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## ВЕСТНИК

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**TO THE QUESTION OF HISTORY OF FORMATION  
AND DEVELOPMENT OF INDEPENDENT KAZAKHSTAN**

**Abstract.** The concept “constitution” is applied in two meanings. In formal sense the legal Constitution is the fundamental law of the state, regulated the socio-economic system, the form of government and form of administration; also the legal status of the personality. It is the document, which defines the constitutional and legal status of the official organs. However, during the legal reforms in our society the practical application and whole situation have changed: there are new institutions were created; new constitutional laws, etc. were adopted. In the practice there is such procedure of the government, which can significantly differ from the official order, fixed in the Constitution. This real procedure of the election and appointment of the government has called the actual Constitution or the Constitution in material sense of the word. The actual and legal Constitutions can both coincide and disperse. In some countries the political elite seeks to govern, besides the Constitution. It turns out that, from one hand, the constitution is necessary in any democratic state. From the other hand, the Constitution conflicts with the reality. The historical collision between legality and expediency every time is solved, depending on the arrangement of the political forces in the society.

**Keywords:** Supreme Law, government, constitutional laws, form of government, political elite, democratic state, civil society, legality, legal collisions, branches of the power.

Kazakhstan suddenly became an independent nation in 1991 with the collapse of the Soviet Union, and thus had to develop institutions for self-government in a hurry. In doing so, Kazakhstan faced not only the structural problem of what institutional arrangements would best serve the nation, but also of how they would accommodate the major problems of 1) managing the country’s considerable ethnic diversity; 2) shifting from a socialist to a capitalist economy; 3) securing and advancing human and social rights in the wake of independence.

This paper will first discuss the drafting and operation of Kazakhstan’s Constitution in August of 1995. One focus will be on how the drafters changed structures and tried to resolve problems inherited from the old Soviet totalitarian regime by creating a strong system of checks and balances between the executive, legislative and judicial branches. A second focus will be on how the government created by this constitution had great difficulty addressing the country’s problems, because the provisions for checks and balances inhibited cooperation and encouraged political “grandstanding”, particularly in the legislature.

Second, the paper will discuss the dissatisfaction with the August of 1995 Constitution, the election of a new drafting convention (Supreme Body), and the amendments to the of Kazakhstan’s acting constitution. The Supreme Body drafted a constitution that had fewer checks and balances and gave more power to the President, who could often make policy by his Decrees. It also removed the judiciary from the constitutional interpretation process, substituting instead a Constitutional Council appointed by the President. The Constitution of August 1995 also gave more power to the President to meet problems of ethnic conflict and economic transition. Finally, this paper will discuss, how the Constitution of August 1995 is working in operation, during 23 years, including as an example the removal of the Prime Minister and restructuring of the Cabinet of Ministers.

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

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

This paper will present changes in education policy and provision since 1997, when the “Law on Higher Education in the Republic of Kazakhstan” was adopted. At the national level, there is a determination to develop an independent and high level education program, providing qualifications recognized throughout the world. However, there are peculiarities of the reforming processes in the educational field in the Republic of Kazakhstan. Part of the discussion will focus on the replacement of former vocational and technical schools with more general occupational colleges. A second focus will be on the impact of new tuition policies in higher education in Kazakhstan today, and some discussion of the proposed student loan scheme. These plans are contained within the draft revisions to the Education Law, which can be delayed, with the dissolution of the parliament.

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

Today it is the ninth largest independent nation in the world. The current population is approximately 17 million, of whom 43.2% are ethnic Kazaks, 36.5% Russians, 5.2% Ukrainians, 4.1% Germans, and the remainder Uzbeks, Tatars and other ethnic minorities. Despite a steady and continuing shift of population to the cities, there is still an overall predominance of the total population in rural areas, where ethnic Kazaks form the vast majority [1, p. 62]. Among all other educational reforms, instituting new instructional language curricula is perhaps highest on the agenda of the republican government. Kazakh is now the official language of the republic, but Russian has been given a special statute as the language of interethnic communication. This recognizes the fact that the language used most often in official situations has become Russian, and was the primary language of instruction taught in the Republic's schools for 50 years and until independence. As a result, many ethnic Kazaks have a poor knowledge of the official state language, and less than one percent of all Russians can speak Kazakh either. Many Kazak-medium schools have been opened since 1992, and many post-secondary education institutions are now starting to teach at least first and second year students in Kazakh.

With democratization aims of the sovereign republic and the belief that teachers should be given the ability to be more pedagogically creative secondary schools have become more circularly diverse. There are 103 government certified gymnasiums and 71 lyceums in Kazakhstan today, of which 18 gymnasiums and 11 lyceums are in Almaty. The gymnasias and lyceum theoretically offer higher level classical and technical curricula than regular secondary schools, with special facilities for “talented” children. A Lyceum may have, for example, classes in space biology, management, marketing or art. For example, Technical Lyceum No. 28 at Mametova has support from the regional administration, the joint Kazak-British firm “Kazinterlink”, and Almaty State University. This school has a mini-plant for the production of radio technology (TV sets, computers, video players and calculators, etc.), and it is designed to underscore the practical application of theoretical technical knowledge to emerging needs of Kazakhstan's economic development.

For example, European languages, the latter opening Russians access to Western culture and science show the different points of view. By the end of the century the system of industrial schools offering first-grade training to those, who wanted to use their talents in the field of industry, had been formed. Actually,

the Russian system of secondary education surpassed in quality of training the educational systems, existing then in Europe and USA. Attempts at reforming now present educational system should preserve the best features of the European system of education rather than replicate American system [2].

Kazakhstan held its Union Republic status within the Soviet Union continuously until 1991. Its historical continuity with its own past broke down severely during Soviet dominion, and, over the seven decades preceding independence, was subject to destructive forces sometimes bordering on genocide. Not only were the Kazakh people abused, but the land bears a record of decline and degradation: a place which seemed eternal for a thousand years is now suffering from severe ecological problems.

The American higher education is respected all over the world. The training of university students in America, with its vibrancy and ability to keep abreast of the latest scientific discoveries and technological inventions, did not prompt criticism until quite recently. We cannot but admire the widespread ramifications of the American university educational system, which comprises 1,964 universities (compare this figure with less than one hundred in Russia) and 1,416 colleges with two-year highly specialized courses. These figures do not call for further comment. If we add to them several thousand one-year vocational schools, then what is there to discuss and argue about?

But in spite of all these evident accomplishments, troubled voices make themselves heard today. It is becoming more and clearer that taken as a whole the American secondary school gives only a superficial knowledge of subjects studied, and universities have to devote a large part of the first years of study to remedial teaching. Besides, the disparity of knowledge among students is too great. Fairly good knowledge of some subjects and unacceptably poor knowledge of other subjects is the rule at both the collective and individual level; that is, every student has a specific set of subjects known well and subjects hardly known at all.

These disparities are caused by an Anglo-American system of electives, which allow a student to follow the principle of "I study what I want to and I don't study what I don't want to, that's my business". It is true that a student must take certain compulsory courses in each of the main subjects such as physics, mathematics, chemistry and biology. Even so a student still has the right to choose both teachers and varieties of a compulsory course, so it is possible for one to complete a course in, say, physics which does not even touch upon theories fundamental to the discipline and leaves a student simply less than completely ignorant.

Here I'd like to share with my readers the impression I received from couple years of lecturing in American universities and from discussions held by thinking American professors concerned with the situation. It is beyond doubt that University of Kentucky, Illinois, Oklahoma and other attract well-prepared candidates from all over the world and, after a strenuous selection, admit only the best of them. However, even professors of these universities speak of an evident fall in the level of training of first-year students, which has to be still more noticeable in the other two thousand universities. The best professors and leaders of science and education in America are apprehensive of a general decline in the educational level of young Americans, especially young university students, as well as a nearly complete ignorance of social sciences and humanities among those who study the natural, physical etc. and applied sciences. Some young people, when in primary school, gravitate to computers and forget about all else; others at the same age decide to become neurobiologists or surgeons and study nothing but subjects pertaining to their future occupation. Some American experts in education say that today about eighty-five percent of American boys and girl are not acquainted with elementary arithmetic and unable to add or subtract without calculators. Some experts are alarmed by the fact that television prevents children from reading books to the degree that those familiar books with which the older generation has lived their whole life have been taken out of print and moved to computer disks. If a child wants to read a classic, he takes a Shakespeare disk and sits at his computer.

I don't want to grumble or speak ill of American students. They are clever and tenacious in their aims and they work much more than Russian students. But they work only in their chosen field, and moreover, they are depressingly lacking in what is called a general social education, which is almost totally absent. To receive a course of study, a student must pay a large sum, so he tries to get the utmost possible for his/her money. From my experience at teaching, I can tell that in every group of students there are only two or three with poor results, and several dozen whose results are excellent. I am quite satisfied by the results my students achieve on the whole. But in every group of students I come across one and the same

thing; that is, if I digress from the textbook or the subject, I see that students' knowledge is fragmentary and limited in scope. As I now understand it, the main reason accounting for these facts are the following circumstances.

1. Freedom in choice of subjects for study, from the secondary school to a university. Each course earns a student a certain number of credits and in order to get a certificate of education, a student has to gain a set number of point's credit/hours and pass a set number of examinations. That is why students take on subjects they are interested in and avoid subjects they are not interested in. The absence of a set system of knowledge enveloping what should be known to any educated person, as existed in Russia for more than a century, makes many university professors speak of the importance of imposing on the secondary school a so called "core curriculum", or an obligatory set of knowledge, which is aimed at improving the situation when a person claiming to be educated is ignorant of so many subjects that a professional looks like a twisted tree, being well-grown in one direction but clipped and undeveloped in all other directions. The traditional freedom of choice is a result of struggle for personal freedom in all areas, subjects for study included. Freedom in itself is excellent, but the cost of its extremes is self-evident. The price of freedom of choice is a low level of education.

2. The second causal circumstance the freedom of teachers, who are at liberty to teach only what they themselves consider necessary and important. First, any university professor can work out any course of study he has invented himself and he can teach it if it has been approved by his or her colleagues at a university (at some universities a prior approval by other professors is not required). Second, a professor has the right to choose any textbook from a large number offered by publishing houses. Third, from a chosen textbook any part can be omitted, if a professor isn't well acquainted with it or doesn't think it important. If a professor has acquired permission to teach a given course from a school or university administration, everything else is up to him.

3. The great merit of American schools and universities lies in the fact that all examinations are taken in written form only, be it examinations taken at some point of a course of study or final examinations at the end of a course. No oral examinations, no oral questioning students of their knowledge of a subject, especially in the presence of other students. This advantage has a negative side to it, which may seem negligible at first sight, but which serious analysis shows to be substantial. Again I want my readers to understand me correctly. Written examinations when students receive lists of the same questions and fill in the empty spaces left with brief answers have many positive aspects as all students are put in the same position. Any prejudices on the part of an examiner are excluded as are any grounds for complaints about an examiner's prejudice against a student's race, religion, etc. (the number of people squabbling in courts of law is growing in America more and more rapidly, being parallel to the growing number of lawyers and becoming a tragedy for that beautiful country, but this is a different topic). A student puts down in his questionnaire what he wants to and has nobody to complain against. If a student does make a complaint, a committee is set up which examines what has been put down and then makes a decision. It is simple. It is democratic. It is practical. In Russia teachers at all levels of education (at schools and universities alike) put questions to students in class, make students solve mathematical problems on blackboards in the presence of other students, and nobody raises any objections on moral or other grounds. At American universities practices of this kind are completely excluded; nobody has the right to put a student in an awkward situation or make results of intermediate or final examinations public. A teacher cannot test a student's knowledge at will, to say nothing of arbitrary questions at oral examinations when a teacher can see that a student is weak at some particular part of the course and ask him more questions about it.

4. At most American schools and at all universities students are not put into any particular class or group. They are free to choose subjects and teachers and then take lessons. For example, to get a certificate of secondary education in Washington, a student should have a mathematical subject for each of his last four years of study and subjects in physics, biology and chemistry during his last three years of study. But as concerns, for instance, mathematics, a student is not obliged to study everything - algebra, geometry, and elementary differential calculus. He is to choose are several dozen different mathematical courses with less material; a student has to have just one of them at each of his last four years of study. If a student does not study all mathematics, it is his business. The same with physics and other main subjects. All other subjects are still simpler - everything depends on the student's initiative. But if a student chooses subjects, he cannot establish a permanent peer group to work with. A student chooses courses and teachers

and is free to move about. For one of his lessons he comes to an open classroom where the teacher he has chosen delivers a lecture, for another lesson he goes to another classroom. So all notion of group is lost, as there are no teams about. There are individual students who are strangers to each other, moving from one classroom to another. If there is an acquaintance in one classroom, he is greeted with a couple of sentences, while the others sitting there would be totally ignored as strangers. This does not surprise anyone. But this is destroying a very important thing that group teaching has: a group is a family where people help each other, know each other, and it is acceptable to announce the results of a test before such a group in order to prick the conscience of a poor pupil (or his ambition, as might be). Yet in the USA, to do so is to commit something like strip-tease, which could easily be followed by the students demanding the removal of a teacher guilty of disclosure of personal data - and having their demand met. And since group teaching is absent, students are robbed of an important part not just of their social life, but of a more efficient method of making knowledge reach every individual, and thus the advantages of competitiveness, which, paradoxically, Americans care so much about.

We would like to note, that mention above is true for the majority of the American schools and colleges, there are still exceptions. In rich suburbia of big cities, and in some other places, excellent schools exist where teachers are not afraid to call the student to the blackboard and ask him questions there (according to the tradition of a particular school, and according to the rules approved by the parents' committee, by the way, parents' committees are exceptionally influential bodies throughout America); where the requirements of knowledge in the obligatory set of subjects are higher than the average American level; where the students, though also moving from one classroom to another, know each other personally, because the number of pupils is small, and because they all participate in extensive extra-curricular activities; so the ties of school fraternity hold for life. These excellent schools provide students for the best universities, and are extremely popular. But my article deals with ordinary public schools. Another exception is private schools, in most of which there are permanent classes of students, obligatory sets of subjects, and many other typical features reminding one of the former Russian gymnasia. But the number of private schools is small, and so is the number of their graduates, and a true American schools looks quite different.

So, comparing the systems of Kazakh, American and Russian education, and the tradition formed within the two, we will state that what riches the Republic of Kazakhstan, Russia Federation possesses lie in its traditional system of secondary education that should be preserved. And within this system, there are rare precious gems - our best teachers, born with a gift for teaching, whose intellect, talent and self-denial contributed to the heritage of the nation and should continue to do so [3, p. 50].

Well, the Constitution of Kazakhstan created a strong presidential republic and distributed powers between three branches of authority. Thus, steady and successive institutions of strong state authority have been created, and that has allowed the stabilization of all internal political processes.

The 1995 Constitution, solving the character of statehood, says that "the Republic of Kazakhstan approves itself as a democratic, secular, legal and social state, higher values of which are the person, his life, rights and freedom", (Art. 1, pt. 1). The new Basic Law of the independent state determines the limit of the constitution and ensures steady development. Kazakhstan, as a state, is characterized as "unitary" and "integral", (Art. 2, pts. 1 and 2). Of primary importance is the fact that Kazakhstan contains no other independent states or entities within its borders. Also, fundamental to the concept of unitary state is uniform citizenship, legislation, and a system of state authority. "We can say that, over the course of a year, and due to the new Basic Law, the fundamental bases of new statehood have been established, and a uniform state authority, capable of adjusting and directing public development, has been generated".

In the conclusion we would like to say, that the state authority in the Republic of Kazakhstan is divided into legislative, executive, and judicial branches, which cooperate among themselves with a system of costs and counterbalances. The new parliament has two chambers, consisting of the Mazhilis and the Senate. Executive authority is carried out by a system of executive agencies. The head of state establishes internal and external policy. Government implements these policy directives. Judicial authority is subordinated to the Constitution and the law. The Constitutional Council is allocated from the general judicial system, the circle of powers of prosecutor's office, courts and others vary. When the supreme arbitrator in the state is the President, the Constitutional Council serves as an optimizing body on maintenance of the constitutional legality.

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**ТӘУЕЛСІЗ ҚАЗАҚСТАННЫҢ ҚҰРЫЛУЫ МЕН ДАМУ ТАРИХЫНЫҢ МӘСЕЛЕЛЕРІНЕ**

**Аннотация.** «Конституция» түсінігі екі мағынада қолданылады. Ресми тұрғыдан алғанда, заңды Конституция – әлеуметтік-экономикалық жүйені, билік түрі мен мемлекеттік құрылымды және тұлғаның құқықтық мәртебесін бекітетін мемлекеттің негізгі заңы болып табылады. Бұл құжат қандай болуы тиіс екендігін айқындайды. Алайда, оны тәжірибе барысында қолдану кезінде жағдай өзгереді: жаңа институттар пайда болады, жаңа конституциялық заңдар қабылданады және т.б. Іс жүзінде, мемлекеттік билікті жүзеге асыру тәртібі заңды Конституцияда белгіленген тәртіптен айтарлықтай ерекшеленуі мүмкін. Мемлекеттік билікті жүзеге асырудың нақты тәртібі сөздің материалдық мағынасында нақты Конституция немесе Конституция деп аталады. Нақты және заңды Конституция сәйкес те қарама-қайшы да келуі мүмкін. Кейбір елдерде саяси элита Конституциямен бөлісуге тырысады, бұны олар қажеттілік және орындылықпен түсіндіреді. Демек, бір жағынан конституция қажет, өйткені онсыз демократиялық мемлекет болмайды. Екінші жағынан, Конституция реалдылыққа қайшы келеді. Заңдылық пен мақсатқа сәйкестік арасындағы тарихи қақтығыстар әр уақытта қоғамдағы саяси күштердің ұйымдастырылуына қарай шешіледі.

**Түйін сөздер:** Ата заң, мемлекеттік билік, конституциялық заңдар, мемлекеттік құрылым формасы, саяси элита, демократиялық мемлекет, азаматтық қоғам, заңдылық, құқықтық жанжалдар, билік тармақтары.

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**К ВОПРОСУ ОБ ИСТОРИИ СТАНОВЛЕНИЯ И РАЗВИТИЯ НЕЗАВИСИМОГО КАЗАХСТАНА**

**Аннотация.** Понятие «конституция» применяется в двух смыслах. В формальном смысле юридическая Конституция – это основной закон государства, закрепляющий общественно-экономический строй, форму правления и форму государственного устройства и правовое положение личности. Это документ, предписывающий то, что должно быть. Однако в ходе его практического применения обстановка меняется: появляются новые учреждения, принимаются новые конституционные законы и т.д. На практике складывается такой порядок осуществления государственной власти, который может существенно отличаться от порядка, предписанного юридической Конституции. Этот реальный порядок осуществления государственной власти называется фактической Конституцией или Конституцией в материальном смысле слова. Фактическая и юридическая Конституции могут, как совпадать, так и расходиться. В некоторых странах политическая элита стремится править помимо Конституции, объясняя это необходимостью и целесообразностью. Получается, что, с одной стороны, конституция нужна, так как без нее не может обойтись ни одно демократическое государство. С другой стороны, Конституция вступает в противоречие с реальностью. Историческая коллизия между законностью и целесообразностью каждый раз решается в зависимости от расстановки политических сил в обществе.

**Ключевые слова:** основной закон, государственная власть, конституционные законы, форма государственного устройства, политическая элита, демократическое государство, гражданское общество, законность, юридические коллизии, ветви власти.

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