



Prerequisites for the Development of the Rule of Law in Kazakhstan

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Abstract

As the world experience proves, one of the prerequisites for the formation of the rule of law is the existence of civil society institutions. And it is directly proportional to the level of development of democracy. The formation and development of civil society in the Republic of Kazakhstan will pave the way for further deepening of the democratization process in the country. Today, many democracies aspire to be the rule of law. The rule of law is a state whose main goal is to protect the rights of the individual and society as a whole. Here the person, his life, rights and freedoms are the main values. In today's global world, the concept of the rule of law is a universal ideal for the formation of the relationship between the state, society and the citizen. The essence of the idea of the rule of law is its consistent democracy, the consolidation of the sovereignty of the people as a source of power, the subordination of the state to society. The main thing in the idea of the rule of law is the connection with the law, which is a guarantee of protection of citizens from violence and oppression of the state and its bodies. Considering all this, the relevance and further research of this problem is of great interest among citizens interested in the country's politics. In the article, the authors studied the historical stages of the development of the rule of law from the point of view of antiquity to modern thinkers.

Keywords: The Rule of Law, Constitutional Government, Civil, Political and Economic Rights and Freedoms

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Kazakistan'da Hukuk Devleti Geliştirilmesinin Ön Koşulları

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Öz

Dünya deneyiminin gösterdiği gibi, hukuk devletinin oluşumunun ön koşullarından biri sivil toplum kurumlarının mevcudiyetidir. Bu, demokrasinin gelişim düzeyi ile doğrudan orantılıdır. Kazakistan Cumhuriyeti'nde sivil toplumun oluşumu ve gelişimi, ülkede demokratikleşme sürecinin daha da derinleşmesine yol açmaktadır. Bugün birçok demokrasi hukukun üstünlüğüne yöneliyor. Hukuk devletinin temel amacı bireyin ve toplumun bir bütün olarak haklarını korumak olan bir devlettir. Buradaki temel değerler insan ve onun hayatı, hakları ve özgürlükleridir. Modern küresel dünyada hukuk devleti kavramı, devlet, toplum ve vatandaş arasındaki ilişkilerin oluşumu için evrensel bir idealdir. Hukuk devleti fikrinin özü, onun tutarlı demokrasisinde, bir güç kaynağı olarak halkın egemenliğini güçlendirmede, devletin topluma boyun eğmesinde yatmaktadır. Hukukun üstünlüğü fikrindeki ana şey, vatandaşların devlet ve organları tarafından şiddet ve baskıdan korunmasının garantörü olan hukukla bağlantıdır. Bütün bunlar göz önüne alındığında, bu sorunun aciliyeti ve daha fazla araştırılması, ülkenin politikasıyla ilgilenen vatandaşlar arasında büyük ilgi görmektedir. Makalede yazarlar, hukuk devletinin gelişiminin tarihi aşamalarını, antik çağdan modern düşünürlere kadar uzanan bir perspektiften incelediler.

Anahtar Kelimeler: Hukukun Üstünlüğü, Anayasal Hüküm, Sivil, Politik ve Ekonomik Haklar ve Özgürlükler.

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Предпосылки развития правового государства в Казахстане

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Резюме

Как показывает мировой опыт, одной из предпосылок формирования правового государства является наличие институтов гражданского общества. Это прямо пропорционально уровню развития демократии. Формирование и развитие гражданского общества в Республике Казахстан открывает путь к дальнейшему углублению процесса демократизации в стране. Сегодня многие демократии стремятся к верховенству закона. Правовое государство-это государство, главной целью которого является защита прав личности и общества в целом. Главные ценности здесь - человек, его жизнь, права и свободы. В современном глобальном мире концепция правового государства является универсальным идеалом для формирования отношений между государством, обществом и гражданином. Суть идеи правового государства заключается в его последовательной демократии, в укреплении суверенитета народа как источника власти, в подчинении государства обществу. Главное в идее верховенства закона - связь с законом, который является гарантом защиты граждан от насилия и угнетения со стороны государства и его органов. Учитывая все это, актуальность и дальнейшее исследование данной проблемы вызывает огромный интерес среди граждан интересующееся политикой страны. В статье авторы изучали исторические этапы развития правового государства начиная с точки зрения с античности до современных мыслителей.

Ключевые слова: Верховенство Закона, Конституционное Положение, Гражданские, Политические и Экономические Права и Свободы.

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Basic provisions

The rule of law is characterized, first of all, by the fact that all state bodies, officials, public associations and citizens are subject to their own legal rules, and the main principle is the rule of law. The rule of law means, first of all, the rule of law. The main, important, basic public relations are regulated by law. Through the rule of law, the principles of the rule of law and the spirit of law are introduced in all political institutions. Thus, the authenticity and inviolability of the rights of citizens, their reliable legal status, legal protection are ensured. The rule of law is, first of all, a constitutional state in which the ideas of the rule of law are realized. The basic principles of the constitutional structure, the most important areas of development of society, its main ideas are enshrined at the constitutional level. The Constitution is the center of the legal system. On this basis, the mechanisms of legality in the rule of law are formed.¹

The rule of law is a form of government with a constitutional order, a developed legal system and an effective judiciary. The rule of law is a state that considers the separation of powers, the independence of the judiciary, the rule of law, the prevention of violations of citizens' rights by the state and compensation for the damage caused to it by public institutions as its main institutions. The idea of the rule of law has a long history. It dates back to ancient times, from Aristotle till modernity. Many researchers gives their own ideas, including German classical thinker - Kant.²

Formation of views on the rule of law in the modern world, the adoption of the doctrine of natural law, the emergence and strengthening of secular legal worldview, criticism of absolute and police discipline, recognition of human freedoms and equality, inviolable rights, the formation of the legislative, executive and judicial branches, the theory of constitutionalism and followed the development of experience.³

¹ Russian-Kazakh Legal Explanatory Dictionary, Almaty, Zhety Zhargy Publishing House, 2008, p.25.

² Russian-Kazakh, *Ibid*, p 28.

³ M.T. Baimakhanov, *The Problem of Implementation of the principles of the rule of law in the Constitution of Kazakhstan*, *Selected Works of the theory of Law and the State*, Almaty, Adilet 2003, p. 36.

Introduction

There are several thinkers made a significant contribution to the development of these rules of law state, B. Spinoza, J. Locke, Sh. Montesquieu, D. Adams, D. Madison. In a state governed by the rule of law, equality of power, citizenship, society and law and their legal equality before the law play a key role. In a state governed by the rule of law, the life of society is governed by law, and if the law prevails, the judiciary is independent and subject only to the law. The rule of law must guarantee the protection of the legitimate interests, honor and dignity of every individual, the rights and freedoms of all citizens, their associations and associations. Its main features are: the rule of law, the organization and functioning of sovereign state power on the basis of constitutional and legal regulation of the principles of separation of powers, the legal form of interaction between the individual, society and the state. In a state governed by the rule of law, it is necessary to establish a strict order of responsibility of society, group members and civil society to the state, the state as a whole, its bodies and departments, officials to society and citizens. In a state governed by the rule of law, the concentration of power in the hands of one person, body or social group is not allowed. In its advanced form, the concept of the rule of law means the representation of all institutions of power, the election of officials. In a state governed by the rule of law, the judiciary must be a defender of justice, a defender of human rights in the broadest sense, and its main task is to protect human rights. The relationship and interdependence of society and the state is carried out through the rights and obligations set out in the laws of the state. At present, the concept of the rule of law is considered in close connection with human rights and means the protection of individual, civil, political and economic rights and freedoms.⁴

The idea of the rule of law, first of all, contradicts the arbitrariness of all its forms. The idea of the rule of law aims to achieve the following goals:

- limited power. The rule of law legally restricts the interference of the authorities in the life of society and the individual;
- The structure of a high legal culture and respect for the law. At the same time, the state expects legal action from all entities;
- observance and protection of the rights and freedoms of every citizen;
- The principle of peaceful settlement of conflicts, the establishment of basic cultural values.

The idea of the rule of law has a long history. The ancient Greek philosophers - Socrates, Plato, Aristotle - tried to find a form of interaction of power and law that would not interfere

⁴ M.T. Baimakhanov, *Ibid*, p.37.

with the proper development of society. According to ancient thinkers, a state power that agrees with the law, but is limited by law, is a sign of a just state.⁵

According to Aristotle, "Where there is no rule of law, there is no place for any form of statehood." He also noted that in every state building there are three elements: the first - an advisory body on the law on state affairs, the second - magistrates (administration), the third - the judiciary.⁶

In his dialogue "Laws", Plato said: And if the law rules the rulers, if the rulers are his slaves, I am convinced that the state is saved and shows all the good that God has given to the rule of law."

1-Description of materials and methods

Political and social figures of ancient Rome developed the idea of human morality, freedom and rights, they saw the state as a universal legal unity of people. According to Cicero, the state is the welfare of the people. The people are a group of like-minded people on issues of law and public interest. The symbol of the wise and just organization of the majority government is Themis, the goddess of justice. Themis has a binding eye, a sword in her hand, and the scales of justice. It represents the unity of law and power, and the rule of law is binding on all.⁷

In the modern era, the idea of the relationship between law and the state, law and politics began with the concept of the separation of state power into legislative, executive and judicial branches. The modern concept of the rule of law is based on the idea of the following European thinkers: Lilburn, G. Grotius, B.Spinoza, J. Locke, Sh. Montesquieu, J.J. Rousseau, I. Kant, G. Hegel. According to them, the bureaucratic state should be replaced by a state with the idea of an independent person with its own rights and freedoms, which can not be taken away. The first laws on human rights and freedoms were enshrined in the US Constitution (1787) and the French Declaration of the Rights of Man and of the Citizen (1789).⁸

According to modern scientists, the rule of law is a very long process, so it should be done in stages. Academician - M. Baimakhanov. "The structure of the rule of law is a multifaceted process that involves the interaction of various models and methods that affect all components of statehood and the legal system with society, a separate society, group, individual," he wrote.⁹

⁵ M.T. Baimakhanov, *Ibid*, p.39.

⁶ *Socio-economical and humanitarian journal Krasnoyarsk SAU*, 2021, № 3, p.127.

⁷ *Socio-economical Ibid*, p.129.

⁸ *Socio-economical, Ibid*, p.130.

⁹ *Republic of Kazakhstan*, Law of July 13, 1999 № 411. *Civil Procedural Code of the Republic of Kazakhstan*, Statements of Parliament RK, 1999, № 18, p.37.

The Republic of Kazakhstan has established itself as a democratic, secular, legal and social state. This means that our country is on the path of supporting the rule of law, that is, on the path to building a state based on the rule of law.¹⁰

Basic principles of the rule of law. There are principles that underlie the development of the rule of law.

The rule of law is not tied to the experience of a particular state. The realization of this ideal differs depending on the traditions of each country, the level of development of culture, science, the spiritual morality of society.

Consider the content of these principles.

2-The principle of the rule of law is

- consideration of all issues in the life of society and the state from the standpoint of law and the rule of law;
- organizational and territorial division of universal human values (intelligence, justice) and legal values (equality before the law) and the integration of the rule of law by the power of the majority;
- oblige legal justification of decisions made by state and public organizations;
- availability of models and procedures (constitution and laws, system of material and procedural guarantees) for legal action and implementation in the state;
- The law is closely connected with the person, one side of his living conditions, the way of communication and the guarantee of a balanced lifestyle.

The principle of protection of human rights. This principle is original, comprehensive and indisputable. Implemented through the following ideas:

- a) Anything that is not against the law is allowed. This principle applies to all citizens and individuals;
- b) only what is specified in the law is allowed. This principle is intended for government organizations and officials.¹¹

The actions of a person and a citizen must not violate the law. Actions taken to exercise their rights and freedoms are encouraged by the laws of the Republic of Kazakhstan. The law sets limits on unauthorized activities. Beyond these restrictions, citizens can move freely. The state should not assign all responsibilities to one organization. The presence of all power in one hand creates arbitrariness and destroys freedom. Freedom is possible only where there is power limited by law. This means that state power is divided into legislative, executive and

¹⁰ Republic of Kazakhstan, Law of July 13, 1999 № 411. *Civil Procedural Code of the Republic of Kazakhstan*, Statements of Parliament RK, 1999, № 18, p.38.

¹¹ Socio-economical, *Ibid*, p.131.

judicial branches. And each of these branches of government must carry out its functions independently and with restraint, through a special system of bodies and in special forms.

Legislative Parliament. It adopts laws, the parliament is elected by the people. The executive implements the adopted laws. They are: the government, ministries and governors. The judiciary administers justice. The judiciary reviews the legality of legislation passed by the other two branches of government. The President of the Republic of Kazakhstan plays a key role in the division of power into these three systems. The president is at the head of the three branches of government, he is the judge, the political leader, who approves the agreed proposals of the three authorities.

The separation of powers is closely linked to the system of "equilibrium and restraint." It represents a set of legal limitations of the legislative, executive, and judicial branches of government. These include: the institute of veto, the institute of impeachment, the institute of vote, the institution of selection and election of state bodies, the independence of the judiciary. If the legislature is in a hurry, the president vetoes it. The restraints on the executive include the term of office of the president, impeachment, a vote of no confidence, and parliamentary opposition to the government. Officials of executive bodies are prohibited from being elected to the legislature and engaging in commercial activities. The activity of the judiciary is based on the following provisions of the constitution: the presumption of innocence, the right to defense, equality of citizens before the law and the courts, transparency and adversarial proceedings, opposition to the courts, etc.

Impeachment is a procedure of dismissal and prosecution of high-ranking civil servants by the parliament. As stated in paragraph 4 of Article 47 of the Constitution of the Republic of Kazakhstan, the Parliament dismisses the President of the Republic of Kazakhstan only in case of high treason.¹²

Results

The principle of the rule of law. A law is an official act with a high legal force. The law is adopted by parliament. The essence of the rule of law is reflected in the fullest possible provision of human and civil rights and freedoms, the establishment of a regime of legal incentives for the individual, the connection of state power with the law, the establishment of a regime of legal restrictions for government agencies. As the great German philosopher G. Hegel said: "Properly adopted laws make the state prosperous, and the freedom of the individual is the main reason for the prosperity of the state."

¹² M. Tayeb, "Organizations and national culture: Methodology reconsidered", *Organization Studies*, 1994, 15(3), p.429-430.

The principle of mutual responsibility of the state and the individual. This is an independent principle of the rule of law. This is a kind of restriction of political power, which reflects the moral and legal principles of relations between the state as the owner of political power and the citizens as participants in its implementation. By enshrining the freedom of society and the individual in the legislative form, the state has certain restrictions in its decisions and actions. Subject to the law, public authorities may not violate its provisions and shall be held liable for non-compliance with these obligations. The binding nature of the law for public authorities is ensured by a system of guarantees aimed at preventing administrative errors. They include the responsibility of the government to the representative bodies, disciplinary, civil and criminal liability for abuse of power, abuse of power, impeachment, etc. by government officials at any level for violation of the rights and freedoms of certain individuals. applies.

Referendums, accountability of deputies to the electorate, etc. are the forms of public control over the performance of their duties by government agencies. will be found. The responsibility of the individual to the state is based on these legal initiatives. The use of state coercion must be legal in nature, not infringe on the freedom of the individual and commensurate with the gravity of the offense. Thus, the relationship between the state and the individual must be based on mutual responsibility.

In order for the state to function effectively, it must have an equal partner, which is civil society. The main idea in civil society is the freedom of man, to allow him to act independently, respecting the rights and moral principles. At the same time, the state should not interfere with the life of civil society. Civil society has the full right to intervene only in case of violation of the law.

Civil society is a free, democratic society based on the rule of law. Civil society respects the rule of law, customs, traditions, customs, and general humanistic ideas. In such a society, freedom of creative and entrepreneurial activity is granted, and all the opportunities for the realization and success of the activities of the individual and the citizen are created. There are restrictions and controls on the activities of the state. The idea of civil society originated in ancient times.

Discussions

However, it was not until the 17th century that the English philosopher T. Hobbes, in his *On the Citizen and Levifian*, described the process leading to a lost cultural society and the whole concept of civil society. Further, the idea of civil society J. Locke, J.J. Russo, I. Kant and other thinkers continued.

The following important factors play a role in the formation of civil society:

- economic - a diversified economy, the diversity of forms of ownership;
- political - the separation of powers, the separation of powers, political pluralism, the participation of ordinary citizens in state and public life, the nationality of the law and equality before the law;¹³
- spiritual - the absence of a monopoly on the same ideology and worldview, freedom of conscience, civilization.

Civil society and the state are complementary and interdependent.

It is impossible to create a democratic state based on the rule of law without conscious citizens and a mature civil society, because only conscious free citizens can invent optimal, rational models of life for people.

Therefore, the idea of the rule of law is a historical civilization, that is, all advanced societies strive for this idea. The rule of law provides for a wide range of rights and freedoms. It fully guarantees the realization of rights and freedoms. In a state governed by the rule of law, power is divided into three branches: the legislature, the executive and the judiciary, which are interconnected by a system of "equilibrium and restraint". The Republic of Kazakhstan is actively pursuing the formation of civil society and the rule of law. There are many questions related to the individual, society as a whole and the state itself.

Recognizing that the recognition of the inherent dignity and of the inalienable rights of all members of the human race is the foundation of freedom, justice and universal peace, Contribute to the development of friendly relations between peoples, taking into account the need to protect human rights by law, in order to ensure that no one is forced to revolt against tyranny and oppression as a final measure, taking into account the proclamation of a lofty goal to avoid fear and need. Recognizing the need for, the peoples of the United Nations have decided to respond to fundamental human rights, dignity and the value of the human person and to equality between men and women, and to social progress. Given that the Charter enshrines in the Charter that it believes in the improvement of living conditions in full freedom, it is essential that member states, in co-operation with the United Nations, undertake to respect and uphold human rights and fundamental freedoms. Recalling that the General Assembly declares this "Universal Declaration of Human Rights" as a duty to be fulfilled by all peoples and all States.

¹³ R. Rijamampianina, "Effective management in multicultural organisations: Creating a learning-based order with a sharing principle", *Economic Journal of Hokkaido University*, 1996. - №25, p.119-122.

Every person and every body of the Society should always keep in mind this Declaration and strive for respect for those rights and freedoms through education and enlightenment, their universal and effective recognition by national and international progressive measures and their universal implementation among the peoples of the Organization and its territories. believes that it is necessary. Here are some examples from this Universal Declaration of Human Rights:¹⁴

Article 1. All human beings are born free and equal in dignity and rights. That is, everyone is born free.

Article 2. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. All people have equal rights before the law. Religion says the same thing: We are all equal before God.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude, and all forms of slavery and the slave trade shall be prohibited.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. Everyone has the right to freedom of movement and residence within the borders of each State and to choose his place of residence. Everyone has the right to leave any country, including his own, and to return to his country.

Article 18. Everyone has the right to freedom of thought, conscience and religion; This right includes the freedom to change one's religion or belief, and the freedom to preach one's religion or belief in public, in private or in association with others, in public or in private, in the performance of religious and ceremonial rites.

Article 19. Everyone has the right to freedom of religion and expression; this right includes the freedom to exercise his or her faith without hindrance and the freedom to seek, receive and impart messages and ideas by any means, regardless of frontiers.

Article 24. Everyone has the right to freedom of labor, free choice of occupation and profession. Forced labor is allowed only by court order or in case of emergency or war.¹⁵

¹⁴ *Universal Declaration of Human Rights* , Human Rights, International Bill on Human Rights, UN, New York 1995.

¹⁵ *Universal Declaration of Human Rights, Ibid.*

Conclusion

We will not be forgiven if we lose our statehood and lose the strategic foundations of our sovereignty, our lands and resources. To ensure our security and territorial integrity, we must be a strong state and have strong and friendly relations with our neighbors. Fortunately, the understanding of the common interests of people and the state is maturing in the public consciousness. I have no doubt that as people's lives improve, that feeling will grow stronger. This makes it easier to understand the simple truth, just as the well-being of every citizen depends on the sovereignty and security of the state in which he lives. If his country is in danger, no matter how successful an individual may be, he will still live without protection.¹⁶

We have seen that the relationship between freedom and responsibility is associated with the phenomenon and process of globalization. The process of globalization leads to rapprochement with different countries, a common destiny of all mankind, the exchange of national cultural achievements, new technologies.¹⁷

Today we have identified the positive and negative effects of globalization on our lives, we know that it should be for the benefit of the whole country and the people as the potential of the entire human mind. It is easy to see that globalization affects all spheres of society, all aspects of life.

Of course, it is still a long way to achieve the ideal state of law in modern Kazakhstani society, but it is clear that we need to move in this direction. In this regard, we believe that it is necessary to strengthen the ability of the legislature and the executive to reduce tensions and coordinate their interaction, increasing the importance of judicial reform and the formation of a judicial system that is a strong defender of the rule of law, the Constitution and the rule of law.

¹⁶A.Shashkina, *CSTO Peacekeeping Mission In Kazakhstan: the first and successful* <https://ru.sputnik.kz/20220119/mirotvorcheskaya-missiya-odkb-kazakhstan-19176096.html> Accessed 4.04.2022, (28.11.2021.)

¹⁷A. Shashkina, *Ibid.*

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