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Абай атындағы Қазақ ұлттық педагогикалық университетінің

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## ИЗВЕСТИЯ

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК  
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## NEWS

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OF THE REPUBLIC OF KAZAKHSTAN  
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**THE LEGAL SYSTEM OF THE REPUBLIC OF KAZAKHSTAN:  
NOVELTIES AND EVOLUTION PROCESSES**

**Abstract.** The development of Kazakhstan's society in the modern period is inevitably associated with the internationalization of political, economic, cultural life, at the turn of the XX-XXI centuries. There was an intensive development of international relations, their quantitative growth and, as a result, a transition to a qualitatively new state, which is characterized by the increasing complexity of the system of transnational economic relations. In this regard, the leading trends in the development of the world economy are internationalization, globalization of world economic life and international economic integration. The most important aspect of international cooperation of states means a whole expansion of the international economic relations. There is an active process of institutionalization of new economic realities, expressed in the development of existing and the formation of new economic blocs, unions, organizations, as well as in the development of various levels of international treaties, entities. Globalization processes have shown an inability to form a fair world order, the existing injustice in the world, since they are based on the formally voluntary acceptance by all countries of the established system of organizing commodity production. At the same time, globalization demonstrates the inability of many states to build a democratic society and at the same time ensure an effective economic system.

**Keywords:** globalization, legal integration, international relations, international law, international cooperation, world economy, economic connections, internationalization, justice world order, economic blocks.

The Republic of Kazakhstan was founded on the territory of the former Soviet Union. Having decided to solve the complicated problems of the deep transformation of its legal system, previously based on socialist principles, Kazakhstan followed the way of other democratic countries based on the principles of the rule of law. The official record of these main ideas was embedded in a political document - Declaration of the State Sovereignty of Kazakh SSR, adopted on October 25, 1990. Later, another legal act – the Constitutional Law from December 16, 1991 “On the Independence of the Republic of Kazakhstan“ confirmed the new State's proclamation. The new Constitution of the Independent Kazakhstan has being elaborated simultaneously and was adopted by the Supreme Soviet of the Republic of Kazakhstan on January 28, 1993. Prepared under the pressure of domestic political conditions, the Constitution showed a contradictory character. On one hand, it was a compromise with the former Soviet Constitution. On the other hand, it contained revolutionary provisions related to the principles of the rule of law [1, C.18].

The current Constitution of the Republic of Kazakhstan was adopted by referendum on August 30, 1995. It includes the main provisions of consolidation of Kazakhstan as a democratic, modern state in which the individual, his life, rights and freedoms are considered the highest values of the society. The Constitution guarantees the equality of citizens. Private and state properties are also guaranteed, as well as foreign investments, public unions including political parties, and Mass Media. On October 7, 1998 the Parliament enacted a “Law on amendments and complements to the Constitution of the Republic of Kazakhstan”. This revision dealt with matters pertaining to the president's term of office, age restrictions, succession of authority in case of his death or resignation, and terms of Majilis[2, C.23].

The only source of state power is people. The Constitution and laws administrate the state's power. The Constitution creates three separate, independent branches of power: legislative, executive and judicial, keeping the branches of power within the boundaries set by the rule of law. The Republic of Kazakhstan is established as a state with a presidential form of governing.

The President takes the leading place in the state's mechanism of the Republic of Kazakhstan. He is the head of the state, its supreme official, symbol and guarantor of unity between the people and the state power, the symbol of the immovability of human rights and freedoms. The President defines the main directions of internal and external policy, guarantees the coordination and functioning of all branches of power as well as transparency of the branches of power before the people. The President is elected every seven years on the basis of universal suffrage. The President of the Republic has the power to make laws and decrees.

The Government manages the executive power in Kazakhstan. It heads the executive bodies and directs their activity. It is appointed by the President of the Republic and lays down its jurisdiction when a new President is elected. The Government is responsible to the head of the state and accountable to the Parliament. Each of the Houses of the Parliament has the right to hear the reports of members of the Government concerning their activity. The majority of the deputies (two-thirds) can sign an appeal to the President of the Republic asking him to discharge from the office the member of the Government who doesn't obey to the laws of Republic[3, C.17].

The legislative branch comprises the Senate and Majilis. The Senate consists of deputies (two from each region, town and the capital of the Republic), elected at the joint meeting by the deputies of the representative organs of the Republic. The President appoints seven senators. Majilis consists of 77 deputies. Sixty-seven of them are elected from the geographical electoral districts directly by voters. Ten of the deputies are elected on the basis of party lists according to the system of proportional representation and on the territory of the national electoral districts. The deputies of the Senate are elected for six-year and the deputies of Majilis are elected for five-year terms of office. According to the Constitution, the Parliament has the power to initiates laws in the spheres of its competence.

The Parliament has the right to pass a vote of no confidence regarding the activity of the Government. When the Parliament does not adopt a law initiated by the Government, the Prime Minister has the right to rise a question of no confidence.

The President of the Republic has the power to dissolve the Parliament when the Parliament expresses a vote of no confidence for the Government. When the Parliament refuses twice to give consent for the appointment of the Prime Minister, the President can also dissolve the Parliament. The same thing can occur when a political crisis caused by the insuperable differences between the Houses of the Parliament or the Parliament and other branches of state power evolves.

The Parliament has the right to remove the President of the Republic in the case of high treason[4, C.91].

The Constitutional control in Kazakhstan is administrated by the Constitutional Council. It consists of seven members appointed by the President of Republic, the chairman of the Senate and by the chairman of the Majilis of the Parliament.

The Court system of Kazakhstan includes the Supreme Court of the Republic of Kazakhstan and local courts (regional, district and others), established in accordance with the Constitution. Establishment of special and extraordinary courts is prohibited, though specialized courts may be created (military, economic, administrative, juvenile, etc). The Supreme Court, the highest judicial body, dealing with civil, criminal and other cases, as well as cases of common jurisdiction, performs the control over lower courts activities and solves problems of the judicial practice. The Supreme Court includes the supervisory board, civil board, criminal board and plenary session of the court.

Judges of the Supreme Court are appointed by the Senate after being presented by the President and recommended by the Highest Court Council. Other judges, depending on their status, are appointed by the President on recommendation of the Qualification College of Justice or the Highest Court Council, which are special bodies regulated by special laws. A judge can be replaced on the legal grounds only.

The organization of courts, status of judges and enforcement of justice are regulated by the Constitution, Constitutional Law "About Court System and Judges Status in the Republic of Kazakhstan" (2000) and other legislative acts. Only courts administrate justice, which gives all the judicial

power to judges and jury, acting on behalf of the courts. No other juridical and physical bodies are empowered to perform the duties of a judge and execute judicial power. Judges are independent and submitted only to the laws[5, C.58].

The legal system of the Republic of Kazakhstan, along with legal systems of Italy, France, Germany, Austria and other countries, belongs to the Roman-German (continental) legal system. As opposed to the Anglo-Saxon legal system (England, the USA), where judicial precedents are the main legal sources, Roman-German legal system has a single hierarchically structured system of enacted law sources. Written constitution (fundamental law) plays the essential role among the law sources in the Roman-German legal system, and has the supreme legal force. In accordance with the article 4 of the Constitution of Kazakhstan, the Law in the Republic is made of the norms of the Constitution, laws which conform to the Constitution, other normative legal acts, international treaties and other obligations of the Republic of Kazakhstan, as well as normative resolutions of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan. Hierarchy of the law sources in Kazakhstan is determined by the Law of the RK dated March 24, 1998, "On Normative legal acts." In accordance with the article 4 of this Law, Constitution of the Republic of Kazakhstan, has the uppermost legal force. Following the Constitution, all normative legal acts are arranged in the hierarchy presented below:

1. Laws which modify and amend the Constitution;
2. Constitutional laws and Edicts of the President of the Republic of Kazakhstan which have a force of Constitutional law;
3. Codes of the Republic of Kazakhstan;
4. Laws of the Republic of Kazakhstan, as well as Edicts of the President having force of the law;
5. Normative resolutions of the Parliament of the Republic of Kazakhstan and its chambers;
6. Normative edicts of the President of the Republic of Kazakhstan;
7. Normative resolutions of the Government of the Republic of Kazakhstan;
8. Normative legal acts of the ministers of the Republic of Kazakhstan and other heads of central state authorities, normative resolutions of the central state authorities and normative resolutions of the Central Election Committee of the Republic of Kazakhstan;
9. Normative legal orders of the heads of the branches of central state authorities;
10. Normative legal decisions of Maslikhats (local representative body), normative legal degrees of Akimats (local executive body), normative legal decisions of Akimats.

The normative legal acts of the lower level cannot contradict the normative legal acts of the higher level. Upon occurrence of contradictions between norms of the normative acts of different level, norms of act of higher level shall have priority. Upon occurrence of contradictions between norms of normative legal acts of the same level, norms introduced later have the priority. The resolutions of the Constitutional Council of the Republic of Kazakhstan and the Supreme Court of the Republic of Kazakhstan are out of the specified hierarchy. Normative resolutions of the Constitutional Council of the Republic of Kazakhstan are based solely on Constitution, and all other regulatory legal acts cannot contravene them.

International treaties ratified by Kazakhstan have priority over its laws and are applied directly, unless international treaty specifies its application requires issuance of a law[6, C.17].

Thus, recognized principles and provisions of international law are an element of the legal framework of the Republic of Kazakhstan, to which all legal subjects may appeal. The basics of the civil relations can be found in the article 6 of the Constitution of the Republic of Kazakhstan. According to this article, in the Republic of Kazakhstan the state property and private property are equally recognized and protected. Central Normative legal act in the sphere of civil law relations, the Civil Code of the Republic of Kazakhstan, consists of two parts – General and Special. General Part was adopted on December 27, 1994, and became effective from March 1, 1995. Special Part entered into force on June 1, 1999. Notwithstanding that both parts of the Civil Code are already in effect, the process of their improvement through modifications and amendments is still in progress.

The General Part of the Civil Code regulates such issues as legal status of private and legal entities, transactions, ownership rights, general provisions on obligations and contracts, The Special Part of the Civil Code contains norms that regulate specific types of obligations (sale and purchase, donations, lease, services, etc.), as well of intellectual property rights, inheritance (succession) and international private law[7, C.48].

Along with the Civil Code, business activity in Kazakhstan is regulated by other normative legal acts, including:

- Law of the RK dated March 31, 1998, "On farming enterprise";
- Edict of the President of the RK, having a force law, dated May 2, 1995, "On economic partnerships";
- Law of the RK dated April 22, 1998, "On partnerships with limited and additional liability";
- Law of the RK dated May 13, 2003, "On joint-stock companies";
- Law of the RK dated January 21, 1997, "On bankruptcy."

Unique feature of Kazakhstani legislation, compared to that of CIS countries, is that from July 1, 2006, private businessmen and enterprises are statutorily entitled to participate in lawmaking process, in drafting laws that concern regulation of private business. Central and local authorities submit such draft laws to accredited associations of private businessmen and enterprises for their expert opinion. Such opinion is a recommendation, and must accompany the draft law during the process of discussion and adoption.

This is one of the most prestigious, well-paid and highly needed profession in Kazakhstan. A diploma of higher legal education is obligatory when applying for various positions in government divisions, courts, procuracy, Ministry of Interior Affairs, Committee of the National Security, and Finance Police. Professional lawyers are in demand with social organizations, political parties, independent mass media, and international organizations. People, applying for the position of a judge, notary or advocate, must take a special qualification examination [8, C.13].

The system of legal education in Kazakhstan has a multi-level structure, which includes secondary (colleges) and higher professional educational institutions (institutes, academies, and universities), and aspirancy or doktorantura, where scientists and tutors of the highest qualification are trained and write their dissertations. Training in higher educational institutions can guarantee that any accepted student can get a higher specialized education and a qualification as a lawyer; higher basic education and a diploma of the Bachelor of Law; higher scientific-pedagogical education and a diploma of the Master of Law. The State Standards of the higher legal education lay out the main and optional subjects of programs for higher educational institutions.

In the conclusion we would like to note, that the cardinal changes of the legal system, the development of the open society institutions and the shift towards the democratic values, the training of lawyers has been changing too. Specialization in the field of commerce, international arbitration, civil law becomes more and more popular.

**З.К. Аюпова, Д.Ө. Құсайынов**

### **ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ ҚҰҚЫҚ ЖҮЙЕСІ: ЖАҢАЛЫҚТАРЫ МЕН ЭВОЛЮЦИЯЛЫҚ ПРОЦЕССТЕРІ**

**Аннотация.** Заманауи жағдайлардағы Қазақстандық Республикасының қазіргі жасаған қоғамның дамуы саяси, шаруашылық, мәдени өмірді интернационализациялау мен тікелей байланыстылығын көрсетті, оған себепші болған XX- ғасырдың соңы мен XXI-ғасырдың басында болған халықаралық байланыстардың интенсивті сипаты деп ой қортамыз, әріне солардың әсерінен әлемде орын алған мәдени, әлеуметтік, экономикалық, халықаралық қатынастар мүлдем басқа сапаға көтеріліп өтті және трансұлттық экономикалық қатынастардың жүйесін мүлдем күрделілендірді, көп аспектілі сипаттандырды. Сол себептерге байланысты әлемдік экономикалық шаруашылық өмірі интернационализациялану, жаһандану және интеграция процесстеріне ұшырап жаңа сипатқа ие болып, көп қырлы, көп аспекті түрде дамыды. Мемлекеттердің халықаралық қатынастарында басымдылық сипатқа халықаралық экономикалық байланыс басымдыққа ие болды. Жаңа экономикалық жағдайларда институционализация процессі белсенділік сипатқа ие болып жаңа экономикалық блоктар, одақтар, мекемелер, әртүрлі дәрежедегі келіс сөздер жүргізіп келісім шарттар жасады. Жаһандану процессі әділетті әлемдік тәртіп қалыптастыруға дәрменсіз екендігін көрсетті, бірақ та, өз басына олар бұрынғы әлемдік тәртіпті бұзған жоқ. Себебі олар бұл құжаттарды тауар өндіру мекемелерінің өз еріктерімен қабылдау негізінде құрылған. Сонымен қатар жаһанданудың өзі көптеген мемлекеттердің тиімді экономикалық жүйе қалыптастыруға, демократиялық қоғам құруға қол жеткізе алмайтындықтарын көрсетті.

**Түйін сөздер:** жаһандану, құқықтық интеграция, халықаралық қатынастар, халықаралық құқық, халықаралық қарым-қатынас, әлемдік шаруашылық, экономикалық байланыстар, интернационализация, әділетті әлемдік тәртіп, экономикалық блоктар.



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### ПРАВОВАЯ СИСТЕМА РЕСПУБЛИКИ КАЗАХСТАН: НОВЕЛЛЫ И ЭВОЛЮЦИОННЫЕ ПРОЦЕССЫ

**Аннотация.** Развитие казахстанского общества в современный период неизбежно связано с интернационализацией политической, хозяйственной, культурной жизни, результатом которой на рубеже XX-XXI вв. стало интенсивное развитие международных связей, их количественный рост и в итоге - переход в качественно новое состояние, которое характеризуется усложнением системы транснациональных экономических отношений. В связи с этим ведущими тенденциями развития всемирного хозяйства являются интернационализация, глобализация мирохозяйственной жизни и международная экономическая интеграция. Важнейшим аспектом международного сотрудничества государств в целом становится расширение международных экономических связей. Идет активный процесс институционализации новых экономических реалий, выражающийся в развитии существующих и образовании новых экономических блоков, союзов, организаций, а также в развитии различных уровней международных договоров, заключаемых такими образованиями. Глобализационные процессы показали неспособность формирования справедливого миропорядка, но сами по себе они не усугубляют существующую в мире несправедливость, так как основываются на формально добровольном принятии всеми странами сложившейся системы организации товарного производства. При этом глобализация свидетельствует о неспособности многих государств построить демократическое общество и одновременно обеспечить эффективную экономическую систему.

**Ключевые слова:** индивидуальные правовые системы государств, глобальные системы, правовые семьи, классификация, капиталистическая правовая система, тоталитарно-социалистическая правовая система,

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