

FORMATION OF PARLIAMENTARISM IN KAZAKHSTAN: CURRENT AGENDA

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ABSTRACT

The role and place of the legislative power (parliament) in the structure of political institutions of society serves as a kind of indicator showing the degree of the country's advancement along the path of political modernization. With the completion of political transformation, that is, when a stable democratic system is created, the institutions of parliamentary democracy become its most important and integral part. It does not matter what form of state it is and the corresponding model of separation of powers that exists, as long as parliament has a real impact on political decision-making. The research revealed the specific features of the national parliament of Kazakhstan in the system of checks and balances of state power. Recently, attention has been escalated to the question of the optimal structure of the Kazakhstan Parliament, the need to move to a unicameral parliament. This idea is not new and interest in it usually arises on the eve of constitutional reforms, which is explained by the opportunity to discuss the prospects for political modernization of the country in the framework of the organizational and legal forms of its preparation. It is likely that the acceleration of political processes in the country, mass rallies, along with a change in the thirty-year rule of the first president, will put the authorities in front of the need to transform the legislative branch. This paper examines the impact of the current national characteristics of the formation of post-Soviet state to parliamentarism. Then we look at the predicted influence of parliamentary control over the executive. Relying primarily on Kazakhstan's experience, we analyzed potential changes in a democratic and constitutional spirit as a result of the redistribution of powers between the executive and legislative branches. Our statement is that the current Constitution of Kazakhstan requires increasing the role and expanding the powers of the parliament, granting the government the status of an independent executive body, introducing a multiparty system, and ensuring fair representation.

Keywords: Constitution, Multiparty System, Parliament, Parliamentarism, Representative Power, Separation of Powers.

INTRODUCTION

A component of the complex process of transition from the traditional society to the modern is political modernization, the content of which consists of changes in the political

system in accordance with the transformations in the economic and social spheres of society. In the process of political modernization, both the formation of new and the evolution, adaptation to the changed circumstances of existing political institutions takes place. At the same time, it is objectively necessary, on the one hand, to preserve political stability as the most important condition for social development as a whole, and on the other hand, to expand the possibilities and forms of political participation. The absence of such conditions may have crisis consequences.

Constitutional legal science proceeds from the need to take into account two main dangers threatening the process of political modernization. The first is the danger of political modernization lagging behind changes in other spheres of social life. Pursuing a policy of "*first economy, and then politics*", Kazakhstan is under increasing pressure to carry out political reforms (Knox, 2008). Such a gap can cause a revolutionary crisis. Another danger is that rapid democratization may turn out to be premature, not prepared by the appropriate level of development of civil society and political culture. In this case, a crisis is also possible.

The formation of parliamentarism in Kazakhstan has a small history since 1991, this process, as in most post-communist countries, is accompanied by the preservation of the characteristic features of political life low public trust in state institutions and the wide gulf between elites and state on the one hand and the public on the other; low quality and ideological amorphousness of political parties (Kuzio, 2012).

In fact, we in Kazakhstan saw only two forms of management-state (Soviet) and the current corporate/group. A request for strengthening/increasing the role of the state can be viewed as a demand of the population (based on dissatisfaction with the results of social policy) of changing the corporate management model that is, changing the ineffective management. At the same time, there is no other arbitrator/guarantor of the protection of interests other than the state. But the irony of fate is that it was our modern state that created these noncompetitive conditions convenient for monopolists that the population cannot change. Political scientists suggest/forecast that the request for active state intervention in the country will increase in any political environment (authoritarianism, for example), and at the same time a turn to liberalism in the coming years is hardly possible (Grinin & Korotayev, 2016; Mayer, 2001; GeL'Man, 2017).

The deepest political and socio-economic, as well as legal changes carried out in recent years, led to the emergence and evolution of fundamental institutions and categories of constitutional law of Kazakhstan, changing not only the approaches, but also the very concept of this leading branch of Kazakhstan law. A number of major theoretical problems arose that need serious development from new positions based on progressive ideas and tenets that are legally enshrined in the 1995 Constitution of the Republic of Kazakhstan and developed in constitutional laws, laws and other normative legal acts. Among the major problems of constitutional law, the problem of correlation of the principle of separation of powers and parliamentarism in modern Kazakhstan, in particular, the problems of the functioning of the legislative power in general, stands out with its theoretical relevance.

The separation of powers doctrine is a complex and contested notion (Meyerson, 2004). We should think of the separation of powers as requiring a division of labor where each branch plays a distinct role in the constitutional scheme. Though the labor is divided, functions may be shared. Instead of conceptualizing the branches of government as isolated or compartmentalized bodies with 'high walls' between them, emphasizes the necessary interdependence, interaction, and interconnections between the branches. The actions of each branch take effect in a complex interactive setting, where the branches take account of-and coordinate with-the actions of the

other branches (Kavanagh, 2016; Ackerman, 2000). They have to work together in the joint enterprise of governing. It emphasizes that lawmaking, law-applying, and law-executing are collaborative tasks where each organ of government must cooperate with the other organs in an interactive setting (Eskridge & Frickey, 1994).

The relevance of the work is determined by the fact that after the adoption of the Constitution in 1995, a fundamentally new stage in the history of Kazakhstani parliamentarism began. Writing a constitution is mainly a political bargain in which several political forces try to adopt a system that is closer their preferences (Russo & Verzichelli, 2014).

The Constitution of the Republic of Kazakhstan, one of the basic principles of which is the separation of powers, established a bicameral parliament. One of the chambers-the Mazhilis is the body of representation of the whole people (legally its role is reduced to two functions - representation of interests and legislation), in the other chamber-the Senate-the regions of Kazakhstan are represented. Therefore, it is especially important to research and identify the main characteristics and features of the process of development of Kazakhstan parliamentarism.

It is necessary to identify not only the main stages of the development of democratic institutions in Kazakhstan, but also the most important traits of this process, its features, to formulate the most important factors that influenced its course and results, to determine its main perspectives. As the researchers accurately point out: the process of democratization in modern times, and especially in the contemporary world is inextricably linked to the phenomenon of parliamentarism, key institution that requires the implementation of legal norms that facilitate not only a range of fundamental rights, but also an optimized development of all state segments, economic and political. The correlation between the Parliament and democracy is classical and the effect of this conglomerate is a reflection of social life (Nemțoi, 2014).

The research revealed the specific features of the national parliament of Kazakhstan in the system of checks and balances of state power. Recently, attention has been escalated to the question of the optimal structure of the Kazakhstan Parliament, the need to move to a unicameral parliament. This idea is not new and interest in it usually arises on the eve of constitutional reforms, which is explained by the opportunity to discuss the prospects for political modernization of the country in the framework of the organizational and legal forms of its preparation. Summarizing the data of the constitutional-legal science on the analyzed problem, it should be noted that the pros and cons of these ideas are enough, since both the unicameral parliament and its bicameral structure reveal a set of disadvantages and advantages, manifested in the peculiarity of the functioning of the parliament of a particular country. The authors share the idea of reforming electoral legislation based on adherence to generally accepted principles and norms of international law and moral and ethical values, ensuring the professionalism of parliamentarians, and establishing genuine control of voters over the activities of parliamentarians.

The research substantiates the proposition that, as applied to Kazakhstani conditions, an optimal model of parliament organization has not yet been found that is capable of adequately implementing the interests of the majority of the population at the national level, as well as creating a legislative system based on the real state of the economy, politics, law and order, and others. Socially significant factors and support the legislation in the necessary state for society. The authors formulated proposals aimed at improving the institution of parliamentarism in Kazakhstan.

METHOD

In conducting the study, an interdisciplinary approach was widely used. This allowed the authors, as necessary, to combine sociological, political and formal legal approaches to the consideration of the stated topic from at least three different parties, which should strengthen the power of the arguments and theses put forward. So, thanks to the consistent application of these methods, the main problem of the modern Kazakhstani state was revealed: either to preserve the existing presidential form, or to transform it into a mixed or parliamentary form.

In order to clarify the importance of the institution of parliamentarism for society and the individual and clarify their assessment of this institution in terms of the common good, justice, freedom, respect for human rights and respect for its dignity, the study also uses the normative value approach.

Of particular importance for the study is the contextual approach, which is characteristic of American pragmatism and implies a fundamental refusal to follow the given principles and axioms. The desire of the authors to objectivity does not mean the abandonment of any regulatory installations. However, in our opinion, these attitudes must be declared in the course of the study and, secondly, they must prove their suitability for specific recommendations on reforming the interaction of representative and executive authorities. Such consideration convincingly shows that the emergence and formation of parliamentarism with its specific features is a reflection of the transformation processes of the political system and public relations in the country at a specific historical stage of its development.

Parliamentarism in Kazakhstan: National Characteristics

Under the conditions of the ongoing formation of a national state, Kazakhstan's parliamentarism can be defined as a type and form of state leadership of society based on the principle of separation of powers, taking into account the specific relationship between the legislative and executive branches of government subject to their interaction, interdependence and interpenetration, recognition of government responsibility to parliament.

The research of the characteristics of modern Kazakhstan's parliamentarism, broad historical comparisons dictated by the specifics of the topic, led the authors to conclude that the structure of the Kazakhstani parliament has certain specificity. The model of parliament, enshrined in the Constitution, provides that it consists of two independent, fully autonomous chambers—the Senate and the Mazhilis. In this regard, it is necessary to distinguish the nature and character of the representative function of the chambers of parliament, especially since the Senate is a special representation of the territories of Kazakhstan or of the authorities, and therefore is intended to reflect the interests of a certain circle of voters due to their territorial identity.

The domestic parliament is largely limited in its interaction with the executive power, primarily with the Government. Nevertheless, this does not mean that in Kazakhstan there is no parliamentary control over the executive branch. At present, the supervisory powers of the Kazakhstani parliament in relation to the executive power have a regulatory legal framework, primarily in the Constitution and laws. This control is carried out in practice, although its implementation is not always sufficiently effective. Based on modern regulatory legal and law enforcement realities, we believe that parliamentary control over the executive in our country

involves more monitoring and verification than coordination and direction of the executive branch of government. This is clearly expressed in its forms and content.

Parliamentary control of the executive branch in Kazakhstan is primarily informational and recommendatory. The legislative and representative body of the Republic of Kazakhstan is seriously limited in the possibility of applying sanctions in connection with the identification of deviations in the activities of the bodies of this branch of government. There is no proper public control over the work of state power. In this regard, Kazakhstani society needs to create an open information space for the realization of the individual's right. The open state management involves an initiative on the part of state bodies and officials, i.e. their willingness to express their operation by means of legal and efficient measures at different levels of state authority. The further progressive promotion of the process of building a democratic and rule-of-law state, establishing civil society in Kazakhstan involves ensuring the citizens' legal access to information on the operation of state administration bodies (Apakhayev, 2017).

Separation of powers and parliamentarism are interrelated and interdependent state-legal phenomena. The current separation of powers system in the state determines the degree of independence of the parliament in the implementation of the legislative function and the ability to exercise control over the executive power, which are the most important characteristics of the development of parliamentarism.

Currently, in Kazakhstan, a new branch of state power, presidential, is actually forming within the system of separation of powers, which has a significant impact on the objective development of all other branches of state power and, first of all, the legislative branch. At the initial stage of the formation of the statehood of Kazakhstan, the French constitutional model was the basis for development. Surprisingly, the constitutional model they most often chose was neither the pure parliamentary model found in most of Western Europe at the time, nor the presidential model of the Americas. Rather, it was semi-presidentialism--a rare model known more generally as the "*French type*." This constitutional model melded elements of pure presidentialism with those of pure parliamentarism. Specifically, semi-presidentialism combined a popularly elected head of state with a head of government responsible to a legislature (Skach, 2011).

The specifics of the current system of separation of powers are determined by the form of government chosen in the state. In Kazakhstan, a rigid presidential form of government is chosen as the super-presidential republic. In her, the head of state seriously rises above all other bodies of state power, has broad powers in all spheres of public life and at the same time does not bear any political responsibility. This significantly distorts the system of separation of powers: in Kazakhstan there is a significant imbalance towards the executive branch, which, through the President, as its de facto leader, subordinates all the rest (in details the research about common explanatory factors and internal causal mechanisms behind non-high democratic effectiveness of post-communist semi-presidential regimes is represented in the work of Yan (2017)). The implementation of its functions by the parliament is seriously influenced by the executive branch in the person of the President and the Government. As a result, the independence of the parliament in the implementation of its powers (which implies the theory of separation of powers) is significantly limited.

As an analysis of the parliament's activity shows, the majority of deputies believe that their sole duty is to review and adopt laws. This understanding was introduced into the minds of parliamentarians by the executive branch. As a result, the provision enshrined in the Constitution of the Republic of Kazakhstan stating that "*the parliament is the highest representative body of*

the republic performing legislative functions" is not actually implemented in its first part. It ceased to be a truly representative body; as a result, it ceased to be autonomous, got a dependent position in the hierarchy of state power, direct or indirect subordination of one political party.

According to the Constitution, deputies have the right of legislative initiative, but in practice it is extremely difficult to realize this right, since any bill in one way or another affects the revenue or expenditure part of the republican budget. And in such cases, under the Constitution, be sure to need a positive opinion of the government. As a result, the legislative initiative of the deputies is limited to individual minor amendments to bills proposed by the government, and these amendments must again be agreed with him.

An important but still not solved by the parliament problem is an inventory of the current legislation, which is full of contradictions, blanket norms and in which there is no systematic connection between laws and by-laws. At an extremely unsatisfactory level is the expert and analytical support of draft laws. Deputies do not use the potential of scientific institutes, special analytical centers, scientists, as a result of which they become hostages of information provided by the government. Unfortunately, parliament does not have the appropriate institutions to constantly monitor laws. The powers of parliament are inadequate to the dynamic processes taking place in society. The axiom that states that representative functions are primary and not secondary is not perceived by deputies.

In the current system of separation of powers, the role of parliament is reduced to the adoption of laws prepared by the executive branch and the exercise of a number of formal supervisory powers. In this connection, the restriction of certain powers of the head of state, the strengthening of the role of the government are in demand, the government should be really responsible to parliament. Thus, the independent parliament of the country should be a counterbalance to the actual presidential absolutism.

In the theory of law, there are two basic forms of government: the republic and the monarchy. In Kazakhstan, the republican form of government should be unshakable, and not the presidential form of government. The presidential form of government is only a derivative of the republican form of government. In other words, the republican form of government should be unchanged, and its varieties of presidential, parliamentary or presidential-parliamentary form of government may vary as necessary depending on the development of state institutions and society.

Are Reforms of the Parliament of the Republic of Kazakhstan Necessary?

In 1995, the second Constitution of sovereign Kazakhstan was adopted, which in section IV provided for the creation of a bicameral parliament. Such a structure of the Parliament for Kazakhstan was new, since in the Soviet period and in the first years of independence unicameral parliaments operated in the person of the Supreme Soviet of the Kazakh SSR and the Supreme Soviet of the Republic of Kazakhstan.

Even then, the bicameral structure of Parliament caused great controversy among politicians and jurists. A fair question was asked, why is there a bicameral Parliament in unitary Kazakhstan (Dzhunusova, 1998; Mukhamedzhanov, 2005).

From the theory of state and law as well as from practice it is known that the structure of parliament, as a rule, depends on the form of government, the composition (size) of the population or on the historical traditions that have developed in a particular country. For example, democracies with a federal form of government form parliaments according to a

bicameral system, but there may be deviations from the rule, since the traditional system of building parliaments was bicameral. As history shows, the second or upper chamber was introduced, firstly, to represent the aristocracy and, secondly, to contain the lower chamber, in which the bourgeoisie and other democratically-minded persons were represented.

The bicameral structure of parliament is firmly established in the political and legal practice of many democratic countries. In European states, bicameral parliaments prevail over unicameral parliaments. At present, bicameral parliaments operate both in federations (Russia, Germany, Switzerland and Austria) and in unitary states (Great Britain, France, Poland, Romania, Czech Republic, etc.) In the European Union, 2/3 of the countries have bicameral parliament and 1/3 of states—unicameral.

As can be seen from this review in Kazakhstan there is no, and there was no classical reason for creating a bicameral Parliament, since Kazakhstan is unitary, and had no corresponding historical traditions.

The creation of a bicameral model of Parliament was explained by the fact that this will improve the quality of the adopted laws, as they will be consistently discussed and adopted by each chamber independently, and disputes over laws adopted in this way will be resolved through conciliation proceedings in the chambers.

Another argument was that such a structure would reduce the probability of crises in relations between state bodies, and the Parliament itself makes it more stable; reduce the negative impact of local and departmental trends on legislative activity.

More than two decades have passed since the bicameral structure of the Parliament was introduced in Kazakhstan, during which time a certain amount of lawmaking experience has been accumulated, which indicates that the quality of laws adopted by parliament has not improved, and the periodic early elections of deputies to the Mazhilis have little in common with sustainability and the stability of this chamber. Although, it should be noted that as a result of the order of formation of the Mazhilis changed by party lists in 2007, the Parliament became controlled by one political will, and, therefore, the Parliament itself turned into a “*notary office*” for laws that the Government is developing.

Today, political analysts give the same assessment to Parliament, who note that the bicameral structure of parliament made sense when the Mazhilis was formed by the self-nomination of candidates, which hypothetically created the possibility of the presence of opposition in it, in which case the Senate was intended to act as an additional guarantee of the presidential power. Today, figuratively speaking, the government replaced the radical opposition with the surrogate opposition, which is easy to control and because of this, the Senate has lost its main function, for which it was created, to be a counterbalance to the Mazhilis.

Multi-party system and the presence of representatives of opposition parties in the Parliament represent the modern standard of democracy of European value. Under these conditions, the old truth is better realized that the most intelligent and mature decisions are born in healthy clashes of opinions and different positions. In cases of danger of absolute (total) predominance of members of one party in parliamentary elections, the so-called “*quota system*” of the distribution of seats in parliament is applied in such countries so that representatives of other parties get there. Another way to provide small parties with seats in parliament is to set a lower percentage threshold for them to enter parliament.

There can be no real democracy without opposition. In representative democracies, the parliamentary opposition holds a special place; the notable neglect of “*opposition issues*” is not justified by any compelling theoretical or empirical contentions (Helms, 2008).

On the other hand, the presence of the second chamber makes it possible to ensure the stability of the current constitution on principled positions, that is, the inviolability of its basic provisions, because the second chamber of parliament prevents an abrupt change of policy, it contributes to the continuity of politics when renewing the composition of the lower house of parliament. To a certain extent, this is due to the order and timing of the formation of the upper chamber.

In the Republic of Kazakhstan, as in most countries with a bicameral structure, the upper house has a longer term of office (than the lower house) and is renewed in parts, that is, in the case of a major renewal of the composition of the Mazhilis, the Senate continues to operate. To a large extent, the specified procedural mechanism for the formation of a bicameral parliament contributes to the implementation of a consistent legislative policy, continuity in other areas of parliamentary activity.

The presence of the second chamber of parliament makes it possible to avoid haste in making decisions, and, above all, in the legislative sphere. In other words, the complicated legislative process creates optimal conditions for a well-considered, weighted legal regulation of social relations. It is well known that the quality of all by-laws adopted by state bodies largely depends on the quality of legislative decisions of the Parliament. Defectiveness of laws, in essence, is capable of reducing to know the whole system of legal regulation, its results, therefore, the dilemma “*simply or difficult*” should, on the other hand, be decided in favor of a relatively long but multilevel legislative activity.

The need for reform of the Parliament is caused not only by the foregoing, but also by the fact that the existing procedure for its formation:

1. It does not allow to identify, educate new political and public leaders, as the Mazhilis is formed through elections on party lists and the election of deputies by the Assembly of the People of Kazakhstan (hereinafter-APK), and the Senate is formed through indirect elections, which deprives the process of such elections of transparency, competitiveness and access to them the general population;
2. Violates the constitutional rights of citizens related to the exercise of their passive right to vote in this chamber. To be registered as a candidate for the elections to this chamber, you must be a member of any party that is allowed to participate in the elections and included such an applicant in your party list. Another way to become a member of the Mazhilis of Parliament is to be nominated by the APK. All this contradicts clause 1 of Article 5 of the Constitution of the Republic of Kazakhstan, which deals with ideological and political diversity, as well as clause 3 of Article 39, which says that no restriction of the rights and freedoms of citizens for political reasons is allowed in any form. In our case, if you are not a party member, then you cannot be a deputy of the Mazhilis;
3. The maintenance of a bicameral Parliament is quite expensive for taxpayers. At their expense, not only deputies of both chambers are kept, but also civil servants of the staffs of these chambers, as well as numerous economic services. It seems that the time has come for the state to set an example of economy by abandoning the bicameral parliament and replacing it with a unicameral one.

In addition, the relevance of the reform of the Parliament is also due to the fact that, starting in 2007, the question of adjusting the form of government, namely, the transition from presidential to presidential-parliamentary form, has been raised in Kazakhstan. The implementation of such casting will require filling the Parliament not only with new powers (Article 53 of the Constitution), but also with new politicians. In our opinion, the most preferred is the parliamentary form of government, in in-depth studies it is noted that the superior historical performance of parliamentary democracies is no accident. A careful comparison of parliamentarism as such with presidentialism as such leads to the conclusion that, on balance, the former is more conducive to stable democracy than the latter. This conclusion applies especially

to nations with deep political cleavages and numerous political parties; for such countries, parliamentarism generally offers a better hope of preserving democracy (Linz, 1990; Dahl, 1996).

The transformation of the highest political power gives reason to think about how the stability of the country will be ensured after the first president completely leaves power. According to the classic work of Juan Linz 1994, the presidential system does not contribute to the stability of democracy in comparison with parliamentary countries. The conclusion about the “*dangers*” of presidentialism was made on the basis of an analysis of the experience of countries in the 1970-80s. There is dual legitimacy in presidential systems, where not only the president but also the parliaments are popularly elected, and therefore they can stand in opposition to each other and there are no mechanisms for resolving these conflicts. Confrontation may drag on. The president is striving for more power, since he does not feel any restrictions. Presidential elections, where the candidate wins with the least margin but receives all the power (zero sum), are fundamentally different from the parliamentary elections, where the party with the fewest votes still gets seats in parliament (win-win). Majoritarianism, disproportionality, polarization, rigidity of government, prohibitions/restrictions on re-election-these characteristics of presidentialism cannot contribute to the stability of democracy.

It is difficult to say which model of transition from one form of government to another will be chosen by the current government, but there is no doubt that it is time for the political elite to decide on this issue. The current model of legislative power is deprived not only of dynamism and progress in moving forward, but also characterized by a loss of communication with voters. At present, voters do not know their deputies, as they vote in elections for party lists, and not for a particular candidate for deputy of the Mazhilis of Parliament. The deputies of the Senate are known only to the electors (deputies of the maslikhats who elected them), the population of the administrative-territorial unit they represent is completely unaware of them. All this makes it impossible for them to actually represent regional interests in the center.

We believe that no matter what form of reform (radical or cosmetic) the current government chooses; it should return to Parliament at least part of the powers that Parliament voluntarily transferred to it in 1993-1995. In order to promptly carry out appropriate economic and political transformations in the country, the former head of state before the Parliament raised the issue of giving him additional powers for the transitional period.

Under presidentialism, it is thought; governments are not likely to be supported by a majority of the legislature since there is nothing in the system that guarantees that such a majority will exist. Deadlocks between the government and the legislature, thus, would be common under presidentialism and would lead to conflict between the two powers. Decision-making under presidentialism is normally considered to be decentralized, that is, to be such that the president simply responds to proposals originated in the legislature, which is, in turn, organized in such a way as to allow for politicians to pursue individualistic rather than partisan strategies. As a consequence, the government’s ability to influence and implement policy is reduced and “*crises of governability*” are more likely to occur.

There are some features of presidentialism that represent an advantage over parliamentarism. Two that may be of particular value in a situation of relatively high political volatility are: term stability, which orders and makes the political calendar predictable, and the existence of an office that has a national constituency. These features do not constitute sufficient ground for adopting presidentialism over parliamentarism; but they should be taken into account

in making the decision. In order for it to work, however, a presidential constitution needs to pay attention to three very important areas:

1. Legislative and agenda powers of the presidency.
2. Rules for legislative and presidential elections.
3. Constitutional term limits on presidential reelection (Cheibub et al., 2004).

In the most difficult period of socio-economic reforms, in the mid-90s of the last century, the people of Kazakhstan, feeling their responsibility for maintaining the independence of the republic and the stability of society, showing a high degree of tolerance, supported the President of the country in this matter. In other words, the people of Kazakhstan realized that, to the detriment of their rights and freedoms, at a critical time for the country, they give priority to the interests of the state.

According to the first Constitution of 1993, Kazakhstan was a parliamentary republic. Parliament (Supreme Council) was the only legislative and supreme representative body of the country.

Only this state body had the rights:

1. Adopt the Constitution of the Republic of Kazakhstan and make amendments and additions to it;
2. Enact laws and monitor their implementation;
3. Interpret laws whose application is controversial;
4. Change the territorial borders of the country, resolve administrative-territorial disputes;
5. Approve and amend the state budget and control its implementation;
6. Establish a monetary system, tax policy, make decisions on government loans;
7. Appoint the president, prime minister and ministers. The president was accountable to the Supreme Council and had limited power.

Modern Kazakhstan faces a choice: either to preserve the existing presidential form, or to transform it into a mixed or parliamentary form. Mixed forms of government allow redistributing part of the presidential functions to the parliament and the government and create a system of checks and balances. The peculiarity of the parliamentary system is that, despite the special role of the party leader, the voter chooses the party. The maximum concentration of power in the hands of the president was necessary after Kazakhstan gained independence, now there is no such need. The research notes that an indispensable component of future-oriented comprehensive democratic reforms is parliamentarism, the expansion of the powers of representative bodies, the strengthening of the rights and control functions of parliament, its participation in the formation of the government and other constitutional bodies (Malinovskiy, 2005).

In fact, in recent years there has been a tendency for Kazakhstan to move from one form of government to another—from presidential, but to which one—mixed or parliamentary republic, is an uncertain fact.

Today, after leaving the post of the first president, but retaining wide powers, the role of the second president, K. Tokayev, is declining. It must be understood that changes within the Kazakhstan system characterize the post-transit period. Under Nazarbayev, the power of the incumbent president could not be limited, because it carried too much risk. But the second president already de facto does not have such powers. Parliament becomes a real power-sharing mechanism and represents all the diverse interests strictly controlled by the leading Nur-Otan party. The head of the Mazhilis and the Senate are people, especially trusted ones, and leaders of

the regime. These may be representatives of the family or representatives of the so-called “*old guard*”.

In the Kazakhstani example, the political system looks that way, but, of course, there are many ambiguities. Will diverse interests be able to balance, will the Nur-Otan party turn out to be stable, will the new president be able to maintain public confidence, and can elections be controlled to the same extent, without the use of repression? And of course, will politics contribute to economic growth, social justice, prosperity of the country, at least to the same extent as under the first leader?

About Directions of Further Improvement of Parliamentarism

Under the multi-party system, it is necessary to understand the constitutional principle that determines the form of self-organization of society and the prerequisite for the formation of government bodies, which consists in allowing the creation of political parties and the creation of mechanisms for their participation in the political life of the state.

In modern times, a multiparty system has not developed in Kazakhstan that can influence the development of parliamentarism and constitutionalism. One party, formed by the state power, headed by the President, plays a significant role in the constitutional structure of the Republic of Kazakhstan. This situation is not conducive to the formation of political and ideological diversity; does not ensure the sustainable functioning of the political system and the state apparatus.

A multi-party system is one of the basic conditions for the functioning of parliamentarism, since it is thanks to a multi-party system that parliament is a truly democratic body. At the same time, through the parliament, carriers of different ideologies can not only try to prove the viability of their ideas in practice, but also directly influence the governance of the state.

The artificial reduction in the number of political parties in Kazakhstan through a legally unjustified increase in the requirements for the number of their members, the actual ban on the creation of regional political parties deprive voters of a real opportunity to participate in the formation of the Mazhilis using the opportunities offered by the multiparty political system.

Despite the fact that there is no robust effect of presidentialism or parliamentarism on growth. However, there is very robust evidence for a positive, and quite substantial, effect of Proportional Representation (PR) electoral rules on economic growth. This is partly due to PR systems' propensity to generate broad-interest policies, like universal education spending, property rights protection and free-trade, rather than special interest economic policies. Also, semi-proportional systems seem to enhance growth relative to plural-majoritarian systems (Knutsen, 2011). Real multiparty system in the parliament will not only ensure political stability, sustainability of state power, but also more efficient economic development of Kazakhstan.

Mutual relations of the parliament with the state, as the main element of the political system of modern Kazakhstan, are extremely versatile and can be legislative, representative and controlling. The main point of these relationships is that the Parliament adopts legal norms on the basis of which the state acts, and also gives citizens the opportunity to participate in government. The state, in turn, ensures the activities of the parliament, in particular, by not allowing other state bodies to interfere in its activities, ensuring elections to the parliament, and also, if necessary, ensuring by means of coercion the obligation to comply with parliamentary requirements.

Rapport of the parliament with state bodies take place within the framework of the system of separation of powers, in strict accordance with the norms of the Constitution of the Republic of Kazakhstan and the functional duties of this or that state body and are reduced to ensuring comprehensive state management, as well as mutual deterrence in the process of government.

At present, it can be stated that the political system of Kazakhstan is already under construction, taking into account the existence of such a state body as the parliament, as well as taking into account the use of parliamentary methods of government.

The basic law of Kazakhstan, having established a bicameral parliament, gave each of the chambers the authority to perform both legislative and controlling functions. At the same time, the history of parliamentarism showed that the free exercise of these functions turned out to be practically impossible, under the conditions of the government chosen in Kazakhstan, the super-presidential republic, in which the President has the opportunity to intervene in all spheres of public life, in fact directs the executive branch and is able to dictate his will to the legislative branch.

Ways to further improve parliamentarism include:

1. Development of representative aspects of the organization of parliament (introducing the responsibility of deputies to voters and the creation of deputy offices in constituencies);
2. Development of legislative process technologies (in other words, procedures for the development and adoption of laws by parliament);
3. Elimination (or, at least, minimization) of the constitutionally fixed imbalance between the parliament and the institution of the presidency of the Republic of Kazakhstan;
4. Strengthening the controlling function of the parliament in general and above the Government of the Republic of Kazakhstan, in particular.

Parliamentary control in the system of public control over the activities of the executive branch should play a more significant role. This requires the existence of a constitutional and legal framework establishing the direction of control, forms and the ability to establish and ensure the functioning of specialized bodies of parliamentary control, as well as the existence of guarantees of control powers of the Parliament (Tlembayeva, 2016).

In the framework of the above ways to further improve parliamentarism, we can note a number of priorities, the solution of which would enhance the role of parliamentary structures in the Kazakhstani political system:

1. Improving the efficiency of the legislative process (development of uniform requirements for laws and regulatory legal acts, their preparation, introduction into consideration, adoption, publication, interpretation and systematization; as well as the development and practical application of the rules of legislative technique);
2. Forecasting the consequences of the effect of the newly adopted normative legal act (minimization of the so-called "*stillborn*" laws, that is, those that cannot be applied within the framework of the existing political and legal reality, as well as the accompaniment of each adopted law with a series of by-laws aimed at implementing the main law to life);
3. Development of mutual relations between different branches of government (expansion of the control powers of the parliament, as well as the narrowing of the powers of the President in relation to the Kazakh parliament);
4. Comprehensive expansion of relations between deputies and voters (primarily within the framework of deputy instructions, as well as through the formation of offices of acting deputies of the Majilis in deputy districts).

In addition, the creation of an effective mechanism for citizens to control the activities of parliament and its members is in demand. To this end, it is recommended that the law establish the obligation of deputies to periodically (at least once a year) report publicly to voters and provide for the responsibility of deputies for failure to fulfill obligations, including up to recall of a deputy by citizens.

In order to restore the balance of the restraining influence within the system of state authorities, it is necessary to simplify the procedure for the removal of the President from office in connection with the commission of a serious crime. It is also proposed to complicate the process of dissolution of the Parliament in connection with the resolution of the issue of confidence in the Government. It is necessary to determine the grounds for expressing distrust, at the proof of which the Government is subject to dissolution.

It is required to reform the institution of parliamentary inquiry and to abandon the currently existing redundant form of exercising supervisory powers-deputy inquiry. The legislative function of parliament plays a big role in establishing a reliable rule of law in the state. Legislative activity of the parliament, based on strict observance of constitutional norms, taking into account the rights and interests of a minority when making major state decisions, allows to guarantee stability in the country, to ensure dictation of rights and law in the process of exercising state power.

The quality of the adopted laws can be improved by setting the requirements for the special training of members of parliament. The central place among the measures ensuring the improvement of the quality of the adopted laws is the responsibility of the deputies themselves, who should not allow significant violations of the regulations, stop the practice of returning to voting when considering the draft law, and repeatedly re-voting the same amendments. An equally important duty of a deputy, the responsibility for the non-fulfillment of which must be established by law, is to attend the meetings of the chamber to which he is elected to participate in the work of the chamber.

CONCLUSION

The establishment of a bicameral parliament by the Constitution of Kazakhstan, accompanied by the establishment of other parameters of parliamentarism, is a very noticeable event in the organization of state power. The Soviet period of history, when Kazakhstan was part of the Soviet empire, was characterized by the rejection of the ideas of parliamentarism, for a long time Kazakhstan did not know the bicameral parliamentary system. Since the beginning of the 90s of the last century, the idea of bicameral system evolved from ideas about the second chamber as a tool for representing the interests of all regions of Kazakhstan.

The principle of the upper and lower chambers, which characterizes the parliamentary structure in the Republic of Kazakhstan, causes considerable independence of the Mazhilis and the Senate (their powers, their representation, meetings, as a rule, were different, etc.) are different.

Different degrees of legitimation of the Senate and the Mazhilis are sometimes perceived critically. As a result, it is widely believed that the lower house is more democratic, and the Senate, by contrast, more conservative. Additions to existing legislation in order to ensure greater transparency and publicity in the election and appointment of senators can raise the bar of publicity of the existing way of forming the upper chamber.

It is necessary to activate the legislative potential of the Senate. This is due to the wider use of the right of legislative initiative; the participation of the upper house in the work on the laws at an earlier stage, and not after their adoption by the Mazhilis; with the implementation of the right of the Senate to amend bills in their preparation for the second reading in the lower house of parliament.

The amendment of the current Constitution of Kazakhstan is needed to increase the role and expand the powers of Parliament, giving the Government the status of an independent body of executive power. But for the successful implementation of the reform of constitutional legislation, it is necessary to fulfill a number of conditions, without which it will be impossible to ensure the stable development of our state:

1. It is necessary to achieve a stable social and political situation in the society, which should prevent the adoption of hasty, opportunistic decisions. In the context of the current socio-economic crisis, constitutional reform can develop into a conflict in society;
2. Constitutional amendments should be developed by joint decision of all branches of government. They should be the basis of a compromise between the main political forces of society. It is possible that the adoption of constitutional amendments will be preceded by a long negotiation process, since, in order to achieve general agreement, each participant in this process will have to sacrifice his interests in some way.

The goal of constitutional reform is to stabilize the power mechanism by eliminating some distortions in presidential powers. It will take quite a lot of time to create conditions for the further development of democracy in Kazakhstan, within which parliamentarism, as a way of organizing a power mechanism consistently meeting the interests of the broad popular masses, will play a leading role.

The separation of powers is not a frozen state of separate state structures, it is a working mechanism, achieving unity on the basis of a complex process of coordination and special legal procedures provided for in case of conflict situations.

Excessive emphasis on the separation of powers can lead to a certain imbalance, the loss of a significant degree of controllability of the state. Speaking about division, we should not forget that the branches of state power have not only a single social character, unity is also necessary in the political and legal aspect as the unity of goals, the unity of action on fundamental issues of public policy. Without this, society is threatened with chaos, anarchy, decay.

But already now, it can be said that in our country there are real opportunities for solving one of the most important problems of democracy - a combination of the stability of state institutions and their adaptation to the often changing moods of society and, accordingly, building such a state where there is no threat of usurpation of power by one state institution (President or even Parliament).

REFERENCES

- Ackerman, B. (2000). The new separation of powers. *Harvard Law Review*, 113(3), 633-729.
- Apakhayev, N. (2017). Legal basis for ensuring freedom of access to information on the operation of state administration bodies in Kazakhstan. *Journal of Advanced Research in Law and Economics*, 3(25), 722-729.

- Cheibub, J., Przeworski, A., & Saiegh, S. (2004). Government coalitions and legislative success under presidentialism and parliamentarism. *British Journal of Political Science*, 34(4), 565-587.
- Dahl, R. (1996). Thinking about democratic constitutions: Conclusions from democratic experience. *Nomos*, 38(1), 175-206.
- Dzhunusova, Z. (1998). Kazakstan's political transformation since 1991. *Nationalities Papers*, 26(3), 545-555.
- Eskridge, W.N., & Frickey, P.P. (1994). Foreword: Law as equilibrium. *Harvard Law Review*, 108(1), 1-26.
- GeL'Man, V. (2017). Authoritarian modernization in Russia-mission: Impossible. *Mir Rossii- Universe of Russia*, 26(2), 38-61.
- Grinin, L.E., & Korotayev, A.V. (2016). Revolution and democracy: Socio-political systems in the context of modernisation. *Central European Journal of International & Security Studies*, 10(3), 1-11.
- Helms, L. (2008). Studying parliamentary opposition in old and new democracies: Issues and perspectives. *The Journal of Legislative Studies*, 14(1-2), 6-19.
- Kavanagh, A. (2016). The constitutional separation of powers. In D. Dyzenhaus, & M. Thorburn (Eds.), *Philosophical Foundations of Constitutional Law*. Oxford: Oxford UP.
- Knox, C. (2008). Kazakhstan: Modernizing government in the context of political inertia. *International Review of Administrative Sciences*, 74(3), 477-496.
- Knutsen, C.H. (2011). Which democracies prosper? Electoral rules, form of government and economic growth. *Electoral Studies*, 30(1), 83-90.
- Kuzio, T. (2012). Twenty years as an independent state: Ukraine's ten logical inconsistencies. *Communist and Post-Communist Studies*, 45(3-4), 429-438.
- Linz, J.J. (1990). The perils of presidentialism. *Journal of democracy*, 1(1), 51-69.
- Linz, J.J. (1994). Democracy, presidential or parliamentary: Does it make a difference? In J.J. Linz, & A. Valenzuela (Eds.), *The Failure of Presidential Democracy: The Case of Latin America*. Baltimore: Johns Hopkins University Press.
- Malinovskiy, V.A. (2005). *The president of the republic of Kazakhstan and the parliament of the republic: Relations, system of checks and balances*. Scientific publication-Astana: Institute of Legislation of the Republic of Kazakhstan.
- Mayer, R. (2001). Strategies of justification in authoritarian ideology. *Journal of Political Ideologies*, 6(2), 147-168.
- Meyerson, D. (2004). The rule of law and the separation of powers. *Macquarie Law Journal*, 4(1), 1-11.
- Mukhamedzhanov, E. (2005). Once again about the structure of parliament. *Specialized monthly magazine Lawyer*. Retrieved from <https://journal.zakon.kz/203698-eshhe-raz-o-strukture-parlamenta.html>
- Nemțoi, G. (2014). The decisive role of parliaments in democracy of social-political life. *Procedia-Social and Behavioral Sciences*, 149(1), 647-652.
- Russo, F., & Verzichelli, L. (2014). The adoption of positive and negative parliamentarism: systemic or idiosyncratic differences. In *ECPR Joint Sessions of Workshops*.
- Skach, C. (2011). *Borrowing constitutional designs: Constitutional law in Weimar Germany and the French fifth republic*. Princeton University Press.

Tlembayeva, Z.U. (2016). *Foreign experience in organizing parliamentary control and improving its legal mechanisms in Kazakhstan*. Scientific Yearbook of the Institute of Philosophy and Law of the Ural Branch of the Russian Academy of Sciences.

Yan, H.T. (2017). Comparing democratic performance of semi-presidential regimes in the post-communist region: Omnipotent presidents and media control. *Communist and Post-Communist Studies*, 50(4), 263-275.