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FORMATION AND DEVELOPMENT OF THE RULE OF LAW IN KAZAKHSTAN

"Among all the deeds there is nothing so important as the power of laws, which distributes divine and human affairs in order and banishes all injustice" - Justinian. It is impossible not to agree with the expression of one of the greatest and wisest emperors of the Byzantine Empire, Justinian, about the rule of law. Indeed, for the stable development of statehood and the state as a whole, it is necessary to create certain norms of law, the purpose of which is to ensure the rule of law. Every civilizational people from any part of the world is now organized into a legal or constitutional state. The Republic of Kazakhstan, having established independence from the Soviet regime, eventually embarked on the path to building a legal state in the republic. However, the process of transition to a law-based state was especially painful for our country for a number of certain reasons, some of which were: artificial delays in the process of transition to a law-based state, great difficulties associated primarily with the adoption of new economic relations and transformations of all spheres of social activity. However, despite all the obstacles that arose in this process, Kazakhstan nevertheless joined the camp of the family of civilized peoples, setting as its main goal the construction of a legal state.

The construction of a modern legal state is relevant in the modern world, due to the development of mankind not only in technical innovations, but also in the constant improvement of the socio-economic institution. In Kazakhstan, this topic is of particular relevance. The Republic of Kazakhstan is aimed at further integration into the world community and cooperation with international organizations such as the UN and the OSCE. This cooperation presupposes the commitment of the state to the universal principles of democracy and human rights. The development of the rule of law will not only help Kazakhstan meet international standards, but also improve its image on the world stage, which will contribute to closer cooperation with partners, as well as attract new international investments that will contribute to the country's economic growth.

Also, the development of the rule of law will favorably affect the further development of the population and the country as a whole. Therefore, the Republic of Kazakhstan has taken a course for large-scale reforms, concentrating in their content the most important principles, both for the people and for the country. To date, the President of the Republic of Kazakhstan Kassym-Jomart Tokayev voiced this issue in building and establishing a legal state in the country, and also highlighted the needs for the formation of a new quality of people in Kazakhstan based on the latest principles and directions of state development, the main goal of which is to update the methodological component for the development of fundamental legal science and strengthening the principles of the rule of law. "Today, according to the head of state, we are facing the task of forming a new paradigm for the development of our people and a new quality of the nation. I want our people to acquire many new exemplary qualities.

Firstly, the generation of the twenty-first century should be deeply educated, secondly, it is necessary to accustom young people to tireless work, thirdly, it is right when professionalism is the basis of any business, fourthly, iron discipline and high responsibility should become characteristic features of all of us, fifthly, we must not turn away from the path of justice. Justice is an important condition for the development of society. Justice is of particular importance in the fate of the country and the people.

Sixth, we need to cultivate qualities such as honesty, thrift, and thoroughness. We all want to see Kazakhstanis in this image. This is the only way we can build a competitive state and create an intellectual nation." [2],[3].

The main goals of this work include: to determine the main stages of building and establishing a legal state in Kazakhstan, to describe the prospects for the development of the legal system in the Republic of Kazakhstan, to identify the main challenges and problems in the process of establishing a legal state, to analyze the anti-corruption measures taken by Kazakhstan.

The objectives of the scientific work are to consider the theoretical foundations of the rule of law, to determine the main aspects in the process of the formation of the rule of law in Kazakhstan, to analyze the stages of development of the legal system in the Republic of Kazakhstan, to determine the prospects for the development of the legal system, to identify the main challenges and problems in the process of the formation of the rule of law.

1. Theoretical foundations of the rule of law state

The rule of law is a state system in which the rule of law exists, the rights and freedoms of citizens are guaranteed, and state bodies and officials act on the basis of and within the limits of the law. The main features of a state governed by the rule of law, which distinguish it from a state without the rule of law, are: the most complete provision of human and civil rights and freedoms, the most consistent binding of political power with the help of law, the formation of a regime of legal restriction for state structures, the division of powers into legislative, executive, and judicial; the principle of the rule of law, mutual responsibility of the state and the individual, a high level of legal awareness and legal culture in society; the presence of civil society and its control over the implementation of laws by all subjects of law.

The rule of law implies that all by-laws and acts of law enforcement are subordinate and do not contradict the law. According to the natural law theory, the rule of law requires that all normative legal acts (including the constitution and legislation) and all activities of state power be subordinated to the protection of human dignity, freedom and rights. The law is adopted either by the people themselves or by deputies who are representatives of the whole people and express, respectively, public interests, in contrast to the instructions and orders issued by the minister, qualities and departments in their narrow sectoral or even corporate interests, therefore, if departmental orders differ from the law, the law must apply.

Mutual responsibility of the state and the individual is also a way of limiting political power, Immanuel Kant formulated this idea, in which every citizen should have the same ability to coerce the ruler to the exact and unconditional execution of the law as the ruler in his relation to the citizen, in the conditions of the rule of law, the person and the ruling subject or representative of the state should act as equal partners. This method of limiting political power expresses the moral and legal principles in the relations between the state as the bearer of power and the individual as a participant in its exercise.

2. Historical stages of the formation of the rule of law in the Republic of Kazakhstan

After gaining independence, the Republic of Kazakhstan began a course aimed at creating a state based on the rule of law. The most important aspects in the process of establishing a legal state were:

The adoption of the Constitution of 1993, which laid the foundations of an independent state based on the rule of law, but contained shortcomings in terms of checks and balances, and also had difficulties in the organization of the legislative branch, where there was no interaction between the parliament and the government of the republic, which subsequently caused certain kinds of difficulties in the implementation and adoption of reforms. Also, one of the most significant shortcomings of the Constitution of the Republic of Kazakhstan of 1993 was the lack of mechanisms for the protection of human rights. An example of this is the fact that the Constitution did not provide for the creation of the institution of ombudsmen, as well as other specialized bodies for the protection of human rights, which greatly complicated the implementation of the protection of human rights and "slowed down" the process of Kazakhstan's transition to a state governed by the rule of law.

The constitutional reform carried out in 1995 improved the system of democracy in the Republic of Kazakhstan, it filled the gaps, and also eliminated the shortcomings of the Constitution adopted in 1993. The key differences between the 1995 Constitution and the 1993 Constitution

were that the 1995 Constitution clearly strengthened the presidential power and defined the functions and powers in the branches of government. At the same time, the Constitution of 1993 was based on the model of a parliamentary republic and positioned Kazakhstan in this way. Also, one of the main changes from the general legal point of view was the establishment of the constitutional court. The Constitutional Court, being a body that directly protects the rights and freedoms of citizens enshrined in the Constitution, which performs the task of control, in accordance with normative legal acts. All these changes are the main indicators that Kazakhstan is constantly moving towards creating all favorable conditions for the adoption of a legal state.

3. Development of the legal system

The development of the modern legal system in the Republic of Kazakhstan dates back to 1991, namely from the independence and collapse of the Union of Soviet Socialist Republics. Over the years of independence, the Republic of Kazakhstan has carried out significant transformations in the transition from the socialist system (which was established on the territory of the state, since Kazakhstan was part of the USSR) of law to the legal standards of democratic states, which required the creation of an appropriate legislative framework. The development of the legal system went through several key stages, each of which was aimed at strengthening the rule of law.

Stage of formation (1991–1995)

At the initial stage, the legal system of Kazakhstan began to take shape in the conditions of political and economic instability caused by the collapse of the Soviet Union. The first step towards building a democratic, sovereign, independent and legal state was the adoption of the Constitution of 1993. The adoption of the main regulatory legal act of 1993 laid the foundations of an independent state and defined the key principles of the rule of law, such as the separation of powers, the rights and freedoms of citizens, and also served as an important step towards reforming the Kazakh legal system. At the stage of formation, in addition to the adoption of the constitution, new state institutions were created, national governing bodies were formed and organizationally finalized, such as the Supreme Court and the Constitutional Council, the purpose of which is to ensure the independence of the judiciary and control over compliance with constitutional norms.

Constitutional reform phase (1995)

The adoption of the 1995 Constitution was a key step in the development of the legal system of Kazakhstan. It was with the adoption of the Constitution of 1995 that the cardinal changes of the Republic of Kazakhstan towards democratization and ensuring the rule of law began.

Institutional reform phase (1996-2007)

During this period, Kazakhstan actively developed the legal framework, introducing reforms in various areas of law, thereby improving the functioning of regulatory law, as well as filling gaps in existing legislation. During this period, a number of fundamental codes were adopted, which strengthened the legal regulation in the country. The Penal Code (1997), the Civil Code (1999), the Tax Code and other important pieces of legislation have been adopted, modernizing the country's legal framework and bringing it in line with international standards.

Modernization stage (2008–2017)

During this period, the legal system of Kazakhstan was aimed at further modernization and integration with international law:

Kazakhstan has become a party to many international human rights conventions, which has led to improved standards for the protection of citizens' rights and freedoms. As an example of the development of international relations of the state, Kazakhstan's chairmanship in the OSCE in 2010 can be cited. Also this year, Kazakhstan has achieved high results, the main of which is the holding of the OSCE Summit in Astana after an 11-year break, which resulted in the adoption of the Astana Declaration "Towards a Security Community"

Stage of further democratization and digitalization (2018–present)

At this stage, Kazakhstan continues to reform the legal system with an emphasis on democratization and improving access to justice. In 2017, constitutional reforms were carried out. These reforms transferred some of the powers from the president to the parliament and the government, strengthening their role in governing the state. This was an important step towards the

democratization of the country's political system. Also, changes and additions affected the following points: Kazakhstan moved from a super-presidential form of government to a presidential form with a strong parliament, land and its subsoil, water sources, flora and fauna, as well as other natural resources belong to the people, close relatives of the president do not have the right to hold positions of political civil servants and heads of quasi-public sector entities, Kazakhstanis can independently apply to the Constitutional The judiciary, the death penalty is prohibited, no one has the right to take human life, the deputy corps of the Mazhilis will be formed according to a mixed electoral system, the presidential quota in the Senate has been reduced, the quota for the APK, the majority system in the Assembly allows you to recall a deputy at the request of the voters, and the provisions on the special role and privileges of the first president have been excluded.

4. Challenges and Problems in the Process of Establishing the Rule of Law

Despite significant achievements, the process of establishing the rule of law in Kazakhstan faces a number of challenges that must be suppressed in order to fully ensure the rule of law in the Republic.

The problem of corruption in Kazakhstan remains relevant, despite all possible measures to reduce it. There is a very high level of corruption in Kazakhstan. At the end of 2022, Kazakhstan again fell into the ranks of highly corrupt countries, according to Transparency, scoring 39 points out of 100 possible (92nd place among 180 countries). This undermines confidence in the legal system and is a serious challenge to the rule of law. [6]

However, our country is making great efforts to fight corruption. Within the framework of the concept for 2022-2026, a number of reforms are being carried out, recommended by the Group of States against Corruption (GRECO). Key measures include the introduction of an anti-corruption culture and the expansion of public scrutiny of government agencies. To this end, the Anti-Corruption Agency (ANTIKOR), subordinate to the President, is actively working to prevent and detect corruption in close cooperation with local authorities. [5], [6]

Rights and freedoms of citizens.

According to the Constitution, every citizen of Kazakhstan has the right to life, freedom of speech, freedom of creativity, as well as freedom of religion, work and rest, health care, free secondary education and inviolability of the home. Although the Constitution guarantees a wide range of rights and freedoms, in practice there are cases of restrictions on freedom of speech and assembly. As an example of this phenomenon, we can refer to the law "On the procedure for organizing and holding peaceful assemblies, rallies, marches, pickets and demonstrations in the Republic of Kazakhstan".

Article 2. An application for holding a meeting, rally, procession, picket or demonstration shall be submitted to the local executive body of a city of republican significance, the capital, a district (a city of regional significance).

Article 3. An application for holding a meeting, rally, march, picket or demonstration shall be submitted in writing not later than 10 days before the scheduled date of their holding. The application shall indicate the purpose, form, place of the event or routes, the time of its beginning and end, the expected number of participants, the surnames, names, patronymics of the authorized persons (organizers) and persons responsible for maintaining public order, their place of residence and work (study), the date of submission of the application. The deadline for filing an application shall be calculated from the date of its registration in the local executive body of the city of republican significance, the capital, district (city of regional significance). [10]

I agree that all these articles do not legally prohibit the holding of peaceful rallies, pickets and other other marches. In most cases, however, applications for such activities are rejected by local governments. Examples include:

Actions in support of independent electoral trade unions and labor rights. From 2021 to 2022, in a number of cities in Kazakhstan, especially in oil-producing regions, workers and trade union activists tried to organize rallies aimed at improving working conditions, as well as against pressure on independent trade unions. The authorities have repeatedly refused to approve these rallies. In

Zhanaozen, for example, attempts to organize peaceful protests by oil workers were often not authorized, which caused discontent among workers and activists. [10]

Another striking example is the rallies for political reforms and democratization. In 2020, activists and political groups repeatedly applied to hold rallies, demanding political reforms and expanded democratic freedoms. However, in most cases, the authorities refused, citing various reasons, including sanitary restrictions due to the COVID-19 pandemic. Nevertheless, individual activists continued to gather in the streets, which led to mass detentions and administrative fines. [10]

Thus, we see that in Kazakhstan, the right to peaceful assembly is often limited through the refusal to approve applications to hold rallies. The arguments for refusals can be different - from sanitary restrictions to technical claims to the registration of applications. This suggests that the authorities are afraid of the opinion of the people, which contradicts the principles of the rule of law, based primarily on freedom of speech. These phenomena are of concern to human rights organizations, which emphasize that respect for the right to peaceful assembly is an important element of a democratic society.

Conclusion

Summing up, it should be said that the process of establishing and developing the rule of law in the Republic of Kazakhstan is a complex and multifaceted process that requires comprehensive reforms and diligent strategic planning. Despite all the successes achieved, Kazakhstan faces a number of extremely serious challenges that require increased political will and further reform of the administrative and judicial system. Also, our Republic needs to develop a legal society. I believe that in order to develop the values of the rule of law and cultivate these qualities in the mentality of the people of Kazakhstan, it is necessary to start laying the values of the rule of law in children's educational institutions, thereby simplifying the process of development and establishment of a legal and politically active society in the country.

There is also a need to continue developing the principles of the rule of law, protecting the rights and freedoms of citizens, as well as ensuring the independence and transparency of all state institutions, especially the judicial system. In addition to reforms and further development of the country's legal system, it is necessary to develop international relations, the purpose of which is to ensure human rights and freedoms, as well as respect for the rule of law. It is participation in international organizations and the adoption of their norms and standards that help to adapt modern approaches to ensuring the legal system, to the national uniqueness of our Republic. Thus, all the current reforms adopted by the government have shown that Kazakhstan is on the right path to adopting the rule of law, but it should not be forgotten that in order to achieve this not so far-reaching goal, efforts will still be required, after which Kazakhstan will fully become a legal state.

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АДАМ ҚҰҚЫҒЫН ҚОРҒАУ ЖӨНІНДЕГІ ҰЛТТЫҚ МЕКЕМЕЛЕРДІҢ ҚҰРЫЛУ ЖӘНЕ ҚЫЗМЕТ ЕТУ МӘСЕЛЕЛЕРІ

Құқық қорғау – адам құқығын жүзеге асыру үрдісінің элементі. Оның мазмұны мемлекеттік, қоғамдық ұйымдардың және жеке тұлғаның тұрғысынан өзінің де адам құқығымен бостандығын жүзеге асыру процессіне үздіксіз әсер беретін заңды жағдайларды құру үшін іс қызметін, ал осы жағдай тоқталған кезде оның қалпына келтірілуін құрайды. Дүниежүзілік тәжірибеге қарағанда адам және азаматтың құқығымен бостандығын қорғау тәсілдері бойынша төмендегі негізгі топтарға бөлуге болады. Онда:

- Мемлекеттік қорғау;
- Соттық қорғау (биліктің тәуелсіз саласы ретінде сот орындары арқылы қорғау);
- Мемлекеттік емес қорғау (арбитраж, қоғамдық ұйымдар қызметі);
- Өзін өзі қорғау.

Қазақстандағы құқық қорғаудың аталмыш тәсілдеріне сай адам және азаматтың құқығымен бостандығын қорғайтын ұлттық жүйе құрылуда. Оның маңызды құрылым элементі болып биліктің мемлекеттік органдары (адам және азаматтың құқығымен бостандығының кепілдігі ретінде – Президент, Парламент, Конституциялық Сот және барлық саладағы атқарушы органдар – Үкіметтен акиматқа дейін, прокуратура органдары, құқық қорғау органдары) басты құқық қорғау институты ретіндегі сот органдары, адвокатура институты, қоғамдық мекемелер және мемлекеттік емес құқық қорғау ұйымдары [1;71].

Адам мен азаматтың құқығы мен бостандығын қамтамасыз етуде халық пен халықаралық қоғам алдында негізгі жауапты тұлға мемлекет болып табылады. Сондықтан құқықты қамтамасыз ету процессіне мемлекеттік органдар жүйесі, осындай жұмыстың мазмұнымен маңыздылығын олардың тұрғысынан толық түсінуі, олардың осы саладағы іс әрекетінің жоғарғы кәсібилігі мен ұйғарымдылығы сәйкес келуі тиіс. Бұл Қазақстандағы құқық қорғау іс қызметінің қалыптасу процессінің қатысушылар арасындағы ынтымақтылықтың мәртебесі мен жалпы қоғамдық консенсуске жету – пайда табу және ерегесу тұрғысынан алып көргенде маңызды. Мемлекеттік биліктің барлық органдарының іс қызмет нәтижесінен, соның ішінде заң шығарушы, атқарушы және соттың билік органдары тұрғысынан орталықта және ауылдық жерде өздерінің іс қызметіне берілген мәселені реттеуінен адам мен азаматтың құқығымен бостандығы жүзеге асырылады. Биліктің барлық саласындағы мемлекеттік орындарын, сот және құқық қорғау органдарын қайта құруы осындай институциональдық құрылуды жаңа конституцияның артықшылығына сәйкес келтірумен іске қосылды.

Азаматтың құқығы мен бостандығын қорғау – мемлекеттік билік органдарының, әсіресе атқарушы органдардың ерекше міндеті. Ол осы орындардың құқық мәртебесін бекітетін барлық нормативтік актілерде белгіленген. Осылайша Қазақстан Республикасының «Мемлекеттік қызмет туралы» заңында мемлекеттік қызметтің қағидалары ретінде