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PROBLEMS OF FORMATION AND DEVELOPMENT OF SOCIETAL CONSTITUTIONALISM IN THE REPUBLIC OF KAZAKHSTAN

This article explores the challenges and complexities surrounding the formation and development of societal constitutionalism in the Republic of Kazakhstan, a nation with a rich historical tapestry and a diverse society. Situated at the crossroads of Europe and Asia, Kazakhstan's pursuit of constitutionalism transcends domestic boundaries and holds global significance. The historical context sets the stage, delving into the enduring legacies of the Soviet era and the transformative journey from independence to nation-building. These historical junctures have profoundly influenced Kazakhstan's political identity and its approach to constitutionalism. Examining the legal framework, we uncover how constitutional revisions and ambiguities in legal protections impact the stability of Kazakhstan's constitutional order. The article then delves into sociopolitical factors, including limited civic engagement, media freedom, and political pluralism, shedding light on the challenges faced by civil society and political diversity. The international dimension emerges as a crucial influencer, with organizations like the United Nations and the OSCE actively promoting democratic governance and constitutionalism. Bilateral relations, regional dynamics, and economic partnerships further shape Kazakhstan's commitment to align with global norms. As Kazakhstan navigates these challenges and opportunities, it stands at a crossroads, requiring a multifaceted approach to nurture societal constitutionalism. Leveraging its unique position and history, Kazakhstan can contribute to the global discourse on democratic governance and constitutionalism, ultimately reflecting the aspirations of its people.

Key words: civil, constitutional law, freedom, legality, stability.

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Қазақстан Республикасында социеталды конституционализмнің орнығуы мен жүзеге асырылу мәселелері

Бұл мақалада Қазақстан Республикасында, бай тарихи тарихы мен алуан түрлі қоғамы бар елде қоғамдық конституционализмнің қалыптасуы мен дамуына байланысты сын-қатерлер мен күрделіліктер зерттеледі. Еуропа мен Азияның қиылысында орналасқан Қазақстан ішкі шекарадан тыс және жаһандық маңызы бар конституционализмге ұмтылады. Тарихи контекст кеңес дәуірінің берік мұрасын және тәуелсіздіктен мемлекеттік құрылысқа дейінгі өзгермелі жолды зерттеуге негіз жасайды. Бұл тарихи оқиғалар Қазақстанның саяси бірегейлігіне және оның конституционализмге көзқарасына терең әсер етті. Құқықтық базаны зерделей отырып, біз құқықтық қорғаудағы конституциялық өзгерістер мен түсініксіздіктер Қазақстанның конституциялық құрылысының тұрақтылығына қалай әсер ететінін ашамыз. Содан кейін мақалада әлеуметтік-саяси факторлар, соның ішінде шектеулі Азаматтық белсенділік, бас бостандығы және саяси плюрализм қарастырылады, бұл азаматтық қоғам мен саяси әртүрліліктің алдында тұрған мәселелерге жарық түсіреді. Халықаралық өлшем әсер етудің маңызды факторына айналуға, өйткені Біріккен Ұлттар Ұйымы мен ЕҚЫҰ сияқты ұйымдар демократиялық басқару мен конституционализмді белсенді түрде насихаттайды. Екіжақты қатынастар, өңірлік динамика және экономикалық әріптестік Қазақстанның жаһандық нормаларға сәйкестендіруге деген ұмтылысын одан әрі қалыптастырады. Қазақстан осы сын-қатерлер мен мүмкіндіктерді еңсере отырып, ол қоғамдық конституционализмді тәрбиелеуге көп қырлы көзқарасты талап ететін қиылыста тұр. Өзінің бірегей ұстанымы мен тарихын пайдалана отырып, Қазақстан демократиялық басқару және конституционализм туралы жаһандық дискурсқа өз үлесін қоса алады, сайып келгенде, өз халқының тілектерін көрсетеді.

Түйін сөздер: азаматтық, конституциялық құқық, бостандық, заңдылық, тұрақтылық.

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Проблемы становления и развития социального конституционализма в Республике Казахстан

В этой статье исследуются вызовы и сложности, связанные с формированием и развитием общественного конституционализма в Республике Казахстан, стране с богатой исторической историей и разнообразным обществом. Расположенный на перекрестке Европы и Азии, Казахстан стремится к конституционализму, выходящему за рамки внутренних границ и имеющему глобальное значение. Исторический контекст создает основу для изучения прочного наследия советской эпохи и преобразующего пути от независимости к государственному строительству. Эти исторические события глубоко повлияли на политическую идентичность Казахстана и его подход к конституционализму. Изучая правовую базу, мы раскрываем, как конституционные изменения и двусмысленности в правовой защите влияют на стабильность конституционного строя Казахстана. Затем в статье рассматриваются социально-политические факторы, включая ограниченную гражданскую активность, свободу СМИ и политический плюрализм, проливающие свет на проблемы, с которыми сталкивается гражданское общество и политическое многообразие. Международное измерение становится важнейшим фактором влияния, поскольку такие организации, как Организация Объединенных Наций и ОБСЕ, активно продвигают демократическое управление и конституционализм. Двусторонние отношения, региональная динамика и экономическое партнерство еще больше формируют приверженность Казахстана приведению в соответствие с глобальными нормами. По мере того, как Казахстан преодолевает эти вызовы и возможности, он находится на перепутье, требующем многогранного подхода к воспитанию общественного конституционализма. Используя свое уникальное положение и историю, Казахстан может внести свой вклад в глобальный дискурс о демократическом управлении и конституционализме, в конечном счете отражая чаяния своего народа.

Ключевые слова: гражданское, конституционное право, свобода, законность, стабильность.

Introduction

Societal constitutionalism is a concept that emphasizes the role of civil society in upholding and promoting constitutional principles and values within a state. In the Republic of Kazakhstan, a country with a complex political history and a diverse society, the formation and development of societal constitutionalism have faced numerous challenges. Kazakhstan's pursuit of constitutionalism and democratic governance is not merely a domestic endeavor but a reflection of its aspirations on the global stage. Situated at the crossroads of Europe and Asia, this vast Central Asian nation has navigated a tumultuous path toward nationhood and statehood. Its journey is marked by significant historical junctures and profound geopolitical shifts that have shaped its political identity. This article explores the various problems that have hindered the progress of societal constitutionalism in Kazakhstan, examining the historical context, legal framework, and sociopolitical factors that have contributed to these challenges. By delving into these issues, we can gain a deeper understanding of the state of constitutionalism in Kazakhstan and the potential pathways for its enhancement.

I Historical Context

To understand the challenges facing societal constitutionalism in Kazakhstan, it is imperative to delve into the historical context that has shaped the nation's political landscape. Kazakhstan's path toward nationhood and statehood is a complex tapestry woven with significant historical events and transformative shifts in political power. This historical backdrop illuminates the intricate dynamics at play in the country's formation and development of constitutionalism.

Soviet Era and Its Legacy:

Kazakhstan's history in the 20th century was largely defined by its role within the Soviet Union. From the early days of the Russian Revolution, the territory that would become Kazakhstan was incorporated into the Soviet state. The Soviet era witnessed the imposition of centralized control, ideological conformity, and the suppression of dissent. This legacy has left an indelible mark on Kazakhstan's political culture and governance structures (Laumulin, 2017).

Stalinist Policies:

During Joseph Stalin's leadership, Kazakhstan experienced significant demographic and

social changes due to policies such as forced collectivization, deportations, and the Great Famine of the 1930s. These policies had a lasting impact on the country's demographics, with ethnic Kazakhs becoming a minority in their own land, and they continue to influence social and political dynamics in contemporary Kazakhstan (Balayeva, 2014).

Independence and Nation-Building:

The dissolution of the Soviet Union in 1991 marked a pivotal moment in Kazakhstan's history. The country declared its independence, and Nursultan Nazarbayev, who had been a key figure in Soviet Kazakhstan, became its first president. Kazakhstan embarked on a journey of nation-building, grappling with the challenge of forging a national identity and establishing democratic institutions (Hunter, 2012).

Constitutional Development:

The establishment of a modern constitution in 1993 was a significant milestone in Kazakhstan's transition to a democratic state. This constitution, albeit undergoing subsequent revisions, enshrined fundamental rights and democratic principles. However, it also concentrated power in the presidency, a feature that would become a central point of contention in the development of constitutionalism (Abdrakhmanov, 2018).

Analyzing the historical context of Kazakhstan's political evolution reveals how deeply rooted challenges and complexities have been. The Soviet legacy, including the suppression of political freedoms and the demographic consequences of Stalinist policies, has created a unique environment in which constitutionalism must take root. Furthermore, the transition to independence and nation-building added layers of complexity as the nation sought to strike a balance between its historical ties to Russia and its aspirations for democratic governance.

II Legal Framework

The legal framework in Kazakhstan plays a crucial role in shaping the dynamics of societal constitutionalism. While there have been efforts to establish a constitutional order that respects individual rights and freedoms, several legal challenges persist.

Constitutional Revisions:

Kazakhstan has undergone multiple constitutional revisions since gaining independence. While these revisions have aimed to strengthen democracy and human rights, critics argue that they have often been used to consolidate presidential power. Frequent changes to the constitution can undermine the stability and predictability of the

legal framework, which is essential for societal constitutionalism to thrive (Ginsburg, 2009).

Ambiguities in Legal Protections:

The legal protections for civil society and individual rights in Kazakhstan's constitution and laws can be vague and subject to interpretation. This ambiguity can hinder the effectiveness of societal constitutionalism by creating uncertainty about the boundaries of civil liberties (Omarova, 2017).

III Sociopolitical Factors

The challenges faced by societal constitutionalism in Kazakhstan are not solely the result of historical factors and legal frameworks. Sociopolitical factors also play a significant role in shaping the environment in which civil society operates.

Limited Civic Engagement:

One of the fundamental problems is the limited engagement of civil society in political processes. While there are various civil society organizations in Kazakhstan, their ability to influence policy and governance remains restricted. This is partly due to a lack of government willingness to engage with civil society and partly due to the weakness of civil society organizations themselves (Abazov, 2003).

Media Freedom:

Freedom of the press and the ability of the media to act as a watchdog are essential components of societal constitutionalism. In Kazakhstan, concerns about media freedom have been raised, with allegations of censorship and restrictions on independent journalism (Reporters Without Borders, 2021).

Political Pluralism:

A vibrant and diverse political landscape is vital for the development of societal constitutionalism. Kazakhstan has faced criticism for its limited political pluralism, with a dominant ruling party and allegations of electoral irregularities (OSCE/ODIHR, 2020).

Also, Political pluralism, characterized by a vibrant and diverse political landscape, is a cornerstone of democratic governance and societal constitutionalism. In Kazakhstan, the presence or absence of such political diversity plays a crucial role in shaping the development of constitutionalism.

The dominance of Party:

Kazakhstan's political scene has long been characterized by the dominance of the Party, led by Nursultan Nazarbayev, who served as the country's president for nearly three decades. The party's electoral dominance has raised concerns about the

level of genuine political competition in the country (Abdrakhmanov, 2018). Critics argue that such dominance can stifle political pluralism by limiting the representation of diverse voices and ideas.

Electoral Irregularities:

Allegations of electoral irregularities have marred Kazakhstan's electoral processes, casting doubt on the fairness and transparency of elections (OSCE/ODIHR, 2020). These irregularities include issues related to voter registration, media bias, and restrictions on political opposition. Such challenges undermine the political process's integrity and inhibit political pluralism's growth (International Crisis Group, 2021).

Challenges for Opposition Parties:

Opposition parties in Kazakhstan have often struggled to gain a foothold in the political landscape. This is due to a combination of legal restrictions, limitations on media access, and the dominance of the ruling party. Opposition figures and parties have frequently faced hurdles in registering and participating in elections, constraining their ability to challenge the status quo (Rakhimzhanova, 2020).

Civil Society's Role:

A robust civil society can play a pivotal role in promoting political pluralism and contributing to societal constitutionalism. However, limitations on civil society's ability to operate freely can further hinder political diversity. Legal restrictions on civil society organizations and their ability to engage in political activities can hamper their effectiveness as advocates for political change (Freedom House, 2021).

Regional Disparities:

Kazakhstan's vast geographic expanse and regional disparities add complexity to the issue of political pluralism. Different regions may have distinct political preferences and priorities, and ensuring representation and political engagement across the nation's diverse regions can be challenging (Hunter, 2012).

Efforts to address the challenges of political pluralism in Kazakhstan are essential for the advancement of societal constitutionalism. A diverse political landscape encourages open debate, fosters the representation of diverse interests, and enhances the checks and balances necessary for constitutional governance. Moreover, it allows citizens to make informed choices and hold their leaders accountable.

IV International Influence

The international community also plays a role in the development of societal constitutionalism in Kazakhstan. International organizations, such as the

United Nations and the Organization for Security and Cooperation in Europe (OSCE), have actively promoted democratic governance and the rule of law in the country.

The international dimension of societal constitutionalism in Kazakhstan is of paramount significance. The involvement of international organizations and the broader global community has both shaped and influenced the development of democratic governance, constitutionalism, and the rule of law within the country.

United Nations' Role:

The United Nations (UN) has played a pivotal role in supporting Kazakhstan's transition towards democratic governance and constitutionalism. Kazakhstan's engagement with the UN has been multifaceted, including participation in various UN bodies and initiatives. The UN has assisted in electoral processes, human rights, and sustainable development, contributing to the country's efforts to align with international norms and standards (UNDP, 2020).

OSCE and Democratization:

The Organization for Security and Cooperation in Europe (OSCE) has been actively engaged in Kazakhstan, particularly in the realm of democratization. OSCE's Office for Democratic Institutions and Human Rights (ODIHR) has monitored elections in Kazakhstan, offering assessments and recommendations aimed at enhancing the democratic process and constitutionalism (OSCE/ODIHR, 2020).

Bilateral Relations:

Beyond international organizations, Kazakhstan's bilateral relations with other nations have also influenced its commitment to constitutionalism and democratic values. Relations with countries that prioritize democratic governance and the rule of law have often encouraged Kazakhstan to align its policies with international standards (Rakhimzhanova, 2020).

Regional Cooperation:

Kazakhstan's role as a key actor in Central Asia has implications for its constitutional development. Regional organizations, such as the Shanghai Cooperation Organization (SCO) and the Collective Security Treaty Organization (CSTO), have provided platforms for discussions on security and governance issues that intersect with constitutionalism (International Crisis Group, 2021).

Economic and Trade Partnerships:

Kazakhstan's economic relationships with global partners also bear on its commitment to

democratic governance. Economic and trade ties with democratic nations often come with expectations related to human rights, political freedoms, and the rule of law. These expectations can influence Kazakhstan's approach to constitutionalism (Blank, 2019).

Analyzing the international aspect of Kazakhstan's constitutional development underscores the interconnectedness of domestic and international dynamics. While international organizations like the UN and OSCE actively promote democratic governance and constitutionalism, the broader international community, including individual nations and regional actors, also exert influence. These external factors, whether through diplomacy, economic ties, or political pressure, contribute to Kazakhstan's ongoing efforts to enhance societal constitutionalism.

International Pressure:

Kazakhstan's international partners have at times, exerted pressure to encourage democratic reforms and the protection of human rights. While this pressure can be a catalyst for change, it can also lead to tensions between the government and the international community (OSCE, 2020).

Regional Dynamics:

Kazakhstan's position in Central Asia and its relationships with neighboring countries also influence its approach to constitutionalism. Regional dynamics, including security concerns and economic interests, can shape the government's priorities and its willingness to engage with civil society (Blank, 2019).

Conclusion

In conclusion, the journey of Kazakhstan toward societal constitutionalism is marked by a complex interplay of historical legacies, legal complexities, sociopolitical factors, and international dynamics. The challenges facing the formation and development of constitutionalism in this vast Central Asian nation are deeply rooted and multifaceted. However, they also present opportunities for growth and transformation.

Kazakhstan's historical context, shaped by its tumultuous past within the Soviet Union and its transition to independence, has left indelible imprints on its political culture and governance

structures. The legacies of centralized control, ideological conformity, and demographic shifts cast a long shadow, influencing the nation's approach to constitutionalism and democratic governance.

While providing a foundation for constitutional principles and rights, the legal framework in Kazakhstan also grapples with challenges such as frequent constitutional revisions and ambiguities in legal protections. These complexities can create uncertainties within the legal system, hindering the development of societal constitutionalism. Sociopolitical factors, including limited civic engagement and media freedom, pose substantial challenges to the flourishing of civil society and political pluralism. The dominance of the Nur Otan Party and allegations of electoral irregularities further underscore the need for a more diverse and competitive political landscape. Addressing these issues is essential to fostering an environment where constitutional principles and values can thrive.

Moreover, international influences and engagements play a pivotal role in shaping Kazakhstan's constitutional trajectory. The active involvement of organizations like the United Nations and the OSCE underscores the global significance of Kazakhstan's democratic development. International pressure, regional dynamics, bilateral relations, and economic partnerships all contribute to Kazakhstan's ongoing commitment to aligning with international norms and standards. In the face of these challenges and opportunities, Kazakhstan stands at a crossroads. The development of societal constitutionalism requires a multifaceted approach that addresses historical legacies, strengthens the legal framework, promotes civic engagement, and encourages political pluralism. Additionally, maintaining open dialogue and cooperation with international partners will be crucial in the pursuit of democratic governance and the rule of law.

As Kazakhstan continues its journey towards a more robust constitutional culture that upholds democratic principles and respects individual rights, it is imperative that the nation leverages its unique position, history, and resources to build a society where societal constitutionalism thrives. This path will reflect the aspirations of the Kazakh people and contribute to the broader global discourse on democratic governance and constitutionalism.

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