

# AN ESSAY ON MAIN PROVISIONS OF THE CONSTITUTION OF REPUBLIC OF KAZAKHSTAN ON ORGANIZATION OF STATE AND ADMINISTRATION

*Assist.Proff.Dr. Yücel OĞURLU\**

## INTRODUCTION

During the time I was in Kazakhstan for nearly hundred days in 1999-2000 educational term at Law Faculty of International Kazakh-Turk University, I had an opportunity to translate Kazakh constitution to Turkish from both English and Kazakh original texts. This study gave me some ideas to understand and compare the laws of this country with those of some other countries.

Kazakhstan as a very rapidly developing country in Central Asia is important for many researcher in all over the world. In our country, most of the eastern countries' laws are not be sought with scientific aims, in contrast the western countries have at least one institute for observing the developments in law as in other scopes of these countries. Sometimes these institutes can be successfull for helping other researchers, moreover for shaping the legal systems according to their studies. Unfortunately, it is rather hard for performing an academic study on this scope because of shortage of articles or other written materials on Internet or in any way. Even in Kazakhstan, it is impossible to find legal texts in English or Kazakh language except constitution.

Main principles of Kazakh constitution which is not known sufficiently in Turkey, will be researched in this article and I will try to inform the readers at least the sources and main principles in Kazakh constitution. Here in this study, after giving the general structure of Kazakhstan's system, we would like to discuss some matters of provisions on administration prescribed by constitution. As a result, our study will deal with only the structure of administrative organization.

---

\* Administrative Law, The Law Faculty of Atatürk University, Erzinan, Turkey, e-mail: yucelogurlu@yahoo.com

## I. SOURCES OF KAZAKH LAW

As we know, in generally, constitutions can be described as documents showing fundamental rights and freedoms of peoples and main structures of states. Obviously, most of the constitutions are results of a long-term struggles of peoples and have historical background. Only some of them are given as a right or gift to people by administrators and emperors. Kazakhstan was under the rule of USSR for nearly seventy years until 1990. After Gorbachev's "Glasnost" (openness) and "Perestroika" (reconstruction) policies, for a while every Soviet Socialist Republic had their own constitutions. Thus a dilemma appeared which way would be followed by Kazakhstan in law reform?

Kazakhs had three ways to follow after collapse of Soviet Pact. The first was the easiest way, namely copying the Russian laws. The second was constitution of new laws or reception from European countries. As we see today, Kazakh administrators chose third and also mixed way for their country. First of all, it is obvious that new constitution has been rather considerably affected by former system. It is very clear that most of Kazakh laws are from former Russian laws and some of them are copied from the laws of other post-communist countries. In addition, while system of Western countries was another model for Kazakhstan at the same time, this second possibility has not been considered except regarding private property and some open market regulations. Other laws, especially those on economy have been taken from Western countries.

On the first step, it must be stated, the new Kazakh constitution was not sufficient to constitute a comprehensive system, since it was written under the pressure and influence of laws of former Soviet period. That meant there were need for an administrative reform for Kazakhstan too such other former Soviet countries. But, the former Russian law is not unique source for Kazakhs. In fact, the West countries with their strong economies and political structure even though they were in enemy camp became a crucial source for East European and Central Asian states.

It is obvious that when constituting a new constitution, priorities, regional and cultural differences are taken into consideration. These issues are reflected in laws of each country. For instance, foundations of Russia's unusual federal structure can be found in Russian traditions and history<sup>1</sup>. Today, Russia and other former Soviet countries, with some exceptions, follows the same way: strong state, strong administration. But, Russia's traditions such as statism, collectivism and paternalism which were effective in the former USSR countries, are seen as

---

<sup>1</sup> HENDERSON, Jane, "Redefining Russia's Federal Structure", *European Public Law*, 2000, Vol. 6, No. 4, p.496.

realities by Russian politicians and administrators. At the same time, it is an obligation to combine these traditions with the indispensable universal values of freedom, democracy, and the rule of law<sup>2</sup>. As one of my observation, I watched on TV the inauguration of Putin, when I was in Kyrgyzstan, a ceremony probably very similar to inauguration of a Tsar. One of his initial works was to establish a new strong administrative structure, since Russian administrative system was out of date for the world of the 1990's. There were signals of a new administrative reform.

## **II. CENTRAL ORGANIZATION OF ADMINISTRATION IN KAZAKHSTAN**

In general executive branch in Kazakhstan is according to constitutional definition of "Kazakhstan" as a unitary state with a presidential form of government. The president is the highest state officer and is responsible for the name of government. The president is responsible for the proper functioning of government, with the power to override the decisions and actions of local authorities and councils. So, constitution formalizes the increased power of the president and provides justification for the one-man rule<sup>3</sup>.

Kazakhstan is described as a democratic, secular, social, rule of law state. Main priority and highest value has been shown as the "person" and fundamental rights and freedoms of person (Ar.1/1). Constitution has chosen the word "person", not "human". As it is known, human and person in law is not always the same thing. This can be a subject for an article in Private Law.

The main principles of the operations of Kazakhstan is shown as social harmony, political stability, economic development, patriotism and the democratic resolution of the most important issues of national life (Ar.1/2).

Central Administration of Kazakhstan has not been described in similar way as constitutions of other Western countries. Contrary to them, structure of Kazakh central administration and administrative divisions has not been regulated in a certain section of Kazakh Constitution<sup>4</sup>. Provisions dealing with central

---

<sup>2</sup> REMINGTON, Thomas F., "Putin's Third Way Russia and The 'Strong State' Ideal", *East European Constitutional Review*, 2000, Vol. 9, No. 1-2, in [http://www.law.nyu.edu/eecr/vol9num\\_onehalf/feature/strongstate.html](http://www.law.nyu.edu/eecr/vol9num_onehalf/feature/strongstate.html); Statements of Putin in English can be found: [www.pravitelstvo.gov.ru/english/statVP\\_engl\\_1.html](http://www.pravitelstvo.gov.ru/english/statVP_engl_1.html).

<sup>3</sup> KAZAKHSTAN, "A Country Study", <http://leweb2.loc.gov/frd/cs/kztoc.html>

<sup>4</sup> Constitution has been adopted in 30 August 1995. Amendments are effective as of 8 October 1998, signed into effect 7 October 1998 by the President of the Republic of Kazakhstan, N. Nazarbaev in the city of Astana.

administration are spread to various articles of Kazakh Constitution<sup>5</sup>. Various regulations on local governments and local self-governments can be found under a certain title, but only few instructions on central organization of state in "Section One" under general provisions.

Kazakhstan is described in Constitution as a unified Republic with a presidential form of government (Ar.2/1). The sovereignty of the Kazakh State is valid on the entirety of Kazakhstan's territory. Integrity, inviolability, and inalienability of the state in its territory has been ensured (Ar.2/1). Various relationships among different nationalities or ethnicities of the former Soviet region have a potential for conflicts. According to the experts of area one of these conflicts would be among Kazakhs and Russians<sup>6</sup>. It is expressed in constitution that the administrative territorial system is described by law. "Republic of Kazakhstan" and "Kazakhstan" has been thought as same names with equal meaning (Ar.2/4). With these provisions, conflicts on territory of State has been tried to be prevented. At the same time, the location and status of the capital is determined by law (Ar.2/2). Capital of Kazakhstan was Alma-ata until recently. Later it has been changed and at present the capital is Astana. As it has been seen explicitly, Kazakhstan is a unified country and this is not an obstacle for forming the structural form of local government base.

Kazakhstan is divided into nineteen provinces, and the capital Astana has an administrative status not equal to any other province. Each city has its own council and large cities are divided into regions each of which has a council. The provinces are divided into regions that contain many settlement points. Every provinces, regions and most settlements have elective councils. They are charged with drawing up a budget and supervising local taxation as well.

State power is separated into legislative, executive and judicial branches as a rule. Governmental power has been thought as united and is applied on the basis of the Constitution and laws. Power can be used in the principle of coordination of these three branches with each other (Ar.3/4)<sup>7</sup>. The separation of powers is a guarantee against abuses of powers both at internal or external levels. Sometimes

---

<sup>5</sup> First Kazakhstan Constitution adopted in 28 January 1993. Later, many articles changed with amendments in 30 July 1995 and in 1998.

<sup>6</sup> CAROTHERS, Thomas, "Western Civil-Society Aid to Eastern Europe and the Former Soviet Union", *East European Constitutional Review*, 1999, Vol. 8, No. 4, in <http://www.law.nyu.edu/cecr/vol8num4/special/western.html>

<sup>7</sup> There are approximately same provisions nearly with the same meaning in Russian Constitution which was adopted on 12 December 1993: Article 10: "State power in the Russian Federation shall be exercised on the basis of the separation of the legislative, executive and judiciary branches. The bodies of legislative, executive and judiciary powers shall be independent."

decentralization and specialization on functions results in an optimum allocation of public activities<sup>8</sup>. Distribution of official functions which is considered as an internal matter by International Law in federal states are divided between the central government and component units which can be states, regions, cantons and provinces<sup>9</sup>.

Unfortunately, contrary to provisions of Kazakh Constitution, today President is everything in Kazakhstan and separation of powers is a matter which remains only on paper, but not in exercise. The relations between the executive and the legislative power and President show clearly real situation of mentioned countries. One of the most controversial issues of the new Constitutions in post Soviet term is the position of President against executive organs. Most of the post-communist democracies have adopted a dualistic structure of the executive system, which changes the actual balance of powers between the political and institutional actors, with a strong president as head of executive.

Kazakhstan recognized a semi-presidential system in which the Cabinet must have simultaneously the confidence of the Parliament and the President as in Russia, Belarus, Ukraine and Croatia<sup>10</sup>. According to Russian and Kazakh constitutions, President has a right to intervene with the executive organs, even elected. This and other mechanisms are used by central government to reestablish control over regional governors. This is "vertical" command and reestablishing executive subordination of local administrations leads to going away from federalism and democracy<sup>11</sup>. The result is hierarchical executive power, not local administration. In the Balkans, in models of Romania and Bulgaria, the position of the President has been strengthened. Even some scholars characterize this kind of regimes as "Presidential Monarchy"<sup>12</sup>.

---

<sup>8</sup> SCHREUER, Christoph, "The Waning of the Sovereign State: Towards a New Paradigm for International Law?" *European Journal of International Law*, 1993, No. 4, in conclusion, p.43.

<sup>9</sup> SCHREUER, *op.cit.*, p.8.

<sup>10</sup> KATROUGALOS, George, "The Principle of Separation of Powers and Structure of State in Balkan Countries", [http://www.cecl.gr/RigasNetwork/databank/REPORTS/r4/GR\\_4\\_Katrougalos.html](http://www.cecl.gr/RigasNetwork/databank/REPORTS/r4/GR_4_Katrougalos.html)

<sup>11</sup> For intervention methods see. Gordon M. HAHN, "Putin's "Federal Revolution": The Administrative and Judicial Reform of Russian Federalism", 10 *East European Constitutional Review* 2001 No 1, in <http://www.law.nyu.edu/eect/vol10num1/special/hahn.html>

<sup>12</sup> KATROUGALOS, *op.cit.*

## B. STRUCTURE OF LOCAL ADMINISTRATION IN KAZAKHSTAN

Administrative territorial system has been considered as one of the most important issues of society. Fundamental principles and norms of administrative territorial system is also one of the issues of the Parliament (Ar.61/10). Local executive organs are accepted as a part of a unified system in Kazakhstan. They carry out general state policies of the executive power by considering the interests and developmental needs of their local population and territories (Ar. 87/1).

There are always suspicions on devolving power from the center to local administrations due to fear of destroying the unity of states<sup>13</sup>. In fact, reasons for existence of local administrations in any country can be shown as; to exercise democracy in administration and to ensure participating of people to governing process. In addition, it is suggested that local administration reduces bureaucracy and produces quality in public service<sup>14</sup>.

In Russian Constitution, as one source of inspiration for Kazakhs, vertical and horizontal relationships between Central government and local administrations such as federal republics, regions, autonomous regions, krais have been explicitly regulated. But relationship of administrative legal entities in constitution is not declared in the same way. Only vertical relationship between President and Akims and other executive organs is clearly regulated.

Local governing ways are very different from those of Russia and centralized countries. At the first sight, it can be seen as decentralized governing style in Kazakhstan and Russia. Contrast to this, powers of central government on local administration and limited authority of local bodies determine the quality of administration.

Both organs of government. and local self-government are elected by citizens. Citizens can participate in the administration in two ways: directly and through their representatives. Participating in the elections and management of local self-government has been considered as a right of the citizens (Ar. 33/1-2)<sup>15</sup>.

---

<sup>13</sup> BROWN, L. Neville; BELL, John S., *French Administrative Law*, 4 th Edition, Oxford, 1993, p.32.

<sup>14</sup> YILDIRIM, Turan, *Türkiye'nin İdari Teşkilatı (Administrative Organization of Turkey)*, Ankara, 1999, 14; Şeref GÖZÜBÜYÜK, *İdare Hukuku (Administrative Law)*, 10<sup>th</sup> Edition, Ankara 1997, p.39; GÜNDAY, Metin, *İdare Hukuku (Administrative Law)*, 4<sup>th</sup> Edition, Ankara, 1999, p.45-50.

<sup>15</sup> The same provision can be found in Russian Constitution in article 3/2 "The people of the Russian Federation shall exercise their power directly, and also through organs of state power and local self-government."

Sometimes it is possible to terminate the powers of local governmental organs prematurely. For instance it can be performed within the exclusive jurisdiction of the Senate in accordance with the law (Ar. 55/4). In addition, the operations of all ministries, central and local executive bodies are managed by the Government (Ar. 66/6). At the same time, enforcing force of acts of them are repealed or suspended, entirely or partially by the Government (Ar. 66/7). These powers can be obstacles in way of local democracy in many a time.

Constitution amendments in 1995 provides that the local councils can express by a two-thirds vote no confidence in their Akim. The president also has the power to annul or revoke decisions of local councils. An Akim has the power to control budgetary decisions of the local council. The Akim also can reverse budgetary decisions of the local Councils<sup>16</sup>. Now, after expansion of his presidential powers by a decree, the president can appoint administrative heads of regions and cities<sup>17</sup>.

Today, administrative divisions of Kazakhstan is as follows: In principle, administrative divisions have the same names as their administrative centers<sup>18</sup>, exceptions have the name of administrative center following in parentheses. Kazakh and Russian Governments agreed in 1995 that Russia would lease for a period of 20 years an area of 6,000 sq kms enclosing the Bayqongyr (Baykonur) city, space launch facilities.

The Federal Law on the General Principles of Organization of local self-administration in the Russian Federation, similar in Kazakhstan, strengthens vertical integration. This sort of integration can cause to weaken democracy and the rule of law in their territories. A power in controlling federal-regional legal coordination and resolving federal-regional legal disputes has many risks. This can result injecting politics into constitutional, administrative and legal interpretation of issues of local administrations<sup>19</sup>.

As it can be seen explicitly, local administration has been a kind of local

---

16 Ibid.

17 Other expanded powers of President are: to make constitutional amendments, to appoint and to dismiss the government, dissolve Parliament, call referenda at his discretion.

18 Seventeen oblyses (oblastar): Almaty, Aqmola (Astana), Aqtobe, Atyrau, Batys Qazaqstan, Bayqongyr, Jambyl (Taraz), Jezkazgan, Kokshetau, Mangghystau (Aqtau), Ongtustik Qazaqstan (Shymkent), Pavlodar, Semypalatinsk, Qaraghand, Qostanay, Qyzylorda, Shyghys Qazaqstan (Oskemen), Soltustik Qazaqstan, Taldyqorgan, Torgay. In addition, Almaty and Astana have both special status; Kazakhstan Ülke Raporu (Kazakhstan Country Report), TC. Dışişleri Bakanlığı (Ministry of Foreign Affairs), Publications of TİKA, Ankara, p.21.

19 Ibid.

government in Kazakh Constitution. But, it is very far from being an effective and real local government form, since it is only endowed powers in a narrow limited area. So, local government has a wide mean with politico-technique concept, in contrast to common understanding of local administration. It should be remembered that local governments which have local executive organs to perform their powers to ensure public service which can be described as collective, permanent necessities when they are unsatisfied can cause destruction of peace in society<sup>20</sup>. Thus, it can be said that because of being under great powers of central administration, Kazakh local structure can be named as a narrow local administration.

### CONCLUSION

As a result, separation of power prescribed by constitution of Kazakhstan is not in practice exactly at the present situation. Kazakhstan as a multhi-ethnic, secular, social and unitary state needs time to perform democracy in local administration and in local government. Multiethnic structure, political chaos and Soviet communist inheritance cause centralist administrative structures. Putin's politics in Russia and federal governments and as well as affects of Russia on former Soviet countries may lead an autarchic and authoritarian regimes at least for a near future. With a foreseeing, this concludes that local administrations will go on legal papers, but not in practice.

Kazakhstan follows the same way with other former Soviet countries: strong state, strong administration. Russian political philosophy which formed of a series of politic traditions of statism, collectivism, paternalism may affect Kazakh administrative structure as in old days has affected Kazakh administrative system in the same way. However, indispensable universal values that are chosen as an ideal, of freedom, democracy, and the rule of law can not be given up by Kazakhstan in any way.

It can be said that Kazakh administrative structure and control mechanisms on administration have been affected by former Soviet administrative structure on a large scale. Enormous power of President and narrow competence of Akims which are governors, in practice, show "rule of power" in Kazakhstan. Very strengthened President has capable of eclipsing the executive powers, even though they have elected by the people. Dismissals by president may be a peril on local administrations when it has been thought with "de facto" powers.

---

<sup>20</sup> ÖZAY, İl Han, *Günişigında Yönetim*, İstanbul 1996, p. 180-181.