



Section 6. Political science

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UNDERSTANDING THE CONSTITUTIONAL IDEAS OF THE GREAT STEPPE

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Abstract

The current pace of development of Kazakhstan in the context of ongoing reforms gives rise to the need for a deep understanding of the ideas and principles of constitutionalism, the degree of their dissemination and the dynamics of implementation in national legislation. The Constitution, as the main form of embodiment of these legal postulates, is the highest political and legal act regulating fundamental social relations, and its further improvement in accordance with global challenges and the needs of state development, which is necessary and in demand.

Keywords: *'Zhety Zhargy', Khan Tauke, administrative-legal norms, criminal-legal norms, Barlybek Syrtanov, 'Charter "Kazak eli", Country of the Kazakhs, Declaration 'On State Sovereignty of the Kazakh SSR', constitutional Law 'About State Independence of the Republic of Kazakhstan' which is dated December 16, 1991, Constitution of the Republic of Kazakhstan 1993, Constitution of the Republic of Kazakhstan 1995. Constitutional reform of the Republic of Kazakhstan in 2007. Constitutional reform of the Republic of Kazakhstan 2017, republican referendum on June 5, 2022*

Introduction

"Zhety Zhargy" of Tauke Khan is one of the most striking legal monuments in the history of the Kazakh people. Experts recognize that "Zheti Zhargy" is a structured legislative work that includes all spheres of life, aimed at protecting the fundamental rights of any person. Tauke Khan, unlike his predecessors, sought to strengthen his power with the help of representatives of the steppe aristocracy — the biys, people who made up a significant elite social

group in the Khanate. Surrounding himself by biys, Tauke, through the 'council of biys,' led the fight against the Chingizid class, who openly opposed the khan's power. Tauke made serious attempts to streamline the activities of the Biysk councils. He established the venues for holding councils and the time for convening the congress of biys. As the most important body of the khan, the council of biys was always held at one or another headquarters of Tauke Khan: in Bitoba, place near the city of

Turkestan or Martoba, place near the city of Sairam (Zimanov S. 3., Userov N., 1975).

Tauke Khan turned the council of biys into an important body, sometimes with advisory functions, while significantly expanding the rights of biys in judicial proceedings. Soon the council of biys became a permanent institution, whose tasks included solving the most important issues of foreign and domestic policy of the Kazakh Khanate.

Khan Tauke began to convene successfully a council of biys, primarily with the participation of the most influential three Kazakh zhuzes. In the Senior Zhuz, the authority of Tole-biy was unshakable, in the Middle — it was Kazybek-biy's authority, in the Younger — it was Aiteke-biy's authority. Their wisdom and determination were aimed at overcoming the difficult trials of the Khanate, in particular, at uniting the forces of the Kazakh people against the Oirat invasion.

According to another legend, Khan Tauke gathered seven biys in the Kul-Tobe tract (Syr Darya region). And these biys combined, as researchers Grodekov in 1889 and Slovohtov in 1903 reported, the old customs of the khans of Kasym and Ishim into new customs, calling them "Zheti zhargy". Therefore, in the scientific literature, "Zheti Zhargy" is called the "Code", or "Laws" of Khan Tauke.

There is also no consensus on the specific time of compilation of "Zheti Zhargy". Without much argumentation, some researchers attribute it to the second half of the 17th century, others to the beginning of the 18th century. The most acceptable is the first opinion, which was expressed in 1820 by the researcher Spassky. It can even be argued that the creation of "Zheti Zhargy" dates back to the last quarter of the 17th century, since its appearance was the response of Khan Tauke and his entourage to the initiatives of the Oirat (Dzungar) huntaiji Galdan.

In the second half of the 17th century, in the west of the khanate there was a war with the Ashtarkhanids, who wanted to dominate over the Syr Darya cities, in the southeast there was a grueling struggle with the Oirats (Dzungars), who sought to seize the Semirechensk nomads. As a result of these wars, the Kazakhs lost a significant part of their nomads in Semirechye and in the northeast of the Khanate.

The lack of pastures caused internal turmoil and, above all, a struggle for land among the Kazakhs themselves. Civil strife created the preconditions for the violation of traditional customs and law and led to the undermining of public and state life. This, in turn, gave rise to a completely understandable desire for a legislative settlement of shaken social foundations. And only a legislative settlement could fully mobilize internal forces for defence against an external enemy — the Oirats, with whom war was inevitable (Zimanov S. 3., Userov N., 1975).

However, it was not only the military-political situation that contributed to the emergence of "Zheta Zhargy". When creating this code of laws, the desire of the feudal nobility to adapt the existing norms of customary law to the new needs of Kazakh society turned out to be important and even determining its character. And prescribe such legal mechanisms that would correspond to its interests.

Today we can get acquainted with the legal norms of "Zhety Zhargy" thanks to the records of Russian researchers. There are two known editions of this code of laws, differing in text variations and unequal number and order of articles. The first edition is 11 fragments of the "Code" of Khan Tauke, recorded in 1804 from the words of "the elder of the Yappas family, Kubek Shukuraliyev." They were published in 1820 by Spassky on the pages of the *Sibirsky Vestnik*, which he published.

The second edition of the articles "Zhety Zhargy" is given in the essay of the famous expert on the history and life of the Kazakhs, Levshin. He managed to collect 34 articles. But even they do not represent the entirety of the legal provisions of Khan Tauke in their original form. However, this is understandable, because he examined the legislative document more than a hundred years later its composition, which affected the completeness of the records.

Thus, the analysis of the "Code" of Khan Tauke is difficult, since it has not been preserved in its original form, but only in fragmentary retellings.

Supreme power, according to Zhety Zhargy, was concentrated in the hands of the khan. He judged and punished crimes and misbehaviour, tried lawsuits, issued orders to maintain public order, and also established

taxation procedures. Nevertheless, the supreme overlord, had to share power with the sultans and biys, who concentrated in their hands the power over the inhabitants of the uluses and clan associations. Thus, the management of national affairs was carried out through the combined activities of the dominant group of feudal lords.

For example, one of the clauses of the Code specified the procedure for governing the Khanate by sultans and tribal elders. Article 31 “Zhety Zhargy” obliged the khan, sultans and biys to gather annually in the fall to discuss the affairs of the people. All of them had to come to public meetings with weapons. Anyone who was unarmed at the kurultai was deprived of the right to vote. These people were also subjected to disgrace because juniors in rank and age may not give way them to their place, in violation of all customs.

Separate articles in “Zhety Zhargy” are devoted to the taxation of the combat-ready part of the population in favour of the khan and biys. One of these articles says: “So that everyone who can bear arms, except the sultans, pays the khan and the people’s rulers a tax of the 20th part of their property annually.”

According to “Zhety Zhargy”, all Kazakh tribes, clans and generations had to have their own tamga. As Levshin wrote, these tamgas ‘were distributed at the same time with the obligation to apply them to all livestock and property to distinguish what belonged to whom.’

The period of action of “Zhety Zhargy” is unknown for certain. According to researcher Krasovsky, expressed in 1869 and repeated by others, “Zhety Zhargy” had force, ‘and even then conditionally binding, only during the life of Khan Tauke (died between 1715–1718).’ According to Spassky, expressed in 1820, the “Code” of Khan Tauke remained effective during the reign of Khan Abulhair, that is, until the middle of the 18th century.

Soviet scientist Tair Kulteleev wrote in the 50s of the 20th century that the ‘Code’ of Khan Tauke is a record of Kazakh customary law, ‘mainly until the beginning of the 19th century.’ There are researchers who believe that “Zhety Zhargy” remained ‘the main act of legal regulation of socio-political relations in Kazakh society during the 18th and 19th centuries.’

The creation of “Zhety-Zhargy” pursued the goal of adapting the existing norms of customary law to the new needs of Kazakh feudal society. In the ‘Code’ of Khan Tauke, the social and legal norms of Kazakh society of that time were legally established. “Zhety-Zhargy” contains norms of administrative, criminal, civil law, as well as tax regulations, religious views — it covered all aspects of the life of Kazakh society.

Administrative legal, criminal legal norms. Supreme power, according to Zhety-Zhargy, should be concentrated in the hands of the khan. Judging by individual articles of the laws, the khan was the supreme judge, he judged and punished for crimes and misdemeanors, examined claims, and established taxation procedures (Levshin A., 1948).

As in other legal documents of the Middle Ages, the main place in ‘Zhety-Zhargy’ was given to criminal law norms. The list of crimes included: murder, mutilation, rape, beatings, insult, failure to comply with the rules of filial piety, theft, adultery and others. ‘Zhety-Zhargy’ provided for liability for crimes against the person, theft of property relations, for crimes in the field of family and marriage relations and religion, etc.

For committing crimes, the perpetrators were subjected to various punishments. In ‘Zhety-Zhargy’ the law ‘to take revenge for blood with blood, for mutilation with the same mutilation’ has been preserved. But punishments could be commuted by sentences of judges or by the consent of the plaintiffs, then the criminal was punished only by the payment established for any crime. The opportunity to buy out, however, was not always provided. In four cases the death penalty was legalized: 1) if a wife kills her husband and his relatives do not forgive her; 2) if ‘a woman kills an illegitimate baby out of shame’; 3) if the husband witnesses his wife’s adultery; 4) if the fact of blasphemy is established. There were two types of death penalty: hanging and stoning a person to death (for blasphemy).

In addition to the death penalty and ransom, ‘Zhety-Zhargy’ also provided for other punishments: confiscation of property, ostracism and public disgrace. The first type of punishment was applied to people who accepted the Christian religion; the second — to

pregnant women for killing their husbands, the third — for non-compliance with the rules of filial piety (insulting or beating parents).

Family and marriage law. In the field of family and marriage relations, the right of parents over the lives of their children was asserted, and the unequal position of women was consolidated. 'Parents are not punished in any way for killing their children,' the law said. The wife and children who knew about the crime of their husband or father and did not report him were not subject to any punishment, 'for it is not allowed to report the eldest person in the family.'

Parents are not punished in any way for killing their children; but a woman who kills an illegitimate baby out of shame is put to death. A son who dares to slander or beat his father or mother is placed on a black cow, face to tail, with old felt tied around his neck: this cow is led around the villages and the one sitting on it is beaten with a whip; and the daughter is tied up and handed over to her mother for punishment at her discretion (Levshin A. I., 1932).

Barlybek Syrtanov: 'The Charter of 'Kazak eli' is the first draft of the Kazakh constitution', 1911.

B. Syrtanov's charter contained sections: 'Preamble', 'About the independence of the republic Country of Kazakhs', 'About human rights', 'About the Kazakh land', 'About the court'. The preamble of the document recognized the antiquity of the Kazakh nation, its significant number, the unification of the Kazakh zhuzes for protection from the Kalmyks, the forced subordination of the Kazakhs to the junior zhuz of Russia and its expansion into the Kazakh lands. 'In modern times, peacefully,' the preamble says, 'without shooting and war, without shedding blood, in order to be on our own land a country with our own government and to be in friendship with all other countries [we] are establishing the republic of the Country of Kazakhs. ... Just as other self-governing peoples of the world strive to be independent, [we] in order to become an independent country and to lead the people to a happy, equal and free life, propose this Charter.'

The status of the Kazakh Country was assumed to be a dominion of Russia, that is, a

virtually independent state that was part of another state and recognized the head of that state. The division of powers into legislative (parliament), executive (government) and judicial power was proclaimed. The National mazhilis, as the highest body, was supposed to elect a president for four years (no more than two terms), approve ministers chosen by the president, select and appoint judges for life. Ministers report to the president and the national mazhilis. The equality of all people, the inadmissibility of discrimination, freedom of expression and association in political parties were proclaimed. Actions of associations, parties and people aimed at enmity between ethnic groups were prohibited. Judges must know the Kazakh language, and representatives of other ethnic groups have the right to speak their language in court. It was recognized that serious criminal offenses were tried with the participation of seven juries. The land of the Kazakhs was determined as their property and was not for sale. Fossil fuels and other minerals, forests, water, lakes and mountains were determined as the property of the government, which allocated land for cattle breeding, agriculture, building houses and returned the land to the state.

I. About the independence of the republic Country of Kazakhs

1. The country of the Kazakhs is a country governed by the people and it has Kazakh characteristics.

2. The country of the Kazakhs has a flag. The flag consists of green, red and yellow transverse stripes. There is a crescent and star design in the top corner. Green is a sign of the country's fidelity to Islam, red is a symbol of the blood spilled in defence of the country, yellow is a symbol of the wide Kazakh steppe and freedom.

3. From now on, the Country of Kazakhs will maintain friendly relations with Russia and has a dominion status.

4. The highest body of the Country of Kazakhs is the National Mazhilis. People who are elected to this body, then elect the head of the Country of Kazakhs (the President) for four years.

5. One President does not have the right to rule the country for more than two terms.

6. The President governs the Country of Kazakhs through ministers. The President chooses ministers independently, but they are subject to approval by vote of the National Mazhilis.

7. Ministers report on their work to the President and the National Mazhilis.

8. The Deputy President of the Kazakh Country is the Vice President. He replaces the President in his absence, but otherwise reports to the President.

9. In the Country of the Kazakhs there will be authorities — legislative (parliament), executive (government) and judicial. The three powers do not **obey each other and will be a symbol of preventing lawlessness.**

II. About human rights

10. In the Country of Kazakhs, all people have equal rights. Discrimination against a person on the basis of religion, blood, social or ethnic origin is not permitted. A person is responsible only before the law and God.

11. In the Country of Kazakhs, people have the right to freedom, equality and a happy life.

12. In the Country of Kazakhs, men and women are equal. Kazakh features do not humiliate women and are carried out with their consent.

13. In the Country of the Kazakhs, a person has the right to freely speak out, associate and join [political] parties.

14. Actions of associations, [political] parties and people aimed at enmity between ethnic groups are prohibited. The perpetrators will be held accountable according to the law.

15. In the Country of Kazakhs, a person cannot be detained or imprisoned without court approval. A court decision must be made regarding detainees within 24 hours, otherwise [the detainee] is released. Those responsible for illegal detention [or arrest] are liable to the court.

16. In the Country of Kazakhs, opening letters and correspondence is not allowed. Permission [for an opening] is within the competence of the court.

17. A person has the right to own any type of property. The possession, use and disposal of property must not cause harm to [another] person. Deprivation of the right to property is carried out on the basis of the law and with [appropriate] material compensation.

III. About the land of the Kazakhs.

18. The land of the Kazakhs is their property.

19. Kazakh land is not for sale, God created it to be used by people.

20. Fossil fuels and other minerals, forests, water, lakes and mountains are in the possession of the Kazakh Country. Cattle breeding, arable farming, building houses, farming, as well as returning land to the state for general benefit is carried out with the permission of the government.

IV. About the court

21. Judicial power is processed independently.

22. Court decisions are based on the law and court rules.

23. Judges, when deciding disputes, are not subordinate to the government or the people and make decisions based on the law and judicial rules. People who [illegally] influence judges are prosecuted.

24. All judges in the Country of Kazakhs are elected by the National Mazhilis for life. Judges who have violated or failed to comply with the law are dismissed from office.

25. The dismissal of [a judge] from office is carried out on the basis of [someone's] complaint and the decision of the Chairman of the Court of the Country of Kazakhs and is approved by a majority vote of the National Mazhilis. The power of a judge is renewed if the conditions that served as the basis for dismissal from office are absent.

26. Judges are required to know the Kazakh language. People of a different [ethnic] origin have the right to speak their own language in court.

27. The jury [judges] has the right to consider criminal cases involving serious crimes. The number of jurors is seven people.

28. Activities of [political] parties are not permitted in judicial institutions. Judges may not be members of [political] parties. If such secret membership is revealed, [the judge] is dismissed from office (Ozbekuly S. Barlybek Syrtanov 1996).

June 13, 1911, St. Petersburg

In general, B. Syrtanov's Charter laid the foundations for future constitutional documents; many of his ideas were reflected in the program of the Alash party.

The period of creation of the constitutional system in Kazakhstan began with the Declaration “About the State Sovereignty of the Kazakh SSR”, adopted by the Supreme Council of the Kazakh SSR on October 25, 1990, in which the indivisibility and inviolability of the territory was first established, the country was defined as a subject of international law, the institution of citizenship was introduced, and also equality of forms of ownership.

It established for the first time three norms:

– about the supremacy of the constitution and laws of the republic on the territory of the Kazakh SSR, ‘with the exception of issues voluntarily delegated by it to the Union,’ and on the right of the republic ‘to suspend on its territory the laws and other acts of the supreme bodies of the Union that violate the sovereign rights and the Constitution of the Republic’;

– about the exclusive ownership of the Kazakh SSR, which forms the basis of its sovereignty, “all national wealth available on its territory”, and also secured ‘the right of the Kazakh SSR to its share in the all-Union property in accordance with the contribution of the Republic, including in diamond, currency funds and gold reserves;’

– about the right of the Kazakh SSR ‘to act as an independent subject of international relations, to determine foreign policy in its own interests...’

A significant stage in the political process was the **constitutional Law ‘About State Independence of the Republic of Kazakhstan’ dated December 16, 1991**. Developing the key ideas of the Declaration of State Sovereignty, the constitutional law stated that the Republic of Kazakhstan builds its relations with all states on the principles of international law, as an independent to the state. For the first time, a single Kazakh citizenship was established. A variety of forms of ownership was established, the state’s course towards an independent economic system with its own financial, credit, tax and customs policies were consolidated. To protect the independence and territorial integrity of the Republic of Kazakhstan, the constitutional law provided the creation of its own Armed Forces.

The Constitutional Law ‘About State Independence of the Republic of Kazakhstan’

determined the ‘united people of Kazakhstan’ as the only source of state power. The people of Kazakhstan, together with the Kazakh nation, the law stated, are citizens of the republic of all nationalities, united with it by a common historical destiny. This law became the temporary constitution of independent Kazakhstan at the stage of establishing its de jure sovereignty. The Constitutional Law ‘About State Independence of the Republic of Kazakhstan’ dated December 16, 1991 was a continuation of the Declaration ‘On the State Sovereignty of the Kazakh SSR’ dated October 25, 1990. The Declaration marked an act of political intentions, and the constitutional law put the end to the process of socialist construction and outlined the path of another system. Thus, a fundamentally new beginning was laid for new, high-quality processes of its system in Kazakhstan, the independent construction of a new politically and economically independent statehood.

Constitution of the Republic of Kazakhstan, adopted on January 28, 1993. On January 28, 1993, after a two-year search for compromises, the Supreme Council of the twelfth convocation adopted the first post-Soviet Constitution of Kazakhstan, which completed the formation of the de jure sovereignty of the republic and continued the establishment of true constitutionalism. Thus, the republic began the transition to a qualitatively new stage of ensuring national independence, real guarantees of civil rights and freedoms, building a democratic society and the rule of law. The 1993 Constitution opened up space for the positive dynamics of the development of Kazakh society, abandoning one-party political rule, a monopoly economic system, and the ideology of historical violence. At the stage of the transition period to a socially oriented market economy, the Basic Law legitimized the Republic as a new independent state in the world community. The 1993 Constitution declared Kazakhstan as an integral part of modern civilization, Kazakhstan has intentions of good neighborliness, multipolar and mutually beneficial cooperation, and is committed to universal human values.

The Republic of Kazakhstan determined man’s life, freedom and inalienable rights as the highest value. The republic assumed a

constitutional obligation to 'carry out its activities in the interests of the citizen and society' (clause 3) (Constitution of the Republic of Kazakhstan. 1993). For the first time, the principle of sovereignty of the people of Kazakhstan was formalized constitutionally. Provision four of the Fundamentals of the Constitutional System established: 'The people of Kazakhstan are the only source of state power of the republic,' which they process directly and through their representatives. Provision six of the Fundamentals stated: 'State power in the Republic of Kazakhstan is based on the principle of its division into legislative, executive and judicial' (clause 6) (Constitution of the Republic of Kazakhstan. 1993). The Constitution of the Republic of Kazakhstan of 1993, unlike previous Soviet constitutions, acquired the highest legal force and direct effect. Constitution 1993 legitimized the republic as a new independent state in the world community.

But the 1993 Constitution could not help but bear the stamp of the past. Work on it was carried out even at the time when the USSR existed, and was finalized at the initial stage of the formation of political independence. It was a kind of compromise between the need for the emerging institution of the presidency and the surviving communist system. The 1993 Constitution did not enshrine universal human rights, but was limited to stating the socialist rights of citizens. The structure of the Supreme Council was preserved in its previous form; the system of 'checks and balances' in the interaction of authorities was not sufficiently refined. The 1993 Constitution did not resolve the issue of a specific form of republican government.

According to the 1993 Constitution, the President of the Republic headed a unified system of executive power and determined the composition of the government, which was responsible to him. All the elements of a presidential republic were there. But there was no executive power that could cope with the decline in production, corruption, and the polarization of society. Also, the 1993 Constitution did not provide a clear understanding of the constitutional definition of the nature of developing statehood; established status of languages; an ambiguous approach to regulating citizenship issues; legal foundations

of the foreign policy of the Republic of Kazakhstan as a new independent state. In the 1993 Constitution, the status and powers of the President changed somewhat: now it is not 'the head of the Republic of Kazakhstan and its executive power,' but 'the head of state and the unified system of executive power — the guarantor of respect for the rights and freedoms of citizens, the Constitution and the laws of the Republic.' Within the limits of constitutional power, the President has the right to speak on behalf of the people of Kazakhstan (Kotov A. K. 1970. p. 64).

The 1993 Constitution made significant adjustments to the legitimate basis of the executive power of Kazakhstan:

- defined the executive branch as an independent branch of government;
- introduced the concept of a unified system of executive power;
- made changes to the procedure for forming the Government. From the norm of Article 78, paragraph 3 of the 1993 Constitution, it follows that the consent of the Supreme Council is now required for the Prime Minister appointed by the President, as well as for key positions in the executive branch – ministers of foreign affairs, defence, finance, internal affairs, Chairman of the Committee national security. The consent of the highest legislative body for the appointment of other posts in the Government is not required;
- significantly changed the provision on the responsibility of the executive branch to the Supreme Council: The Cabinet of Ministers is responsible to the President; before the Supreme Council it is of a limited nature – only on issues of execution of laws (Articles 85, 88) (Kotov A. K. 2000).

Constitution of the Republic of Kazakhstan 1995. A significant milestone in the life of Kazakh society was the Constitution of the Republic of Kazakhstan in 1995, which was approved by 89.14% of the votes from the number of citizens of the republic who participated in the vote (8,091,715 citizens, or 90.58%) in a referendum. The number of those who voted against the new Constitution was 800,839 citizens or 9.90% of the number of Kazakhstanis who took part in the referendum. As a result, the Constitution of 1995 was admitted by the people of Kazakhstan, and the Kazakh people themselves became

co-authors of the ideas of this Basic Law together with the President of the Republic of Kazakhstan N.A. Nazarbayev. The draft Constitution of 1995 was developed under the leadership and with the direct participation of N.A. Nazarbayev. More than 3 million 345 thousand Kazakh people took part in the discussion of the project, which took place from June 30 to July 30, 1995, making 31 thousand 886 proposals and comments, which led to changes in 55 articles out of 98 articles the last, fourth project. The adoption of the 1995 Constitution, its spirit and letter, opened up new prospects for the further development and strengthening of an independent state.

The 1995 Constitution defines the foundation of the new independent state of Kazakhstan in Article 1 of Section 1 'General Provisions': 'The Republic of Kazakhstan establishes itself as a democratic, secular, legal and social state, the highest values of which are the person, his life, rights and freedoms' (p. 1). The 1995 Constitution formulates and consolidates the rights, freedoms and responsibilities of man and citizen. Art. 10 clearly states that 'the citizenship of the Republic of Kazakhstan ... is uniform.' 'Regardless of the grounds for its acquisition,' the same article of the new Constitution notes, 'citizenship of the Republic of Kazakhstan is equal.' The Kazakh language is also defined as the official language, but with a clarification: in state bodies and local government bodies, the Russian language is officially used along with the state language (Constitution of the Republic of Kazakhstan of August 30, 1995 p. 70).

According to Article 40 of Section 111 of the Constitution of the Republic of Kazakhstan of 1995, the President, being the head of state and its highest official, who determines the main directions of the domestic and foreign policy of the state and represents Kazakhstan within the country and in international relations, serves:

- firstly, a symbol and guarantor of the unity of the people and state power;
- secondly, it ensures the coordinated functioning of all branches of government, as well as the responsibility of its bodies to the people of Kazakhstan;
- in case of a political crisis that can arise as a result of the identification of an insurmountable disagreement between the cham-

bers of Parliament or between Parliament and other branches of government (Article 63);

- The President, on his own initiative, has the right to decide to terminate the power of the Government and dismiss any of its members from office. In this case, the dismissal of the head of the Government entails the resignation of the Government in its entirety (clause 7 of Article 70).

In accordance with the concept of the Kazakh model of a presidential republic, all elements of the system of government are built, forming a mechanism of 'checks and balances.' According to the 1995 Constitution, the President is effectively and equidistant from both the executive and legislative powers. The presidential system is an institution for ensuring the coordinated functioning of all branches of government and their responsibility to the people (clause 3 of Article 40), and the President of the Republic of Kazakhstan has the constitutional powers of an arbiter in matters of maintaining the balance of powers. Evidence that the President of the Republic of Kazakhstan possesses arbitration functions can also be provided by such state legal institutions as the right to dissolve, in certain cases, both the Parliament and the Government (Article 63).

The main feature of the system of government in the state of Kazakhstan according to the 1995 Constitution is the strengthening of the institution of the presidency. The President of the Republic is the legitimate representative of the Kazakh people. The head of state personifies the unity of the people of Kazakhstan. According to fundamental constitutional norms, he has an unlimited right to speak on behalf of the people and the state. Parliament has the right to speak on behalf of the people "within the limits of its constitutional powers" (Constitution of the Republic of Kazakhstan of August 30, 1995 p. 75).

President of Kazakhstan according to the 1995 Constitution endowed with a dual status: firstly, the head of state, and secondly, the highest official (Constitution of the Republic of Kazakhstan of August 30, 1995 p. 75). When determining the main directions of the state's domestic and foreign policy, the President of the Republic of Kazakhstan does this equally in relation to all branches of the state and acts as the head of state. Ensuring the implemen-

tation of the main directions of the state's domestic and foreign policy, the President of the Republic of Kazakhstan interacts with each of the branches of government. In cases of direct leadership influence of the President on the Government, he acts primarily as a senior official. For example, in relations with the Armed Forces of the Republic, the President acts as the Supreme Commander-in-Chief (Constitution of the Republic of Kazakhstan of August 30, 1995 p. 75).

According to the Constitution, the President of the Republic is the guarantor of the rights and freedoms of man and citizen in Kazakhstan. Under the head of state, the Human Rights Commission has been created and operates as a prototype of the institution of "ombudsman" – the person authorized in the state for human rights. The 1995 Constitution gives the President the right to declare a state of emergency in the country (Clause 16, Article 44). This is the case when: democratic institutions, independence and territorial integrity; political stability and security of citizens; normal functioning of the constitutional bodies of the state are under threat. The 1995 Constitution legally enshrines the presidential form of government, but, according to Kazakh political scientists, we can talk about a non-classical presidential or super-presidential form of government, since the constitutional powers of the head of state are significantly strengthened compared to the period 1991–1995 and classical presidential republics. The 1995 Constitution was the result of N.A. Nazarbayev's consistent and balanced course. It laid the foundation for political stability, a more complete implementation of the principle of separation of powers, and the formation of a modern and professional bicameral Parliament operating on a permanent basis. The 1995 Constitution became the foundation for the systemic modernization of Kazakh society through deep economic and political transformations.

As part of the 1998 amendments, 19 articles were changed and supplemented. Thus, they removed the presidential age limit of 65 years and, at the same time, increased the term of office from five to seven years; the age limit for civil servants of 60 years was removed; divided parliament into two chambers – the Senate and the Mazhilis; distribut-

ed the legislative function of parliament between three institutions – the president, the government and members of parliament; the Supreme Council was abolished; the Constitutional and Arbitration Courts were abolished.

Constitutional reform of the Republic of Kazakhstan in 2007. Nursultan Nazarbayev in May 2007 submitted amendments to the Constitution to the Parliament. The President announced the beginning of a new stage in the democratization of Kazakhstan. The head of the state proposed transforming our republic from a presidential one to a presidential-parliamentary one. This presupposes a serious strengthening of the role of representative power, both in the centre and locally. In addition, the importance of political parties, public associations and the Assembly of Peoples of Kazakhstan will increase, the judicial system will be improved, the death penalty in the republic will actually be abolished, and the term of presidential rule will be reduced from seven to five years. The author of the constitutional reform was President N. A. Nazarbayev. The head of state personally headed the State Commission for the development and specification of the program of democratic reforms and the Working Group for the preparation of amendments and additions to the Constitution. Our leader made this decision for the sake of the future of the country and its flourishing as a democratic state. Specific innovations of the constitutional reform and the ensuing tasks of its legislative support.

In general, constitutional reform means the entry of Kazakhstan into a new historical era. A transition to a more democratic and institutionally stable form is being realized, in which there is a slight shift in the centre of power from the executive branch to the legislative branch. Constitutional changes, can be considered as the next step towards further modernization of the political system of Kazakhstan. President N.A. Nazarbayev became the author of all changes and confirmed his status as an outstanding reformer and statesman. This reform more clearly than ever confirms the large-scale strategic thinking of the Kazakh leader.

During the constitutional reform of 2007, the powers of Parliament were expanded, the role of political parties in the formation

of the legislative body was increased, and the influence of local representative bodies was strengthened.

The Senate of Parliament, in addition to legislative functions, takes a direct part in the personnel policy of the state by giving consent to the appointment by the President of the head of the National Bank, the Prosecutor General, the chairman of the National Security Committee, elects and dismisses the chairman and judges of the Supreme Court, participates in the formation of the Constitutional Council, the Central Election Commission, the Accounting Committee for monitoring the execution of the republican budget. The Senate is vested with the right to issue laws during the temporary absence of the Mazhilis caused by the early termination of its powers. Time has shown the effectiveness of the constitutional reform of 2007.

As part of the 2007 amendments, more than 40 significant amendments were made. The changes and additions were so serious that we can say that almost a new Constitution was created; democratic principles, the same for everyone, were enshrined as the highest values of the people of Kazakhstan; reduced the presidential term from seven to five years; a definition of "First President" appeared, which is not subject to the restriction on being elected more than two times in a row; established a proportional party system; political competition and diversity appeared; the status of parliament was strengthened by introducing a rule on the approval of the prime minister by a parliamentary majority; assigned constitutional status to the Assembly of the People of Kazakhstan and gave it the right to delegate its representatives to the Mazhilis of Parliament, according to the established quota (Law of the Republic of Kazakhstan dated May 21, 2007).

As part of the 2011 amendments, only one amendment was made to the Constitution of the Republic of Kazakhstan; they established a constitutional framework for calling and holding early elections of the country's president, which secured the status of 'Elbasy'.

The constitutional reform proposed by President Nursultan Nazarbayev in 2017 became a fateful moment in the political history of Kazakhstan, as changes to the Consti-

tution had a positive impact on the further trajectory of the development of national statehood. Political reform has become a serious aid in the implementation of the modernization of Kazakhstan. What amendments are introduced by this reform?

Strong President

Kazakhstan remains a republic with a presidential form of government. The Head of State retains the functions of the guarantor of the Constitution and stability, the supreme arbiter between the branches of government, determining the strategy of foreign and domestic policy, ensuring the security and defence capability of the country. Legislatively established powers that ensure the status of the President as the Supreme Commander-in-Chief and the powers of the Head of State in the field of national security, law and order are not subject to transfer.

The head of state will have the right to send an appeal to the Constitutional Council to verify the compliance of laws with the Constitution not only before they are signed, but also after they are put into effect (Law of the Republic of Kazakhstan "About Amendments and Additions to the Constitution of the Republic of Kazakhstan", adopted by Parliament on March 6, 2017).

Strong Parliament

The norms that enable the President to adopt decrees that have the force of law, as well as to delegate legislative powers to the President by Parliament, are excluded from the Constitution. The bill provides for a refusal to declare the consideration of the draft law urgent by the Head of State. The head of state reserves the right to determine the priority for the passage of bills in Parliament.

Based on the results of hearing the report of a member of the Government by a majority of at least two-thirds of the total number of deputies of the chamber, each chamber has the right to adopt an appeal to the President for the release of this official in case of failure to comply with the laws. In this case, the President dismisses a member of the Government from office. The President's right to reject the appeal of chamber deputies for the dismissal of a member of the Government is excluded, that is, the corresponding appeal

of the chamber to the Head of State for the dismissal of a specific member of the Government is subject to acceptance (Law of the Republic of Kazakhstan “About Amendments and Additions to the Constitution of the Republic of Kazakhstan”, adopted by Parliament on March 6, 2017).

Strong government

According to the constitutional reform, the Government will bear full responsibility for the state of affairs in the socio-economic sphere. The authority to approve state programs is transferred to the Government in agreement with the President. The executive branch bears the burden of responsibility for the documents it develops and implements. The same applies to the powers to form and abolish bodies that are not part of the Government, and to create state enterprises. The competence of the executive branch of government includes the formation of the Republican Budget Commission, the creation and abolition of special economic zones, the introduction of a special currency regime, approval of the list of holidays, and the establishment of city boundaries.

The constitutional reform will expand the responsibility of the Government and the entire system of the executive branch of government, ensuring their accountability to the Parliament. The Head of Government in the lower house of Parliament must answer questions from party factions about his work on the socio-economic development of the country at least once a quarter.

The role of the Parliament in relation to the executive branch of government has been revised. The government in its activities is now responsible to the President and the Parliament. Now the Prime Minister will make proposals on the structure and composition of the Government after consultations with the Mazhilis. The exception is the ministers of defence and foreign affairs, who will be appointed by the Head of State independently. It is expected that the Government will resign before the newly elected Mazhilis. The procedure for dismissing members of the Government at the request of deputies of Parliament will be simplified.

Important changes concern the legal support of such a key issue as the inviolability of

the independence of the state. The stability of the Constitution and the inadmissibility of changing its provisions establishing the independence, unitarity and territorial integrity of the republic, and the form of its government, are determined by the indispensable presence of the conclusion of the Constitutional Council before submitting the relevant amendments to the Basic Law for consideration.

The reform proposed by the Leader of the Nation was a major step towards democratization of the country’s political system. The President proceeded from the imperative of further strengthening statehood in the name of the well-being of the citizens of our country.

Giving constitutional status to the Commissioner for Human Rights in the Republic and regulating the procedure for his appointment and dismissal corresponds with the provisions of paragraph 1 of Article 1 and paragraph 2 of Article 12 of the Constitution, according to which the Republic of Kazakhstan asserts itself as a democratic, secular, legal and social state, the highest values of which are people, their lives, rights and freedoms (Law of the Republic of Kazakhstan “About Amendments and Additions to the Constitution of the Republic of Kazakhstan”, adopted by Parliament on March 6, 2017).

Provisions on the ombudsman are contained in the constitutions of a number of countries: Albania, Austria, Croatia, Estonia, Finland, Georgia, Hungary, Poland, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, etc.

In the opinion of the Venice Commission on the status of the Commissioner for Human Rights in the Republic of Kazakhstan (2007), it was noted that the institution of the Commissioner for Human Rights should have guarantees at the constitutional level, which would set out the essence of the characteristics and powers of this institution and the basic conditions for its appointment, providing selection of this person by a qualified majority in Parliament.

The law carried out the democratic modernization of the presidential form of government by strengthening the role, independence and responsibility of the Parliament and the Government, and the redistribution of certain powers of the President between the Parliament and the Government.

In accordance with the updated paragraph 1 of Article 49 of the Constitution, Parliament 'is the highest representative body of the Republic, exercising legislative power.' This fundamental provision is supported by the exclusion from the competence of the Head of State of the authority to issue laws, decrees that have the force of laws; on the exercise of legislative powers in the event of their delegation to him by the Parliament, as well as on giving instructions to the Government to submit a bill to the Mazhilis of the Parliament (clause 2 of Article 45, clause 2 of Article 61 of the Constitution, subclause 3) of Article 44 of the Constitution). At the same time, the President of the Republic retains the right of legislative initiative and the right to determine the priority of consideration of bills, meaning that they must be adopted by Parliament as a matter of priority within two months (clause 2 of Article 61 of the Constitution).

The law expanded the role of the Mazhilis of Parliament in the formation of the Government. The Prime Minister, after consultations with the Mazhilis of the Parliament, submits a proposal to the Head of State on the candidacies of members of the Government. An exception is provided for the positions of the Ministers of Foreign Affairs, Defence and Internal Affairs, who are appointed and dismissed by the President independently (new edition of subparagraph 3) of Article 44 of the Constitution).

A fundamental innovation is the norm establishing the resignation by the Government of its powers before the newly elected Mazhilis of the Parliament (amendment to paragraph 1 of Article 70 of the Constitution), which is quite logical when the Government is formed with the active participation of political parties represented in the Mazhilis.

The redistribution of powers between the branches of government, as noted by the Constitutional Council, does not affect the foundations of the presidential form of government and the status of the President as the Head of State, his highest official who determines the main directions of the domestic and foreign policy of the state, the symbol and guarantor of the unity of the people and state power, the inviolability of the Constitution, rights and freedoms of man and citizen, ensuring the coordinated functioning of all

branches of government and the responsibility of government bodies to the people.

As part of the 2017 amendments, 31 amendments were made to the Constitution. Thus, the powers of the Parliament of the Republic of Kazakhstan were changed, which affected its constitutional and political status; The President can no longer raise objections to decisions of the Constitutional Council; The Constitutional Council interprets the Constitution, gives conclusions on the correctness of the elections of the president and members of parliament, the republican referendum, and the compliance of laws with the Constitution; The Security Council became the main constitutional body of Kazakhstan; A special legal regime in the financial sector has been established within the capital.

The 2019 amendment made one change – the renaming of the capital Astana to Nur-Sultan.

The head of state in his message 'New Kazakhstan: the path of renewal and modernization' outlined the transition of Kazakhstan from a 'super-presidential' model to a 'presidential' one with a strong Parliament and an accountable Government. In order to implement the message of the Head of State within the framework of the 2022 amendments, 56 amendments to 33 articles were proposed to the Constitution, which the President submitted for public discussion at a referendum on July 5, 2022. Thus, amendments have been proposed to the Constitution to reformat the model of the system of checks and balances.

The draft law 'About amendments and additions to the Constitution of the Republic of Kazakhstan' was submitted to **the republican referendum** with the following wording of the question: 'Do you accept the amendments and additions to the Constitution of the Republic of Kazakhstan set out in the draft Law of the Republic of Kazakhstan "About amendments and additions to the Constitution of the Republic of Kazakhstan', published in the media on May 6, 2022.

According to Tokayev, the constitutional reform is aimed at a comprehensive transformation of the entire state model. 'The amendments are intended to consolidate the final transition from the 'super-presidential' form of government to a presidential republic with an influential Parliament and an accountable

Government. The constitutional reform will significantly strengthen the representative branch of government, strengthen the system of checks and balances, and increase the subjectivity of maslikhats (local authorities), the president said. The introduction of a mixed majoritarian-proportional model for electing deputies of the Mazhilis and regional maslikhats will make it possible to cover more fully the entire spectrum of views and opinions of voters, the head of state added (Law of the Republic of Kazakhstan “About Amendments and Additions to the Constitution of the Republic of Kazakhstan”, submitted to a republican referendum on June 5, 2022).

Amendments to the Constitution are aimed at modernizing the country’s political system, ensuring equal conditions for the development of all parties; simplification of legislative procedures; strengthening parliamentary control over the execution of the republican budget; increasing the electoral activity of citizens and their involvement in the process of comprehensive modernization of the country; protection of the rights and freedoms of citizens (Constitutional Court and the Commissioner for Human Rights in the Republic of Kazakhstan).

The main economic amendments include: recognition of the ownership of land, fossil fuels and minerals, and natural resources by the people; the state, that will manage it, is obliged to think of the people as the owner of the country’s natural resources; eliminating the monopoly in the economic sphere of close relatives of the President by prohibiting them from holding positions in the quasi-public sector.

The main political changes include, first of all: the democratization of elections to the Mazhilis, the introduction of a mixed electoral system; election of a significant part of deputies not according to party lists, but in single-mandate electoral districts covering all regions of the republic, with the right of voters to recall careless deputies; increasing the role and importance of the Mazhilis, elected by citizens, as the main body making laws (with the ability to bypass the objections of the Senate); eliminating the monopoly of one political party, individuals and groups of individuals by introducing for the first time

the non-partisanship of the President, prohibiting relatives of the President from holding positions as political civil servants and abolishing the previously established excessive privileges of the First President; a step towards a more democratic appointment of akims (heads) of regions and cities of republican significance (selection by a meeting of deputies of all maslikhats of a region or a city of one of two candidates proposed by the President); for the first time, stimulating the activity and increasing the responsibility of the Government in critical situations by giving it the right to adopt resolutions equal in force to laws – before the Parliament makes a decision on this issue.

The main legal and human rights provisions include: the full establishment in the Constitution of the institution of the Commissioner for Human Rights; re-establishment of the Constitutional Court of the Republic of Kazakhstan, liquidated in 1995, with the expansion of its competence in comparison with the currently existing Constitutional Council. For example, from January 2023, citizens, the Commissioner for Human Rights and the Prosecutor General will have the right to appeal to the Constitutional Court and, most importantly, to review the constitutionality of existing laws and other regulatory legal acts. The Constitutional Court is capable of raising the authority of the judicial system and increasing the confidence of citizens in it.

The current pace of development of Kazakhstan in the context of ongoing reforms produce the necessity for a deep understanding of the ideas and principles of constitutionalism, the degree of their dissemination and the dynamics of implementation in national legislation. The Constitution, as the main form of embodiment of these legal postulates, as the highest political and legal act regulating fundamental social relations, and its further improvement in accordance with global challenges and the needs of state development is necessary and in demand. The content of the Basic Law of the state must reflect both universal and national ideals, meet the needs of socio-economic, political, cultural, humanitarian and other spheres of life of society and the state.

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