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The Constitutional Status of the President of the Republic of Kazakhstan

Streszczenie

W niniejszym artykule prawny status prezydenta Republiki Kazachstanu jest brany pod uwagę. W artykule analizuje się podstawy prawne dotyczące wyborów głowy niepodległego Kazachstanu. Ponadto artykuł przedstawia historię wniesienia poprawek do konstytucji Kazachstanu i rolę w tym Pierwszego Prezydenta.

Słowa kluczowe

głowa państwa, prezydent, poprawki do konstytucji, Kazachstan.

Abstract

The legal status of the President of Kazakhstan is considered. This article analyses the constitution and legislative grounds of election of the head of state from independence to the present days in Kazakhstan. Moreover, the article presents history of constitutional amendments and the role of the First President.

Key words

president, constitutional amendments, Republic of Kazakhstan, constitutional law

There are many forms of government in which the head of state position is different. For the monarchy it is a monarch, for republics - the elective president. The state requires the official providing a constitutional order, stability and continuity in international relations. Also the head of state retains the large powers in sphere of mutual relations with the legislative, executive and judicial powers and acting as an original symbol of the state and the official representative of the people. The head of state urges the government to provide permission of all crises and conflicts between public authorities within the constitutional way.

The status of the head of state is determined by the constitution and laws accepted on its basis. It is necessary to say that the person occupying the higher position in the state, has the clear rights and obligations and could not leave his position, to generate the actions threat to constitutional laws and freedom of citizens.

The constitutional status of the head of state is implemented within the constitution determining its functions and powers, which are closed to each other, but they are not identical. Functions are understood as the most important general obligations of the head of state arising from its position in the public administration. Powers arise from functions, rights and obligations of the head of state within the scope of its competence. In that measure, the functions and powers which are inherent exclusively to the head of state (i.e. they do not share with parliament, the government or judicial bodies) are called as prerogatives of the head of state (for example, the right to offer parliament a nominee on a government post of the head).

Today it is 25 years of an independence of the Republic of Kazakhstan (RK). During independence there were occurred essential transformations. It was necessary to solve set of versatile problems that required the absolutely new outlook to the public administration. Transformations of the republic have not avoided also political sphere. The direction of the Soviet Kazakhstan to gain state sovereignty, the planning and early implementation of structural changes in the political, economic and social spheres, a sharp increase of the international dimension in the policy followed many other have caused an objective need for the establishment of a new constitutional authority¹. The new political institute – presidential powers have been entered. At this period this kind of the government institute, which was not discredited by the society, was required. One of the major issues was development of the status of the head of state. Establishment of institute of the president gave a possibility to form the legal statehood which based on the power concentration directly on state structures, and also division of the power into legislative, executive and judicial². According to a traditional triad of division of the power the presidential power is usual considered as executive power. However there are various forms of the presidential power. As it is known, the head of state is usual individual monarch or the president. The head of state typical for modern conditions with the republican form of government is the president which official heads the state in 150 countries from 216, the others have monarchic form of government. The president as the head of state acts in different qualities depending on a version of the republican form of government.

Thus, in parliamentary republic the President only under the Constitution possesses the executive power. Other situation in presidential republic, there the President possesses and implements executive power, for example in the USA. In Kazakhstan, according to article 40, point 1 of the Constitution of the Republic of Kazakhstan from 1995 the President of the Republic of Kazakhstan is the head of the state, its high official,

¹ М.Т. Баймаханов, Л. М. Вайсберг, А. К. Котов, *Становление суверенитета РК*. Алматы, 1994. С. 127.

² В.А. Ким, Г.В. Ким, *Конституционный строй РК*. Алматы, 1998. С.92.

determining the basic directions internal and foreign policy of the state and representing Kazakhstan within the country and in the international relations. The president of the Republic Kazakhstan ensures the coordinated functioning of all branches of state power and responsibility of government towards the community³. Thus, it is possible to make a conclusion that the President plays the role of the arbitrator between power branches, other words, the President dominate the legislative, executive and judicial powers as the head of state, has ability to provide their distinction, to be the original arbitrator in case of their dispute on competence infringement. For the first time in the world the post of the President as a high official of the state and executive power has arisen in the USA. Now this institute is implemented in many countries. In Kazakhstan the political legal status of the President has passed some stages in the development. The first, this position under the law of the Kazakh Soviet Socialist Republic from 24 April 1994 About Organization of a Post of the President of the Kazakh Soviet Socialist Republic and Modification and Additions in the Constitution of the Kazakh Soviet Socialist Republic⁴, where it is said that the head of the Kazakh Soviet Socialist Republic is the President, and also under the Declaration on the State Sovereignty of the Kazakh Soviet Socialist Republic⁵ where in point 7 is told that the President is the head of republic and possesses the higher administrative and executive power. The second stage originates with accepting of laws of the Kazakh Soviet Socialist Republic from 20 November 1990 About Enhancement of Structure of the Government and Modification and Additions in the Constitution (Fundamental law) of the Kazakh Soviet Socialist Republic⁶ where article 144 is stated in the following edition: the head of the Kazakh Soviet Socialist Republic, its high executive and administrative power is the President of the Kazakh Soviet Socialist Republic. The third stage accordingly, it is the passing of the first Constitution of the independent Kazakhstan in which is written that the President of the RK is the head of state and heads uniform system of executive power⁷. Last stage is the period of implementation of the Constitution of the Republic of Kazakhstan adopted at an all-nation

³ Constitution of the Republic of Kazakhstan was adopted at an all-nation referendum on 30 August 1995. Law on amendments and complements to the Constitution of the Republic of Kazakhstan on 7 October 1998, the Law of the Republic of Kazakhstan dated 21 May 2007, the Law of the Republic of Kazakhstan on February 2, 2011.

⁴ Закон Казахской Советской Социалистической Республики от 24 апреля 1990 г. „Об учреждении поста Президента Казахской ССР и внесении изменений и дополнений в Конституцию (Основной Закон) Казахской ССР“.

⁵ Декларация Казахской ССР от 25 октября 1990 г. „О государственном суверенитете Казахской ССР“.

⁶ Закон Казахской ССР от 20 ноября 1990 г. № 334-ХІІ „О совершенствовании структуры государственной власти и управления в Казахской ССР и внесении изменений и дополнений в Конституцию (Основной Закон) Казахской ССР“.

⁷ Статья 75 Конституции Республики Казахстан, принятой Верховным Советом Республики Казахстан 28 января 1993 года (утратила силу).

referendum in 1995⁸. This period is characterized by investment of the President with a wide range of powers, strengthening of the status of the President in the conditions of consolidation of an executive branch of the power and deepening of the authorities, transition to presidential republic. Determination of the status of the President under the new Constitution from 1995 is reasonable for beginning with the basic moments of the general certificate. Namely, the constitutional characteristic RK as the state confirming as democratic and legal. Thus, accepted on execution in Kazakhstan the constitutional reference points proclaim the ideals developed by progressive thought⁹. Including those that concern to the state and a society, limits of intervention of the government in sphere of self-government, to borders of legal regulation and mechanisms of a formulation of such legislation which will be equitable to interests of the people.

In the article 1, point 4 of the statutory Decree “About the President of the Republic of Kazakhstan is written”: “The President of the Republic of Kazakhstan possesses the right to speak on behalf of the people”¹⁰. Such direct application is possible only at the decision of destiny of the constitutional amendments, at dialogue with the people through the referendum and in the conditions of emergency situations. It is possible to make a conclusion that Kazakhstan is the republic with a presidential government, and its status is directly specified in the Constitution from 1995. The President of RK is the head of the state providing functioning of all state structures. The president has risen over a principle of division of the authorities, left on the foreground in system of state structures. The main thing is that the presidential power is active and concrete. That is why the public confidence to it is great. The president of the Republic Kazakhstan is selected according to the constitutional law full age citizens of Republic on the basis of general, equal and a direct suffrage at confidential voting for a period of five years. According to the Constitution of the Republic of Kazakhstan only a citizen of Kazakhstan by birth who has been a resident in Kazakhstan for not less than the past 15 years and who has reached the age of 40 may be elected President.

Since the adoption the current Constitution was amended three times: in 1998, 2007 and 2011. In 1998 19 articles of the Basic Law were amended and complemented. The changes affected the term and competence of the President, Deputies of the Senate

⁸ В.А. Малиновский, *Становление и развитие президентской формы правления в РК* // Научные труды „Адилет” 1997 г. №1, с. 52.

⁹ A.F. Suleymanov, *The legal status of the President of the Republic of Kazakhstan, the procedure of election*, Herald KazSU. Legal Series. Almaty, 1999, №2, p. 36-40.

¹⁰ Constitutional Law of the Republic of Kazakhstan dated on December 26, 1995 N 2733 *About the President of the Republic of Kazakhstan* - http://www.akorda.kz/en/official_documents/constitution (access: 10.04.2014).

and the Majilis¹¹; age limit for public servants specified in the previous constitution was called off. In addition, amendments made provisions for election of 10 Deputies of the Majilis from party lists according to the principle of proportional representation¹².

So after this amendments the presidential term was prolong from five-years to seven-years term. January 10, 1999 held the second general elections (special election) of the President of Kazakhstan. Incumbent President Nursultan Nazarbayev won, receiving 79.78% of the vote¹³, and stayed in the position for the next 7 years.

Changes in the constitution of Kazakhstan and early presidential elections motivated deteriorating economic and political situation in Russia after the „August default” and fears that what is happening in Russia will adversely affect the economy and political stability in Kazakhstan. The relationship between these events is undeniable – for 3 April 1999, after two and a half months after the election, the Government of Kazakhstan adopted a resolution „On the Policy of the exchange rate,” the tenge exchange rate (currency of the Republic of Kazakhstan) was the „free-floating” and the devaluation of tenge (only in April, 1999 - 30%). Nursultan Nazarbayev, in his book „Kazakhstan’s way” in „economic crisis of 1998” recognizes that preparation for the tenge devaluation began in September 1998¹⁴.

June 20, 2000, the Constitutional Council of the Republic of Kazakhstan issued a formal interpretation of paragraph 5 of Article 42 of the Constitution of the Republic of Kazakhstan. According to this paragraph, the same person is not entitled to hold the office of President for more than two consecutive terms. The Constitutional Council ruled: This constitutional provision does not apply to any person exercise the powers of the president of the Kazakh Soviet Socialist Republic and the Republic of Kazakhstan to his election to the post January 10, 1999 in accordance with the Constitution of the Republic in 1995¹⁵.

December 4, 2005 held its third national elections of the President of Kazakhstan. Incumbent President Nursultan Nazarbayev won, receiving 91.15% of the vote to remain in office for the next 7 years.

More significant amendments were adopted in 2007. In general, their idea can be explained in the following way: transition to the proportional representation system;

¹¹ Majilis is the lower house and Senat - the upper house of the Parliament of the Republic of Kazakhstan.

¹² Закон Республики Казахстан от 7 октября 1998 года N 284 *О внесении изменений и дополнений в Конституцию Республики Казахстан*.

¹³ Н. Назарбаев, *Конституция - основа стабильности и процветания Казахстана*. 30 августа 2000 г., http://www.akorda.kz/ru/page/konstitutsiya-osnova-stabilnosti-i-protsvetaniya-kazakhstana-statya-prezidenta-rk-nazarbaeva_1337076995 (access: 14.05.2014).

¹⁴ N. Nazarbayev, „*Kazakhstan’s way*”, chapter „The economic crisis of 1998”.

¹⁵ On the official interpretation of paragraph 5 of Article 42 of the Constitution of the Republic of Kazakhstan - the decision of the Constitutional Council of the Republic of Kazakhstan from June 20, 2000.

strengthening the status of the Parliament due to introduction of the norm on approval of the nominee for the appointment to the position of the Prime Minister by the parliamentary majority and the procedure of the President's consultation with party factions before the appointment of the Head of Government. At the same time, the People's Assembly of Kazakhstan obtained constitutional status and the right to delegate its representatives to the Majilis and the Senate of the Parliament according to the established quota¹⁶.

It has been again entered corrected that the same person cannot hold a post of the president more than two terms successively, the date of performance of powers of the president has been reduced till 5 years (earlier there were 7 years), is entered corrected that the president should live constantly in Kazakhstan last 15 years (earlier residing time in Kazakhstan was not determined in any way, only its term). Besides, in the constitution Nursultan Nazarbayev's special position on which restriction on terms of stay in a post now does not extend has been fixed, and the status of the first president of Kazakhstan is determined by the separate constitutional law¹⁷. On June, 15th, 2010 - day of occurrence of new institute of the power «Ate Basses» or «the Leader of the Nation» is appointed to this post acting then the president.

In February 2011 the Constitution was amended to establish constitutional basis for the announcement and conduction of extraordinary Presidential election¹⁸.

For 2012 in Kazakhstan the next presidential elections have been planned. However on December, 23rd, 2010 at a forum in Ust-Kamenogorsk powers of the president of the country till 2020 have suggested to extend a number of public figures of Kazakhstan. For this purpose, in their opinion, it is necessary to hold general a republican referendum. Acting at a forum, public figure Olzhas Sulejmenov has declared that the working president should not be distracted «from the decision of important tasks» elections. The result of elections would be all the same known, but for the sake of it to spend hundred millions for elections preparation hardly probable costs¹⁹.

On December, 27th, 2010 the Central election committee Republic Kazakhstan (Central Electoral Committee) there has passed session in which course the statement of initiative group on carrying out of a republican referendum about prolongation of term

¹⁶ Закон Республики Казахстан от 21 мая 2007 года N 254 *О внесении изменений и дополнений в Конституцию Республики Казахстан.*

¹⁷ Law of the Republic of Kazakhstan *On amendments and additions to the Constitution of the Republic of Kazakhstan*, dated 21.05.2007.

¹⁸ Закон Республики Казахстан от 2 февраля 2011 года № 403-IV *О внесении дополнения в Конституцию Республики Казахстан.*

¹⁹ A.F. Suleymanov, *The legal status of the President of the Republic of Kazakhstan, the procedure of election.*-Herald KazSU. Legal Series. Almaty, 1999, №2, p. 36-40.

of presidential powers of „the Leader of the nation» has been considered. During session it was accepted the decision on registration of initiative group.

Three days later, the initiative group on referendum collected 314,000 signatures 621 Kazakhstan. In accordance with the legislation on a referendum, proponents had to collect at least 200,000 signatures of citizens, equally representing all regions, cities of Astana and Almaty, that is not less than 12,500 signatures in each region. On the same day the Majilis of Kazakhstan adopted an appeal to the President of Kazakhstan, Nursultan Nazarbayev, to amend the Constitution to call a referendum to extend his presidential term until December 2020. For a project of this decision on appeal to the president of the lower house voted under a secret ballot. January 5, 2011 - across Kazakhstan was collected 2.5 million signatures in support of the replacement of the presidential election referendum. January 6, 2011, the Senate of Kazakhstan at the plenary session of deputies supported the appeal to the head of state, Nursultan Nazarbayev, on the appointment of them holding the referendum to extend his presidential term until the end of 2020.

The President of Kazakhstan has rejected of the offer of parliament on removal on a republican referendum of changes and additions in the Republic Kazakhstan Constitution on prolongation of powers of the working president without national elections till 2020. On January, 13th, 2011 the Central Electoral Committee of Kazakhstan has confirmed the Summary report on results of check of reliability of signatures of citizens of the country. In total it has been collected 5 million 16 thousand signatures or 55.2% from total number of citizens of Kazakhstan, having the right to participate in republican referendum. 194 thousand signatures as a result of check by territorial election committees are recognized by void. On January, 14th, 2011 the parliament of Kazakhstan has unanimously approved of the amendment to the constitution of the country which provide prolongation of powers of Nursultan Nazarbayev by a referendum till 2020, but the president has not signed the amendment to the constitution to prolong his presidential term till 2020 and on January, 17th has directed them on consideration to the Constitutional council. On January, 31st the Constitutional council of Kazakhstan recognized the law on replacement of elections on a referendum unconstitutional and has made decision to refuse in carrying out of a referendum concerning prolongation of powers of the president of Kazakhstan Nursultan Nazarbayev for the reason to „discrepancy of formulations». The same day addressing to the people, the president has agreed with the council decision, and has suggested conducting special presidential election. Thereby his current term in the office was reduced to two years. On February, 2nd, 2011, on joint sitting of chambers of parliament the amendment to the Constitution, allocating the president of the country has been accepted by the right of the announcement of special presidential election, and on February, 3rd the Mazhilis has approved the bill regulating carrying out in Kazakhstan of special

presidential election. According to the bill extraordinary presidential election is appointed the decision of the president and conducted in two-month term after their appointment.

The president of the Republic of Kazakhstan Nursultan Nazarbayev has signed the decree about carrying out of extraordinary presidential elections on April, 3rd, 2011. Nursultan Nazarbayev, received more of 95 percent of votes, was re-elected for the fourth term.

One of the most important political institutes providing of the realization of checks and balances concept on which based the state supreme bodies functions is the constitutional liability of the President. According to the current legislation, in particular, according to item 2 of item 47 of Constitution RK the President has responsibility for the actions made at execution of the obligations, only in case of high treason and can be released for it from a post Parliament. In the Constitutional Law from 12/26/1995 “About the President of the Republic of Kazakhstan”, high treason is determined as the deliberate act made for the purpose of blasting or easing of external safety and sovereignty RK, expressed in transition to the party of the enemy during war or a confrontation, rendering to the foreign state of the help in realization of hostile activity against republic. But many people and political scientists do not agree with this position, they consider that the Constitution should contain and responsibility of the President for serious crimes, for deliberate flagrant violation of the Constitution as it is contained in constitutions of countries. In world practice procedure of impeachment concerning the President it was initiated on the facts of corruption of the head of the state more often. In Constitutions of many countries, except high treason other bases of dismissal of the President from a post are provided also: deliberate and Constitution flagrant violation (Lithuania, Germany, Pakistan), other laws (Germany), oaths (Lithuania), bribery (the USA, France), others heavy or even is simple crimes (Moldova, Russia, the Kirghiz Republic, the USA).

President RK can be ahead of schedule dismissed at steady inability to perform the obligations through illness. In clause 48 of Constitution RK, questions of exemption and dismissal from a post of the President are fixed. In a new wording it looks so: The President of the Republic of Kazakhstan may be prematurely released from office in the case of continued incapacity to perform his duties due to illness. In this case the Parliament shall form a commission consisting of equal numbers of deputies from each Chamber and specialists of the respective areas of medicine. The decision of premature release based on the conclusion of the commission and that of the Constitutional Council confirming observance of the established constitutional procedures shall be adopted at a joint sitting of the Parliament’s Chambers by the majority of no less than three-fourths from the total number of deputies of each Chamber.