



## The Evolution of Kazakhstan's Legal Framework: Blending Islamic, Roman, and Soviet Traditions into a Modern Legal System

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**Abstract:** Kazakhstan, a transcontinental republic in Central Asia and Eastern Europe, boasts a rich blend of cultures and a legal system deeply rooted in its complex history. Following its declaration of independence in 1991, Kazakhstan adopted its Constitution in 1995 through a nationwide referendum. This Constitution forms the bedrock of its legal framework, blending elements of Islamic, Roman, and Soviet laws into a modern legal system. Kazakhstan's legal code is comprehensive and includes constitutional, administrative, civil, criminal, labor, and taxation laws, with significant amendments reflecting political and social reforms. The bicameral parliament, comprising the Senate and the Majilis, governs the legislative functions, while the President is the head of state, ensuring the implementation of domestic and foreign policies. The judiciary is independent, with the Supreme Court at its helm, supported by local courts. The Constitutional Council, tasked with ensuring the supremacy of the Constitution, plays a pivotal role in interpreting laws. Significant amendments over the years, particularly in 1998, 2007, 2011, and 2017, have shaped Kazakhstan's legal landscape, enhancing parliamentary authority, protecting human rights, and establishing a special legal regime in the capital. This paper provides a comprehensive overview of Kazakhstan's evolving legal system, its key institutions, and the significant reforms that have shaped its governance and justice system.

**Keywords:** Kazakhstan Legal system, constitutional amendments, governance, legal reforms.

### 1. Introduction

The 'Republic of Kazakhstan' is a pancontinental republic situated in 'Central Asia' and 'Eastern Europe' with 2.7 million square kilometers covered area and population of roughly 18 million people (Republic of Kazakhstan, n.d.). It is a Muslim country with 70% Muslim population. Prominently 'Kazakh', 'Russian', 'Uyghur', 'Ukrainian', 'Uzbek', and 'Tatar' people live in Kazakhstan and 63% of the population is Kazakhs. The official language of the country is 'Kazakh' and 'Russian language' is also used in official documentation. Kazakhstan is the 9th largest country in the world in terms of covered area. It shares a border with Russia on the northern side, China, Kyrgyzstan, Uzbekistan, Turkmenistan, and a substantial portion with the Caspian Sea.

The current legal system of Kazakhstan is "based on their 'Constitutional Law' which was adopted in 1991 "On State Independence of the Republic of Kazakhstan" and is considered central to the progress of their country" (Government of Kazakhstan, 1991). Then in 1995, the 'Constitution' of the 'Republic of Kazakhstan' was approved through a countrywide 'referendum'. The 'legal system of Kazakhstan' is based on characteristics from with 'Islamic law' and 'Roman law' (Government of Kazakhstan, 1995). Earlier till 1920 predominantly the 'Islamic Law' was enforced including the 'customary law' related to their traditions. Meanwhile, the legal system

was impacted by 'Roman Law' from 'Soviet law' and its 'socialist principles'. Presently the 'Kazakh legislation' is 'codified' and the legislative and further standardized 'legal acts' could be characterized as 'constitutional', 'administrative', 'civil', 'criminal', 'labor laws', 'taxation and customs' and further substantial or 'procedure laws.'(Sabirov, Konussova, & Alenov, 2019) In pursuance of the 'Article 4' of the 'Constitution of the Republic of Kazakhstan', "the operative laws of the 'Republic of Kazakhstan' are the requirements of the Constitution, laws fulfilling therewith, further regulatory legal acts, global contractual and other obligations of the 'Republic of Kazakhstan' and supervisory resolves of the 'Constitutional Council' and the 'Supreme Court of the Republic of Kazakhstan'".(CIS Legislation, n.d.)

The classification of the foundations of law in Kazakhstan is adjudicated by the Law of the 'Republic of Kazakhstan' on 'Legal Acts of 6 April 2016'. In further pursuance to 'Article 10' of the Law, "the 'Constitution of the Republic of Kazakhstan' has the topmost lawful permissible power. Subsequently, "the Constitution and it's all governing legal actions are based on a firm grading of the foundations of law that comprises of the 'Constitution of the Republic of Kazakhstan' the 'Constitutional laws and rulings', 'International agreements', 'Codes', 'Usual laws' and 'Supplementary protocols', and regularizing declarations".(CIS Legislation, n.d.)

### **1.1 Problem Statement**

Kazakhstan's legal framework, which merges Islamic, Roman, and Soviet traditions to form a distinctive post-independence system, created a challenging environment for a transition to a modern legal system. The adoption of Kazakhstan's 1995 Constitution provided the structure for the country's governance, but the legal system established is far from complete. Frequent amendments to laws raise questions about the legitimacy of the amendments and the reliability of legal institutions. This research seeks to examine the evolution of Kazakhstan's legal framework, its advantages and challenges, and investigate the opportunities that exist within the constitutional development process.

#### Research Objectives

- a) Undertake an analysis of Kazakhstan's legal system structure evaluating constitutional, administrative, and judicial structures.
- b) Examine the impact of constitutional amendments on Kazakhstan's governance, human rights, and judicial reforms.
- c) Evaluate the influence of Islamic, Roman, and Soviet legal traditions in shaping Kazakhstan's contemporary legal system.
- d) Analyze the significance of international agreements in shaping Kazakhstan's domestic law and legal reforms.

### **2. Research Methodology**

This research performs a qualitative analysis of Kazakhstan's legal system utilizing a doctrinal approach, while examining primary legal sources such as the Constitution, Constitutional, national laws and international commitment, as well as secondary sources. It performs document analysis of legislative docus and court decisions, compares this material with Islamic and Roman and Soviet legal control systems, and employs a historical approach to understanding legal heritage of Kazakhstan and the developing reforming legal system in post-independence region. Critical legal interpretive framework underlies the analysis of impacts on elements associated with governance, human rights, and determinations of rule of law. A synthesis of the legal literature and government reports provides a coherent sense of the Kazakhstan legal framework.

#### **2.1 Significance of the Research**

The Significance of this research is in its attempt to address the problem of legal evolution in Kazakhstan that is conditioned by Islamic, Roman and Soviet laws. Through a historical approach in analyzing and critiquing the political evolution and constitutional changes in Kazakhstan, this research broadens the understanding of these different legal influences towards a development of a modern law. It also contributes to the understanding of the role of the foreign treaties in the domestic law and reforms as well as the relations among law, political and human rights contexts in Kazakhstan. Such research does not only reasonably interpret historical and legal realities, but also presents design solutions in order to improve the protection of the rule of law, democratic processes and civil liberties in the legal system of Kazakhstan.

### 3. Literature Review

The legal system of Kazakhstan is considered to be a remarkable synthesis of various legal systems based on the many social, historical, and cultural aspects of the country. Legal development in this country has followed the principles of Islamic law, Roman law, and Soviet law, where we now have a legal system that incorporates outdated ways with modern expectations of governance, human rights, and the rule of law.

Kazakhstan's legal structure before the Soviet influence was thoroughly Islamic and traditional customs. Shari'ah law, and more generally, Islam dominantly influenced and guided legal activity within Kazakhstan for many centuries (Ibrayeva&Nurgaliyeva, 2018). These regulations did not differ much in content as they regulated matrimonial relations, sucesory and contractual rights and obligations, all under the aegis of religious contours. This pre Soviet model coexisted with the customary law among the Kazakhs that was mostly unwritten and communally managed and governed (Ospanova, 2017). Some of these customs were interrupted by Soviet rule which helped to integrate Roman legal principles and socialistic ideas into the existing law and practice of Kazakhstan.

The range of events that took place in the territory of Kazakhstan during the Soviet period made cardinal structural changes to the legal system. The Soviet model of law was characterized by the ideas of monopoly power, the state ownership and total control of the communist party. Policies were legislated, and Islam and customary customs were heavily discouraged (Kalinichenko&Petrushenko, 2016). The adoption of roman sources while developing civil law in Kazakhstan was almost the very first and highly pronounced upside of roman law in Kazakhstan's civil law. The Soviet system also imposed stringent controls over individual rights and freedoms, prioritizing the needs of the collective over the individual. While this system established a strong legal foundation for governance, it also limited political and legal pluralism.

The dissolution of the Soviet Union in 1991 represented a major point for Kazakhstan as an independent state you can turn to your writing and write essay on this. After independence, the Constitution of Kazakhstan (through a national referendum) was adopted in 1995. Islamic, Roman and Soviet laws. The 1995 Constitution has stood as the main legal document of Kazakhstan since its introduction (Kassenova, 2021). Kazakhstan is a civil law country, while Roman law influences including codification and centralization are significant. Nonetheless, the post-independence legal system bears telltale signs of both Kazakhstan's Islamic legacy and its Soviet history as exemplified by constitutional provisions that emphasize national unity, social justice and state sovereignty.

Kazakhstan has repeatedly updated the provisions of its Constitution, depending on political and social processes. Important changes that have been made respectively in 1998, 2007, 2011 and following-2019 are key for the development of a legal framework existing in the country (Nazarbayev,2019) The reforms streamlined the parliamentary role, strengthened human rights and rule of law protections... The 2007 amendments, for example, consolidated the role of parliament and political parties in governance while the amendments from 2017 expanded decentralization initiatives and created a special legal system based on English law (Dosmukhamedova 2020). These reforms mark Kazakhstan's gradual step towards a more democratic and legal state — as far as possible in the framework of strong presidential vertical.

Yet, against such a background of development in legislation, the Kazakhstani legal system still feels the effects of difficulties in judicial independence and protection of human rights. International observers raise a number of concerns on the centralization of power within the presidency and restrictions of political freedoms (Human Rights Watch, 2021). Nevertheless, Kazakhstan's legal framework has been constantly revised and updated due to both domestic reforms and international demands for its adaptation to the standards of international law.

The legal system in Kazakhstan represents both historical legacies and modern reforms. It integrates Islamic, Roman, and Soviet legal traditions into one coherent legal framework—one that fosters governance, economic development, and social order. Though challenges do remain, the ongoing constitutional amendments and legal reforms show the commitment of Kazakhstan to its continuing refinement of its legal system in order to better meet the needs of its citizens and those required by the international community.

#### 3.1 Constitution of the Republic of Kazakhstan

The first Constitution of the state after the collapse of Soviet Union was adopted by the Supreme Council of The Republic of Kazakhstan in August, 1993. The first one was replaced by the present one with the help of a non-provincial referendum in the entire Sri Lanka in 1995. There were translated editions as well in the English, Russian and Kazakh languages of the Constitution. Members of Congress filed bills to amend it severally with major changes made 1998, 2007, 2011, 2017 & 2019. The Constitution envisages a presidential system of the

government; nonetheless, this continues to demand frequent legislative changes that are needed for conformity with politics and concepts of diversification, as well as the entrenchment of the standard rights of man.

### **3.2 Amendments**

In reference to the constitution of the Republic of Kazakhstan the parliament passed on the 7th of October, 1998 the "Law on Amendments and Complements to the Constitution of the Republic of Kazakhstan" This amendment was on the presidential term, age limits, succession in case of death or resignation of the President and the terms of service of the members of the Majilis and the Senate. On May 16, 2007 the President of Kazakhstan Nursultan Nazarbayev put several constitutional amendments in the parliament session. These included: reforming the Parliament with the intention of increasing its powers, devolving and decentralising powers and duties, and prospect of cutting the presidential term of office from seven years to five years. The number of members in the Majilis has grown from seventy-seven to one hundred and seven, the Senate expanded from thirty-nine to forty-seven members. The field of political struggle was expanded when political parties were given a greater position in the legal field and the model of local self-government was developed. Departments of judiciary armed forces and civilian structures were also changed with respect to the protection of human rights and international agreements. Less changes were made on February 2, 2011, amending the process of electing the President, now the President is able to call an early election with Constitutional Law. On March 2, 2017, other changes were made which included introducing a special legal status and a court in Astana based on English and Welsh law. This period also witnessed some changes meant for withdrawal of citizenship to anybody involved in terrorism or acts of hostility against the state. Others were measures related to resignation of the Government after the formation of a new Majilis and protection of privileges of the First President of Kazakhstan, Nursultan Nazarbayev. Early in 2019, an amendment of the Constitution saw the capital's name earlier known as, Astana change to this new name, Nur-Sultan.

### **3.3 Constitutional Laws**

Considering the context of legal development for the state governance, the official source which deals with monitoring of legal acts is "Adilet", where the user can find several articles concerning the constitutional law in Kazakhstan.

#### **3.1 State Order**

According to article 3 of the Constitution of the Republic of Kazakhstan, state power in this country is created and realized according to the Constitution and laws with the division of powers between the legislative, executive, and judicial branches with monitoring authorities. The third branch of power is the legislative branch with the participation of the Parliament, Senate, and Majilis. This branch comprises the Government, state committees, and central and local executive authorities. The judicial branch entails the supreme court and other regional and district courts. Thus, according to the Constitution, the Constitutional Council is an independent body that does not belong to the judicial, executive or legislative branch of the state. Oddly, the presidency is not considered a part of any one of these branches.

#### **3.2 The Presidency**

The President of the Republic of Kazakhstan is the highest official in the state power thus he is the head of the state. The President establishes the basic trends in domestic and foreign politics and is responsible for external and internal representation of Kazakhstan. According to Article 40, the President is supposed to exercise state control over divisions of state power, and guarantee the authority of the public. Presidential elections are conducted by a general vote and the frequency is after every five years. Article 42 says that there are certain limitations to the presidency including two terms but this does not apply to the First President, Nursultan Nazarbayev.

#### **3.3 Parliament**

According to Article 50 of the Constitution, the bicameral Parliament of Kazakhstan is the highest legislative chamber, which consists of the Senate and Majilis. The Senate has two deputies representing each region, major city, and capital city. After the augmentation in August 2007, the Senate consists of different members who can be appointed by the President for 15 senators. The term of office is six years and each Senate deputy is directly elected. The Majilis has a total of 107 deputies with ninety-eight directly elected from the electoral districts and nine members are elected by the Assembly of the people of Kazakhstan. The shuttle is that Majilis deputies are

elected for a term of 5 years. Legislative functions include presenting constitutional changes, approving the budget, discussing and making conclusions on government reports, as well as considering measures connected with defense and security.

### **3.4 The Government**

The Government guides the executive functions, oversees the executive authorities, and controls their actions. It is responsible to the President and Parliament. According to Article 66, the Government is involved in the formulation of socio-economic policies, provision of support to defense, security and maintenance of public order, management of state properties, development and foreign policies.

### **3.5 Constitutional Council**

The Constitutional Council that is different from the judiciary is tasked with protection of the Constitution. It has seven members, including the Chairman appointed by the President of Turkmenistan and other members appointed by the President of Turkmenistan and the chairs of the Senate of Turkmenistan and the Majilis of the Republic of Kazakhstan. Former Presidents are lifetime members of this organization. The Council has the following main functions of reviewing laws to determine the extent to which they are constitutionally compliant and, where necessary, supervising the implementation of treaties and other international instruments to ensure they meet specified constitutional requirements. It also interprets the Constitution and plays the role of a dispute resolution mechanism.

### **3.6 Judicial Authority**

The judicial system according to Article 75 comprises of the Supreme Court and other subordinate courts. The Supreme Court deals with civil, criminal, and other cases under the general jurisdiction and supervises the activities of other courts. Article 77(3) also provides for the right to a fair trial and this right includes the right to the presumption therein of innocence and also protection from being tried more than once for the same offence. The judiciary is composed of the judges who are elected by the Senate after having been recommended by the Judicial Council.

## **5. Conclusions**

The country's legal framework over the last two decades since independence in 1991 has moved from that of a Soviet era governed state to what Mr Fay The 1995 Constitution, based on a combination of Islamic (outwardly secular), Roman and Soviet laws proposed as the operating framework for governance appropriate to the historical and cultural context. This laid the foundation for a modern legal system; however, it contains several unique features to address Kazakhstani needs.

This framework has produced substantial movement in the key legal institutions. The two-chamber parliamentary system created by the 1995 Constitution consists of a Senate and Majilis, intended to help ensure both regional and national representation. Revisions over the years have made legislation more efficient and responsive. Initially the locus of governance, the Presidency has been eroded and bled slowly to assist in greater parliamentary oversight with its powers being shared between it and democratic duties. An important component of this transformation has been reforming the judiciary to reinforce its independence and transparency, with initiatives that even include creating a Constitutional Council whose mission will be ensuring respect for human rights in accordance with national laws as well international conventions.

However, Kazakhstan continues to encounter challenges in fully implementing democratic principles and securing human rights. Work will be needed to guarantee the success of reforms, protect the independence of judges and civic rights. With Kazakhstan in the process of gradually harmonizing its legal system with global norms, managing these risks will be critical to how it evolves as a multi-party-political nation and integrates internationally.

### **5.1 Recommendations**

Given the historical abuse of law and politicization in Kazakhstan, solidifying independence among its judiciary must as such precede any radical orientation toward Western ideals. This entails pushing reforms aimed at bringing more transparency, reducing the executive's control over the judiciary and efficiency in mechanisms for judicial accountability. Measures to adopt are the establishment of transparent guidelines for the selection and dismissal of judicial office holders, independent oversight bodies over their work as well as keeping legal

proceedings free from political intervention to guarantee public trust in justice systems.

Kazakhstan must build a more inclusive and representative system by developing its democratic institutions. These include encouraging political pluralism, enhancing representation in both the Senate and Majilis; improving coverage of electoral legislation to guarantee a level playing field for all parties. This will further strengthen political parties and enhance the transparency as well as accountability of parliamentary activities that in turn lead to all-inclusive representation.

Among other things, stronger human rights protections. They must reconsider the laws of revocation and counterterrorism against their violation to basic rights or civil liberties in Kazakhstan. Among safeguards that may work is the establishment of independent human rights commissions, often with a greater role for civil society monitoring. Moreover, reinforcing governance leveraging decentralisation and participative mechanisms enables more locality-oriented local governments to cater for community-driven specific needs. Compliance with international legal norms and the development of educational programs to assist increased civic engagement will facilitate future democratic integration within Kazakhstan.

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