

Problems of Formation and Development of the Institute of Presidency in the Republic of Kazakhstan

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Abstract: The article deals with the research on the peculiarities of the Institute of Presidency in the Republic of Kazakhstan. Here the periodization of the development of the institution of the Head of State is suggested since the Independence in 1991 until present days. Whereby, the given periodization is based upon the changes and additions inserted into the Constitution of the Republic of Kazakhstan. In the present article a brief analysis of norms that govern the Institute of Presidency in the Republic of Kazakhstan during the period of 1993-1995 is given. Also the objective opinions of the scientists from abroad on the changes in the Constitution in the year 2007 and political processes of the mentioned period were found and presented at the present work. The author notes that the President who guarantees the integrity of the state regulates the legislative, executive and judicial branches optimally and balanced, as well as acts as the moderator in the disputes. These are the main purposes of the Institute. An essential advantage of the presidential system is that it serves to the establishment of the unified, stable executive power which, in its turn, executes the President's policies. The article also examines the problems of the establishment of the Institute of Presidency of the Republic of Kazakhstan caused by the internal and external circumstances of the rebound. The global experience proves that this institution has been used by many countries for the risk-free solutions to the critical situations. As the result of the research, the author draws the conclusion that Kazakhstan is facing the constant upturn of the Presidency power. This tendency is caused by the rebound and is vital at the current stage of the development of the Republic.

Key words: Presidency, the principle of separation of powers, forms of government, the constitution.

INTRODUCTION

Democratic transformations in the countries within the Commonwealth of Independent States in early 90s of the previous century are fundamentally affecting the state institutions and have significantly transformed the system of the state authorities. The most important change of the institutional power of the countries mentioned above became the establishment of the Institute of Presidency in 1991, though a similar institution had already existed since 1990 in the Soviet Union. Despite the age-old experience gained by the developed countries in the scope of the arrangement and activity of the President this institution is rather new for the countries of the Commonwealth of the Independent States [1, p.3].

Whereby, it should be taken into account that the certain experience of the Institute of Presidency functioning in the countries of the Commonwealth of Independent States has been gained which provides an

opportunity for the substantial analysis and correction of norms of the legislation and law-enforcement practice. Such experience needs scientific understanding of the institution of the Head of State, as well as the generalization, political and legal evaluation and, therefore, a special research.

If we study the process of establishment of the Institute of Presidency in the Republic of Kazakhstan, we will unfailingly go back to the closest past of our state. It was exactly in the period of the Soviet regime when the Presidency which took the leading part in the system of the political institutions of the sovereign Kazakhstan during the process of evolution was implemented in the political system.

The insert of political innovations, including the Presidency, into the system of the totalitarian Soviet state was actually just the mechanical implantation of democratic institutions onto the alien totalitarian system.

For the most part, for Kazakhstan it is typical that the implementation of the Presidency had taken place much earlier than the Presidency institution appeared in the former Soviet republics. The Presidency implementation had its impact on the powers of the Chairman of the Supreme Soviet who lost the status of an official representative of the Soviet Socialist Republic of Kazakhstan within the country and in the international affairs. Due to this fact, the Chairman of the Supreme Soviet was deprived of the right to sign laws and reports on the situation in the country, was significantly restricted in his powers in the scopes of recruiting policy and ceremonial functions that reflected the processes of the differentiation of the branches of power and formation of the presidential republic.

The implementation of the Institute of Presidency in the Republic of Kazakhstan, as well as in other countries of the Commonwealth, was caused by the internal and external conditions of the rebound. The global experience proves that this institution has been used by many countries for the risk-free solutions of the critical situations, but in the Commonwealth of Independent States it served as a tool for the adoption of the power, the termination of the Soviet system and the absolute power of the Party.

The Institute of Presidency in the world was first introduced in the United States of America. In the Constitution adopted on September 17, 1787 it was documented that "the executive power is given to the President of the United States" [2, p. 391].

The Institute of Presidency was first mentioned in Kazakhstan in the manifesto of the Alash party which functioned in Kazakhstan even in November, 1917 that ran the Government shall have the Constituent Assembly as its head and for short periods - the President elected by the Constituent Assembly and the Duma for a particular term.

Thus, the Presidency, alongside with other ideas of the democratic organization of the statehood and constitutional regime, was suggested in Kazakhstan in that period. However, the firmly established absolute power of the Soviets and monopolism of the Party's executive board in all scopes of the state and social life prevented from the establishment of the democratic institutions, the system of checks and balances and the implementation of the Institute of Presidency.

The development of the Institute of Presidency in the Republic of Kazakhstan can be formally divided into three stages:

- The period of formation from 1990 to 1995;
- The development and the simultaneous upturn of the President's power from 1995 to 2007;
- the stage of the partial democratization from 2007 till nowadays.

The periodization of the development of the Institute of Presidency in Kazakhstan is based upon the accepted changes and additions to the constitutional legislation of the Republic, as well as with the exception of the changes of 1998. The law proclaiming the insert of the changes and additions to the Constitution of the Republic of Kazakhstan passed on October 7, 1998 just extended the terms of the President's powers from five to seven years and age limits for the candidates applying for the Presidency. The system of checks and balances, in fact, experienced no significant changes.

The Formation of Institute of Presidency in the Independent Republic of Kazakhstan:

The becoming of market economic relations, the elimination of one-party system and the consistent implementation of the principle of separation of powers demanded the establishment and strengthening of the institution in Kazakhstan due to the collapse of the USSR. The Supreme Soviet of the Kazakh SSR Act of April 24, 1990 "On the establishment of the post of the President of the Kazakh SSR and the introduction of amendments and additions to the Constitution of the Kazakh Soviet Socialist Republic" for political and economic transformations, the strengthening of the constitutional system, rights, freedom and security of citizens, improving the interaction of the supreme public and management authorities, created the post of President of the Kazakh SSR. In the first half of 1990 the social order of the USSR was struck by a deep crisis and its power structures were ineffective in deciding critical challenges in overcoming the crisis. Because of this, most of the post-totalitarian countries of the CIS presidential leadership were rationally dominating control over the parliamentary methods of management of society. The transition from totalitarianism to democracy has led to the need of a "strong" leader, which means the presidential form of government.

For effective and independent implementation by the President of the Republic of his powers to the further strengthening of a presidential form of government there was an objective need to legitimize the source of presidential power from all people of Kazakhstan, rather than indirectly through a representative authority.

Therefore, an important step in establishing the institution of the presidency of the republic was held on December 1, 1991 - the national elections of the president. The list of voters of 21 constituencies on the territory of the republic included 9,961,242 citizens. Only 8,788,726 people accounting for 88.23 percents of the population has participated in the voting. In a secret bulletin for voting were included the presidential candidate of the Kazakh SSR NA Nazarbayev and a candidate for the Vice - President of the Kazakh SSR, EM Asanbaev. As a result, for the NA Nazarbayev voted 98.78 per cent of those who took part in the vote. This is due to his competent political agenda on economic issues in the crisis heat of the Soviet economy. Relationship between the choice of the President, the economic crisis and the economic program is obvious [3].

The further development of the process of democratization of the political system in the period from November 1990 to December 1991 resulted in clear expression in the Declaration of State Sovereignty of the Kazakh SSR of the principle of separation of powers into legislative, executive and judicial, in which legislative power is performed by the Supreme Council, the President is the Head of the Republic and possesses the supreme administrative, executive and supreme judicial power belongs to the Supreme Court of the Kazakh SSR. Regulatory consolidation of this provision was in November 1990.

Due to the fact that the Supreme Council has not managed as effectively as president, the consolidation of society and power, the creation of tough and effective power structure and the initiative to stage the dominance of state-political paradigms (since 1991) is gradually transformed from a representative of the executive power to that headed by the President.

German researcher O.Lyuhterhand gave us the detailed comparative analysis of the constitutional structure of Kazakhstan. His work shows the evolution of constitutional law in the Kazakh SSR and leads to a state of the Basic Law at the time of independence. Also emphasizes in Kazakhstan by 1991 have shown the same contradiction between the executive and the legislature, same as in Russia at the community level. Legal contradiction was added to this, which was associated with the presence of articles on the role of the Communist Party.

However, the Constitution of 1977 was an important prerequisite for giving the right to self-determination and for the output from the USSR and it was its historical merit. Next constitution of 1993 emphasizes Lyuhterhand,

responds to modern requirements and contains articles adopted by a civilized community of the sovereignty of the people, the regulation of the legal, family and property issues. The only anachronism saved from the Soviet period was the name of the parliament - the Supreme Council [4].

The President received the public support for the consistent implementation of the course of strengthening the presidential form of government [5].

The Constitution of the Republic of Kazakhstan adopted by the Supreme Council of the Republic of Kazakhstan in January 28, 1993 consistently continued the tendency to strengthen the presidential power and admitted that the President of the Republic of Kazakhstan was the head of the executive power system. According to the first Constitution, the President did not have such strong influence on the legislative and executive branches of government.

The President had the right and the duty to take the necessary measures for the protection of national sovereignty, constitutional order, security and territorial integrity of the country, strengthen the defense of the state, rights and freedoms of citizens, as well as he had the right to issue decrees, decisions and orders (Article 78 of the Constitution of 1993). The only legislative body was the Parliament known as the Supreme Council. In general, while analyzing the standards of the Constitution in 1993, we can conclude that the Republic of Kazakhstan has leaned more towards the mixed form of government.

Problematic issues of development of Institute of Presidency in the Republic of Kazakhstan in late 1990th of the 20th century

The main objective was to improve the dynamics of economic and political realities, implementation in practice the relationship of public authorities dealing with checks and balances, consistent legal reform in the country, the need to answer the question about the power system. All this again has demanded the constitutional - legal reforms.

The Constitution of the Republic of Kazakhstan accepted on August 30, 1995 by public voting accepted the presidential form of government and contributed to the strengthening of political and legal foundations of head of state's status. Kazakhstan's Constitution legally supported a strong presidential form of government and as a result the country created the conditions for sustainable and consistent establishment of strong state power [6].

In the formation of the Institute of the President in Kazakhstan the criterion of its high stability and effective impact on the socio-economic and socio-political processes was actively used, also "the recognition of a universal rule of separation of powers, an adaptation of the constitutional experience of foreign countries to the conditions of Kazakh society, the priority preservation of political stability among the various bodies in a single state" were used.

At the end of the 20th century the economic crises in developed countries have caused the need for the strong presidents who would extend their authority [7]. And in Kazakhstan, due to the economic and political crises, it became necessary to have a strong presidential power. According to the Constitution of the Republic of Kazakhstan in 1995 the President became the guarantor of the unity of the three branches of power and also got the opportunity to influence the legislative and judicial branches. Thus, the President appoints judges and presidents of local courts (Part 2 of Art. 82 of the Constitution), he has the right to appoint 15 senators in the house of Parliament and also dissolve the Parliament (Article 63). The Parliament, in its turn, had no influence onto the power of the President. The political autonomy of Parliament in the realization of the legislative and judicial functions of the government "in the process of litigation and dispute resolution" was indispensable [8].

There should be no impact onto the judge in the exercise of justice and Kazakhstan's Constitution provides for the principle of independence of the judiciary courts (Article 77, part 1). The independence of the Parliament is the most important factor of any democratic state.

In republican form of government among the heads of higher organs of the state the president legally occupies the first place. In fact, the status of the President depends on many other political and legal factors. In states with a semi-President mixed form of government the President acts as the central body and plays a dominant role in the public life of the country.

Especially noting the transition to a presidential form of government of the Republic of Kazakhstan and democratic reforms, we cannot forget about the favorable and unfavorable factors affecting its formation. Historical and cultural heritage of the country plays a great role in the democratic perspective. The power of law, a certain system of representation and elections give the experience of though limited, but democratic government. The absence of electoral competition, political parties and

coalitions before independence does not increase the effectiveness of democratic institutions with the acquisition of sovereignty it takes time for the perception of democratic principles [9, p.68].

The study of the Institute of President in the context of modern conditions of interpretation of its legal status is done by the additional opportunities of transfer of the powers of the executive branch of government to him for strengthening the powers of the president as the guarantor of the Constitution to bring political stability in the country. Modern challenges in society point to the fact that it is necessary to withstand internal and external threats, which are amplifying every day. These threats are external because of the desire of foreign countries to enslave Kazakhstan economically and politically and internal threats are the attempts of some people to enrich at the expense of Kazakhstan or to archive their ambitious aims using their power.

Recent Changes to the Constitution and the Status of the President of the Republic of Kazakhstan: On May 21, 2007 new additions and changes to the Constitution of the Republic of Kazakhstan were introduced according to which members of the Parliament are elected from the party lists, the presidential term is reduced from seven years to five years and some legislative powers are expanded. According to foreign scientists, in May 2007 the President of Kazakhstan "has made the constitutional changes, ostensibly to enhance the role of the Majilis and political parties in the political system. It would seem positive steps, but at the same time the removal of restrictions of the terms of the first President has actually made Nazarbayev the President for the whole life".

"The reforms have been provoked to increase the chances of Kazakhstan to ensure the OSCE chairmanship in 2009 and to strengthen the international image of Kazakhstan with foreign investors. President Nazarbayev, at the request of the Parliament, appointed a parliamentary election on August 18, 2007, so the deputies could be elected under the new system of elections held under the new rules". These steps were taken in order to prove Kazakhstan's commitment to transition to democratic principles [10].

We believe that the changes in the Constitution of Kazakhstan that allow the President to be unrestricted are definitely not democratic. Unlike Kazakhstan's neighbor, Russia without violating constitutional principles decided similar problems by political means. For example, the 2003

Constitution of the Russian Federation (Article 81-3) provides that no person shall be President of the Russian Federation for more than two consecutive four-year terms. Elected in 2000 and 2004 Vladimir Putin was constitutionally prohibited from seeking a third consecutive term [11].

The State Duma has proposed some changes to the Constitution to lift up the ban, but Putin using political leverage managed to promote to the post of the President his successor Dmitry Medvedev and then again under the rules of the Constitution managed to return to the post of President. Dmitry Medvedev in 2008, in his turn, has offered to extend the term of the President to 6 years [12].

Thus, we believe that Kazakhstan due to the democratization of the state and society should not introduce the innovations that allow the First President to run for the presidency without limits. These issues could be solved within the frameworks of constitutional standards by political means, as it was done in the Russian Federation.

Key takeaways. The research of the presidential powers indicates the factor, where in fact the presidency gives the solution of problems of the state. Here, the process of formation of these functions in the Institution of Presidency is characterized by the brave actions of the president that can ensure the development of a sovereign Kazakhstan.

By studying the role of the President in the realization of tasks of the executive branch of government it is necessary to emphasize the existence of the influence of the President onto the key issues on the decisions taken by the executive branch. The President strengthens the legal effects of the executive branch of the government on government relations that are developed and realized in Kazakhstan.

The presidency in a modern aspect should cover only the democratic framework of permissions and should not exceed their limits. The attempt of some scholar lawyers to associate institution of the presidency with monarchist elements is not correct. Failure to understand the difference between the institute of absolutism leads to different misinterpretations, including Kazakhstan's environment. The legal status of the presidency should only involve its role as coordinator of the government and in exceptional cases it must be brought to the powers of the executive branch, as it happened in Kazakhstan. We need to specify that in the present conditions of formation of the Kazakh society the needs of Kazakhstan are the

more efficient and effective government. The development of the presidency should go in a more structured, dynamic and democratic way and great attention is paid to the study of the status of the president.

By analyzing the stages of establishment of the Institution of the Presidency in the Republic of Kazakhstan it can be easily seen that every time the power of the President of the Republic of Kazakhstan is enhanced which is shown through his power and leverage over the other branches of government. For the democratization of higher authorities they should provide the possibility for the judicial power to appoint judges independently and the legislature to provide the means of influence on the President in case of a vote of no confidence.

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