

Section 5. Political science

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CONSTITUTIONAL POLICIES OF KAZAKHSTAN

Abstract. Present-day pace of Kazakhstan's development in the midst of the ongoing reforms raises the need for profound analysis of the ideas and principles of constitutionalism, the extent of their spread and the dynamics of their implementation in the national legislation. The Constitution as the main form of implementation of these legal postulates is the highest political and legal act governing the underlying social relations, and its further improvement in accordance with the global challenges and needs of state development is essential and demanded.

Keywords: Declaration "On the State Sovereignty of the Kazakh SSR", Constitutional Law "On the State Independence of the Republic of Kazakhstan" of December 16, 1991, Constitution of the Republic of Kazakhstan of 1993, Constitution of the Republic of Kazakhstan of 1995. Constitutional Reform of the Republic of Kazakhstan of 2007. Constitutional Reform of the Republic of Kazakhstan of 2017, Republican Referendum of June 5, 2022.

The establishment of the constitutional order in Kazakhstan began with the Declaration "On the State Sovereignty of the Kazakh SSR", adopted by the Supreme Soviet of the Kazakh SSR on October 25, 1990, establishing for the first time the indivisibility and inviolability of the territory, defining the country as a subject of international law, introducing the institution of citizenship and equality of forms of ownership.

Three norms were set out there for the first time: On the supremacy of the constitution and laws of the republic on the territory of the Kazakh SSR, "except for matters voluntarily delegated by it to the Union", and on the right of the republic "to suspend in its territory the laws and other acts of the supreme bodies of the Union which violate the sovereign rights and the Constitution of the Republic"; on the exclusive property of the Kazakh SSR, which constituted the

basis of its sovereignty, "all the national wealth available in its territory", and also enshrined "the right of the Kazakh SSR to its share in the general Union property in accordance with the contribution of the Republic, including in the diamond, currency funds and gold reserve"; on the right of the Kazakh SSR "to act as an independent subject of international relations, to determine foreign policy in its interests ..."

An important step in the political process was the **Constitutional Law on State Independence of the Republic of Kazakhstan of December 16, 1991**. Elaborating on the key ideas of the Declaration on State Sovereignty, the Constitutional Law stipulated that the Republic of Kazakhstan would build its relations with all states according to the principles of international law, as an independent state should. For the first time, a single Kazakhstani nationality was established. A variety of forms of ownership

was constitutionalized and the course of the state towards an independent economic system with its own financial and credit, tax and customs policies was consolidated. To protect the independence and territorial integrity of the Republic of Kazakhstan, the constitutional law established the creation of the country's own armed forces.

The Constitutional Law "On State Independence of the Republic of Kazakhstan" recognized "the united people of Kazakhstan" as the sole source of state power. The people of Kazakhstan, together with the Kazakh nation, the law stated, consisted of the citizens of the republic of all ethnicities, united with it by the commonality of historical destiny. This law became the provisional constitution of independent Kazakhstan at the stage of constitution of its *de jure* sovereignty. The Constitutional law "On State Independence of the Republic of Kazakhstan" dated December 16, 1991 became the continuation of the Declaration "On State Sovereignty of Kazakh SSR" of October 25, 1990. The Declaration was the act of political intention, and the constitutional law put an end to the process of socialistic construction and marked the way to another system. Thereby a fundamentally new beginning was made for the new, qualitative processes of its own system in Kazakhstan, the independent construction of a new politically and economically independent statehood.

The Constitutional Law raised the status of the President, who was given the same authority as the Supreme Soviet to speak on behalf of the people. The Constitutional Law on State Independence of the Republic of Kazakhstan of 1991 also adhered to the principle of separation of powers. In the case of the legislative and executive powers, the provisions of the 1990 declaration had been maintained, while the judicial power was vested in the Supreme Court and the Supreme Arbitration Court. The Constitutional Court of the Republic of Kazakhstan was proclaimed as the supreme judicial authority for the protection of the Constitution. A contradiction in the 1990 declaration has also been corrected: The direct elec-

tion of the President of the Republic in December 1991 changed the system of legitimizing the power of the head of state. Now the presidential vote of confidence did not depend on the will of the highest representative body and became independent. The overlapping of the posts of head of state and executive in a direct electoral, non-parliamentary election led to the conclusion that in December 1991 there was a transition from a semi-parliamentary to a presidential form of government.

The Constitution of the Republic of Kazakhstan adopted on January 28, 1993. On January 28, 1993, after two years of attempts to find compromises, the Supreme Soviet of the twelfth convocation adopted the first post-Soviet Constitution of Kazakhstan that completed the sovereignty of the republic *de jure* and continued the establishment of genuine constitutionalism. This marked the beginning of the transition to a qualitatively new stage in ensuring national independence, real guarantees of civil rights and freedoms, building of a democratic society and state based on the rule of law in the Republic. The Constitution of 1993 has opened a space for positive dynamics in the development of the Kazakhstani society, abandoning the single-party political rule, the monopolistic economic system and the ideology of historical violence. In the transition phase to a socially oriented market economy, the Fundamental Law legitimized the Republic as a new independent state in the world community. The 1993 Constitution declared that Kazakhstan positioned itself as part of the modern civilization, had the intention of good-neighborliness, multi-polarity and mutually beneficial cooperation, and was committed to universal values.

The greatest value of the Republic of Kazakhstan has been recognised as the human being, human life, freedom and inalienable rights. It has undertaken a constitutional obligation "to carry out its activities in the interests of the citizen and society" (Clause 3) [1]. For the first time, the principle of the sovereignty of the people of Kazakhstan was constitutionally formalised.

The fourth article of the Foundations of the Constitutional Order stipulated that “The people of Kazakhstan is the only source of state power of the Republic”, which it exercises directly and through its representatives. The sixth provision of the Foundations stipulated that “State power in the Republic of Kazakhstan is based on the principle of its division into the legislative, executive and judicial branches” (Clause 6) [1]. The Constitution of the Republic of Kazakhstan of 1993, unlike the former Soviet Constitutions, acquired the highest legal force and direct action. The Constitution of 1993 legitimized the Republic as a new independent state in the world community.

But the Constitution of 1993 could not help but bear the stamp of the past. It had been drafted at the time of the Union of Soviet Socialist Republics and was being finalised in the early stages of political independence. It was a kind of compromise between the need for the nascent presidency and the continued communist system. The Constitution of 1993 did not establish universal human rights but confined itself to stating the socialist rights of the citizens. The structure of the Supreme Council (former Supreme Soviet) remained as it was and the system of checks and balances in the interaction of powers had not been sufficiently refined. The Constitution of 1993 did not resolve the question of the specific form of republican rule.

Under the Constitution of 1993, the President of the Republic headed a unified system of executive power, determined the composition of the government, which was responsible to the President. All the elements of a presidential republic were in place. But there was no executive authority to deal with the decline in production, corruption, and polarisation of society. Also, the Constitution of 1993 did not provide a clear understanding of the constitutional definition of the nature of the developing statehood; the established status of languages; the ambiguous approach to the regulation of citizenship issues; the legal basis of Kazakhstan’s foreign policy as a newly independent state. The status and powers

of the President changed slightly in the Constitution of 1993: from being “the head of the Republic of Kazakhstan and its executive power” to “the head of the state and the unified system of executive power – the guarantor of observance of the rights and freedoms of citizens, of the Constitution and laws of the Republic”. Within the limits of constitutional powers, the President has the right to speak on behalf of the people of Kazakhstan [2, p. 64].

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

- defined the executive branch as an independent branch of state power;
- introduced the concept of a unified system of executive power;
- made changes in the procedure for forming the Government. It follows from Article 78(3) of the Constitution of 1993 that the consent of the Supreme Council is now required for the Prime Minister to be appointed by the President, as well as for key positions in the system of executive power – Ministers of Foreign Affairs, Defense, Finance, Internal Affairs, and the Chairman of the National Security Committee. The consent of the supreme legislative body is not required for the appointment of other positions in the government;
- Substantially changed the provision on the responsibility of the executive branch to the Supreme Council: the Cabinet of Ministers is responsible to the President; it has a limited responsibility to the Supreme Council only for the implementation of laws (Articles 85, 88) [1].

In addition, the role of Parliament in dismissing the Government was minimised. It was stipulated that the Supreme Council may raise with the President of the Republic the question of early dismissal of a member of the Cabinet of Ministers only if he has violated the Constitution and the laws of the state. In general, the Cabinet of Ministers is responsible to the head of

state and resigns before the newly elected President [2]. The Constitution of 1993 took another step in strengthening the position of the executive branch by continuing the redistribution of power between the executive and the legislature in favor of the former. This was largely due to, among other factors, the low efficiency of the legislative and judicial bodies and the weakness of political parties. The constitutional enshrinement of the possibility of declaring a state of emergency (the Basic Law of 1993 grants the head of state the right to declare a state of emergency) also indicated a strengthening of the executive power in the person of the President [2].

Under the Constitution of 1993, the President, along with deputies of the Supreme Soviet, the Cabinet of Ministers, the Supreme Court and the Supreme Arbitration Court, had the right to initiate legislation. Under the Constitution of 1995, as the highest official to whom both the legislative and executive branches of power could appeal, the head of state had no such initiative and was empowered to issue decrees with the force of law in strictly defined cases. Also under the Constitution of 1993, the President had a veto power which had to be overruled by a qualified majority (Article 78(2)).

The Constitution of the Republic of Kazakhstan of 1995. A significant event in the life of Kazakh society was the Constitution of the Republic of Kazakhstan in 1995, which was adopted by referendum with 89.14% of the votes of the citizens of the Republic participating in the voting (8,091,715 citizens or 90.58%). The number of citizens who voted against the new Constitution was 800839 or 9.90% of the citizens of Kazakhstan who took part in the referendum. As a result, the Constitution of 1995 was adopted by the people of Kazakhstan, and the people of Kazakhstan 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 Kazakhstani citizens took part in the discussion of the Draft, which took place from June 30 to July 30, 1995. 31 thousand 886 proposals and comments were made, which led to the amendment of 55 articles out of 98 articles of the Final, Fourth Draft. The adoption of the Constitution of 1995, its spirit and letter opened up new prospects for the further development and strengthening of the independent state.

The Constitution of 1995 defines the foundation of Kazakhstan's new independent state in Article 1, Section 1, "General Provisions": "The Republic of Kazakhstan claims to be a democratic, secular, legal and social state whose highest values are the individual, his life, rights and freedoms" (Clause 1). The Constitution of 1995 formulates and enshrines the rights, freedoms and duties of the individual and the citizen. Article 10 unambiguously enshrines that "citizenship of the Republic of Kazakhstan ... is one". "Irrespective of the grounds of its acquisition", the same article of the new Constitution notes, "citizenship of the Republic of Kazakhstan is equal". Also the state language is defined as the Kazakh language, but with a clarification: the Russian language is officially used in state bodies and local authorities on an equal basis with the state language [3, p. 70].

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

- first, as a symbol and guarantor of the unity of the people and the state power;
- second, it ensures the coordinated functioning of all branches of State power, as well as the responsibility of its bodies towards the people of Kazakhstan;
- in addition, the President is vested with the right to issue laws and decrees having the force of law. He forms the Government in the man-

ner prescribed by the Constitution. In all its activities, the Government is responsible to the President. The President may dissolve Parliament, but in strictly defined cases:

- a vote of no confidence in the Government by Parliament;
- when Parliament twice refuses to give its consent to the appointment of a Prime Minister;
- in the event of a political crisis resulting from an irreconcilable disagreement between the chambers of Parliament or between Parliament and the other branches of Government (Article 63);
- the President, on an individual initiative, has the right to decide to terminate the powers of the Government and to dismiss any of its members. The dismissal of the Head of Government entails the resignation of the entire Government (Article 70(7)).

Under Kazakhstan's model of a presidential republic, all elements of the system of government are aligned, forming a mechanism of checks and balances. Under the Constitution of 1995, the President is realistically and equidistant from both the executive and the legislature. The presidential system is the institution that ensures the coordinated functioning of all branches of state power and their responsibility to the people (Article 40(3)), and the President of the Republic of Kazakhstan has constitutional powers of arbiter in matters of maintaining the balance of powers. Evidence of the arbitration functions of the President of the Republic of Kazakhstan can also be found in such state-legal institutions as the right to dissolve both Parliament and the Government in certain cases (Article 63).

The main distinctive aspect of the system of government in the state of Kazakhstan under the Constitution of 1995 is the strengthening of the institution of the presidency. The President of the Republic is the legitimate representative of the Kazakhstani people. The Head of State embodies the unity of the people of Kazakhstan. According to the fundamental consti-

tutional norms he has the unlimited right to speak on behalf of the people and the state. The Parliament has the right to speak on behalf of the people "within the limits of its constitutional powers" [3, p. 75].

The President of Kazakhstan according to the Constitution of 1995 is endowed with the dual status: first, as the Head of State, and second, as the highest official [4]. Determining the main directions of domestic and foreign policy, the President of the Republic of Kazakhstan does so equally in relation to all branches of the state and acts as the head of state. Ensuring the implementation of the main directions of domestic and foreign policy of the state, the President of the Republic of Kazakhstan interacts with each of the branches of power. In cases where the President directly directs the Government, he acts predominantly as the highest official. For example, in relations with the Armed Forces of the Republic, the President acts as the Supreme Commander-in-Chief [5].

Under the Constitution, the President of the Republic is the guarantor of human and civil rights and freedoms in Kazakhstan. The Head of State has established and operates the Commission on Human Rights as a prototype of the institution of the 'ombudsman', the state's commissioner for human rights. The Constitution of 1995 gives the President the right to declare a state of emergency in the country (Article 44(16)). This is when the democratic institutions, independence and territorial integrity; political stability and security of citizens; and the normal functioning of the constitutional organs of the state are threatened. The Constitution of 1995 legally provides for a presidential form of government, but, according to Kazakhstani political analysts, one may speak of a non-classical presidential, or super-presidential form of government, because the constitutional powers of the head of state are significantly strengthened in comparison to the 1991–1995 period and the classical presidential republics. The Constitution of 1995 was the result of Nursultan Nazarbayev's consistent and balanced course. It laid the foundation for political stability, a fuller implementation of the principle

of separation of powers, and the formation of a modern and professional bicameral Parliament operating on a permanent basis. The Constitution of 1995 became the foundation for the systemic modernization of Kazakh society through profound economic and political transformations.

As part of the **1998 amendments**, 19 articles were amended. For example, the presidential age limit of 65 was removed and the term of office increased from five to seven years; the age limit of 60 for civil servants was removed; parliament was divided into two chambers, the Senate and the Majilis; parliament's legislative function was divided among three institutions – the president, the government and members of parliament; the Supreme Council was abolished; and the Constitutional and Arbitration Courts were abolished.

The constitutional reform of the Republic of Kazakhstan in 2007. Nursultan Nazarbayev presented amendments to the Constitution to Parliament in May 2007. The President announced the beginning of a new stage in Kazakhstan's democratization. The head of state proposed transforming our republic from a presidential to a presidential-parliamentary one. This implies a serious strengthening of the role of representative power, both centrally and locally. In addition, the importance of political parties, public associations and the Assembly of the Peoples of Kazakhstan will increase, the judicial system will be improved, the death penalty in the republic will actually be abolished, and the presidential term of office will be reduced from seven to five years. The author of the constitutional reform was President Nazarbayev. The head of state personally headed the State Commission on Development and Concretization of the Program of Democratic Reforms and the Working Group on Preparation of Amendments and Additions to the Constitution. Our leader took this decision for the sake of the future of the country and its prosperity as a democratic state. Concrete innovations of the constitutional reform and the ensuing legislative tasks:

- The President proposed to go along the lines of such a constitutional change, whereby the republic remains presidential, but with a significant increase in the powers of Parliament. This would transform the model of our republic from presidential to presidential-parliamentary. According to Nazarbayev, it is reasonable to reduce the term of presidential rule from seven to five years;

- Parliament passed an amendment initiated by a large group of deputies, whereby Nursultan Nazarbayev, as the first President, the founder of the modern Kazakhstani state and generally recognised national leader, was given the exclusive right and opportunity to run for the post of head of state beyond the two terms established in the Constitution;

- Democratization of the electoral system. The president developed the proposals of the state commission, which proposed electing half of the deputies on a majoritarian system and half on a proportional one. Nazarbayev proposed a transition to the election of deputies to the Majilis under the proportional electoral system, which ensures representativeness and takes into account the specific features of Kazakhstan. The new form of elections in Kazakhstan should provide political parties with additional opportunities to strengthen their role in the political system of the country by ensuring a real reflection of the balance of political forces and the actual will of the population;

- The proposal of the State Commission to increase the size of the Senate by increasing the presidential quota, which now rises from 7 to 15 deputies, was adopted. The Majilis is proposed to be increased to 107 deputies. 98 deputies are elected under the proportional system, while 9 deputies represent the Assembly of People of Kazakhstan, elected according to the law. This is necessary to take into account the interests of large ethnic groups and will serve to further consolidate society. Thus, the number of deputies in Parliament is increased by 38 people and will make up 154 deputies. This is a normal proportion for our 15 million population;

– As for the functions of the chambers of Parliament, the Senate will be able to pass laws on its own if the Majilis terminates its powers prematurely. Also, the upper house will approve the chairman of the National Bank. Deputies will henceforth be bound by an imperative mandate to uphold a single party's position in the voting. Parliament's authority to control the government will be strengthened. In particular, the procedure of passing a vote of no confidence in the central executive will be simplified. The Prime Minister will be required to raise the issue of confidence in the Cabinet of Ministers before a newly elected Majilis. The composition of the government will be formed on the prime minister's proposal;

– Changes and amendments to the basic law of the country related to strengthening the role of political parties. According to Nazarbayev, the election of Majilis deputies under the proportional system is a historically important step in enhancing the role of political parties. In addition, the Prime Minister will represent the parliamentary majority party. The implementation of such an approach would, first, enhance the role of political parties in forming the government; second, it would result in the parliamentary majority party being responsible for the formation and subsequent actions of the government, which would have to implement the programme of the winning party or coalition. The new amendments will abolish the ban on public funding of public associations. The parties will be able to count on the support of the national budget. The importance of parliamentary groups of political parties will increase;

– Develop civil society institutions. The role of NGOs and the media will increase, but, as the president noted, so will their responsibility to the public. The head of state initiated the establishment of a Civil Forum, under which the Civic Alliance of Kazakhstan was created. A chamber of public experts under the Majilis was established to ensure its participation in law-making processes. This will establish a high level of dialogue between the authorities and non-

governmental organizations, thus strengthening the role of civil institutions in the social and economic life of society;

– changes and additions with regard to local self-government issues. Maslikhats will become a full-fledged instrument of people's power at the local level. The proposed amendments to the Constitution will allow rural akims, along with the performance of state functions, to legitimately address the tasks of local self-government. The term of office of maslikhats is determined to be five years; this will contribute to much greater stability of local power. Akims of oblasts, cities of republican significance and the capital will be appointed with the consent of the respective maslikhats. Akims of other levels will be appointed according to the same scheme. According to the President, it will now be easier for the maslikhat to express no confidence in the akim, which will automatically increase the responsibility of the local executive power;

– Judicial authorisation of arrests has been introduced. In addition, the qualification collegium of justice is abolished. Its function of selecting candidates for judicial positions is transferred to the Supreme Judicial Council. The Assembly of the People of Kazakhstan was also updated. The Assembly of the People of Kazakhstan has been given constitutional status as an organisation that ensures representation of different ethnic groups of the country in public and political life [6].

Overall, the constitutional reform signifies Kazakhstan's entry into a new historical era. A transition to a more democratic and institutionally sustainable form is being implemented, with a slight shift in the power centre from the executive to the legislative branch. The constitutional changes can certainly be regarded as another step towards further modernisation of Kazakhstan's political system. President Nazarbayev was the author of all the changes and confirmed his status as an outstanding reformer and statesman. This reform vividly confirms as never before the large-scale strategic thinking of the leader of Kazakhstan.

The constitutional reform of 2007 expanded the powers of Parliament, increased the role of political parties in the formation of the legislature, and strengthened the influence of local representative bodies.

In addition to its legislative functions, the Senate of Parliament is directly involved in the personnel policy of the state by giving its consent to the appointment by the President of the Head of the National Bank, the Prosecutor General and the Chairman of the National Security Committee; it elects and dismisses the Chairman and judges of the Supreme Court and participates in the formation of the Constitutional Council, the Central Election Commission and the Accounts Committee for monitoring the execution of the national budget. The Senate is empowered to issue laws during the temporary absence of the Majilis caused by the early termination of its powers. Time has shown the effectiveness of the 2007 constitutional reform.

As part of the amendments of 2007, more than 40 significant amendments were introduced. The amendments and additions were so serious that one can say that a virtually new Constitution has been created: democratic principles equal for all have been enshrined as the highest values of the people of Kazakhstan; the presidential term of office has been reduced from seven to five years; the definition of “First President”, who is not subject to the restriction of election for more than two consecutive terms, has been introduced; a proportional-party system has been established; political competition and diversity has emerged; the status of parliament has been enhanced by the introduction of a rule on the approval of the prime minister by a parliamentary majority; gave the Assembly of the People of Kazakhstan constitutional status and the right to delegate its representatives to the Majilis of Parliament, according to a set quota.

As part of the **2011 amendments**, only one amendment was made to the Kazakh constitution, establishing a constitutional basis for the appointment and conduct of extraordinary presidential elections, which enshrined the status of Elbasy.

The constitutional reform proposed by President Nursultan Nazarbayev in **2017** was a defining moment in Kazakhstan’s political history, as the constitutional amendments have positively influenced the further trajectory of domestic statehood. The political reform has become a major support for the modernisation of Kazakhstan. What amendments are introduced by this reform?

Strong President

Kazakhstan remains a presidential republic. The Head of State retains the functions of guarantor of the Constitution and stability, supreme arbiter between the branches of power, determining the strategy of foreign and domestic policy, and ensuring the security and defence capacity of the country. The statutory powers that ensure the President’s status as Supreme Commander-in-Chief and the powers of the Head of State in the area of national security, law and order are not subject to transfer.

The Head of State will have the right to appeal to the Constitutional Council to verify the constitutionality of laws not only before they are signed, but also after their enactment [7].

Strong Parliament

The rules allowing the President to issue decrees having the force of law and for Parliament to delegate legislative powers to the President are excluded from the Constitution. The law would not allow the Head of State to declare the consideration of a draft law urgent. The Head of State reserves the right to prioritise the passage of draft legislation in Parliament.

Following the hearing of the report of a member of the Government by a majority of not less than two-thirds of the total number of deputies of the chamber, each chamber shall have the right to appeal to the President to dismiss the official in the event that he fails to obey the laws. In this case, the President shall dismiss the member of the Government. The right of the President to reject an appeal of the deputies of the chamber to dismiss a member of the Government is excluded, i.e. a corresponding appeal of the chamber to the Head of State to dismiss a par-

ticular member of the Government shall be subject to acceptance [7].

Strong Government

According to the constitutional reform, the government will be fully responsible for the state of affairs in the socio-economic sphere. The authority to approve state programmes in consultation with the President is transferred to the Government. The executive branch bears the burden of responsibility for the documents it develops and implements. The same applies to the power to form and abolish agencies that are not part of the government, and to create state-owned enterprises. The competence of the executive branch includes the formation of the republican budget commission, the creation and abolition of special economic zones, the introduction of a special currency regime, the approval of a list of public holidays, and the establishment of city boundaries.

The constitutional reform will expand the responsibility of the Government and the entire executive branch system and ensure their accountability to Parliament. The Head of the Government in the lower house of Parliament should answer questions from party factions at least once a quarter on his work on the social and economic development of the country.

The role of Parliament in relation to the executive branch has been redefined. The Government is now responsible to the President and Parliament in its activities. The Prime Minister will now make proposals on the structure and composition of the government after consultation with the Majilis. The exceptions are the ministers of defence and foreign affairs, who will be appointed by the head of state independently. It is envisaged that the government will resign before a newly elected Majilis. The procedure for dismissal of members of the Government at the request of members of Parliament will be simplified.

New amendments to the Constitution will tighten the requirements for judicial candidates. The role of law enforcement agencies in fulfilling the tasks of ensuring the rights and freedoms of citizens, state se-

curity, law and order and the rule of law will change. Each law enforcement agency would have to perform its tasks in good faith under public scrutiny. The Constitution revises the functions of the Prosecutor's Office. Its tasks are defined succinctly and precisely, i.e. to supervise the observance of the rule of law, to represent the interest of the state in court and to prosecute.

One of the constitutional amendments affecting the activities of local state administration and self-governance bodies concerns the early termination of the powers of the maslikhat. The President retains the right to terminate the powers of the maslikhat early, but the Head of State takes such a decision only after consultation with the Prime Minister and the chairpersons of the parliamentary chambers. Therefore, the decision to dissolve the maslikhat involves representatives of the two branches of government – the legislative and the executive.

The new version of the Constitution deals with the appointment or election to the office of akims of other administrative-territorial units, except for the akims of oblasts, cities of republican significance and the capital. Unlike the current constitutional norm, according to which the procedure for appointment or election to the post of akims of these administrative-territorial units was determined by acts of the President, such procedure will now be determined by law. Thus, this power of the Head of State is proposed to be transferred to the Parliament, which will establish by law the procedure of appointment or election to the position of akims of a district in a city, a town of district subordination, a village, a settlement and a rural district. The President only retains the right to dismiss akims. The amendments to the Constitution proposed by the Head of the State contain another fundamental innovation: the right of private ownership of any lawfully acquired property extends to each person staying on the territory of our country irrespective of the citizenship of which country he belongs or is a stateless person. This provision is the result of the positive evolution of our society.

Expanding guarantees of private property rights would further encourage foreign investment in the country, boost entrepreneurial initiatives by citizens, and promote the growth of the middle class as the basis of the state's sociopolitical stability.

Important changes relate to the legal security of the key issue of the inviolability of state independence. The stability of the Constitution and the inadmissibility of changes to its provisions establishing the independence, unitary and territorial integrity of the republic and the form of its government are determined by the indispensable existence of an opinion of the Constitutional Council before the relevant amendments to the Basic Law are submitted for consideration.

The reform proposed by the Leader of the Nation was a major step towards democratisation of the country's political system. The President was guided by the imperative to further strengthen statehood for the well-being of the citizens of our country.

The list of specially protected constitutional values was expanded by the law: "The independence of the state, unitarity and territorial integrity of the republic, the form of its government, as well as the fundamental principles of the republic, established by the Founder of independent Kazakhstan, the First President of the Republic of Kazakhstan – Elbasy, and his status are unchangeable" (paragraph 2 of Article 91 of the Constitution). As the Constitutional Court of Kazakhstan noted in its decision, thus the historical mission of Nursultan Nazarbayev as the Founder of new independent state of Kazakhstan is constitutionally confirmed, who provided its unity, defense of Constitution, rights and freedom of man and citizen; who made due to his constitutional status and personal qualities crucial contribution to the formation and development of sovereign Kazakhstan, including the constitutional values of Basic Law and fundamental principles of activity of the republic. The law provides for a mandatory opinion of the Constitutional Council on the compliance of amendments to the Constitution with the above

requirement before they are submitted to a national referendum or to Parliament [7].

The amendments significantly strengthen the human rights potential of the State. The right of the President of the Republic to address the Constitutional Council to review a law or other legal act that has entered into force for compliance with the Constitution is linked to the interests of protecting human and civil rights and freedoms, ensuring national security, sovereignty and the integrity of the state, which derives from the constitutional and legal status of the Head of State, enshrined in Article 40 of the Constitution.

On the initiative of the Head of State, Article 73, para. 4 of the Constitution, which provided for the right of the President of the Republic to submit objections to decisions of the Constitutional Council and regulated the procedure and consequences of their consideration, has been deleted. We perceive the adopted decision aimed at strengthening the Constitutional Council as a demonstration of a high degree of confidence of the President of the Republic in the Constitutional Council, whose staff is deeply aware that it increases the responsibility and stricter requirements for the activity of the body of constitutional control. As many foreign experts note, thanks to these constitutional amendments, the Constitutional Council of Kazakhstan now becomes equal in its competence to constitutional courts of some European countries.

Giving constitutional status to the Ombudsman for Human Rights in the Republic and regulation of the procedure of his/her appointment and dismissal corresponds to the provisions of paragraph 1 of article 1 and paragraph 2 of article 12 of the Constitution, according to which the Republic of Kazakhstan claims to be a democratic, secular, legal and social state, the highest values of which are man, his life, rights and freedoms [7].

Provisions on the Ombudsman are contained in the constitutions of several countries: Albania, Austria, Croatia, Estonia, Finland, Georgia, Hungary,

Poland, Romania, Russia, Slovakia, Slovenia, Spain, Sweden and others.

The Venice Commission on the Status of the Commissioner for Human Rights in the Republic of Kazakhstan (2007) noted that the establishment of the Commissioner for Human Rights should have guarantees at constitutional level setting out the substance of the institution's characteristics and powers and the basic conditions for its appointment, providing for the selection of this person by a qualified majority in Parliament.

The higher requirements for presidential candidates, in particular the introduction of a higher education requirement (Article 1(5) of the Law), are justified. A regulatory decision of the Constitutional Council of April 9, 2004 explains that the constitutional requirements for citizens exercising passive suffrage are significantly higher than those for the rest of the majority of voters, since they are to bear the burden of legislation and state decisions.

The law has democratically modernised the presidential form of government by strengthening the role, autonomy and responsibility of Parliament and the Government and by redistributing certain presidential powers between Parliament and the Government.

According to the amended Article 49 (1) of the Constitution, Parliament "is the supreme representative body of the Republic, which exercises legislative power". This provision of principle is supported by the exception of the competence of the head of state to issue laws, decrees having the force of law; to exercise legislative power if Parliament delegates them to him, as well as to give instructions to the Government to submit a bill to the Majilis of the Parliament (article. 45, clause 2, article 61, clause 2 of the Constitution, article 44, subclause 3) of the Constitution). At the same time, the President of the Republic retains the right of legislative initiative and the right to prioritise the consideration of draft laws, meaning that they must be passed by Parliament as a

matter of priority within two months (Article 61(2) of the Constitution).

The Law expands the role of the Majilis of the Parliament in the formation of the Government. The Prime Minister, after consultation with the Majilis of Parliament, submits a nomination for members of the Government to the Head of State. An exception is provided for the posts of Ministers of Foreign Affairs, Defence and Internal Affairs, who are appointed and dismissed independently by the President (new wording of Article 44, subclause 3 of the Constitution).

A fundamental innovation is the provision establishing the resignation of the Government before a newly elected Majilis of Parliament (amendment to Article 70(1) of the Constitution), which is logical when the Government is formed with the active participation of political parties represented in the Majilis.

The control powers of Parliament and its chambers over the Government and its members have been considerably strengthened. To this end, it has been established that the Government is accountable in its activities to the President and to Parliament. The Prime Minister is now obliged to report on the main directions of the Government's activities and its most important decisions not only to the President, but also to the Parliament. The Chambers of Parliament, after hearing the report of a member of the Government, have the right to appeal to the President of the Republic to dismiss the minister if he has not fulfilled the laws. In such a case, the Head of State shall dismiss the member of the Government.

The right of the President of the Republic to revoke or suspend the acts of the Government and the Prime Minister has been abolished, which increases the independence and at the same time the responsibility of the Government.

The government has been given the authority by the Head of State to approve state programmes, a unified system of financing and remuneration of employees for all bodies financed from the state budget,

which will be implemented by the government in agreement with the President.

Article 86 of the Constitution introduces a new requirement that the powers of the maslikhat be terminated prematurely by the President of the Republic after consultation with the Prime Minister and the Chambers of Parliament. This means that there are elements of collegiality in making such a decision, which is intended to ensure its legitimacy and validity.

The power to determine the procedure for appointing or electing, as well as dismissing, akims of other administrative-territorial units is to some extent transferred from the Head of State to the Parliament, which will exercise it by passing a law.

The reform adjusts the constitutional basis of the judiciary and the prosecutor's office. Article 79(3) of the Constitution establishes that the requirements for judges of the courts of the republic shall be determined by the Constitutional Law.

The new wording of Article 81 of the Basic Law provides for a clarification of the functions of the Supreme Court – instead of the provision on supervision over local and other courts, it is defined that the Supreme Court shall hear court cases within its jurisdiction as provided by law.

The amended Article 83 Clause 1 of the Constitution provides that the Prosecutor's Office shall, on behalf of the State, exercise supreme supervision over the observance of the rule of law within the limits and forms established by law, and also expressly states that it shall represent the interests of the State in court and conduct criminal prosecutions on behalf of the State. This more clearly delineates the contours of prosecutorial supervision, the limits of which will be determined by law. This makes it possible to regulate the scope of the powers of the Prosecutor's Office without each time the Constitution is amended.

All these measures help to alleviate the problems that occasionally arise in the modernisation of law enforcement, as well as providing a constitutional basis for deepening the transformation.

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 Head of State, its highest official, who determines the main directions of domestic and foreign policy of the state, symbol and guarantor of the unity of the people and state power, inviolability of the Constitution, human and civil rights and freedoms, ensuring the coordinated functioning of all branches of government and the responsibility of the authorities towards the people.

However, not all of the amendments proposed for public discussion were accepted. Because of the negative attitude of a certain part of society, the Head of State decided to delete the amendments to Article 26 of the Constitution and to retain its current wording. It should be noted that the proposed amendments to this Article were legally correct. The Venice Commission in its opinion expressed its regret that Article 26 of the Constitution on property rights was excluded at the stage of submission to the Parliament, which it deemed to be in line with international standards.

Addressing Parliament, the President drew attention to the need for a more thorough examination of the issue, explanatory work and compromise.

As part of the **amendments in 2017**, 31 amendments were made to the Constitution. For instance, the powers of Kazakhstan's parliament were changed, affecting its constitutional and political status; the President can no longer object to decisions of the Constitutional Council; the Constitutional Council interprets the Constitution, gives opinions on the correctness of presidential and parliamentary elections, republican referendum and the compliance of laws with the Constitution; the Council became the main constitutional body of Kazakhstan; a special legal regime in the financial sphere was established within the capital city.

The amendment of 2019 made one change, the renaming of the capital of Astana as Nur-Sultan.

The Head of State in his message “New Kazakhstan: the path of renewal and modernization” outlined Kazakhstan’s transition from a “super-presidential” model to a “presidential” model with a strong Parliament and an accountable Government. To implement the message of the Head of State in the framework of the amendments of 2022, 56 amendments to 33 articles have been proposed to the Constitution, which the President submitted for public discussion in a referendum on July 5, 2022. In particular, amendments have been proposed to the Constitution to reformat the model of checks and balances.

A draft law “On introducing amendments and additions to the Constitution of the Republic of Kazakhstan” was submitted to a **national referendum** with the following question wording: “**Do you accept the amendments and additions to the Constitution of the Republic of Kazakhstan as set forth in the draft law of the Republic of**

Kazakhstan “On introducing 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 designed to consolidate the final transition from a ‘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 power, reinforce the system of checks and balances, and increase the subjectivity of maslikhats”, the president said. The introduction of a mixed majoritarian-proportional model for the election of deputies to the Majilis and regional maslikhats will allow to more fully cover the full range of views and opinions of voters, the head of state added [8].

Table 1.



June 5 National Referendum	10 Striking examples of Constitutional change	
	Current text in force	New text
Article 6(3)	3. Land and its subsoil, water, flora and fauna, and other natural resources are owned by the state.	3. The land and its subsoil, water, flora and fauna, and other natural resources belong to the people. The state shall exercise the right of ownership on behalf of the people.
Article 15(2)	2. No one has the right to arbitrarily deprive a person of his life. The death penalty is established by law.	2. No one has the right to arbitrarily deprive a person of his life. The death penalty shall be prohibited. 3.
Article 43	The current wording contains no such requirements.	3. The President of the Republic of Kazakhstan shall not belong to a political party during the term of his office. 4. Close relatives of the President of the Republic of Kazakhstan shall not have the right to hold positions of political state employees, heads of quasi-public sector entities.
Article 46(4)	4. The status and powers of the first President of Kazakhstan shall be determined by the Constitution of the Republic and constitutional law.	4. Exclude.
Article 50(3)	3. The Majilis consists of 107 deputies elected according to the procedure established by constitutional law.	3. The Majilis consists of 98 deputies elected in accordance with the procedure established by constitutional law under a mixed electoral system: proportional representation in a single nationwide constituency, as well as in single-member territorial constituencies.

Table 2.

	Current text in force	New text
Раздел VI	Constitutional Council	Constitutional Court
Article 72	There is no such provision in the current wording.	3. The Constitutional Court, upon applications of citizens, shall review for compliance with the Constitution of the Republic of Kazakhstan normative legal acts of the Republic of Kazakhstan directly affecting their rights and freedoms enshrined in the Constitution.
Article 83-1 NEW	There is no such institution in the current wording.	1. The Commissioner for Human Rights in the Republic of Kazakhstan shall assist in the restoration of violated human and civil rights and freedoms and promote human and civil rights and freedoms.
Article 87(4,5)	4. Akims of regions, cities of republican significance and the capital shall be appointed to office by the president of the republic with the consent of maslikhats of oblasts, cities of republican significance and the capital respectively.	4. Akims of regions, cities of republican significance and the capital shall be appointed to office by the President of the Republic with the consent of deputies of maslikhats located on the territory of oblast or deputies of maslikhats of cities of republican significance and the capital respectively. The President of the Republic shall propose no less than two candidates, on which vote shall be held. The candidate who receives a large number of votes of the deputies of maslikhats, who took part in the voting, shall be deemed to have received consent.
Article 91(2)	2. The independence of the state, the unitarity and territorial integrity of the Republic, the form of government, as well as the fundamental principles of the activity of the Republic, established by the founder of independent Kazakhstan, the First President of the Republic of Kazakhstan - Elbasy, and his status are inviolable.	2. The independence of the state, the unitary and territorial integrity of the Republic, its form of government and its fundamental principles, as established by the Constitution, are inviolable. Consequently, the status of the Elbasy and of the First President in the new version is completely excluded.

Amendments to the Constitution are aimed at modernising the country's political system, ensuring equal conditions for the development of all parties; simplifying legislative procedures; strengthening parliamentary control over the execution of the national budget; increasing the electoral activity of citizens and their involvement in the comprehensive modernisation of the country; and protecting citizens' rights and freedoms (Constitutional Court and the Commissioner for Human Rights in Kazakhstan).

The modern pace of development of Kazakhstan in the context of the ongoing reforms generates the need for a deep comprehension of the ideas and principles of constitutionalism, the extent of their spread and the dynamics of implementation in the national legislation. The Constitution as the main form of embodiment of these legal postulates is the highest political and legal act regulating the fundamental social relations, and its further improvement in accordance with the global challenges and needs of state development is necessary and demanded. The content of

the Basic Law of the state must reflect both universal and national ideals and meet the demands of socio-economic, political, cultural, humanitarian and other spheres of life of society and the state.

References:

1. Конституция Республики Казахстан. – Алматы: Казахстан, 1993.
2. Котов А. К. Суверенный Казахстан: гражданин, нация, народ. – Алматы, 1997.
3. Котов А. К. Конституционализм в Казахстане: опыт становления и эффективность механизма власти. – Алматы, 2000.
4. Конституция Республики Казахстан от 30 августа 1995 г. – П. 1 Ст. 40. – Алматы, 1995.
5. Малиновский В. Глава государства суверенного Казахстана. – Алматы: ВШП «Адилет», 1998. – 242 с.
6. О внесении изменений и дополнений в Конституцию Республики Казахстан. Закон Республики Казахстан от 21 мая 2007 года, № 254 // Казахстанская правда. – 22 мая. 2007.
7. Закон РК «О внесении изменений и дополнений в Конституцию Республики Казахстан», принятый Парламентом 6 марта 2017 года // Казахстанская правда. – 14 марта. 2017.
8. Закон Республики Казахстан «О внесении изменений и дополнений в Конституцию Республики Казахстан», вынесенный на республиканский референдум 5 июня 2022 года.