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ПЕДАГОГИКАЛЫҚ УНИВЕРСИТЕТІНІҢ

# Х А Б А Р Л А Р Ы

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НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК  
РЕСПУБЛИКИ КАЗАХСТАН

КАЗАХСКИЙ НАЦИОНАЛЬНЫЙ  
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## NEWS

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ABAY KAZAKH NATIONAL  
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**NEWS**

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**Z.K.Ayupova<sup>1</sup>, D.U. Kussainov<sup>2</sup>**<sup>1</sup>Kazakh national agrarian university, Almaty, Kazakhstan;<sup>2</sup>Kazakh national pedagogical university named after Abai, Almaty, Kazakhstan[zaure567@yandex.ru](mailto:zaure567@yandex.ru)**LEGAL SYSTEMS OF CENTRAL ASIAN COUNTRIES**

**Abstract.** In this article the processes of deepening of integration of the legal systems of Central Asia countries through the prism of the Eurasian economic space were investigated. The model of equal cooperation of the people, based on the high level of consciousness and the civilization, aspiration has the goal to approve the social and international peace and harmony of the people. The large-scale crisis response measures of the state, aimed to the restoration of sure rates of economic growth and provide strong social guarantees to all population. The legal systems of Central Asia countries, with the prevailing of Muslim population are focused on secular model of law (the countries of Central Asia). Feature of the CIS countries with the Muslim population is perception of religion of Islam, as parts of culture of the people, carrier of universal values, keeper of the national spiritual traditions. The sense of justice of citizens of these countries is filled with the traditions, customs and moral standards, inherited from the past. For example, the similarities and paternalism of the state are characteristic of the Uzbek way of life. The collectivist beginnings, collective interests are always prevailed over the private, individual interests. The legal systems of the former soviet republics can be carried to Post-Soviet legal system, which was formed on the basis of rather uniform legal space of the Commonwealth of Independent States.

**Keywords:** Eurasian economic cooperation, equal cooperation of the people, new integratSIONISM, consent of the people, global factor, integration of the former Soviet Union, system of collective security, Customs Union, harmonization of legal systems, valuable and target orientation.

In a world still has not developed some ideal model of building the legal system of the state. Each state has its own unique 27 - year experience of becoming an independent, hard-won over the years the public image of sustainable development. An important role in the formation of the legal systems of Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan play mentality, socio-economic and political conditions, cultural factors and integration processes that are responses to the challenges of our time. According to prof. A.Kh. Saidov, “it is predetermined by the system of values and target orientation, national traditions and historical conditions, socio-economic and political environment, the established way of life and worldview of people, including religious beliefs, psychology, and norms of behavior” [1, P.17]. Both Kazakh and Uzbek, Kyrgyz, Tajik and Turkmen model of the legal system related to the Romano-Germanic legal family. According to prof. V.A. Tumanov, “the development of the rights within the framework of the national state remains one of the most important principles of legal evolution” [2, P.12].

In Kazakhstan, the Declaration of state sovereignty (independence) was adopted in October 25, 1990; in the Republic of Uzbekistan, in June 1990, and in Kyrgyzstan, in August of the same year. As for the Fundamental Laws of the three republics, in Kazakhstan the first sovereign Constitution was adopted in January, 28, 1993, and two years later, in August, 30, 1995, a national referendum was adopted the current Constitution of the Republic of Kazakhstan. The Constitutional law in October 7, 1998 has been introduced 19 amendments on the presidential term, the term of office of both Houses of Parliament, the Senate and the Majilis, etc.

The Constitution of the sovereign Uzbekistan was adopted in 1992. A.Kh. Saidov convinced that “in contrast to the Soviet basic laws the new Constitution of Uzbekistan does not have the dominance of Eurocentric constitutional regulation, but there is a reasonable account of the rules of civil society, the

separation of powers, the system of checks and balances of power inherent in the democratic constitution of the West” [3, P.58].

The Kyrgyz Republic’s Constitution was adopted on May 5, 1993. In all of these constitutions embodied established the constitutional traditions of the international experience and own a centuries-old legal history. And the historical fact is the fact that Uzbekistan was the first, who introduced, in March 1990, the presidential form of government. In Kazakhstan, the Law "On the establishment of the post of the President" was adopted in December, 1990. All three independent states are secular, unitary. Doctor of Law, Professor A.Kh. Saidov notes in this aspect: “The secular criteria can be considered as legal, in the fields covered within the meaning of the Constitution, as a public, civilian-based real consciousness of the society as a whole and its influential strata in particular. The phenomenon of a secular path based on Islamic culture, showing democracy and pluralism in independent Uzbekistan” [4, P.64].

The Constitution of the sovereign Tajikistan was adopted on November 6, 1994. As the President of the country E. Rakhmonov wrote: “The Tajik people in more than a thousand years of statehood for the first time adopted a Constitution for an independent state in a referendum. The active participation of all citizens of the Republic in this important political event is an important achievement and a victory for democracy in Tajikistan” [5, P.145]. Historical and legal study of the Constitution of Tajikistan allows you to explore the past in the recent few years the fundamental political, legal and socio-economic changes in the country and to determine the degree of continuity of legal and other provisions of the preceding 70-year period of the Soviet system and the legitimacy of the use of foreign experience.

In the history of Tajikistan were adopted five Constitutions- in 1929, 1931, 1937, 1978 and 1994 on the basis and in pursuance of which the formation and improvement of the national legislation, which indicates a certain experience and tradition in the national lawmaking. Rigorous analysis of the laws and regulations in the period of adoption of the declaration of independence and the Constitution of the Republic of Tajikistan, shows in-depth study of the basic provisions of the Constitution the unique independent path of the development of the Tajik people in the creation of a legal, democratic and secular state. With the adoption in 1994 of the Constitution as the foundation of the entire system of law and the center of the legal system of the Republic of Tajikistan, appeared the several tasks: design and organization of the activities of the new state on the basis of the constitutional principle of separation of powers, and the development and adoption of new laws that meet the spirit of national independence and the interests of forming the rule of law and a market economy, to bring the legislation into conformity with the principles and provisions of the Constitution. On September 26, 1999 the Basic Law of Tajikistan has been amended.

A huge contribution to the study of this problem was the research of eminent jurists Tajik- A. Imomov [6, P.12], F.T. Takhirov [7, P.17] and others.

The Constitution of Turkmenistan was adopted on May 18, 1992. Turkmenistan is the most controversial and interesting at the same time. It is an example of research studying of the problems of building of the democratic society in the post-Soviet space. At the same time, some international and non-governmental organizations of Turkmenistan referred to the successful transition from totalitarianism to democracy. Elections in the country and the establishment of the political institutions were in strict accordance with the official ideology, it was aimed in creating indispensable, but at the same time, the legitimate authority. The first step in the country was canceled the next presidential election. In December 1993, Parliament took the initiative to extend the powers of the president until 2002, by a popular referendum. The current Constitution does not provide for a legal procedure. In addition, the law “On Referendum” regulates the popular consultation of not less than two months after the decision by Parliament to conduct such procedure. In the Constitution there are number of progressive moments that are supposed to guide the course of political events in a civilized fashion, to create the conditions for the emergence of political pluralism and, most importantly, to guarantee the rights of citizens to freedom of expression, the election of political leadership, etc. These progressive moments in the Constitution include provisions on the rule of law, the direct effect of the constitutional norms, pluralism, the proclamation of the principle of separation of powers, the right to private ownership of the means of production, land and other material and intellectual values.

In accordance with the Constitution, the Majlis is the legislative body and represents the appropriate branch of government. At the same time, in the hierarchy of Supreme Majlis of the state structure is as

powerless, unable to influence the other branches of government. In addition to the Majlis are endowed with the right to legislate and the President of the People's Council, which diminishes the role of Parliament as a legislative body. A number of office Majlis, anyway, is formalized. In particular, it remains largely declarative provision on the right of Parliament to amend the Constitution (Article 67). The fact that such right of Medzhlis belongs to Halk maslakhats. The judicial power in the country doesn't not affect to the other branches of government, the president's decision to cancel, People's Council and the Majlis, contrary to the Constitution, because, according to the Constitution, the judicial power does not have the function of the constitutional review. This situation is completely formalizes the existence of the third branch of government in the country.

In all of these constitutions were established the constitutional traditions of the international experience and ancient legal history. It is well known, that the legal system of any state has been researched in close connection with national legal system and international law. The Constitutions of sovereign Kazakhstan, Tajikistan and Turkmenistan established the mechanisms of functioning of all parts of the state apparatus, their competence, fixed the democratic foundations of social life, gave the priority to the individual rights and freedoms of the citizens. The main attention was paid to the role of elected bodies of state power, the system of checks and balances in the relationship of all branches of government, the status of local government, strengthening the independence of the judiciary, strengthening of law enforcement powers. All these points are relate4d to the other Central Asian republics [8, P.11].

The legal system expresses the legal infrastructure of the society. Therefore, the legal system is flexible, dynamic, and constantly changed. However, the legal system is quite conservative. Another question, some legal traditions should be preserved. The legal system in the narrow sense is a set of regulations, emerging and applied on the basis of general principles. The value of the legal system is provided by the general legal principles and legal procedures of law-making and enforcement. Legislator in establishing a new legal act must clearly understand: how to act in the different cases, within this legal framework, institutions, industries. This position is trivial, but in practice, and in theory, it is very difficult to cover in each case, all the existing legal system [9, P.5].

Summarizing the different interpretations of the legal system, we can give its most general definition. The legal system, in a broad sense, is a direct reflection of the legal life of the society and the functioning of its institutions: the state bodies, the folding of the interaction of the legal rules by themselves (the core of the legal system), legal institutions, their law-making and sense of justice and other legal phenomena. Law-making is an essential tool in public governance. The legal system, in the narrow sense, is a set of the regulations. The category of "legal system" is a consequence of the integration of the positive law, historical and comparative law theory and the sociology of law. The legal system has the following components, elements: the system of legal norms, legal system, legal awareness, and the system entities. "The most impact on Kazakhstan, Tajikistan, Turkmenistan and other Central Asian republics has a political change, and the change of power in Georgia. Actions of US politicians to change the political system of other countries of the Central Asian states are forcing management to reconsider closest allies. In this environment, the role of Russia as a regional center rises again, especially the leadership of the Central Asian states" [10, P.8].

During the several years, in the legal literature has developed an approach, according to which "being a party to the legal life, the legal system appears as internally organized, dynamic integrity, consisting of processes and actions, leading to the formation and improvement of the legal phenomena and the relationships between them" [10, P.9]. We are agreed with the opinion of prof. Yu.A. Tikhomirov that "often in practice and in theory are used the number of concepts, which reflect the different sides of the legal society. These includes the concept of "law", "legal system", "law", "legality", "instruments", "rule of law", and others" [11, P.5].

The Concept of Legal Policy of the Republic of Kazakhstan adopted in September 20, 2002, states that "as a result of the discussion of the policy of legal reforms in the society appeared the progressive development of the legal system on the basis of the Constitution. The Constitution of the Republic of Kazakhstan has the necessary legal capacity, which concluded not only in its legal norms, but also in its legal ideas and principles. Legal ideas of the Constitution should be implemented in the legislative, institutional and other measures aimed at strengthening democratic institutions in Kazakhstan, secular, legal and social state" [12].

According to the Kyrgyz research scholar T.B. Aitmatova, “in the first documents of the independent state laid the formal legal basis of the Declaration on sovereignty- the Declaration on the state independence of the Republic of Kyrgyzstan and Law “On the state sovereignty of the Republic of Kyrgyzstan”. They proclaimed the determination of the republic to build a state of law, guaranteed the rights and freedoms of the citizens. The Constitution of Kyrgyz Republic was adopted on May 5, 1993. These rights were fixed in the Supreme Law. These favorable targets remain a utopia, if we do not improve and obey the laws, if we do not fight to eradicate crimes, if we do not form at those, who work in government, public administration, political parties, public associations and industries of the market economy, the citizens, the whole society a high level of the legal culture” [13, P.77].

“The course of the history is irreversible. The historic event, which our ancestors dreamed, embodied in the life in September 1, 1991, when the Republic of Uzbekistan declared its independence. Peace and stability that prevails in Uzbekistan, progress in the development of a market economy, the expansion of the international relations of the country are highly recognized by the world community” [14].

It is well known that the legal system of almost any state must to be studied in close connection with other national legal systems and international law. On some legal space they interact, influence to each other, and there are a variety of legal formations, which are based on the general processes, carried forward cooperation in all spheres of public life. The Constitution of the Republic of Uzbekistan of 1992, in Article 109 has recorded a provision stating that “the Constitutional Court determines the constitutionality of interstate contracts”. The general principles and norms of the international law are the most important criteria of the constitutionality of laws and regulations.

This provision we easily find in the Constitutions of the Republic of Kazakhstan and Republic of Kyrgyzstan. The different are only the names of the government agencies. For example, earlier, according to the Constitution of Kazakhstan of 1993 was really existed and acted the Constitutional Court of the country. It was later abolished. Now, in accordance with the Supreme Law of the Republic of Kazakhstan, the Constitutional Council was created in 1995 and works effectively. In the Republic of Kyrgyzstan, it is called the Constitutional Assembly. Prof. Ch.I. Arabaev has stressed: “The Constitutional Council, formed by the Presidential Decree “On measures for the preparation of a constitutional reform in the Kyrgyz Republic”, dated by August 26, 2002 [15], for the period from September 4 to October 2, has held 12 meetings and prepared a final document, in which were expressed the support for the initiatives of the state for the constitutional reform and the urgent need to develop and to make changes and additions to the Constitution, in order to enhance the capacity of the constitutional further democratic reforms, strengthening the constitutional balance of powers of state institutions, the improvement of the judicial system, the development of local self-government [16, P.60]”. This research scholar also notes that “the head of the state was offered a unique method of constitutional reform, which is unparalleled in the recent history of the CIS. Yet nowhere the constitutions written or changed by consensus of the government and opposition, as happened in Kyrgyzstan, because at the Constitutional Conference were presented the political parties, non-governmental organizations and various opposition groups, prepared by the Secretariat of the Constitutional Council draft amendments to the Constitution of the Kyrgyz Republic, has been published in the pages of the media for public discussion” [17, P.78]. When adjusted for the changing environment of the change of power in the country, analyze the events of March 2005, as well as the murder of the deputies of Parliament of Kyrgyzstan, the ensuing riots in the colonies, camps and other prisons in Kyrgyzstan, the euphoria of the quoted author on reforms in the country seems to be premature.

In order to conduct due diligence of the draft amendments to the Constitution of the Kyrgyz Republic and the various suggestions and comments, received by the Decree of the President of the Kyrgyz Republic on January 2, 2003 the expert group was formed [18].

The current Constitution of the sovereign Kyrgyzstan establishes mechanisms of functioning of all parts of the state apparatus, their competence, reinforces the democratic foundations of social life, and gives priority to the individual rights and freedoms of the citizens. Main attention was paid to the role of elected bodies of state power, the system of checks and balances in the relationships of all branches of the government, the status of local government, strengthening the independence of the judiciary, law enforcement powers.

The same provisions fixed the Supreme Laws of Kazakhstan and Uzbekistan, which are legalize the following provisions: the principle of democratic rule of law, citizens have the right to do anything that is



not prohibited by law; secured guarantees of the rights and freedoms of the citizens, the right to private property, a unit of economic, political and social rights and freedoms of citizens. In Kyrgyzstan, the adoption of a new Constitution means the move from a presidential to a parliamentary-presidential republic, and in two other independent republics, Kazakhstan and Uzbekistan, this fact marked the transition period from parliamentary-presidential to the super-presidential republic.

We emphasize that the category “legal system” in the scientific literature is relatively new. Its occurrence is related to the development of law [19, P.64]. As some legal phenomena (law, legal, legal awareness, regulation, etc.) have been attentively studied, there was a need for a concept of an overall picture of the entire legal validity. In jurisprudence was marked the diversity in the definition of the legal system. The state is an important, but not the single source of the social development. “The state came under the influence of a number of factors. And their role is not the same in different people. It should be emphasized that their list is not exhaustive defined by economic factors. All this testifies the complexity of the emergence of statehood” [19, P.65]. The society by itself actively participates and has the dialectical relationship with the state. And opposite, weak developed civil society leads to the strengthening of the state. At the same time, they cannot exist independently and complement each other. The concept of the civil society in the Republic of Kazakhstan for 2006-2011 stated that: “Civil society is the society in which the main character and the subject of the social processes and relations is the man with the needs, interests and values. This concept also represents the totality of existence independent of the state and its organs of public relations: political, economic, cultural, national, religious, family, and others, shows the diversity of the private interests. Civil society is only a stage of the democratic development and formed as an economic, political development, the growth of wealth, culture and consciousness of the people” [20].

Speaking about the phenomenon of the integration of historical and civilization factor in the mosaic of ethnic Uzbek population, prof. A.Kh. Saidov emphasizes: “After achieving state independence, general “picture” of ethnic mosaic has not undergone radical changes in respect of a number of presented ethnoses, though the number of population of Slavic origin reduced. A number of ethnic Russians has lessened (1996) in comparison with 1989 for about 23 % (according to the data on departures because of changing a citizenship). But in respect of the number of population they still are the second ethnoses from among others who lived in the country after Uzbeks” [21, P.58].

We are fully share the view of the famous scholar, prof. A.Kh.Saidov, that the legal system must be studied in the historical aspect. For example, he notes: “The problem of the renewal of the legal system of Uzbekistan is directly linked not only with the legal situation of the particular moment in the country, but also must be interpreted in this historical context. It is impossible to comprehend the modern law of Uzbekistan divorced from its many centuries of history” [22, P.77].

About the legal system in the legal literature at the end of the 70-ies of XX century wrote, basically, meaning a system of law, identifying these two different legal categories [23, P.27]. Almost all member countries of the CIS are study the problems of the legal system in the new environment at early stage. We would like to note the research work of V.N. Sinyukov [24], who has devoted a special monograph to study the Russian legal system.

N.I. Matuzov wrote: “The transition period from the Soviet system to the formation in member countries of the CIS democratic legal state is characterized by the fact, that currently analytical framework crossed the scientific theories. As for the available analytical data do not fit into the existing patterns of development, the need for synthesis and generalizations lead to a new theory (definition) of the legal system more adequately summarizes the data of the system analysis” [25, P.16].

Further development of the modern society is inconceivable without a solid legal order, a stable system of legal relationships that translate into practice the basic legal ideals of equality, freedom and justice, the rule of law, the universality of rights and responsibilities, the rights and freedoms of man and citizen, recognized in our Constitution. We agreed with the opinion of Doctor of Law L.B. Tiunova, reminding that “the rights of the citizens are determine the usefulness of human life on the planet and an integral part of the culture of nations, the highest manifestation of the moral and legal ideals of humanity. Therefore, among the spiritual values of the modern world recognized human rights as one of the most important sites. Enshrined in the Charter of the United Nations, the international conventions and the constitutions of many countries, they are increasingly understood as a fundamental and inalienable” [26, P.37].

For nearly two thousand years in jurisprudence the modern research scholars are interested in the study of the legal system. Its concept, structure, content, role and function in the society, the formation and development, the relationships with other legal phenomena, types of legal systems have become the subject of studying by S.S. Alekseyev, V.K. Babaev, A.M. Vasilyev, O.A. Gavrilov, Y.P. Eremenko, etc. At various times, they were reflected in the foreign science in the works M.P. Golding, R. David, K. Joffre-Spinosi, J. Carbonie, G. Kelsen, etc.

A.Kh. Saidov stressed: “Cultural aspects of knowledge of legal phenomena make possible to determine the features of the legislation, its continuity in space-time limits, the relationships with other cultural phenomena in the legal realities@ [27, P.95].

A.Kh. Saidov wrote: “The legal system is an institutional concept, the occurrence of which in legal science is not only a legal reality of the phenomena, but also certain qualitative state of the science and the development of its methodology and conceptual apparatus. Therefore the primary importance in the genesis of this notion is given to differentiation and integration of the legal knowledge as prerequisites and conditions for the occurrence and development of the theory of the legal system, its importance in the structure in the general theory of law” [28, P.111].

In the conclusion, we emphasize that the further development of the national legal systems of independent Central Asian Republics of Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan is the result of new integration processes, strengthening the state independence of these republics on the basis of fundamental changes in the field of social development in these states.

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### **ОРТАЛЫҚ АЗИЯ МЕМЛЕКЕТТЕРІНІҢ ҚҰҚЫҚТЫҚ ЖҮЙЕЛЕРІ**

**Аннотация.** Мақалада қазіргі уақытта Еуразиялық экономикалық кеңістікте өтіп жатқан Орталық Азия елдерінің құқықтық жүйелерін біріктіруді тереңдету процестері қарастырылады. Өзін-өзі ақпараттандыру мен өркениеттің жоғары деңгейіне жеткен және әлеуметтік және этносаралық татулық пен халықтардың келісімін құруға ұмтылған халық арасында тең ынтымақтастық моделі қарастырылады. Экономиканың сенімді өсуін қамтамасыз етуге және бүкіл халыққа ұзақ мерзімді әлеуметтік кепілдіктерді қамтамасыз етуге бағытталған мемлекеттің ауқымды дағдарысқа қарсы шаралары зерттеледі. Мұсылман халқы басымырақ елдердің құқықтық жүйесі зайырлы құқықтық үлгіде (Орталық Азия елдері) құрылған. Мұсылман халқы басым ТМД елдерінің ерекшелігі - жалпыға ортақ адами құндылықтарды, ұлттық рухани дәстүрлерді қорғаушы ретінде ислам дінінің адамның мәдениетінің бөлігі деп қабылдауында. Осы елдер азаматтарының құқықтық санасы өткен дәуірден мұраға қалған салт-дәстүрлерге, әдет-ғұрыптар мен моральдық нормаларға толы. Мысалы, өзбек өмір салты үшін мемлекеттің қауымдық мен патернализм тән. Ұжымдық бастаулар, ұжымдық мүдделер әрқашан жеке, жеке мүдделерден жоғары тұрды. Бұрынғы одақтық республикалардың құқықтық жүйелері Тәуелсіз Мемлекеттер Достастығының салыстырмалы біртекті құқықтық кеңістігі негізінде қалыптасқан посткеңестік құқықтық жүйеге жатқызылуы мүмкін.

**Түйін сөздер:** еуразиялық экономикалық ынтымақтастық, халықтардың тең құқылы ынтымақтастығы, жаңа интеграция, халықтар келісімі, жаһандық фактор, посткеңестік кеңістік интеграциясы, ұжымдық қауіпсіздік жүйесі, кеден одағы, құқықтық жүйелердің үйлесімдігі, құндылықты-мақсатты бағыт.

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### **ПРАВОВЫЕ СИСТЕМЫ СТРАН ЦЕНТРАЛЬНОЙ АЗИИ**

**Аннотация.** В статье исследуются процессы углубления интеграции правовых систем стран Центральной Азии, происходящие в настоящее время в евразийском экономическом пространстве. Рассматривается модель равноправного сотрудничества народов, достигших высокого уровня самосознания и цивилизованности и движимых стремлением утвердить социальный и межнациональный мир и согласие народов. Изучаются масштабные антикризисные меры государства, нацеленные на восстановление уверенных темпов экономического роста и обеспечение прочных социальных гарантий всему населению. Правовые системы стран с преобладающим мусульманским населением ориентированы на светскую модель права (страны Центральной Азии). Особенностью стран СНГ с мусульманским населением является восприятие религии ислама как части культуры народа, как носителя общечеловеческих ценностей, хранителя национальных духовных традиций. Правосознание граждан этих стран наполнено традициями, обычаями и моральными нормами, унаследованными из прошлого. Например, для узбекского образа жизни характерны общинность и патернализм государства. Коллективистские начала, коллективные интересы здесь всегда преобладали над интересами частными, индивидуальными. Правовые системы бывших союзных республик можно отнести к постсоветской правовой системе, которая формировалась на основе сравнительно однородного правового пространства Содружества Независимых Государств.

**Ключевые слова:** евразийское экономическое сотрудничество, равноправное сотрудничество народов, новый интеграционизм, согласие народов, глобальный фактор, интеграция постсоветского пространства, система коллективной безопасности, таможенный союз, гармонизация правовых систем, ценностно-целевая ориентация.

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