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**ABOUT THE BASIS OF THE CREATION
OF THE CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN**

Abstract. Now in our republic we see the permanent process of the formation and development of our Supreme Law as a response to the changed realities in the world community. The head of the state has renounced the legislative powers and the possibility of obtaining the right to cancel or suspend the acts of the government and the Prime Minister's acts. The Foundations of the political system associated with the status of the President and the key mechanisms of its influence. In our view, the fourth reform is more accurate in its content, as it is more precisely and specifically defines the elements of inviolability of the state-independence, unitary, territorial integrity and the republican form of government. In the theory of law, there are two basic forms of government: republic and monarchy. Thus, the Republican form of government should be unshakable in Kazakhstan, and not the monarchy form of government, as follows from the wording of paragraph 2 of article 91, proposed by developers. The presidential form of government is merely a derivative of the Republican form of government. In other words, the republican form of government should be unchanged, and its presidential, parliamentary or presidential-parliamentary forms of government should be changed as necessary.

Keywords: constitution, republic, presidential power, form of rule, parliament republic, branches of power, monarchy, human rights, civil society, law-abiding state.

Kazakhstan became an independent nation in 1991 with the collapse of the Soviet Union, and thus has to develop institutions for self-government quickly. So, Kazakhstan has faced not only with the structural problems of the institutional arrangements and ineffective service the nation, but also of rational accommodation of the major problems of civilized countries with the considerable ethnic diversity; shifting from a socialist to a capitalist economy; securing and advancing human and social rights in the independent state.

This article is devoted to the Kazakhstan's Supreme Law, which was adopted in August, 1995. One focus will be on how the drafters changed structures and tried to resolve problems inherited from the old Soviet totalitarian regime by creating a strong system of checks and balances between the executive, legislative, and judicial branches. A second focus will be on how the government, created by this constitution had great difficulty addressing the country's problems, because the provisions for checks and balances inhibited cooperation and encouraged political "grandstanding", particularly in the legislature.

Second, the article shows the successful development of Kazakhstan's constitution. The Supreme Body drafted a constitution, which has a system of checks and balances, and gave more power to the President, who could often make policy by decree. It also removed the judiciary from the constitutional interpretation process, substituting instead of the Constitutional Council, appointed by the President. The new constitution also gave more power to the President to solve the problems of ethnic conflict and economic transition.

As well known, Kazakhstan was established as an independent sovereign state on December 16, 1991, joining the CIS and, shortly afterwards, becoming a member of the United Nations. Kazakhstan was the second largest of the former republics of the USSR, after Russia, with a total area of 2.72 million square kilometers, approximately equivalent to the whole of Western Europe.

Schooling is compulsory from grades one to eight, with children normally starting school at age seven. Prior to that, the state provides some funding for nursery and kindergarten education, although no longer at the level seen during Soviet times. After completing grade eight, students are awarded the *attestat*, a graduation certificate. Of those remaining in formal education, 30 percent of which go to vocational or technical schools after eighth or ninth grade, pursuing two or three year courses. The remainder continues through eleventh grade in general schools. Entry into higher education institutions is open to all on a competitive basis, each institution setting up its own entrance examination or test.

This article will present changes in education policy and provision since 1995, when “Law on Higher Education in the Republic of Kazakhstan” was adopted. At the national level, there is a determination to develop an independent and high level education program, providing qualifications, recognized throughout the world. However, there are peculiarities of the reforming processes in the educational field in the Republic of Kazakhstan, which peculiarities will be researched in this article.

Part of the discussion will focus on the replacement of former vocational and technical schools with more general occupational colleges. A second focus will be on the impact of new tuition policies in higher education in Kazakhstan today, and some discussion of the proposed student loan scheme. These plans are contained within the draft revisions to the Education Law, which have now been delayed with the dissolution of the parliament.

The article will also discuss the general curricular revisions across the entire educational sector during the past three years. These proposed some actual changes are being attempted to encourage greater development of courses in new fields. Among these changes are an increase in the study of computerization in some schools, and the introduction of language laboratories - although the availability of adequate equipment and of new teaching skills is limited. In addition, special study courses are being established, such as those in a higher education business school, based in Almaty.

The Constitution of the Republic of Kazakhstan defines social and political structure, organization of public administration, relations between state and society, citizens and state. Constitution is one of the most important institutions of democracy.

If we compare two constitutions, we'll discover that the Constitution of the Republic of Kazakhstan, 1993, is the first Constitution of Independent Kazakhstan, was adopted at the 9th session of the Supreme Council of Kazakhstan of 12th convocation on January 28, 1993. Its structure included preamble, 4 sections, 21 chapters and 131 articles. The Constitution absorbed many legal norms adopted with Kazakhstan's state sovereignty: national sovereignty, state independence, principle of the separation of powers, recognition of Kazakh language as state language, recognition of the President as the Head of state, and judicial authorities - Supreme, Constitutional and Supreme Arbitration Courts, and to name but a few.

The Constitution of 1993 was based on the model of parliamentary republic. Along with the laying down Kazakhstan's Independence the Constitution of 1993 reflected complexity and inconsistency of the early years of the country's independence. On the one hand, it fixed legal frameworks for further transformation of all aspects of republic's activity in the line of market economy and democratic state formation. On the other hand, the Constitution caused discussions on the competence of legislative and executive branches of power because the text missed this issue. This didn't contribute to both the stabilization of political and social situation in the country and transformation of all aspects of public life. Moreover, some principal provisions of the Constitution related to the character of statehood, state language, private ownership of land and citizenship became the subject of public controversy.

The Constitution of the Republic of Kazakhstan, 1995 is the current Constitution of the Republic of Kazakhstan, was approved by popular referendum on August 30, 1995. This day is a state holiday - the Day of the Constitution of the Republic of Kazakhstan. Extensive discussion of the draft constitution preceded the adoption of the Basic Law. In general, approximately 33 thousand collective discussions of the draft were carried out. More than 3 million people participated in them. Almost 30 thousand proposals and remarks were made during the discussion. 1100 amendments and additions in 55 articles were made.

Since the adoption the current Constitution was amended four times: in 1998, 2007 and 2011 and 2017. In 1998 19 articles of the Basic Law were amended and complemented. The changes affected the

term and competence of the President, Deputies of the Senate and the Majilis; age limit for public servants specified in the previous constitution was called off. In addition, amendments made provisions for election of 10 Deputies of the Majilis from party lists according to the principle of proportional representation. More significant amendments were adopted in 2007. In general, their idea can be explained in the following way: transition to the proportional representation system; strengthening the status of the Parliament due to introduction of the norm on approval of the nominee for the appointment to the position of the Prime Minister by the parliamentary majority and the procedure of the President's consultation with party factions before the appointment of the Head of Government. At the same time, the People's Assembly of Kazakhstan obtained constitutional status and the right to delegate its representatives to the Majilis and the Senate of the Parliament according to the established quota. In February 2011 the Constitution was amended to establish constitutional basis for the announcement and conduction of extraordinary Presidential election. In January 2017 the Head of the country has delegated some power to other state bodies.

It is very important to remember always the Preamble of the Supreme Law of the Republic of Kazakhstan: "We, the people of Kazakhstan, united by a common historic fate, creating a state on the indigenous Kazakh land, considering ourselves a peace-loving and civil society, dedicated to the ideals of freedom, equality and concord, wishing to take a worthy place in the world community, realizing our high responsibility before the present and future generations, proceeding from our sovereign right, accept this Constitution"[1].

In accordance with the Constitution, The President of the Republic of Kazakhstan is the head of state, its highest official determining the main directions of the domestic and foreign policy of the state and representing Kazakhstan within the country and in international relations. He shall ensure by his arbitration concerted functioning of all branches of state power and responsibility of the institutions of power before the people (Art. 40 of the Constitution). The President is elected every seven years on the basis of universal suffrage. One and the same person may not be elected the President of the Republic more than two times in a row[2].

The highest representative body of the Republic of Kazakhstan is the bicameral Parliament. According to the President's Decree having force of Constitutional Law «On elections in the Republic of Kazakhstan» (1995) the parliament will consist of two chambers (the Senate and the Majilis) and work on professional base. The first two-chamber Parliament was elected in December 1995. The Senate is composed of deputies elected in twos from each region, major city and the capital of the Republic of Kazakhstan, at a joint session of the deputies of all representative bodies of the respective oblast, major city and the capital of the Republic. The President also appoints seven senators. Terms of the powers of Senate deputies shall be six years. The Majilis consists of 77 deputies, 67 of whom are elected from the geographical electoral districts directly by voters. 10 deputies are elected on the basis of the Party Lists according to the system of proportional representation and in the territory of a unified national constituency. Term of the powers of the Majilis deputies shall be five years.

Parliament at a joint session of the Chambers: introduces amendments and makes additions to the Constitution; adopts constitutional laws, approves the republican budget, the reports of the Government, and the Accounts Committee about its implementation, and introduces changes into the budget; conducts a second round of discussion and voting on the laws or articles of the law; hears the report of the Prime Minister on the Government's program and approves or rejects the program and annual messages of the Constitutional Council of the Republic on the state of the constitutional legality in the Republic or reports on the activity of the commissions;; decides issues of war and peace; adopts a decision concerning the use of the Armed Forces of the Republic to fulfill international obligations in support of peace and security at the proposal of the President of the Republic; puts forward an initiative calling for an all-nation referendum; exercises other powers assigned to Parliament by the Constitution [2, P.17].

The Government is appointed by the President and accountable to the Parliament. It implements the executive power in Kazakhstan, heads the system of executive bodies and exercise supervision of their activity. A new structure of the Government of the Republic of Kazakhstan was re-established in 2015.

Part six of the Constitution contains fundamental regulations establishing constitutional control in the Republic, which is assigned to the Constitutional Council. It does not belong to the juridical system and it

is a state structure ensuring the supremacy of the Constitution of the Republic as of the Basic Law on the whole territory of Kazakhstan. The Constitutional Council consists of seven members, the Chairman and two members are appointed by the President of the Republic, the Chairmen of the Senate and Majilis of Parliament each appoint two members for the term of six years.

Local representative bodies - maslikhats - express the will of the population of respective administrative-territorial units and with regard to the common public interests shall determine the measures needed for its realization, and control their implementation. Their jurisdiction includes development of drafts of plans, economic and social programs for development of the territory, local budget and provision of their realization; management of public property; appointment to and release from office the heads of local executive bodies, resolution of other issues connected with organization of the work of local executive bodies; exercise other powers delegated to local executive bodies by the legislation of the Republic in the interests of local public administration [3].

Justice in the Republic of Kazakhstan is exercised only by the court. The judicial system in the Republic consists of the Supreme Court Republic of Kazakhstan, the highest judicial body, and regional, district, town, and city courts. (Art.75). The Supreme Court of the Republic of Kazakhstan shall be the highest judicial body for civil, criminal and other cases which are under the courts of general jurisdiction; exercises the supervision over their activities in the forms of juridical procedure stipulated by law, and provide interpretation on the issues of judicial practice.

In the conclusion we would like to note, that the legislation of the Republic of Kazakhstan does not contain any laws or regulations with extraterritorial effects on the sovereignty of other countries, the legitimate interests of corporations and individuals or freedom of international trade and navigation. The current Constitution of the Republic of Kazakhstan guarantees freedom of expression and creative activity, and censorship is prohibited.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ АТА ЗАҢ БАСТАЛУЫ ҚАЛЫПТАСУРАЛЫ

Аннотация. Қазіргі кезде біздің республикамызда әлемдегі түбегелі өзгерістерге жауап ретінде Ата Заңымыздың дамып жетілуінің перманентты, үздіксіз, түбегейлі процесстер жүру үстінде. Елбасы өзінің көптеген заң шығарушылық құзыреттіліктерімен Үкіметпен Премьер-Министрдің кейбір шешімдерін тоқтату, кей кездерде жағдайға байланысты олармен келіспей, тіпті, немесе мүлдем қайта қарау мүмкіндіктерінен бас тартып отыр. Әріне бұл Президент тарапынан жасалған демократиялық акт. Саяси жүйенің негізі болып есептелетін Президенттің құзыреттілігі мен оның ел билігіне әсер ететін басты механизмдері бұрынғы қалпында қалдырылды. Біздің ойымызша, төртінші реформа мазмұны жағынан әлде қайда нақты, себебі мемлекеттік тәуелсіздіктің басты элементтерін, унитарлық пен шекарасының бүтіндігін, республикалық билік формасын айқын көрсетеді. Құқық теориясында екі негізгі билік формасы қалыптасқан: республика және монархия. Қазақстанда республикалық билік формасы негізгі болып табылғандықтан, президенттік билік формасы соның ішінен авторлардың көрсеткен екінші пункт, 91 бабына сүйенеді. Президенттік билік формасы республикалық биліктің құрамдас бөлігі болып есептеледі. Басқа сөзбен айтқанда республикалық билік формасы өзгермеу тиіс, ал президенттік билік пен президенттік-парламенттік билік қажеттігіне байласты өзгеруі де мүмкін.

Түйін сөздер: конституция, республика, президенттік билік, билік формасы, парламенттік республика, билік тармақтары, монархия, адам құқықтары, азаматтық қоғам, құқықтық мемлекет.

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ОБ ИСТОКАХ СТАНОВЛЕНИЯ КОНСТИТУЦИИ РЕСПУБЛИКИ КАЗАХСТАН

Аннотация. В настоящее время в нашей республике идет перманентный процесс становления и развития нашего Основного Закона, как ответ на изменившиеся реалии в мировом сообществе. Глава государства отказался от законодательных полномочий и возможности их получения, права отмены или приостановления действия актов правительства и премьер-министра и т.д. Основы политической системы, связанные со статусом президента и ключевыми механизмами его влияния, остаются прежними. На наш взгляд, четвертая реформа является более точной по содержанию, т.к. конкретно определяет элементы незыблемости государства - независимость, унитарность, территориальная целостность и республиканская форма правления. В теории права существуют две основные формы правления: республика и монархия. Так, в Казахстане должна быть незыблемой республиканская форма правления, а не монархическая форма правления, как вытекает из редакции п.2 ст.91, предложенной разработчиками. Президентская форма правления является всего лишь производной от республиканской формы правления. Иными словами, республиканская форма правления должна быть неизменной, а ее разновидности президентская, парламентская или президентско-парламентская формы правления должны по мере необходимости меняться.

Ключевые слова: конституция, республика, президентская власть, форма правления, парламентская республика, ветви власти, монархия, права человека, гражданское общество, правовое государство.

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