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### About the model of separation of powers in the Republic of Kazakhstan

In this article we analyzed all kinds of organization of state power, which in legal science taken to reduce to a few typological models, depending on the form of government. Within the framework of the modern legal integration the features of that models of separation of powers, which are implemented in the practice of developed countries in legal terms are disclosed that can detect a specific historical identity of each of these models. Detailed analysis of types of organization of the state power in terms of their membership of a particular model of separation of powers is theoretically possible to determine the potential and practically realized model of separation of powers and form of manifestation (implementation) in the Republic of Kazakhstan.

*Key words:* model of separation of powers, «checks and balances», the principle of separation of powers, a form of government branch, state power.

Finding the best forms of organization of power, the study of the mechanism of its implementation permeate the entire history of political thought. The rudiments of the doctrine of separation of powers is already discernible in the works of prominent thinkers Ancient Greece and Ancient Rome. Among them are Aristotle (384 — 322 BC.), Epicurus (c. 341 — c. 270 BC.), Polybius (c. 201 — c. 120 years. BC. e.). However, the authorship belongs indisputably two thinkers who have been to a certain extent the forerunners of the revolutionary changes in their respective countries: the Englishman John Locke (1632 — 1704) and Frenchman Charles Montesquieu (1689 — 1755) [1].

State formation and resulted in the specialization of power of different persons and institutions in which early discovered two stable trend: the concentration of power in the hands of one or a single institution and the need to share power, work and responsibility. Hence two consequences of this dual relationship to power:

a power struggle already separated institutions and against the division, on the one hand and the pursuit of arrange the division of powers and rid society of collisions between them on the other.

The first division of power began early in the secular state since the separation of the functions of professional power. Aristotle already noted the existence in it of the legislative body — the Judiciary (executing agency) and the judiciary. Is a division of power between central and local government, formed more complex political system of society, the authorities at different levels and with different functions. Development of the division of power was ultimately one of the institutional foundations of the state of modern times, which functions as a system of functional separation, and associated institutions, and government units. Developing at the same time, trade and industrial bourgeoisie supported at first absolutist monarchical center and helped strengthen it, but it was and access to power, which has proved to a certain measure, and divided between the classes and the classes and the access was opened, first of all, in the emerging central regulatory (legislative and representative) structure.

Further development of separated powers were several parallel paths:

1. being centralized parliamentary structures, displacement of parliamentarism in the center with all the ideology and technology of formation of representative government (its elective, principles of organization, etc.);

2. to strengthen and improve the central government executive power and especially its vehicles, staff of civil servants;

3. Complete the formation arose in the Middle Ages, feudal system of supervision and administration of justice, transfer the judicial functions of the ruling tops — socialized judicial body [2; 330].

Division of power to the branch, independent in relation to each other, is designed to ensure that eventually the necessary balance of interests, which makes the power of whole and united. The balance of power is not constant and unchanging. He is dynamic in the situation often changing political conditions and factors, retaining, however, the fundamental importance of their «circuits» [2; 329].

Historically, there were two typical model of separation of powers, which are based on the principle of separation of powers and forms of government: presidential and parliamentary. The main criterion that allows to distinguish between them is the degree of structural and functional separation of legislative and executive powers.

Parliamentary model of separation of powers in the form of a constitutional monarchy is the result of a long evolutionary process of transformation of the absolute monarchy in limited since the XVII century. The complexity of the analysis of this model is to understand the most important component of the British Constitution — constitutional agreements. It agreements are a form of expression mechanisms of containment and control branches. In other words, the principle of separation of powers and its logical continuation — a system of checks and balances — in the British Constitution establishes the first constitutional treaty [3; 27].

Model of separation of powers are divided into two types:

- 1) the horizontal model of separation of powers — this is the model of separation of powers, in which there are three branches of government, ie, legislative, executive and judicial;

- 2) the vertical separation of powers model — a model of separation of powers, describes the powers, which are distributed among the subjects of government at various levels. For example, this model of separation of powers widely used in federal states (Russia, USA), where the head of state federations are subject to the president of the federal subjects (states). And not only in this form of government, we can see the model, but also in the republics. For example, the chief executive — the Prime Minister, and by subordinate ministers are various spheres of activity of the state (economic, educational, military, transportation it.d.).

Thus, the model of separation of powers is the source of the form of government, as a form of government determines system organization supreme bodies of state power and interaction with each other for not difficult to determine the model of separation of powers.

Among the classical principles that distinguish the country with a parliamentary form of government, usually distinguished: the supremacy of Parliament; the formation of the executive branch on the basis of a parliamentary majority; Political responsibility of government to parliament; Institute of early dissolution of parliament as a kind of counterweight to the executive branch against «vote of no confidence.»

The rule of parliament determines its position as the supreme legislative body. 'But most of the bills passing through Parliament, belongs to the executive branch, which actively uses the right of legislative initiative. The government may apply to the bodies of the constitutional supervision, can «advise» the head of state have voted to return the bill to parliament for reconsideration. Of course, that the desired effect, these measures can provide only in the case when the government is based on a parliamentary majority.

Formation of the government in parliamentary states, usually the prerogative of the President. However, according to the head of state constitutional conventions in the appointment of members of the cabinet should opt for the member parties having a parliamentary majority. Thus, the government is increasingly dependent on the rules and usages adopted in the party than by constitutional norms. At the same time, it should take into account that the government even formed from the party leaders are not legally related party solutions. More over, cabinet of ministers actually performs the functions of the governing body of the parliamentary faction of the ruling party [4; 426].

In parliamentary countries, the head of state, usually directly involved in the management of the affairs of the state will not accept. The head of state is not the head of government and generally not part of the government. Institute kontrassignatory deprives the Head of State to act on your own. Monarch or president has a mostly ceremonial, and ceremonial duties. All acts formally posed by the head of state, prepared and implemented by the government. At the same time the head of state is endowed with considerable powers to enable it to provide coordinated functioning of public authorities, act as a guarantor of the Constitution, national independence and territorial integrity [5; 109].

Thus, «in the parliamentary forms of government, there are legal mechanisms for coordinated functioning of the legislative and executive authorities to ensure the necessary unity of action, as well as the constitutional mechanisms for resolving conflicts between them, restoring, maintaining their coordinated action, balance.» However, in the absence of a developed party system, a stable political regime sharply raises the question of the social base of the government. Direct dependence on the volatile public opinion in this case, turns permanent government crisis [6; 113].

Presidential form of government characterized by a large detachment of powers, independence in relation to each other, their formal equality. In order to ensure that all branches of the government formed a special mechanism of checks and balances.

Legal equality of the branches of government is manifested in the «hard» separation of functions and powers between the holders of power. Each of the state and government bodies responsible to the different categories of voters. Legislative power initiates and adopts laws. Executive power is the right of legislative initiative does not have. Its representatives have no right to not only participate in the discussion of the bill in the parliament, but even the right of access to the House of Parliament. The executive branch is involved in the legislative process through a suspense veneto, the president has the right to return to parliament normative act for a second discussion. Overcoming a presidential veto requires a qualified majority, which gather parliamentarians is not always easy.

At the same time secured the independence of the legal executive. Firstly, the executive bodies are formed independently of Parliament. The head of state, as the sole carrier of executive power, as a rule, popularly elected. Heads of government agencies actually only advisers and aides. The Cabinet of Ministers — an advisory and coordinating body under the president who does not have special competence. The decision on any matter falling within the jurisdiction of the constitution of the executive power, takes only the president. The head of state in a presidential republic plays a leading role in managing the affairs of the state. He is the head of the armed forces and the supreme leader of the administrative apparatus.

Second, in a presidential republic there is no institution of parliamentary accountability of the government. Parliament can not express no confidence in the government, and thus force him to resign. However, it should be noted that the structure of the executive departments parliament determined by the decision, and the appointment to senior military and civilian positions made president «with the advice and consent» of representative government. In addition, the executive denied the right to an early dissolution of Parliament and calling early parliamentary elections [7; 357].

One of the advantages of presidentialism — institutional and legal stability of the executive branch — acquires a negative value. President, relying on the armed forces, effectively deprives legislators real impact on public policy. Hypertrophy of the functions and powers of the president inevitably involves the transformation of the form of government in the super-presidential republic (with the particular combination of the presidency poludiktatorskim board). Power of the president in the case of a weakly controlled by other public authorities. A significant impact on the functioning of the government machinery has an army.

Thus, in a presidential form of government becomes particularly acute problem of interaction between the authorities, coordination, harmonization of their activities, conflict resolution, the successful solution of which is possible only with careful balancing of the functions and powers of the authorities, consolidating the legal forms of interaction. It is particularly important to create guarantees against degeneration presidential form of government in an authoritarian regime.

For the parliamentary model of separation of powers, of course, the most important is to rationalize the institutions of political accountability of the executive and the procedure of forming a government. In order to prevent a government instability in the absence of a stable majority, the constitution provides for a certain number of procedures (rules), providing the cabinet to a certain independence from the balance of power in parliament.

In particular, it is presumed that the government is in power, has the confidence of Parliament and remain in office until such time as there is no legally witnessed the opposite, that is, the government is not obliged to resign at any disadvantage for him vote in parliament. Distrust of deputies present composition of the Cabinet shall be recorded in a specially adopted resolutions of censure. In Germany, the presumption of trust transformed into a presumption of «positive majority.» This means that for the removal of the government to resign necessary Failure to register distrust deputies actions of the Cabinet, but a statement of fact that Parliament has developed a new majority [8; 110].

Traditionally, in a parliamentary system of government members do not participate directly in the formation of the government, because the government does not need a special trust, in order to begin his duties. Streamlined shape suggests a direct and immediate participation of the representative body in the process of forming a government (vote of confidence the newly formed government and its program, multiple consultations, etc.).

However, the collective nature of the government giving way to the sole authority of the Prime Minister. According to the head office is decisive in any decision. In case of differences of opinion Prime Minister may require the resignation of any minister.

Thus, the rationalization of the parliamentary system is, on the one hand, the restriction of Parliament, on the other hand, the formal expansion of its powers. Parliament loses the ability to impose its will on the government, however, reserves the right to constructive criticism of its activities, monitoring, adjustment and approval of policies and actions of the government. The government, acting as the initiator of most bills, aware of the comments of parliamentarians and take appropriate amendments in the policy. Emerging conflicts if it is not settled by compromise, shot by resignation of the cabinet or the dissolution of parliament and early elections [9; 107].

Constitutional model of the mixed form of government involves a complex structure of executive power, including the institution of the presidency and relatively independent government. The Government, as the highest executive authority, integrates and coordinates the activities of the executive departments. The President, as head of state, has a dominant role in relation to the government. Thereby overcome the possibility of dualism executive. If the parliamentary regime head of state plays the role of a neutral force, is intended only as national integration, a mixed form of government, head of state is central to the system of state-governmental bodies. It ensures compliance with the Constitution, the normal functioning of state bodies and the supreme representative of the country. It has real powers to implement these prerogatives [10; 112].

At the same time, the president is not the exclusive carrier of the executive power, as in the presidential form of government. Media executive power — the Government. Government as a collective body of senior management, is the chief administrator of credits assigned to it pursuant to the state budget at his disposal significant financial resources, administration and armed forces.

Activities of the government headed by the Prime Minister. He was appointed head of state discretion which is connected to the unwritten rule that the prime minister should take a person who enjoys the confidence of the parliamentary majority, as Parliament approves the proposed head of government cabinet ministers. In a parliamentary form of government, head of state can not displace the premiere of a credible parliament. Head of state of the mixed form of government, in principle, not bound by any obligations to the «majority party», it is allowed to displace the head office at any time.

The head of government to implement the law assigns to public office (if the appointment that is not the prerogative of the President), is responsible for national defense, determines the goals and objectives of public policy, gives instructions executive departments coordinate their work, playing the role of mediator between the executive and legislative authorities.

The principle of non-responsibility Head of State assumes countersigning his acts of the Prime Minister and the ministers responsible for them in front of parliament. Institute of accountability by government to parliament distinguishes this form of presidential republic and brings it with a parliamentary form of government [11; 37].

Mixed (semi) republic combines the features and the presidential and parliamentary republic. But the combination of this is different.

For example, according to the Constitution of the French Republic in 1958 President elected by the citizens and leads the government, which is characteristic of a presidential republic. At the same time, the government designee must enjoy the confidence of the lower house of Parliament -National Assembly, which is typical for a parliamentary republic. However, the President may dissolve the National Assembly in its sole discretion, which is not typical for either one or for the other species of the republican form of government.

Experience has shown that this form of government is effective, provided that the government based on a parliamentary majority, and the president share the same political orientation. Otherwise, between the President on the one hand and the Prime Minister and the parliamentary majority — the other may have a conflict, for which permission is not always sufficient constitutional means.

In a number of countries the president is elected by the citizens, which is characteristic of a presidential republic, and has a number of powers, giving him the opportunity to be actively involved in the political process, but in practice it does not use them. Examples are Austria, Ireland, Iceland.

Peculiar form of government in Switzerland. The government is appointed by Parliament and accountable to it, but the political responsibility of government to parliament constitutionally not provided, and the state regime, therefore, dualistic.

Institution in the government of the Republic of Belarus has significantly strengthened the presidential post in our society attention to the institution of the presidency in different political systems. Introduction of the institute opened a new stage in the development of Belarusian statehood. Meanwhile, out of 183 countries that were part of the beginning of 1993, the United Nations, more than 130 have in their polity presidency. On the one hand, this figure reflects the magnitude of the spread of the presidency in the modern world, but on the other — it is important to note that different countries have different amounts of presidential powers.

Separation of state power into legislative, executive and judicial (Art. 6 of the Constitution) does not mean the absence of the need to ensure their interaction. In this connection, usually abroad established the post of head of the state (the monarch, president), which is the official occupying the highest position in the government system.

Analysis of the constitutions of many other countries shows that the head of state or output over all branches of government, or included in the legislative and executive branches of government, or only in the executive branch.

#### Board monarchy Republic

It should be noted that in many constitutions of the term «head of state» is not explicitly mentioned. The literature usually meant is the monarch or president of the country. It is the head of state provides a higher representation of the country, often it is the symbol of the state and the unity of the nation.

As noted by MA Krutogolov doctrine presidential arbitration has clearly monarchist roots, where the head of state has a very important function — bringing together the public authorities, carrying out mediation between them, the President thus towers over all other government agencies. Although it should be noted that the powers of the head of a state depends on the form of government. Sometimes they are purely nominal, such as monarch in the UK, often — quite substantial, as in the US, France, Russia and Kazakhstan. Jure and de facto head of state is predetermined position as an emerging political conditions and historical traditions.

Usually operates individual head of state, but there are exceptions, for example, in Switzerland as head of state is a collegiate body of the Federal Council, composed of members elected by Parliament for a term of four years. Chairs the Federal Council fulfills President of the Swiss Confederation is elected by parliament for one year from among the members of the Federal Council.

Mediation President has rather political than purely legal nature: in fact, the Constitutional Court of Belarus in the legal sense has extensive rights, including in relation to the settlement of disputes on competence by examining the constitutionality of laws and regulations.

Above the President is the only final arbiter — the people. He is the source of state power and the bearer of sovereignty. In the case where the differences between the branches of government can not be removed, it is appropriate to his appeal to the people to ensure that the referendum issue was resolved in favor of one or another.

The President has sole authority only when not needed and do not need countersigning otherwise any part of another public authority (eg, suggestions, agreement).

A major impact on the shape of the state has a cultural level of the people, their historical traditions, the nature of religious worldviews, national characteristics of natural living conditions, foreign experience, sub-

jective factors, etc. Social causes to the fore more often during periods of revolutionary events, such as during and after the bourgeois revolutions in Europe and America: a young, progressive bourgeoisie, who led the general population, has made limited power of the monarch, the elimination of absolutism, establishing a dualistic or parliamentary monarchy, and sometimes the republic (for example, in the US). Following the US presidential republic established in Latin America. Finally, enhancing the role of parliament in several countries in Europe and Asia led to a parliamentary republic. After the collapse of totalitarian regimes since the beginning of the 90s, this process is developing in many countries in Africa. In the course of historical development were peculiar twists: republic under fascism, led by the Fuhrer, Duce, Caudillo little essentially different from the monarchy (although the legal form was different), and the republic in socialist countries, the countries of the socialist and capitalist orientation (mainly in Africa) with a one-party system and the proclamation of the Constitution leading role of one party retains the authentic republican little features.

Separation of monarchies and republics, and their internal classification of the absolute, dualistic, parliamentary monarchy, presidential and parliamentary republic always had and now have a fairly rigid.

In the previous chapter criteria for distinguishing forms of government and today retain their value, all of them (except clearly expressed Dual Monarchy) exist in different countries of the world. But based on them, and along with them by combining and new features are previously unknown form, and this trend is gaining momentum, "clean", traditional forms, there are fewer and forms of governance in emerging countries (eg, the decay of the Soviet Union, Yugoslavia, Czechoslovakia), as a rule, connect different features. In this case, we are not talking about that in the developed capitalist countries, and sometimes in some developing countries, based on the democratization of political regimes have practically lost the distinction between monarchy and republic (nature of the monarchy in the UK or Japan are not much different from the Republic of France or Italy). Speaking of mixed and «hybrid» forms of government, we are celebrating the fact that lost rigidity of existing classifications and legal grounds: combine the features of the republic and the monarchy (eg Malaysia), absolute and constitutional monarchy (Kuwait), presidential and parliamentary republic (Colombia on the constitution in 1991).

There are several reasons. Firstly, the practice of recent decades shows that the controllability of the state, it is important not so much the separation of powers and the system of checks and balances (these moments provide democracy in governance, rule out the concentration of power in the hands of a single body) as required to establish relationships, interaction, consistency between the work of the supreme bodies of the state. The absence of this, as the experience of confrontation legislative and executive power in Russia (and partly — and within the executive branch), leads to a crisis of the entire political system. Creation of mixed and «hybrid» forms improves the interaction of the state, although this is either by reducing the role of Parliament, or by reducing the powers of the president, or by establishing a government submission both parliament and the president, which creates some uncertainty in its position. Some pros are almost always accompanied by certain disadvantages, such as the tendency of repression role of government sole authority of the Prime Minister in a parliamentary form of government.

Secondly, the «pure» form board have drawbacks such as the form. For example, a presidential republic tends to presidential authoritarianism. This is clearly evidenced by the emergence of super-presidential republic in Latin America, as well as presidential-monistic republics in Africa. For the same parliamentary republic is characterized by government instability, frequent government crises and resignation. As a parliamentary republic and a parliamentary monarchy government depends on the parliamentary majority (and it often is accomplished by coalitions of different political parties), the loss of this support leads to no-confidence vote. In Italy, for example, the government has held power in less than a year on average, although the party composition of the government is usually almost unchanged, and personal reshuffle insignificant.

However, the performance in favor of changing the form of government in this country in recent years have increased dramatically, and it seems that this time will not go in vain. The inclusion of elements of a presidential republic in parliamentary and presidential parliamentary, other methods helps to overcome the shortcomings of «pure» forms.

Third, the emergence of mixed, «hybrid» forms associated with the spread and the perception of a growing number of countries in the world of human values, the influence of humanistic ideas and institutions. Under the influence of these ideas in the emirates of the Persian Gulf (Kuwait, Qatar, Bahrain, UAE, in 1992 in Saudi Arabia — the state, the most stubbornly resisted the ideas of constitutionalism) adopted the constitution. However, these acts are not the constitution in the full sense of the word, because it does not limit the power of the monarch, because, even where they are not suspended and dissolved parliaments (in

Kuwait, for example, elections are held), the basic laws declare that all power comes from the monarch parliament actually even legally (Qatar, UAE and others.) is a consultative institution [12].

The acquisition of state sovereignty and education on the political map of the world of independent Kazakhstan led to the need of the domestic production model of the organization of state and government. President of Kazakhstan Nursultan Nazarbayev to determine the prospects of the process of formation of the modern Kazakh statehood, noting that now the people of Kazakhstan have «serious prospects on the basis of existing achievements formation of a new type of state in terms of... XXI Century» [13; 76].

Model of separation of powers determined by the structure and legal status of the supreme bodies of state power. Nature of the model of separation of powers depends on the organization of the supreme state power. The models differ depending on whether an supreme power in the state to one person, or it is carried out by means of various democratic institutions [14; 224].

Of all the elements of the form of the state is recognized as the most important model of separation of powers, which has a significant impact on the development process of a new state of the Republic of Kazakhstan, which is still in its infancy, the development and approval of state-political practice for the new Republic of legal and administrative controls.

At the same time, after fifteen years we can draw some conclusions and analyze the prospects of development of forms of government in the conditions held in the Republic of constitutional and administrative reforms.

Historical traditions of the Kazakh state, the recent history of state-legal formation of independent Kazakhstan determined the choice of country presidential form of government in which the President is the head of state and the executive branch, its highest official determining the main directions of domestic and foreign policy, and, in fact, a national leader. However, development of the democratic foundations of the constitutional system of Kazakhstan has necessitated further improve relations in the organization of the supreme bodies of state power, the redistribution of functions and powers in the executive branch, strengthening parliamentary control over the executive power, which led to a transformation of the form of government of the Republic of Kazakhstan in the presidential-parliamentary republic [15].

Formed in one state or another system of government institutions, the mechanism of their interaction has its own characteristics, which are explained by various factors and circumstances which, as a historically conditioned nature of the objective, and is influenced by subjective factors. The main subjective factor is the presence in the government figures, able to assume responsibility for the state.

Problems of formation and development of the presidential form of government consists in the organization. operation and interaction between the legislative, executive and judicial power with the institution of the President of the Republic of Kazakhstan. Detailed research deserve structural and functional aspects of implementing powers of the head of state, the search for new tools and technologies for their implementation [16].

Research of the republican model of separation of powers of the Republic of Kazakhstan at the present stage of its development due to the fact that the problem is complex both in practical and theoretical terms. The current state of scientific elaboration of the concept «Republican model of separation of powers» does not allow full use of it as a basic design for fundamental theoretical research. All this complicates the search for objective laws of development of the republican model of separation of powers in the formation of the new socio-political system of the Republic of Kazakhstan, Kazakhstan's model to examine the compatibility of the presidential system of government together historical, social, political and other prerequisites for its formation level of political and legal culture, mindset and psychology population, as well as a range of other social factors [4].

According h. 1, Art. 2 of the Constitution is a state with a presidential form of government. However, analysis of the content of the Constitution, in particular the system of state bodies, shows that in terms of the accepted classification model of separation of powers Kazakhstan is not presidential, and mixed republic functioning under a presidential type. As you know, in the classic presidential republics there is no institution of political responsibility of the Government to the Parliament and the President does not have the right to dissolve Parliament. The Constitution of Kazakhstan as we find the possibility of expressing a vote of no confidence in the Government (para. 6 and 7, Art. 53) and the possibility of dissolution of Parliament by the President (Art. 63) [17].

Thus, the first conceptual document, allowing the construction of its own state, has become a «Declaration of State Sovereignty of the Kazakh Soviet Socialist Republic», adopted on 25 October 1990. Head of the republic became president who possessed the supreme administrative — executive. Presidency was established by the Law of the Kazakh SSR on April 24, 1990. It pointed out that the president is the head of the

Kazakh Soviet Socialist Republic. The President does not belong to the executive branch. He had the right to grant the Supreme Council of the Kazakh SSR candidacy for the presidency of the Council of Ministers of the Kazakh SSR, as well as put before the Supreme Council of the Kazakh SSR question of resignation or accepting the resignation of the Council of Ministers. At that time the president was the head of the Kazakh SSR, which is part of the Soviet Union, so it reflects the peculiarities of the relationship status of the Union State with its part — the Federal Republic. (Nysanbaev A., M.Masha Murzalin J., A.Tulegulov. The evolution of the political system of Kazakhstan in 2 vols. — Almaty: Home Edition «The encyclopedia of Kazakh», 2001 2 vol. — S. 201) 20 November 1990 signed the Law «On improvement of the structure of state power and control in the Kazakh SSR and amendments to the Constitution (Fundamental Law) of Kazakh SSR», according to which it was found that the president is the head of the Kazakh SSR highest executive and administrative authorities. The 1993 Constitution was established a clear subordination of government to the president, who became both head of state and the person heading the single system of executive power. Thus, in this Constitution referred to the establishment of a presidential form of government, but it is still important to be secured beginning of a presidential republic [18].

In Kazakhstan, for that matter, in other CIS countries, there was a time lag between the establishment of the institution of the presidency and the presidency. Since the election of Nursultan Nazarbayev to the office of President of the Constitutional fixing it took almost three years — April 1990 — 1993 years. From the outset, the President of Kazakhstan was declared head of state and head of the executive power, but until the middle of 1991, and he combined the post of first secretary of the Central Committee Communist Party of Kazakhstan.

This can be explained by the fact that currently give to know the Soviet Union took place in fusion state with a single party. At that time, there could be no question of division of party leader and head of state, without prejudice to the authority of the latter. When it became possible, «the presidency took on the role the supporting structure of the entire system of state power, replacing it as the Communist Party. So he better than anything else yet, focuses in itself and expresses the essence of what is happening in the post-Soviet societies. Through the prism of presidencies clearly seen similarities and differences in the lives of the former Soviet republics» [19; 5].

The 1995 Constitution legally enshrined the country's transition to a presidential model of separation of powers, according to which there was a fundamental overhaul of existing schemes in Kazakhstan distribution of powers. The Basic Law was made as a tool for the concentration of power in the executive branch. It has significantly strengthened presidential power, as expressed in a certain centralization of power. According to some researchers, the Constitution of 1995 «conclusively established in Kazakhstan presidential republic with all the ensuing political repercussions. Parliament Modern Kazakh Parliament replaced unicameral body of representative power — the Supreme Council, which was first formed on the basis of the Constitution of the Kazakh Soviet Socialist Republic in 1937, and then — on the basis of the Constitution of the Kazakh Soviet Socialist Republic in 1978 and the Constitution of the Republic of Kazakhstan in 1993. The Constitution of 1995, which proclaimed Kazakhstan presidential republic and constitutional law «On the Parliament of the Republic of Kazakhstan and the status of its deputies», «On the Government of the Republic of Kazakhstan», «On judicial system and status of judges» settled the status and function of each branch of government [20].

The formation of the new Kazakh model of realization of the government, based on the implementation of the principles of separation of powers and of «checks and balances», the decentralization of many governance issues. development of civil society led to the need to develop both theoretical background, management models of interaction between public authorities relating to its various branches, and tested these models in practice through direct state-power activities.

The Constitution of the Republic of Kazakhstan laid such structural-functional model of the exercise of public authority, which shall: a) ensure that state power belongs to the people of Kazakhstan: b) to ensure its stability and efficiency, the actual governance activity in the country using its capacity and resources: a) practically implement facing the state goal.

At the same time must recognize the need to improve many aspects of the interaction between the system of presidential power, the executive power with the institutions of the legislative (representative) power, the courts, the supervisory bodies, regional and local authorities.

To strengthen the interaction between different branches of government directed Decree of the President of the Republic of Kazakhstan № 1568 dated March 4, 2005 «On measures for the further use of the potential of the Constitution of the Republic of Kazakhstan.» The decree aims to further use of the potential

of the Constitution of the Republic of Kazakhstan, the implementation of a phased process of political modernization of Kazakhstan society and the state, increasing the role of the Parliament of Kazakhstan [21].

In conclusion, it should be noted that the above model of separation of powers for the implementation of effective powers of state bodies, the head of state and the relationship between them and the model of separation of powers is closely linked to the form of government state, because the model of separation of powers is the source of the form of government of the state. This can be explained by the fact that based on the form of government clearly divided powers between the branches of government that gives analyze and determine what will be the model of separation of powers.

Since Kazakhstan at the present stage of existence is a «young» state, the political reforms that are taking place in the world and in our country, directed on the gradual emergence and formation of a democratic and legal state with a socially relevant interests, development of society, which operates through the market and legal relationships education citizens.

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## Қазақстан Республикасындағы биліктің бөліну моделі туралы

Мақалада құқықтық ғылымда басқару түрлеріне байланысты бірнеше типологиялық модельдерге жататын мемлекеттік биліктің ұйымдастырылуының барлық түрлері сарапталған. Құқықтық дамыған мемлекеттердегі тәжірибе жүзінде қолданысқа енген қазіргі заман құқықтық интеграциясындағы биліктің бөліну модельдерінің ерекшеліктері зерттелген, осы ерекшеліктер негізінде әр модельдің нақты-тарихи өзгешелігі айқындалды. Биліктің бөліну модельдерінің қайсыбір түрлеріне жататынына байланысты мемлекеттік биліктің ұйымдастырылу түрлерінің терең сарапталынуының теориялық мүмкіндігі, тәжірибелік қолданылатын биліктің бөліну модельдері және Қазақстан Республикасындағы басқару түрлері анықталды.

Н.С.Ахметова, А.А.Маусымбаева

## О модели разделения властей в Республике Казахстан

В статье проанализированы все разновидности организации государственной власти, которые в правовой науке принято сводить к нескольким типологическим моделям, в зависимости от формы правления. В рамках современной юридической интеграции раскрыты особенности тех моделей разделения властей, которые реализованы в практике развитых в правовом отношении государств, что позволяет обнаружить конкретно-историческое своеобразие каждой из таких моделей. Углубленный анализ разновидностей организации государственной власти с точки зрения их принадлежности к той или иной модели разделения властей позволяет определить теоретически возможную и практически реализуемую модель разделения властей и форму проявления (осуществления) в Республике Казахстан.

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## **Problems of strengthening the legality and legal order**

This article deals with the role and its features of localization, regulation of regularity and law order in the public relations. Regularity and law order are necessary element of the constitutional state therefore based on regularity and the law; the state can provide unshakable steady level of discipline and turn its legal. And also the problems of improvement of the legislation are considered, its role and place in formation and development of the constitutional state. The problems of regularity and law order always pay attention of scientists and civil servants because the condition of the rights and freedoms of the person is directly connected with questions of definition of a political regime of society.

*Key words:* legality, legal order, democracy, legal state (constitutional state), state power, reform, subject.

Many works are written about legality. There is also a set of definitions about this phenomenon. But almost each of them is the most important thing that contributes the essence, the basis of legality — strict, steady observance, execution of the rule of law by the participants of public relations. It is inherent validity of any historical period, regardless of the conditions of place and time. In the concrete historical conditions of this entity is filled with specific content and acquires appropriate forms. Legality is proclaimed, and often is enshrined in law as a principle, the requirements to comply with legal regulations, addressed to the subjects of public relations. However, for various reasons, including measures of state coercion, legality (observance of the rule of law) is shown in concrete behavior, activity of the specified subjects, i.e. becomes the method of their activity. The result is a mode of social life, expressed in fact that the majority of participants of public relations observe and comply with public relations.

Thus, the validity can be defined as a principle, method and strict mode, strict observance, fulfilment of the rules of law by participants of public relations (state, its bodies, public and other organizations, labor unions, officials, citizens, -all of them, without exception). This principle acts as a ideal form of legality — all people have to respect the rule of law. Actually, not all legal rules and not all subject of law are respected and enforced, many violations of legality take place. Legality is closely related with other phenomenon — a legal order (law and order). The legal order is the condition of orderliness of public relations based on the law and legality. This is the end of the result of implementation of legal requirements and regulations, result of observance, compliance and enforcement of the legal norms, i.e. legality. The legal order represents the purpose of legal regulation, only for its achievement laws and other normative legal acts are published, improvement of legislation is carried out, measures of legality strengthening are taken place. It is important to be aware of the following circumstances:

- firstly, it is impossible to achieve law and order in other ways, in addition to the improvement of legal regulation and enforcement of law;
- secondly, legality strengthening naturally and inevitably leads to strengthening of a law and order;
- the concrete maintenance of a legal order depends on the maintenance of legality which, in turn, is defined by a number of the circumstances considered below [1].

Legality in the conditions of concrete historical period of concrete state, its political mode and etc. is filled with a specific content. The content of legality and legal order in the conditions of Eastern despotism, the Athenian slave-owning democracy, feudal absolutism democratic or totalitarian regimes of modernity has huge differences, although the legality is always compliance, enforcement of legal order- its result.

Differences in the maintenance of legality and legal order depend on its sides (elements): subject (legality carriers — that has to conform to legal requirements); subject (structure of subjects covered by the obligation to comply with legal regulations and the right to require such performance from other people); regulatory (a circle of legal instructions is obligatory for execution). Changing these aspects of legality and defines the different amount of content in the specific historical conditions, increase or decrease of its role in the society.

So, the main carrier of legality is its activity (behavior) of people. But through it property of legality, i.e. compliance with the law, get also other objects — normative and law-enforcement acts (such as the law

contradicting the Constitution, laws, establishing non-judicial or emergency order of consideration of certain categories of criminal cases) has been one of the major causes of mass unjustified repressions in the USSR in the 30's and early 50's. The maintenance of legality substantially depends on structure of its subjects. The majority of scientists connect concept of legality with activity of all participants of the public relations, i.e. the states, its bodies, public and other organizations, officials and citizens. However, there is an opinion which considerably narrows this structure, excluding from it citizens, and in certain cases and public organizations. But the exception of anyone from among the subjects of the law creates the illusion of not fulfillment of legal requirements. There is a narrowing of the sphere of legality, and it from all-social, political and legal turns into the phenomenon much narrower, connected with activity of a limited circle of subjects.

This narrowing of the range of subjects of legality in terms of the administrative-command system contributed to the emergence of «dead zones», is not subject to the law. And although it proclaimed the idea of «universality of legality», in fact, outside of its scope remained consistently the top party and state apparatus, and often the number of state bodies. In the period of Stalin's personality cult is led, in particular, to mass arbitrariness and lawlessness, and during stagnation to the development of corruption, the formation of the clan system for decades with impunity carrying out criminal activities. Similar phenomena take place in the present [2; 215].

Thus, narrowing of a circle of subjects of legality destroys idea of its generality, all-obligation of legal instructions, equalities of all before the law that in practice leads to the erosion of the mode of legality. The normative side of legality is determined by the nature and content of legal norms, observance and execution which form this concept. Most of authors connect legality with need of observance of all legal norms. However, there is an opinion that the meaning of legality is performed only norms formulated in the laws. Acceptance of this position would mean an exception of the sphere of legality of obligation of observance of subordinate regulations that eventually will inevitably lead to weakening of the mode of legality in the country.

Expressed the opinion that the concept of legality are themselves rules of law, the law itself. Legality really is closely connected with the right, with the legislation, can't exist without them: people observe, execute not abstract slogans, but concrete legal instructions. The contents of the legislation, thus, define the maintenance of legality, its standard party. However, legal norms itself are the prerequisite, but not an element of legality. Otherwise there is an illusion that strengthening of legality can be reached only due to improvement of the legislation. Also existence of the independent scientific concept other than the legislation which at the same time would reflect the transition mechanism from legal opportunity to legal reality is necessary.

The selection of the parties of the content of the legality allows for a fresh look at its historical development. Differences in the content of legality and legal order in the different historical conditions are determined primarily normative and subjective aspects of this content: firstly, the degree of regulation of certain aspects of social life, the concrete content of the legislation reflected the interests of different classes and social groups, etc., and secondly, the entities are obligated to comply with legal regulations and has the right to require such performance from the other, i.e., the range of authorized and obligated subjects of legality.

In any society the number of the persons obliged to observe strictly the law includes all representatives of enslaved classes and, as a rule, considerable part of a ruling class, and the relevant requirement is consistently supported by the compulsory force of the state. Thereby the vast majority of the population in the conditions of all social and economic structures and all political regimes is compelled to work according to the existing legislation. At the same time in specific historical conditions, at various political regimes some part of a ruling class and a top of government, having rights to demand from others observance of rules of law (that a people at large is often deprived), cannot adhere to requirements of legality, violate legal instructions. Here various options which depend on a political regime, the form of government, the level of culture of the population, especially political and legal, conditions of legal regulation and etc. But this does not affect the final conclusion that law and order exist under any political regime, and that their specific content socially determined and is shown in normative, objective and subjective sides of the legality. All this objectively causes that circumstance that formal legality and a legal order in certain conditions can turn into the contrast, having become «the lawlessness built in the law» [3; 4].

So, many negative things in our society were not only the result of violations of the laws.

There were a lot of regulations that are not consistent with the public interest. Their «strict observance» actually meant «strict violation», i.e., have resulted in negative consequences for the people, for the interests of social development. Therefore, improvement of legislation involves the creation of robust mechanisms to identify and reflect on the laws of the people's will and interests of the progressive development of society. Important for the theory and practice of strengthening the legality is the question of delimitation of the prin-

ciples and requirements of legality. The principles of legality are the main ideas, start expressing the content of the law, and the requirements of what «requires» legality, i.e. formulated in the general form of legal regulations, compliance, performance of which makes the phenomenon (behavior, act, etc.) legitimate.

With this approach it is possible to identify four of the principle of legality: the rule of law, unity, feasibility and reality of law. The rule of law is usually interpreted as the rule of law in the system of normative acts. However, this principle must be understood much more broadly — as obedience to the law and all regulations and all acts of the implementation of the law (application, compliance, and performance), and all other objects. Only under these conditions, the principle of the rule of law becomes universal, throughout the entire fabric of society [4; 9].

Under unity (universality) of the law refers to a single direction of legislating and previously in the territorial and subject terms, i.e. on the whole territory covered by the respective normative act, in relation to the activity of all subjects of public relations. The feasibility of legality means choosing strictly within the law of the optimum, consistent with the goals and objectives of the company options for the implementation of legislative and prorealtime activity (behavior), the inadmissibility of the opposition to the legality and expediency. And, finally, the reality of law is an achievement actual performance of the legal requirements in all activities and will be held accountable for any breach of them.

The unity (generality) of legality is understood as a uniform orientation of law-making and realization of law in the territorial and subject plan, i.e. in all territory of action of the relevant statutory act, in relation to activity of all subjects of the public relations. Expediency of legality means need of a choice strictly within the law of the optimum, answering to the purposes and tasks of society options of implementation of the law-making and right realizing activity (behavior), inadmissibility of opposition of legality and expediency. And, at last, the reality of legality is an achievement of the actual execution of legal instructions in all kinds of activity and inevitability of responsibility for any their violation.

Requirements of legality (that demands legality) reflect its orientation which is caused by the content of rules of law. Unlike principles, expressing the content of the legality of the act in all its spheres, apply to all activities of any entity of public relations requirements associated with certain activities of certain subjects. For example, the requirements of the protection of rights and legitimate interests of citizens, publication of legal acts in the prescribed manner apply to the authorities of the state, etc. Along with the principles and requirements of the law we can distinguish two groups of features of the law that often, but without sufficient grounds are considered as its principles or requirements. This is, firstly, the characteristics of external relations of legality (the relationship with democracy, culture and so on), and, secondly, the ways and means of ensuring the legality (state control, citizen participation in strengthening the rule of law and so on). When considering communication principles and requirements of legality, you can come to the conclusion that each of the principles can be deployed in the totality of its requirements.

So, the principle of the rule of law is developed in the following requirements:

- all laws (and activities for their creation) have to correspond to the constitution and other higher laws;
- subordinate regulations (and activities for their creation) have to correspond to laws;
- acts of right application and law-enforcement activity have to correspond to laws and subordinate regulations based on them;
- acts of individual behavior have to correspond to the laws based on them to subordinate regulations and acts of right application [5; 32].

It is important that each of these requirements, in turn, can be developed in set of provisions which or are directly recorded in the law, or follow from its text: laws have to correspond to the Constitution.

Thus, we from the principle of the rule of law through the relevant requirements of the law came to specific legal regulations. In the same way based on the activities and outcomes can be deployed and other principles of law in the requirements, and then in certain legal norms. This allows you to define a clear list of requirements and to carry out their regulatory consolidation and specification that will create additional opportunities for strengthening the legality and legal order. The role of legality and legal order can be considered from different positions, and above all from the point of view of the state and individual. To state this role primarily is determined by the place that take legality and legal order in the legal regulation of social relations. Leading the society, the state uses a variety of methods and tools: economic, political, ideological, organizational, and others. Among them, the most important place takes the legal regulation of social relations. This method lies in the fact that the state publishes (or authorizes) the rule of law and provides universal compliance and enforcement, i.e., legality, and thereby achieves the legal order.