR (since 1991 Russia as its successor), China (until 1971 – The Chinese republic, de facto after the civil war controlled only Taiwan), and later France was included. This arrangement was largely preserved, proceeding from the Roosevelt plan of the "four policemen" (1941), which was modified by the inclusion of France and taking into account the fact that instead of the Kuomintang China, the "communist" PRC was present. As a result, unlike the Council of the League of Nations, the UN Security Council acquired the features of a multipolar organization (with countries that oppose each other historically, in particular, and currently the United States, Britain and France on one side, and Russia and China on the other, that is confirmed, in particular, by the use of the right of veto for a number of decisions on the part of Russia or China, if these decisions somehow affect their interests – namely, mutual support is provided). Figure 1 shows the statistics of the application by the permanent members of the UN Security Council.

In general, already in the 1970s and 1980s, the balance of votes in the UN Security Council was changed in favor of the

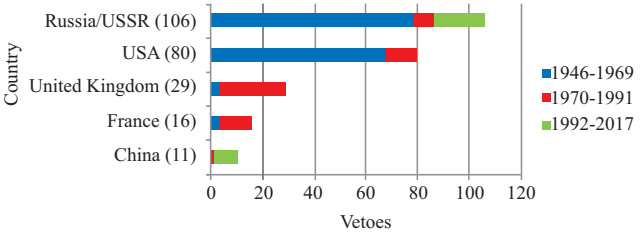

Figure 1 Application of the veto power in the UN Security Council from 1946 to 2017

USSR, which is why the overwhelming majority of vetoes were imposed by The United States. The United Kingdom used the veto 32 times, including 23 with The United States and 14 with France (most recently in 1989). In the first years of its existence, the Soviet Union vetoed 79 times (since 1991, as noted, only 21, and, most of all, in recent years). The blocking, by countries, of solutions important from the other countries' points of view – is a problem in the UN Security Council which has not yet been resolved, although more and more proposals are being made to reform this right, including up to its repeal taking into account the current realities. Summarizing what has been said, one can present a scheme for the application of the veto right in public law (Figure 2).

Therefore, the right of veto is the right to block decisions, which one body uses to the decisions of the other. In constitutional law (the national public law) this contributes to the development of a "balance of checks and balances" between the branches of power (a version of the "people's veto" is also possible, when the referendum repeals the normative acts.) In international law, the application of the veto right now corresponds to a number of international organizations (EU, for example) ensuring the rights of participating States within the framework of integration, and within the framework of such an organization as the UN, where only 5 countries have veto power (the founders of the UN and their successors) The application of this right must contribute to the multipolar development and to the adoption of informed decisions at the international level. However, precisely because of the blocking of a large number of important decisions in recent years and the failure to take into account the rights and interests of other countries that are not permanent members of the UN Security Council, options are proposed for reforming the UN Security Council with a revision of this right.

Actual discussions in the publications of lawyers regarding the use of the veto right concern, first of all, the issues of reforming the application of the veto right in the UN Security Council. Moreover, back in 2017, Kazakhstan proposed the reform of the UN Security Council, which, in the opinion of the MFA of Kazakhstan, is connected with the fact that "in its present form the Security Council no longer reflects the

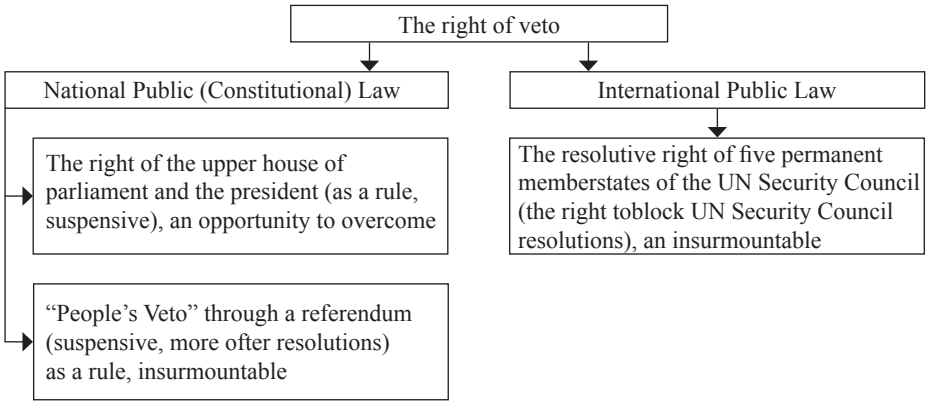

Figure 2 Application of the right of veto in public law

realities of our world" (Kazakhstan proposed reforming the UN Security Council, 2017). In addition to expanding the representation of countries in the UN Security Council, reform of permanent membership is also indicated in the proposed areas of reform. The issue of expanding the number of permanent members of the UN Security Council with the right of veto has long been discussed in world politics: in 2004, the need for India to be included in the number of permanent representatives was announced by its Prime Minister, in 2012 the President of France introduced an initiative to include India, Germany and Japan, as permanent member, and that at least one of the countries of Africa should be included in the number of permanent members, in 2013, Saudi Arabia declared the need for inclusion in the list of permanent members of the UN Security Council, in 2015, A. Merkel (German Chancellor) raised the issue of expanding the number of permanent representatives, in 2016 – by R. Erdogan (the president of Turkey) (Shipilin, 2017).

Scientists – lawyers also have different positions on the need to reform the UN Security Council. Also, the Russian researcher S. Rogov (director of the Institute of the USA and Canada) in 2005 expressed the opinion that "the list of the main players in world politics and the world economy is outdated. It is incomplete, and this means that the idea of permanent members of the Security Council with the right of veto is ineffective. In his opinion, changes are necessary in the composition of the UN Security Council and the decision-making procedure of this body, taking into account modern conditions. Some Kazakhstani researchers also note that "the principle of the formation of the UN Security Council is obsolete, the world faces new challenges that greatly complicate modern system of international relations and only collective actions, possibly prevent the world from destruction and dying". That is why UN Security Council reforms are relevant. The UN Security Council should not remain something archaic, functioning as 70 years ago after the end of the Second World War, when the political situation, the world economy and international relations had a completely different character, which cannot be disagreed. At the same time, a number of researchers, mainly Russian, doubt the prospects for such changes as the restriction of the veto and the expansion of the number of permanent members.

Conclusion

Thus, the right of veto is a legal category used in public law (the constitutional law of the state and international public law), which is associated with the possibility of suspending or preventing the entry into force of a law, decision, or other legal act of a certain body, despite its support by the majority. The right of veto can be absolute (or resolutive) – giving the opportunity to finally reject a legal act, or suspensive, giving the opportunity to return for revision a legal act to change it. The mechanism of constitutional law presupposes the use of suspensive law more often, with the possibility of overcoming the veto power of the head of state or the upper house of parliament. In a number of countries (with a parliamentary form of government), the veto power of the head of state is severely limited, and the overcoming of the veto may involve a majority of the MPs voices, and not a qualified majority. In the post-Soviet countries, the same model is adopted (suspension law, the possibility of overcoming it by the parliament with a qualified majority of votes of deputies in a certain period). In Kazakhstan, the veto power of the President is suspensive, but if it is impossible to overcome it by the Parliament, the objections of the President of the Republic of Kazakhstan are adopted within the amended law, which many researchers of constitutional law do not consider correct.

In international public law, where every state is an equal partner in the framework of an international organization or integration, common decisions are often required where the disagreement of one country is actually a veto. So, the EU is already trying to fight against this in order not to block important decisions (they want to change the veto scheme for decisions so that the veto is used only by the parliament of the state party, and only at a vote of not less than 55 percent of deputies against the decision). In the UN Security Council, only 5 founding members have the right of veto (unlike the pre-existing League of Nations), and overcoming the right of veto on their part (the resolutive right) is not yet possible, despite the fact that proposals are being made to reform the UN Security Council, and the restriction of the use of the veto power. Confronting the given changes on the part of a number of permanent members of the UN Security Council requires a change in the UN Charter so that this organization, like its Security Council, will not lose its significance, taking into account the current topical threats to the world community.

Conflict of Interest

There is no conflict of interest.

References

Abikenova, G., Kubeyev, Y., Bozhkarauly, A., Abdikeev, M., & Rustembekova, D. (2018). On the issue of the concept and status of minors in constitutional law and current problems of the implementation of the rights and freedoms of minors. *Journal of Advanced Research in Law and Economics*, *9*(3), 805–818.

Amandykova, S. K., & Amandykova, L. K. (2014). Some issues of the embodiment of the principle of separation of powers in the constitutional legislation of the Republic of Kazakhstan. *Actual Problems of Russian Law*, *9*, 1849–1856.

Bogdziewicz, M., Żywiec, M., Espelta, J. M., McIntire, E., & Crone, E. E. (2019). Environmental veto synchronizes mast seeding in four contrasting tree species. *The American Naturalist*, *194*(2), 246–259.

Gamso, J. (2019). China's rise and physical integrity rights in developing countries. *Review of International Political Economy*, *26*(4), 722–748. doi: 10.1080/09692290.2019.1620310

Góngora-Mera, M. (2019). The ethnic chapter of the 2016 Colombian peace agreement and the afro-descendants' right to prior consultation: A story of unfulfilled promises. *The International Journal of Human Rights*, *23*(6), 938–956. doi: 10.1080/13642987.2018.1562920

Kazakhstan proposed reforming the UN Security Council (2017). *RIA*. Retrieved from https://ria.ru/world/20170824/1500993620.html

Khanko, D. N. (2011). President's veto in the constitutional and legal mechanism of the post-Soviet republics. In G. A. Shumak (Ed.), *Legal support of innovative development of society and the state: Materials of the international scientific conference for students, undergraduates and post-graduate students* (pp. 45–47). Minsk, Belarus: Nauka.

Kwon, T., Merchán-Pérez, A., Rial Verde, E. M., DeFelipe, J., & Yuste, R. (2019). Ultrastructural, molecular and functional mapping of GABAergic synapses on dendritic spines and shafts of neocortical pyramidal neurons. *Cerebral Cortex*, *29*(7), 2771–2781. doi: 10.1093/cercor/bhy143

Lin, Y.-H. (2019). When activists meet controlling shareholders in the shadow of the law: A case study of Hong Kong. *Asian Journal of Comparative Law*, *14*(1), 1–36.

Lisbon. (2007). *Treaty of Lisbon amending the treaty on the European Union and the treaty establishing the European community*. Retrieved from http://base.garant.ru/2566561/ [in Russian]

McCulloch, A., & Vandeginste, S. (2019). Veto power and power-sharing: Insights from Burundi (2000–2018). *Democratization*, *26*(7), 1176–1193. doi: 10.1080/13510347.2019.1611781

Moon, C. (2019). Political institutions and FDI inflows in autocratic countries. *Democratization*, *26*(7), 1256–1277. doi: 10.1080/13510347.2019.1627520

Okunkov, L. A. (1998). Veto of the President. *Journal of Russian Law*, *2*, 11–28. Retrieved from http://lawlibrary.ru/article1012015.html

Shipilin, P. (2017). *UN reform–the right of veto or the Third World War. Sputnik Georgia*. Retrieved from https://sputnik-georgia.ru/reviews/20171024/237887067/Reforma-OON-pravo-veto-ili-Tretja-mirovaja.html [in Russian]

UN Charter. (1945). *UN*. Retrieved from http://www.un.org/en/charter-united-nations/

Yegorin, M. (2017). *Kazakhstan proposed reforming the UN security council*. Retrieved from https://ria.ru/world/20170824/1500993620.html [in Russian]

Zhanuzakova, L. T. (2016). Powers of the president of the republic of Kazakhstan in the legislative sphere. *Law and Politics*, *4*, 441–448.