

[Dear reader. Please note that this paper is not completed yet. This is a very early draft and contains mainly empirical data analysis.]

## **Working title: Constitutional reforms in Kazakhstan: rebalancing institutional arrangements**

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*This paper reviews constitutional reforms in Kazakhstan with the objective of exploring how the two Constitutions and subsequent amendments to the main law have changed the balance of powers between the executive, legislative and judicial institutions in Kazakhstan. After obtaining its independence in 1991 Kazakhstan subsequently adopted two Constitutions (1993 and 1995) and introduced three packages of constitutional reforms in 1998, 2007 and in 2011. The paper argues that the first Constitution (1993) provided the more effective system of checks and balances, although there are debates on whether this was a progressive constitution. The second Constitution shifted the balance of powers in favour of the President and the Government, substantially weakening judicial and legislative branches. The findings suggest that the subsequent constitutional reforms attempted to restore the balance of powers between the governing institutions. Although some powers were delegated to Parliament it arguably remained the weakest among governing institutions. In 2017 the Constitution was amended once more to delegate more powers to the legislative branch. The reform aims at further improvement of the system of government by strengthening the efficiency of public administration system. Also, the reform project is designed to give impetus to further democratisation of state governance. In addition, it is expected that reforms will lay the grounds for the upcoming succession of presidential power in Kazakhstan. The upcoming constitutional reforms in Kazakhstan indicate positive changes, but whether the transfer of powers from executive to the legislative branch is a formal exercise or real commitment to democratisation is yet to be known. The paper is based on published materials and series of interviews conducted in Kazakhstan.*

*Keywords: Kazakhstan, Central Asia, constitutional reforms, separation of powers, democratisation.*

### **The first Constitution of the post-Soviet Kazakhstan (1993 Constitution).**

Following the collapse of the Soviet Union Kazakhstan formally proclaimed its independence on 16<sup>th</sup> December 1991 by adopting the Declaration of Independence. The country's first Constitution was approved on 28 January in 1993 during the session of the Supreme Council. The new Constitution was supposed to be the foundation for the state-building in independent Kazakhstan and indicated the country's determination to implement political and economic reforms. It established the main branches of power including the Supreme Council, President, Cabinet of Ministers and judiciary institutions.

Kazakhstan's first Constitution established the Supreme Council as the country's most powerful institution. The chapter on the Supreme Council was placed above the sections on the President and Judicial system. The Supreme Council was a unicameral legislature consisting of 360 members and it was defined as the country's only legislative body. Extensive powers of the legislature made Kazakhstan de-facto a parliamentary Republic, *although the Constitution did not specify whether Kazakhstan is presidential or parliamentary republic*. The Council had exclusive powers such as interpreting the country's legislation, adopting the new Constitution and making subsequent changes to it. In addition, the parliament had extensive budgetary powers such as amending and approving the budget, as well as monitoring its implementation.

The list of exclusive powers of the Supreme Council was quite impressive as it was empowered to take decisions to hold public referendums, elect the Constitutional Court, elect the Supreme Court and High Court of Arbitration, appoint the Prosecutor-General and appoint the Chairman of the National Bank.

Furthermore, the Council gave its consent to the appointment of the Prime Minister, key ministers and heads of diplomatic representations of the Republic of Kazakhstan (Art. 64).

### **First political crisis.**

In the immediate years after the independence, the country experienced devastating economic difficulties caused by the sudden disruption of production in industries and agriculture. The first four years of Kazakhstan's independence were characterised by the negative economic growth, as the economy shrank by about 50% (OECD 2012). The recession expressed itself in rising unemployment, a decrease in household incomes, hyperinflation and stagnation in most sectors of the economy. The government's response to the crisis was to embrace market reforms that included, among other things, mass privatisation and liberalisation of trade.

However, the Supreme Council was not as enthusiastic about the transition from the planned economy to market driven economy. The government's position was that the legislative branch slowed the pace of the adoption of the legislation, necessary for fostering privatisation and attraction of foreign investment.

Shortly after adoption of the Constitution in December 13, the 12<sup>th</sup> Supreme Council, which was elected during the Soviet period (April 1990), announced that it dissolved itself before its term was completed. Many of the MPs were not happy with this decision. Interestingly, such procedure when Parliament could terminate its own function was not existent in the Constitution.

As professor Sultan Sartayev, who was one of the lawyers involved in the drafting of the first Constitution remarked: 'The Constitution of 1993 was the most democratic one... [however, it] didn't meet all demands'<sup>1</sup>.

The political crisis of 1993 ended with self-dissolution of the Supreme Council. First, members of Alatau District's Council of People in Almaty announced self-dissolution on November 16 1993.

On November 22, 1993 a group of members of the Presidium of the Supreme Council published an article in "Kazakhstanskaya Pravda" newspaper condemning the mass dissolution of local councils. However, in the end of November the "Egemen Kazakstan" newspaper published an appeal by the chairmen of the committees signed by O. Sabdenov, B. Janasayev, B. Aitimova, in which they demanded early dissolution of the Supreme Council and new parliamentary elections<sup>2</sup>. Despite the sharp condemnation and explicit prohibition of such a decision by the Presidium of the Supreme Council, by the end of November more than 90 regional councils proclaimed their self-dissolution.

After a hot discussion at the meeting, held on November 30, 1993, the Presidium adopted decision on the self-dissolution of the XIIth Supreme Council. During its last sessions on 9-12 December the Supreme Council adopted laws granting President and heads of local authorities with additional powers for the period of absence of the legislature. In accordance with it, the head of state was authorized to issue acts, which had the force of law, and also carry out a number of other powers of the Supreme Council. The Code "On Elections in the Republic of Kazakhstan" was also adopted here, on December 13, 1993.

### **Second political crisis.**

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<sup>1</sup> Kazakhstan's Constitution meets modern standards and ensures sustainability, Kazinform, last retrieved on 06.02.2017 from [http://www.inform.kz/en/kazakhstan-s-constitution-meets-modern-standards-and-ensures-sustainability\\_a2194121](http://www.inform.kz/en/kazakhstan-s-constitution-meets-modern-standards-and-ensures-sustainability_a2194121).

<sup>2</sup> Jurist journal, #8, August 2005. Rojdennaya v protivostoyanii.

## **1995 Political crisis**

In March 1994 members of the 13<sup>th</sup> Supreme Council were elected. It was regarded as one of the most ineffective Parliaments that Kazakhstan had. The 13<sup>th</sup> Supreme Council adopted only 7 laws during its one year term. To compare, the 12<sup>th</sup> Supreme Council adopted 265 laws within 4 years of its functioning (April 1990-December 1993) (Zimanov 1996:123).

In May 1994 the Supreme Council passed a vote of no confidence in the Prime Minister Sergey Tereshenko. The Supreme Council issued a statement in which the Government was harshly criticized. It stated that the Government could not develop a national program of reforms that could become the basis for the consolidation of society and governing institutions.

Meanwhile, the economic situation continued to worsen. In attempts to revive the economy, the government submitted to the Parliament its new anti-crisis program. An analysis of the events of that time allows us to conclude that constructive interaction between branches of power failed. It was often stated that the inefficiency of the anti-crisis program developed by the government had become obvious. This caused another serious criticism of the Government's activities by the Supreme Council, which meant that the government and the Supreme Council could not continue to work together. Finally, in *October* 1994 President Nazarbayev Adopted the Decree "On the resignation of the Cabinet of Ministers of the Republic of Kazakhstan."

On March 6, 1995 Constitutional Court ruled that the elected 13<sup>th</sup> Supreme Council is not legitimate because the Court identified violation of law in the election process. Although President Nazarbayev and the Chairman of the Supreme Council Abish Kekilbayev expressed their objections to the decision of the court, the Court refused to change its decision. Following this, President Nazarbayev acknowledged the decision of the Court and dissolved the Parliament. Similar to 1993 political crisis, large part of the MPs refused to accept such decision. On 12<sup>th</sup> March 130 MPs signed an address to electorate stating that the Courts decision was predetermined not by law but by political considerations. On the same day 72 MPs announced three days hunger-strike (Sheretov 2003). The Parliament was eventually dissolved and the new elections took place only about nine months later.

Between March 1995 and January 1996 President Nazarbayev issued 147 decrees, most of which provided regulatory framework for large-scale economic reforms (Malinovskii 2011). For example, these included presidential decrees regulating tax system, banking sector, stock exchange, privatization, subsoil use, licensing and bankruptcy. Special economic zones were established by the decree of the President, whereas the decree on privatization provided ground for structural transformation of the economy. President also made amendments into existing legislation on regulation of media, judicial system and civil service.

Dissolution of the Parliament was criticised by some, who pointed to unprecedented consolidation of powers around presidents in Kazakhstan. US ambassador to Kazakhstan commenting on Constitutional court's decision of 1995, which led to the dissolution of the Parliament stated that the decision is the 'triumph of democracy' (Sheretov 2003: p.46). Others argued that the strong presidential power was necessary at that early stage of state building in Kazakhstan (Malinovskii 2011).

## **The Second Constitution (1995).**

Kazakhstan adopted its second Constitution on the referendum in 1995, where about 89 percent of the population voted in favour of the new main law. Approval on the referendum strengthened the legitimacy of the main law, while the day of the referendum 30 August is celebrated in Kazakhstan as a national holiday.

The New Constitution changed the name of the Supreme Council and introduced the new bicameral Parliament with lower chamber (Mazhilis) and upper chamber (Senate). Powers of the new Parliament were substantially weakened as it ceased to be the only legislature. President and the Government also

have legislative powers (Art.61) in areas of their competence and in certain circumstances Parliament can delegate to the President the right to issue decrees having the force of laws (Art.45). Furthermore, although both the executive and legislative branches had the authority to initiate legislation, the final say in initiating the new legislation was with the Central Government as its corollary is needed to start the law-drafting process.

The new Constitution considerably strengthened the powers of the President, at the same time, weakening the legislative branch. *Unlike the previous basic law, the new constitution explicitly stated that Kazakhstan is a presidential republic.* Also, unlike the first Constitution, which defined the President as the leader of system of the country's executive branch (Art.75), the new Constitution placed the President above all the branches of power granting him/her powers to arbitrate concerted functioning of all state bodies and ensure responsibility of the institutions of power before the people (Art. 40). Furthermore, the new Constitution granted the President powers to dissolve the Parliament (Art.63).

The new Constitution established that the President may dissolve the Parliament in the following cases: where Parliament expresses the vote of no confidence in the Government, repeated failure of the Parliament to agree to the appointment of the Prime Minister, the political crisis resulting from insuperable disagreements between the chambers of Parliament or between the legislature and other branches of government (Article 63). Due to the vagueness of wording of Constitution, these grounds for the dissolution of Parliament are open to broad interpretation.

Not all provisions of the new Constitution empowered the President. Article 47 of the new Constitution included the procedure of impeachment, granting the legislative branch the powers to dismiss the Presidents by a three-quarter voting. It should be noted that such provisions for impeachment were not contained in 1993 Constitution.

Consolidation of the powers of the President was seen as a necessary response to the economic and political crises, which accompanied the early years of the country's independence (Knox 2008). As President Nazarbayev justified the necessity of strong presidential powers: 'Vertical separation of power was necessary to us in the course of overcoming the enormous difficulties of state formation'<sup>3</sup>.

The adoption of the second constitution was a response to political gridlocks between branches of power. After adoption of the 1995 Constitution no such political crisis happened. Since the adoption of new Constitution, amendments were made to it three times: in 1998, 2007 and 2011. The following sections will review the subsequent changes that were introduced in the Constitution.

**XXX<sup>4</sup>**

## **Changes to the Constitution.**

### **1998 amendments**

In 1998, amendments were introduced to 19 articles of the basic law. The changes affected the term and competence of the President and members of the Parliament. The length of the President's term was prolonged from 5 to 7 years. In addition, age limit for the President and for public servants specified in the previous constitution was called off.

Amendments also introduced partially proportional system of elections to the Parliament. According to amendments, ten members of Mazhilis were to be elected from political parties proportional to the votes cast.

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<sup>3</sup> The Astana Times, 3(117), February 8, 2017, President unveils plans of constitutional reforms.

<sup>4</sup> 'Adilet', Legal information system of Regulatory Legal Acts of the Republic of Kazakhstan.

## **2007 amendments**

The new Constitution was criticised for not providing sufficient checks and balances for preventing the domination of a single branch of power. Therefore, in 2007 the Government introduced amendments to the Constitution granting more powers to the Parliament. However, it is questionable whether the 2007 constitutional reforms empowered the Parliament or transferred only formal powers to the country's legislative [Hooley:2007].

President retained the powers to appoint the Prime-Minister although a novelty was introduced that the appointment of the Prime-Minister shall take place after consultation of the President with the political parties and with the consent of the Mazhilis. President acquired right to initiate legislation and determine the priority bills, which Parliament scrutinises as a matter of priority.

At the local governance level, elected local governments (maslikhats) had to be consulted before the President appoints governors of oblasts, major cities and the capital (Art. 87-4).

President's term in office was shortened from 7 to 5 years for maximum of two terms, although Kazakhstan's first President received a special status and a right to be re-elected for more than two terms.

The amendments reformed the electoral systems to the Mazhilis of the Parliament. Under the new scheme the lower chamber of the Parliament is formed according to the proportional system of representation. In particular, ninety eight of one hundred and seven deputies of the Mazhilis were to be elected from political parties. At the same time the amendments excluded the norm that released the MPs from any imperative mandate. This norm affected the independence of the deputies of the Parliament.

Constitutional amendments stipulated that 9 members of the Mazhilis of the Parliament will be delegated from the Assembly of the People of Kazakhstan. It should be noted that the Assembly was mentioned in the Constitution for the first time. The Assembly is designed to promote tolerance and mutual understanding between ethnicities living in Kazakhstan.

In February 2011 only one article (41) of the Constitution was amended, giving the President rights to assign preterm presidential elections.

## **2017 amendments**

On January 25, 2017 President Nazarbayev delivered his address to the nation on upcoming constitutional reforms, which would involve redistribution of powers among governmental institutions. The President stated in his address that: "The quintessence is that the President delegates some powers to the Parliament and the Government". The President specifically referred to two main objectives of reforms which will be, improving the efficiency of the public administration system and further democratization of the political system.

On 6<sup>th</sup> March 2017 Kazakhstan's Parliament adopted a law, introducing 26 amendments into the Constitution. According to amendments, republic's independence was entrenched in the Constitution as one of the main values along with the unitary state, territorial integrity and the form governance. Article 91 also established that initiated constitutional amendments may be submitted to a national referendum or to the Parliament only upon the approval of the Constitutional Council.

Article 41 stipulated that Parliament is the highest representative body, which is a legislative branch of power. The previous version of Constitution merely stated that the Parliament performs legislative

functions. However, Parliament's formal status is not as strong as for example, in 1993 Constitution stated that the Parliament is the only legislator in the country.

Article 57 of the Constitution stipulates that the central Government shall report to the Parliament on its activities, and Parliament can appeal to the President to release cabinet members from office in the event of non-satisfactory performance. Article 70 states that the Cabinet of Ministers shall be dissolved after the elections to the Majilis.

Amendments to Article 44 provide for the transfer of the authority from President to the Government the authority to approve state programs and unified system of financing and payment of workers of all bodies financed by the state budget. Also President's right to veto regulatory acts of the Prime-Minister and Government was eliminated. However, President retains the right to apply to the Constitutional Council in order to check its constitutionality.

Several amendments to the Constitution are related to the establishment of the Astana International Financial Centre (AIFC). The new paragraph 3-1 was added to Article 2 of the Constitution, which stipulates that a special legal regime may be established regulating the financial sector in Astana. The article is referring to constitutional law, which is planned to be adopted to provide regulatory framework for AIFC. In addition, requirements for the candidacy of the judge were removed from the constitution. This is because on the territory of AIFC international courts will be functioning, where foreign national will be appointed as judges. Previous constitutional requirements contained provisions that only Kazakhstan's citizens can be appointed as judges.

The proposed constitutional amendments will eliminate the possibility of adopting the presidential decrees that have the force of law. President Nazarbayev in his address to the people of Kazakhstan stated that legislative powers were granted to the President in difficult times of early state-building and now this norm has lost its relevance.

## **Conclusion**

To conclude, the upcoming constitutional reforms in Kazakhstan indicate positive changes, but the success of the reform depends not only on the originality and boldness of the reform drafters, but also on the implementation. Whether the transfer of powers from executive to the legislative branch is a formal exercise or real commitment to democratization is yet to be known.

There have been talks about the upcoming succession crisis in Kazakhstan (Roberts 2012). What is clear is that there is no clarity on who is going to succeed the Presidential power in Kazakhstan. Various sources name the name of the powerful clan groups as possible future presidents of Kazakhstan. I will avoid mentioning in order to prevent speculations. This paper argues that Kazakhstan's model of succession is going to be different from other models of succession in the Post-Soviet space because Kazakhstan already launched reforms directed at transfer of powers from presidential to parliamentary body.

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