



The 3rd Asian and European  
Conference of Law and Politics  
Participants: Kazakhstan, France, Korea

# The Asian and European Origins of Legal and Political Systems

| Date |

March 29–31, 2017

| Venue |

Inha University Law School, 2nd Floor, Conference Hall, Incheon, Korea

| Host and Sponsor |

Inha Law School

Inha Law Research Institute

Inha Social Science Research Institute

Incheon Bar Association, Korea

# Contents

The 3rd Asian and European Conference of Law and Politics  
The Asian and European Origins of Legal and  
Political Systems

## Session 1 : Law and Politics in Modern State-Building

1. Prof. S. AIDARBAYEV (Al Farabi Kazakh National University, Kazakhstan) ..... 1  
THE ORIGINS OF THE LEGAL AND POLITICAL SYSTEM OF KAZAKHSTAN:  
HISTORY AND MODERNITY
2. Prof. Y. OMIRZHANOV (Al Farabi Kazakh National University, Kazakhstan) ..... 17  
The Influence of European and Asian Values on the Features of the Legal System of  
Kazakhstan
3. Prof. Ph. GAST (University of Le Havre Normandy, France) ..... 27  
The religious origin of the political and juridical power(s)
4. Prof. F. BOTTINI (University of Le Havre Normandy, France) ..... 37  
The lessons for regionalism of the genesis of the European Service d'Intérêt Général  
(GIS)

## Session 2 : International Law and International Relations

1. Prof. K. BAIZAKOVA (Al Farabi Kazakh National University, Kazakhstan) ..... 45  
The evolution of the conceptual foundations of the multi-vector foreign policy of  
Kazakhstan
2. Prof. Zh. SAIRAMBAYEVA (Al Farabi Kazakh National University, Kazakhstan) ..... 51  
The Sources of the Refugee Status in the Legal System of Kazakhstan
3. Prof. P. CHABAL (Le Havre University LexFeim, France) ..... 59  
A propos some origins of 'neo'-systems of 'cooperation' in Europe and Asia
4. Prof. Seokwoo LEE (Inha University, Korea) ..... 65  
The Making of International Law in Korea: From Colony to Asian Power

## **THE ORIGINS OF THE LEGAL AND POLITICAL SYSTEM OF KAZAKHSTAN: HISTORY AND MODERNITY**

**Aidarbaev S.Zh.,**

The chief of the Department of International Law,  
Doctor of law  
Al-Farabi Kazakh National University

### **1. INTRODUCTION**

Kazakhstan is a key state in the Central Asian region, which includes five states: Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan.

The territory of the Republic of Kazakhstan accounts for more than 80% of the territory of the entire region. The country ranks second in the region place with a population of about 18 million.

Kazakhstan accounts for more than 80% of all foreign investments sent to the Central Asian region. More than 85% of all deals with foreign companies also fall to the share of Kazakhstan. Kazakhstan's GDP is almost three times the GDP of all other Central Asian countries combined. The Republic is one of the world's twenty largest exporters of oil and gas raw materials, among the ten largest grain exporters, and the world's largest exporter of flour. Kazakhstan is one of the three largest world exporters of uranium products, which is the raw material for the nuclear industry. The country is actively developing space research on the basis of the "Baikonur" cosmodrome, one of the largest in the world. The country is the second post-Soviet economy after Russia.

Kazakhstan sets itself an ambitious task to become one of the thirty largest economies of the world by 2050, for which it has serious reasons: developed oil and gas and chemical industry, a promising agricultural and transport sector, a highly educated population.

In these circumstances, the study of the features of the legal and political system of Kazakhstan is of interest to representatives of those countries that invest or plan to invest in the economy of the state and can expect certain guarantees of their investments from political risks. In addition, it is also important for those states that have not only economic, but also certain political, humanitarian, cultural and other interests in Kazakhstan.

### **2. METHODOLOGY**

To understand the political and legal system of Kazakhstan, it is very important to know the historical bases and dynamics of the processes that take place in the country. In order to achieve this goal, it is important to use historical and comparative methods of research, on the basis of which it is possible to make certain forecasts about the future of the country, its political and legal system.

### **3. THE ORIGINS OF THE POLITICAL SYSTEM OF KAZAKHSTAN: DEFINITIONS, HISTORY, MODERNITY**

#### **3.1 Origins of the political system: definitions**

##### **3.1.1 The political system of society: the concept, theories, types**

Any society is politically decorated, it has a power mechanism that ensures its normal functioning as a single social organism. This mechanism is called a political system and is one of the main ones in political science. Its use allows us to isolate political life from the life of society as a whole, which can be considered an "environment", and to establish the existence of links between them. Thus, the political system of society is an integral set of political institutions, socio-political communities, forms, norms and principles of interactions and relationships between them, in which political power is realized [X].<sup>1</sup>

In short, the political system of society or the political organization of society is a set of interactions (relations) of political subjects organized on a single normative-value basis, connected with the exercise of power (government) and the management of society. This concept unites various actions and relationships between ruling groups and subordinate, governing and governed, dominant and subordinate, theoretically generalizes the activities and interconnections of organized forms of relations of power - state and other institutions and establishments, as well as ideological and political values and norms regulating the political life of members of this society. The term "political system" refers to the structures of political activity and attitudes and types of political process characteristic of a particular society [X].<sup>2</sup>

As a result, the political system of society is the totality of all elements and institutions of society that exercise political power, the structure of which consists of the following elements [X]:<sup>3</sup>

- the state;
- political parties and movements;
- political consciousness that takes place in the state (a set of ideology, propaganda, political psychology and final representations of citizens, political processes taking place in the state);
- moral, socio-economic and legal norms governing the political sphere of society;
- political relations;
- political practice.

The political system includes the organization of political power, the relationship between society and the state, characterizes the course of political processes.

<sup>1</sup> Понятие политической системы общества // <http://kulturoznanie.ru/politology/ponyatie-politicheskoy-sistemy-obshhestva/>

<sup>2</sup> Политическая система // <https://ru.wikipedia.org/wiki/>

<sup>3</sup> Государство и политическая система общества // <http://allstatepravo.ru/mptgp/mtgp2/mtgp27.html>

**Theories of political systems.** The notion "political system" received its justification and dissemination in the middle of the 20th century, which was generated by the logic of the development of political science, which led to the need to describe political life from systemic positions.

The foundations of the theory of political systems were laid by the American political scientist D. Iston. He developed a view of the political system as a self-regulating and evolving organism, to which impulses in the form of demands come from outside. Requirements can arise both in the environment and within the system itself, and reflect expectations, motives of behavior and interests of people. Supporting the demands that arise within the political system from the side of society can be expressed in various actions: in the payment of taxes, military service, compliance with laws, voting [X].<sup>4</sup>

Another founder of the political system theory - American political scientist G. Almond - considered the political system as a set of interactions, behaviors (both state and non-state). In this model, the main attention is paid to the plurality of different interests within the system, to their collision and unification, to the accounting of these interests by the system. There are other versions of the theory of the political system. For example, the theory of the political system of D. Truman is derived from the postulates of the theory of "pressure groups", the theory of H. Powell and M. Kaplan, which is an attempt to transfer the main provisions of D. Iston's concept from the sphere of the internal political life of a particular country to the sphere of external relations. There is a theory of a functional political system built on the basic postulates of the social system of T. Parsons, the theory of the political system as a specific, active structure and so on [X].<sup>5</sup>

**Types of political systems.** There are different approaches to determining the types of political systems. Typology of political systems bears the methodological and applied load [X].<sup>6</sup>

The most popular in modern conditions is the concept of R. Dal, according to which the degree of democratic power and the presence of mechanisms for resolving contradictions are divided into political, democratic, authoritarian and totalitarian systems. From the standpoint of this typology, the political system of Kazakhstan is authoritarian.

No less important is the typologization of the political systems of G. Almond, who, depending on the type of political culture, singles out Anglo-American and European continental, as well as pre-industrial and industrial. From the standpoint of this typologization, the political system of modern Kazakhstan tends toward a European continental and industrial type.

<sup>4</sup> Понятие политической системы общества // <http://kulturoznanie.ru/politology/ponyatie-politicheskoy-sistemy-obshhestva/>

<sup>5</sup> Понятие политической системы общества // <http://kulturoznanie.ru/politology/ponyatie-politicheskoy-sistemy-obshhestva/>

<sup>6</sup> Типы политических систем // <http://kulturoznanie.ru/politology/typy-politicheskix-sistem-obshhestva>

In the scientific literature there are other classifications of political systems. Depending on the orientation toward stability or change, political systems are divided into conservative (their goal is to preserve traditional structures, the developed form of political power) and transforming (carrying out social transformations). Among the latter, there are reactionary systems (whose goal is to bring society back to the former type of political system) and progressive (seeking to form a new type of society) [X].<sup>7</sup> From this position, the political system of Kazakhstan is transforming and progressive, as it is aimed at the formation of a new type of society.

It should be noted that the available theories of typologization of political systems are not exhaustive. There may well be new grounds for identifying the differences between them in accordance with the changing conditions of their origin and functioning.

One type of political system can be replaced by another type. The reason for the replacement may be factors such as a change in the form of ownership, a change in state form of government, a change in ideology and etc.

The type of political system is characterized by the correlation and interaction of its structural elements. The nature of the political system depends on their place, role, content and direction, as well as the pace of development of society as a whole. The variety of typologies testifies to the multidimensionality of such a phenomenon as the political system of society. The complexity of political systems is such that no single approach or method is sufficient to give a complete picture, so a multidimensional approach is required to analyze multidimensional political systems. At the same time, any political system needs recognition from society. This recognition can be active or passive, open or hidden, conscious or unconscious, voluntary or coercive. The possibility of recognizing the political system by society is more likely if it expresses the objective needs of people. However, there is no direct and unequivocal connection between the legitimization of the political system and the way it responds to public needs. In some cases, it can enjoy support without expressing the fundamental interests of the masses [X].<sup>8</sup>

### **3.1.2 The role of the state in the political system of society**

The state is the basic element of the political system of society. This is reflected in the following facts:

- the state has a special apparatus and a set of special means for exercising power;
- only the state is authorized to carry out law-making activities;
- the state is the bearer of state sovereignty;

<sup>7</sup> Типы политических систем // <http://kulturoznanie.ru/politology/typy-politicheskix-sistem-obshhestva>

<sup>8</sup> Типы политических систем // <http://kulturoznanie.ru/politology/typy-politicheskix-sistem-obshhestva>

- The state has the exclusive right to implement certain actions (budget formation, printing money, use of military force, etc.) [X].<sup>9</sup>

Despite the fact that the state is the main form of public self-organization of citizens, however, it occupies a special place in the political system of society, since it is the main means of achieving the goals of society, it concentrates a variety of political interests, gives stability to the political system through streamlining its activities. Proceeding from this, the state has signs that distinguish it from public associations:

1) there can exist only one state in each political system of society, and there are many public associations;

2) the state is the organization of the entire population, and public associations are parts of the population;

3) only the state is the only full-fledged organization on a nationwide scale capable of protecting the fundamental rights and freedoms of all persons on its territory;

4) only the state has a special apparatus dealing with the administration of public affairs;

5) only the state has special institutions of a coercive nature and has the monopoly right to apply coercion on its territory; public associations are deprived of these signs;

6) only the state has the exclusive right to issue legal norms binding on the entire population, and to ensure their implementation. Public associations adopt programs, statutes, current decisions that are of intra-organizational importance;

7) only the state has the monopoly right to establish and collect taxes, to form a national budget;

8) only the state is an official person (representative of the whole people) within the country and in the international arena - a sovereign organization. To public organizations such qualities and functions are not peculiar. They solve local problems of their own content and scope in a strictly defined sphere of social life [X, c.70-71].<sup>10</sup>

If the state is a sovereign political organization of the whole people, then the parties and other public organizations are only participants in the exercise of political power. They express the will of their members, groups of people, certain strata of society, operate within the framework of the law and do not have state-power powers [X, c.74-75].<sup>11</sup>

Thus, it can be argued that the state is the central element of the political system of society.

<sup>9</sup> Государство и политическая система общества // <http://allstatepravo.ru/mptgp/mtgp2/mtgp27.html>

<sup>10</sup> Скакун О.Ф. Теория государства и права. Учебник. – Харьков, 2000. – 704 с.

<sup>11</sup> Скакун О.Ф. Теория государства и права. Учебник. – Харьков, 2000. – 704 с.

## 3.2 Origins of the political system of Kazakhstan: history

### 3.2.1 Political System of the Kazakh Khanate

The state formation, based on the national platform of the established Kazakh ethnos - 550<sup>th</sup> anniversary of the formation of the Kazakh Khanate was celebrated in 2016. Although according to many scientists the first state of the established Kazakh ethnos is Ak-Orda with its capital in the city of Syganak. Therefore, these names in historical retrospect merged in our new capital Astana - Sygonak Avenue is in contact with the residence of the President of the Republic of Kazakhstan, called Ak-Orda [X].<sup>12</sup>

A proto-Kazakh state, Desht-i-Kipchak, was formed at the Golden Horde - the White Horde in the territory of the Kazakh steppe in 1227 (Orda-Ezhen's ulus - the eldest son of Juchi-khan (Juchi-khan - the eldest son of Genghiz Khan). After separation from the Golden Horde, the White Horde became an independent state in 1361. After the death of Barak Khan in 1428, the White Horde breaks up into the Khanate of Abulkhair Khan (the Uzbek Khanate - by the name of the ancestor of Abulkhair - Uzbek Khan) and the Nogai Horde.

The Kazakh Khanate was formed in 1465 as a result of separation from the Uzbek Khanate and existed until 1847, when it ceased its independent functioning as a result of joining the Russian Empire.

In fact, this is the first national state in the Central Asian region. For example, Uzbekistan began to be called Uzbekistan since 1924, China became known as China after the Sinhai revolution in 1911, Russia began to be called Russia since 1724 after the Decree of Peter the Great. The Kazakh state began to be called Kazakh in 1465. The clear designation of the Kazakh state, called the Kazakh Khanate, became the basis for the further development of Kazakh statehood [X].<sup>13</sup>

As a result of the resistance to external aggression, the Khanate divided into three parts in the XV-XVI centuries - the Zhuzes - the Senior Zhuz, the Middle Zhuz and the Younger Zhuz. Under Abylai-khan (XVIII century), three Zhuzes recognized him as khan of the entire Kazakh Khanate. After his death, the Khanate again broke up into zhuzes, but already Kenesary khan in 1841 was proclaimed the last general kazakh of the restored Kazakh Khanate [X].<sup>14</sup>

The political system of the Kazakh Khanate was reflected in the system of organization of public authority, the central place in which the institute of khans occupied. The title of khan could be worn only by a direct descendant of Genghis Khan. Khan was elected by the kurultai (meeting of heads of families, military leaders and other representatives of the ruling class) from the number of sultans and performed his functions for life. Khan had his own office - "duan"

<sup>12</sup> Бурханов К.Н. Социально-политическая система Казахского ханства - основа ценностей "Мәңгілік ел" // <http://www.history-state.kz/ru/kazakh-handygy-article12.php>

<sup>13</sup> Бурханов К.Н. Социально-политическая система Казахского ханства - основа ценностей "Мәңгілік ел" // <http://www.history-state.kz/ru/kazakh-handygy-article12.php>

<sup>14</sup> Казахское ханство // <https://ru.wikipedia.org/wiki>



(sofa).

Famous historians Klyashtorny S.G and Sultanov G.I singled out the following functions of the khan's power:

- the right to dispose of the whole territory;
- protection of the country from external enemies;
- the right to declare war and peace;
- the right to negotiate with foreign countries [X, c.354].<sup>15</sup>

The well-known Kazakh jurist-scientist Zimanov S.Z additionally indicates the following functions of the khan's power:

- collection of taxes from the population;
- implementation of domestic and foreign policies;
- ensuring law and order;
- conducting military actions to seize the territory of neighbors and defend their borders [X, c.73].<sup>16</sup>

The modern researcher Allayarov A.Kh adds the exercise of supreme judicial power and the distribution of pastures to the basic functions of the khan [X].<sup>17</sup>

The next important element of the political organization of power in the Kazakh Khanate was the institution of "sultans". All sultans belonged to the estate "torah", that is, Chingizids (descendants of Genghis Khan). It was from their environment that the next Kazakh khans were chosen. Most of the sultans were rulers of uluses (administrative-territorial units), performed diplomatic functions, commanded the troops of their uluses. In their destinies the sultans carried out judicial, civil and military power [X].<sup>18</sup>

The monopoly right of the Chingisid dynasty to the khan's throne of various states led to the fact that they were often invited to the khan's throne to another state. Thus, the Kazakh Chingizid Nur-Ali Abulkhair-uly was twice invited in 1741 and 1745 to the throne of Khan Khiva, and then until 1786 he was the Khan of the Younger Zhuz [X].<sup>19</sup>

An important role in the political system of the Kazakh Khanate was played by the institute of "biys" - the judges and arbitrators elected by the people. Ambassadors were appointed from among them. The khans and sultans listened to the biys' opinion, and solve the most important political and legal issues, the khan was called by the Biys Council, which consisted of the most authoritative biys. Each Kazakh family had its own biya. In addition, there were supreme biys, which represented the whole zhuz.

<sup>15</sup> Кляшторный С.С., Султанов Г.И. Казахстан: летопись трех тысячелетий. – Алма-Ата, 1992.

<sup>16</sup> Зиманов С.З. Политический строй Казахстана конца XVIII и первой половины XIX веков. – Алма-Ата, 1960.

<sup>17</sup> Аллаярова А.Х. Ханская власть в традиционном казахском обществе // <https://articlekz.com/article/7095>

<sup>18</sup> Аллаярова А.Х. Ханская власть в традиционном казахском обществе // <https://articlekz.com/article/7095>

<sup>19</sup> Хлюпин В., Грозин А. Кочевые элиты постсоветской Азии: Трудности модернизации властных структур в новых независимых государствах Центральной Азии // *Азия и Африка сегодня*. - № 4. – 2001. – С.7-12.

After the "biys", the next important institution of power was the institution of "elders" (aksakals), who led the patrimonial divisions of Kazakhs.

The next important institution of power was the institute of "batyrs" - military leaders.

As Zimanov S.Z. mentioned, if we consider the Kazakh Khanate in terms of the means by which it provided the fulfillment of the tasks facing it, one can't help but see that in their system an important role was played by:

1) special groups of people specially singled out from society and specializing in management (sultans, biys, elders);

2) material appendages of power (apparatus, military squads, batyrs with the army);

3) economic sanctions from the authorities and ideological influence on the minds of the population (economic and moral sanctions, propaganda, religion, etc.). [X, c.73].<sup>20</sup>

### 3.2.2 Kazakhstan as part of the Russian Empire

In the 1930s, the process of Kazakhstan's accession to the Russian Empire began - a complex and contradictory process, which was completed only in the middle of the 19th century. The first in 1731 to Russia joined the Junior Zhuz. In 1734, some of the genera of the Middle Zhuz entered Russia. The main regions of north-eastern and central Kazakhstan were incorporated into Russia only in the 20-40s of the XIX century as a result of the military-political actions of the empire.

From this period, the Russian administration began to refer to the Kazakhs as "Kyrgyzs" or "Kirghiz-Kaisaks" in order not to be confused with the Russian Cossacks - the military estate, which was in the service of the Russian Empire. At the same time, the current "Kyrgyz" (the population of modern Kyrgyzstan) the Russian colonial administration called "Kara-Kirghiz" (black Kyrgyz) or "savage Kirghiz".

By the end of the XVIII - beginning of the XIX century in the Kazakh Zhetysu (modern territory of the Almaty region) there was a paradoxical situation of quadruple. In addition to the Kazakhs of the Elder Zhuza, they claimed: Kokand khanate (the argument is the real possession of the terrain), China (the argumentation is historical rights from 1756-1758, as the winners and successors of Dzungaria), Russia (the argument is the oath of allegiance to the Russian citizenship of various leaders of the Senior Juz, beginning from 1793 to the year 1819). The military power of the Russian Empire predetermined the situation in which the question of establishing a western section of the Russian-Chinese border went into the practical plane. The Beijing Treaty was signed in November 1860 and in 1864 the Chuguchag Protocol [X].<sup>21</sup>

<sup>20</sup> Зимапов С.З. Политический строй Казахстана конца XVIII и первой половины XIX веков. – Алма-Ата, 1960.

<sup>21</sup> История Казахстана // <https://ru.wikipedia.org/wiki>

Russia again restored the previously liquidated Khanate power in the Younger Zhuz in 1791. The Russian Emperor Alexander I issued a decree on the introduction of the "Charter on the Siberian Kirghiz" in 1822, which abolished the khan's power in the Kazakh juzes (with the exception of the Bukeyev horde, where the khanate was abolished by Emperor Nicholas I in 1845). Subsequent legal reforms of Russia deprived the local authorities in the person of the nobility and khans of any rights to tax collections and self-government. All these rights and powers were transferred to the Russian authorities, in the competence of which the rights to collect duties from trading caravans [X].<sup>22</sup>

All this led to the fact that in September 1841 representatives of three Kazakh zhuzes elected Kenesary Khan, proclaiming the revival of the single Kazakh Khanate. In 1842-1843, the Bukhara emir Nasrullah Khan also recognized Kenesary as khan of all Kazakhs. The national liberation struggle of the Kazakhs under the leadership of the last independent Kazakh khan, Kenesary, lasted until 1847.

Administrative and political reforms Russia abolished the traditional system of government and gradually began to populate Kazakh lands by Russian settlers. Having gained uncontrolled power over a large part of the population, Russia expanded its colonial policy in almost all spheres [X].<sup>23</sup>

Despite all the measures taken, until the second half of the XIXth century Russia managed the Kazakh juzes through the Foreign Affairs Collegium, and the representatives of Kazakh zhuzes who arrived in Russia were called ambassadors.

The period from 1731 to the second half of the XIX century is characterized by Kazakhstani scientists as a period of protectorate-vassalage relations between the Russian Empire and the Kazakh juzes.

Starting around the 1970s, Kazakhstan completely lost its independence and became part of the Russian Empire.

### 3.2.3 Kazakhstan in the USSR

On August 26, 1920, the All-Russia Central Executive Committee (VTsIK), which was the highest legislative, administrative and controlling body of state power in the Russian Soviet Federative Socialist Republic (RSFSR) in 1917-1937, elected by the All-Russian Congress of Soviets and acted between congresses [X]<sup>24</sup> and the Council of People's Commissars of the RSFSR (government) adopted the Decree "On the Formation of the Kirghiz Soviet Autonomous Socialist Republic" (Kirghiz Autonomous Soviet Socialist Republic) as part of the RSFSR with its capital in Orenburg. The composition of the Kyrgyz Republic includes only the north-eastern and western parts of modern Kazakhstan.

<sup>22</sup> История Казахстана // <https://ru.wikipedia.org/wiki>

<sup>23</sup> Начало присоединения Казахстана к Российской империи // <http://e-history.kz/ru/contents/view/1498>

<sup>24</sup> Всероссийский Центральный Исполнительный Комитет (ВЦИК) // [dic.academic.ru/dic.nsf/ruwiki/828688](http://dic.academic.ru/dic.nsf/ruwiki/828688)

After the national-territorial delimitation in Central Asia in 1925, the Kyr-gyz ASSR was renamed the Kazak ASSR, the capital was moved to the city of Kyzyl-Orda. The territory of modern southern Kazakhstan with the Kazakh population and the Karakalpak Autonomous Region were included in the composition of the Kazakh ASSR, which later was incorporated into the Uzbek SSR in 1936). The Orenburg region was transferred to the RSFSR.

The capital of the Kazakh ASSR was transferred to Almaty in 1927, and the city of Tashkent from the Kazak ASSR was transferred to the Uzbek SSR and became its capital instead of Samarkand. In 1932, the entire Kara-Bogaz-Gol gulf on the Caspian coast was attributed to the Turkmen SSR (the territory of modern northern Turkmenistan), despite the fact that Kazakh tribes lived on its shores. In 1936, the Kazakh ASSR was separated from the RSFSR and transformed into the Kazakh Soviet Socialist Republic.

The part of the territory of southern Kazakhstan, mostly populated by Kazakhs, was transferred to the Uzbek SSR in 1939 and in 1956. In 1963, some of these lands were returned to the Kazakh SSR.

The question of opening the autonomy of Uighurs in the territory of south-east Kazakhstan was discussed in 1949-1950, connected with the revolution in neighboring China. The question of establishing the autonomy of the Germans in Central Kazakhstan was raised in 1978-1979. However, because of the sharp discontent of the local Kazakh population, these issues were closed by Moscow. The first Constitution of the Kazakh ASSR was adopted in 1926, which was based on the Constitution of the RSFSR in 1925. In connection with the adoption of the Constitution of the USSR in 1936, the second Constitution of the Kazakh SSR was adopted in 1937, and in 1978 the third Constitution of the Kazakh SSR, based on the 1977 Constitution of the USSR, was adopted.

During the period of its membership in the USSR, Kazakhstan has grown from an agrarian country to an industrial state, ranking fourth among the 15 Soviet republics in economic power, behind Russia, Ukraine and Belarus.

The system of organizing political power in Soviet Kazakhstan was unified with all other Soviet republics.

### ***3.3 Features of the political system of modern Kazakhstan***

#### **3.3.1 The role of the state in the political system of modern Kazakhstan**

After the collapse of the USSR in December 16, 1991, the Parliament of Kazakhstan proclaimed the state independence of the Republic of Kazakhstan. Kazakhstan, like most other post-Soviet republics, has followed the path of etatism.

The President of Kazakhstan, Nazarbayev N.A., proclaimed the slogan "first economy - then politics", the essence of which was the need to prioritize the economic problems of society, and then - political. In this regard, political reform in Kazakhstan is taking place with a certain time lag from economic re-

forms.

Since 1991, until today, Kazakhstan has moved from a state with a centralized command-administrative system of power to a modern state, which has chosen the path to build a sovereign, democratic, rule-of-law state.

The principle of gradualness can be called the main principle, taken as a basis for reforming the political system of Kazakhstan.

The transition to democracy began in the most difficult conditions of the systemic social and economic crisis, which resulted in a decline in industry, hyperinflation (2600% per year), a sharp decline in the standard of living of the population. The reform of the political system of Kazakhstan can be represented in the form of the following stages:

1) 1990 - 1993 years – destruction of the party political system inherited from the USSR;

2) 1993 – 1995 years – search for a model of the political system of Kazakhstan, specific features of the country. Changes in the political system of society were enshrined in the first Constitution of independent Kazakhstan in 1993: consolidation of the principle of separation of powers: legislative, executive and judicial bodies were first defined as independent branches of state power. In addition, the first alternative elections to the Parliament were held, new bodies of representative power in the field - maslikhats were formed;

3) 1995 - 1998 years – the adoption of the new Constitution of 1995, which legally enshrined the transition from a mixed parliamentary-presidential to a presidential form of government, from unicameral to bicameral Parliament;

4) 1998 – 2007 years – the growth of the democratic component of the country's political system. Amendments were made to the Constitution, which expanded the powers of the Parliament;

5) 2007 – 2017 years – further strengthening of parliamentarism. Regular changes to the Constitution introduced parliamentary elections only on party lists;

6) March 2017 years – the introduction of the next changes in the Constitution, transferring the next block of presidential powers to the Parliament. Preparing the soil for the transition (return) to a mixed, parliamentary-presidential republic.

The state so far leaves behind all the levers of influence on the political system of society, given the complexity of the period of political transit.

### 3.3.2 Parties in the political system of modern Kazakhstan

Taking into account that since 2007, according to the changes made to the Constitution, elections to the Parliament are carried out only on party lists, the role of political parties is growing.

However, in practice, there is no political party that could challenge the Nur Otan party of power, for which (taking into account the administrative resource), over 90% of voters vote in any elections.

As the latest elections to the Parliament of Kazakhstan showed, no party is able to overcome the 7% barrier for delegating its deputies to the Parliament. In addition to the Nur Otan party, all other parties are decorative. Opposition parties were once subjected to persecution and harassment. The reality is that most of the politically indifferent population does not support opposition parties.

Some researchers believe that these are the costs of the period of political transit, which will gradually become obsolete.

#### **4. ORIGINS OF THE LEGAL SYSTEM OF KAZAKHSTAN: DEFINITIONS, HISTORY, MODERNITY**

##### **4.1 Origins of the legal system of Kazakhstan: definitions**

For the accuracy and adequacy of understanding the terms used, it is necessary to determine their definitions. For this, it is necessary to distinguish such similar concepts as "legal system", "system of law" and "system of legislation". At the same time, we proceed from how these terms are understood in Kazakhstan and other post-Soviet states.

The concept of the legal system is often used to characterize the historical, legal and ethno-cultural differences between the rights of different states and peoples [X].<sup>25</sup>

The legal system is a set of interrelated, coordinated and interacting legal means regulating relations in society, and characterizing the level and features of its legal development. It always has a concrete content and specific form, due to which the legal system of the state is recognizable. In the Western theory of law, the concept of a legal system is used primarily in comparative jurisprudence (comparativistics) [X].<sup>26</sup>

The legal system in the broadest sense is the legal organization of society, the totality of agreed and interrelated legal means, institutions, establishments existing and functioning in the state through which state power influences public relations and human behavior. Methods of such influence can be the consolidation, regulation, permitting, binding, prohibition, persuasion, coercion, incentives, restrictions, prevention, sanction, etc. In this sense, the legal system can be considered as a set of 3 elements: 1) the norms of law, legal principles and institutions (normative element); 2) legal institutions (organizational element); 3) legal ideas, views, traditions of legal culture (ideological element). At the same time, the concept of "system of law" acts as one of the parts of the concept "legal system". The notion of a legal system in this sense is logically broader than the concept of law in the objective sense, they are related as a whole and part [X].<sup>27</sup>

<sup>25</sup> Правовая система // <https://ru.wikipedia.org/wiki>

<sup>26</sup> Правовая система // [http://elementary\\_law.academic.ru/673](http://elementary_law.academic.ru/673)

<sup>27</sup> Правовая система // [http://encyclopediya\\_prava.academic.ru/4444](http://encyclopediya_prava.academic.ru/4444)

There is also more precise approach to the notion of the legal system: it should be distinguished from the elements covered by the notions "state" and "political system" (bodies, institutions, structures). In this case, the concept of the legal system includes 4 groups of interrelated elements, the loss or weakening of one of which leads to violations of inter system connections and a decrease in the effectiveness of the entire legal system:

A) legal understanding (legal views, legal conscience, legal culture, legal theories, concepts, legal nihilism);

B) law-making (as a cognitive and procedurally designed way of preparing and adopting laws and other legal acts);

C) legal array (a structured set of officially established and interrelated legal acts);

D) law enforcement (ways to implement legal acts and ensure legality) [X].<sup>28</sup>

We apply the notion of a legal system in the latter sense.

The system of law is the internal structure of the structural elements of law. On the other hand, it is a set of norms, institutions and branches of law in their interrelationship, which includes such basic components as, rule of law, institutions (sub-institution), law, branch (sub-sector) law [X].<sup>29</sup> The system of law is part of the legal system.

The system of legislation is a hierarchical and coordinated set of normative legal acts related and interacting with each other and regulating social relations. The system of legislation is a holistic and at the same time structured education that develops in relation to the branches of law (in this case, the branch of law coincides with the branch of legislation) or to functions and spheres of public administration. The structure of the legislation is specific. Its primary element is a legislative act (law). In turn, legislative acts are united by institutions, sub-sectors and branches of legislation [X].<sup>30</sup>

## 4.2 Origins of the legal system of Kazakhstan: history

### 4.2.1 Law in the Kazakh Khanate

The norms of "adat" (the customary law of the Kazakhs) and, to a lesser extent, sharia (Muslim law) starting from the 15th century, operated on the territory of Kazakhstan.

The customary right of the Kazakhs absorbed all the wealth of the centuries-old ancient Turkic-speaking nomadic civilization, and therefore possesses vitality in the original, ancient form [X].<sup>31</sup>

<sup>28</sup> Правовая система // [http://encyclopediya\\_prava.academic.ru/4444](http://encyclopediya_prava.academic.ru/4444)

<sup>29</sup> Система права // <https://ru.wikipedia.org/wiki>

<sup>30</sup> Система законодательства // [http://elementary\\_law.academic.ru/344](http://elementary_law.academic.ru/344)

<sup>31</sup> Зиманов С.З. Древний мир права казахов и его истоки // Древний мир права казахов. Материалы, документы и исследования. В 10 томах. 2-е изд. Глав. ред. С.З. Зиманов. 1-й т. Алматы. Жеті Жарғы, 2004. - С.40-53.

Kazakh law to the greatest extent absorbed the features and democratic values of the Great Steppe nomads (Desht-i-Kipchak), and it can be called the right of "Steppe Democracy". Its distinctive feature was the recognition of the supremacy of the judiciary in public and political life. It was significantly different from the so-called "eastern", tyrannical forms of justice and punishment in the content-institutional plan during the periods of autochthonous development. It did not know the criminal prosecution, imprisonment and prisons (zindans), self-punishing punishments and insulting the person's orders. All delicts and offenses were considered civil and led to property liability. The death penalty was used very rarely and was considered an exclusive prerogative of the general meeting of the people (ulus, tribal association). In the customary law of the Kazakhs there were norms on the right of ownership (family, patrimonial, private), on inheritance, on contracts, on the rights of family members, etc. Of particular importance were such codified monuments of Kazakh customary law as the Code of Kasim Khan, the Code of Yesim Khan and the "Zhetyi zharyy", compiled by Tauke Khan. They reflected the most important norms of Kazakh customary law [X].<sup>32</sup>

The judicial power was in the hands of the biys elected by the people. The trial was of an adversarial nature.

#### **4.2.2 The right of Kazakhs in the Russian Empire**

After Kazakhstan joined the Russian Empire, the Russian government pursued a policy of non-interference for almost a hundred years and recognized Kazakh customary law as a source of law [X].<sup>33</sup>

And only after the implementation of political and administrative reforms in the Kazakh society began the process of reforming customary law. This process began with the adoption of the Charter of the Siberian Kirghiz in 1822. In the second half of the XIX century, at the congresses of the biys began to be accepted "Erezhe" - collections that contained both the norms of customary law and the legal norms of the Russian Empire.

At the beginning of the XIX century. In Russia began an active process of codification of law, including civil law, culminating in the adoption in 1822 of the Code of Laws of the Russian Empire. Action of the Code of Laws of the Russian Empire was extended to the territory of Kazakhstan. Thus, after joining Russia in Russia, there were three groups of norms:

- norms of Kazakh customary law;
- norms of customary law of Kazakhs in combination with the norms of Russian law;
- norms of the Russian legislation [X].<sup>34</sup>

<sup>32</sup>

<sup>33</sup> Кенжалиев З.Ж. Даулетова С.О. Казахское обычное право в условиях Советской власти (1917-1937 гг.). - Алматы, 1993.

<sup>34</sup> Сулейменов М.К. Система права и система законодательства Казахстана: выбор пути // [http://online.zakon.kz/Document/?doc\\_id=31102841](http://online.zakon.kz/Document/?doc_id=31102841)



Gradually, as the integration of Kazakh society into Russian society, the ratio of these three groups changed due to the strengthening of the role of Russian law in regulating civil relations in Kazakhstan [X, c.52].<sup>35</sup>

#### 4.2.3 The legal system of Soviet Kazakhstan

After the October Revolution of 1917 and the establishment of Soviet power in the Kazakh steppe, the policy of total eradication of Kazakh customary law began to be actively pursued. If in the first years of Soviet power customary law was somehow recognized, it was already in the late 1930s that it turned from an official source of law into customs not sanctioned by the state [X].<sup>36</sup>

Some norms of the customary law of the Kazakhs (adat) are still used in remote rural regions of Kazakhstan (for example, the legal custom of emigration, when the wife of the elder brother comes out after his death for her husband's younger brother). From the norms of the Sharia, religious marriages are still sometimes found in mosques, as a rule, to register a marriage with a second or third wife. Legislatively, these norms are not recognized.

The legal system of Soviet Kazakhstan was an integral part of the legal system of the USSR. During this period, three Constitutions of Kazakhstan (1926, 1937, 1978) were adopted. Separate norms of the Constitution of the Kazakh Soviet Socialist Republic of 1978 acted before the adoption of the Constitution of the Republic of Kazakhstan in 1993.

It is possible to note separately the process of codification of civil legislation, a brief survey of which was given in the work of the famous Kazakh scientist-civilian M.K. Suleimenova [X].<sup>37</sup> The first Civil Code of the RSFSR of November 11, 1922 acted on the territory of the Kyrgyz (Kazakh) Autonomous Soviet Socialist Republic (Kazakh ASSR), formed on 26<sup>th</sup> August, 1920. After the creation of the RSFSR Civil Code of 1922 on the basis of the 1936 Constitution of the USSR in the territory of Kazakhstan.

The second codification of Soviet civil law was carried out in 1961. It was based on the delimitation of competence between the USSR and the Union republics. To this end, on 8<sup>th</sup> December, 1961, the Supreme Soviet of the USSR adopted the "Fundamentals of Civil Legislation of the USSR and Union Republics." On the basis of this law in the union republics, civil codes were adopted. The Civil Code of the Kazakh SSR was adopted by the Supreme Council of KazSSR on 28<sup>th</sup> December, 1963. A new stage in the development of civil legislation within the USSR came in 1985, with the beginning of perestroika, and ended with the adoption on 31<sup>st</sup> May, 1991 of the "Fundamentals of Civil Legislation of the USSR and the Republics" approved by the Supreme Soviet of the USSR.

<sup>35</sup> Карандашева А.А. История договорного права Казахстана XV-XX в.в. Дисс. ... канд. юрид. наук. - Алматы, 2004.

<sup>36</sup> Сулейменов М.К. Указ. соч.

<sup>37</sup> Сулейменов М.К. Указ. соч.

The process of restructuring in Kazakhstan culminated in the adoption on 25<sup>th</sup> October, 1990 of the Declaration on State Sovereignty of the Kazakh SSR. The declaration laid new principles for the correlation of union and republican legislation. It proclaimed the priority of the laws of the Kazakh SSR over the laws of the USSR, the right of the republic to suspend on its territory the laws of the USSR that violate the laws of the Kazakh SSR.

#### **4.3 Features of the legal system of modern Kazakhstan**

The process of the collapse of the USSR and the acquisition of state independence by Kazakhstan ended with the adoption of the Law "On State Independence of the Republic of Kazakhstan" on 16<sup>th</sup> December, 1991, which served as the constitution along with the Constitution of the Kazakh SSR in 1978.

The Armed Forces of the Republic of Kazakhstan adopted the first post-Soviet Constitution of Kazakhstan, which completed the establishment of the sovereignty of the republic on 28<sup>th</sup> January, 1993. The 1993 Constitution opened the door for positive dynamics of the development of Kazakhstan society, abandoning one-party political rule, a monopoly economic system, the ideology of historical violence.

A new Constitution of Kazakhstan was adopted on 30<sup>th</sup> of August 1995, the main reason for which was the absence of a constitutional mechanism for resolving possible contradictions between the legislative and executive authorities [X],<sup>38</sup> As well as the inconsistency of the model of the mixed, parliamentary-presidential form of government to the requirements of forced reform of the economy and the political system. In the new Constitution, the President was excluded from the system of checks and balances and placed above all three branches of power - legislative, executive and judicial.

Kazakhstan was the only country after Russia that extend to its territory the operation of the "Fundamentals of Civil Legislation of the USSR and the Republics" approved by the Supreme Soviet of the USSR on May 31, 1991. Kazakhstan also took an active part in the development of the Model Civil Code of the CIS (Commonwealth of Independent States), and on its basis adopted the Civil Code of the Republic of Kazakhstan (General part) on December 27, 1994. The Criminal Code of Kazakhstan was also adopted on the basis of the model Criminal Code of the CIS countries, developed by the CIS Inter-parliamentary Assembly. This also applies to many other legislative acts. Therefore, the legal system built in Kazakhstan and Russia is of the same type, which meets the foreign policy of Kazakhstan, aimed at tight integration of the post-Soviet states.

<sup>38</sup> Кубеев Е.К. Конституционный строй Республики Казахстан. - Караганда: Болашак-Баспа. - 1998. - 271 с.