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IDEAS OF NATIONAL SOVEREIGNTY IN THE CONSTITUTION OF KAZAKHSTAN AND THEIR IMPLEMENTATION

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ABSTRACT

The article reveals Kazakhstan's model of implementation of the ideas of national sovereignty in the context of interethnic harmony, internal national unity and modernization of society in the Constitution. Comparative legal analysis of scientific conclusions related to the principles of the idea of popular sovereignty is carried out. The importance of strengthening state power and social harmony in the creation of a state governed by the rule of law is emphasized, logical conclusions and thoughts are summed up.

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Introduction. One of the life roots of constitutionalism is the sovereignty of the people, which serves as the basis of state power. The idea of the sovereignty of the people appeared during the democratic revolutions of the XVIII-XIX centuries and was directed against feudal absolutism. The principle of people's sovereignty did not immediately become popular in continental Europe, and in the XIX century, the monarchical principle was the only formula for the legalization of power. Only in the twentieth century did people's sovereignty become the dominant principle of justifying the source of state power.

Materials and methods. At the same time, in the process of developing democracy, the understanding of the principle of popular sovereignty has changed (Amandykova S. K., 2002, p. 339).

It is indisputable that the representation of the people is one of the most important elements of the Constitution of a constitutional or legal state, and with its help, firstly, the subordination of state power to law and law is ensured, and secondly, the participation of the population in the exercise of their functions through their representatives. "Representation of the people is the institutions that are called upon to participate in the exercise of certain rights of state power, to exercise the rights of legislative power as soon as possible, and to create such acts of state power that must be considered and approved in a legislative manner. Therefore, the representation of the people is a set of people's institutions," wrote Alexander Dmitrievich Gradovsky, a well-known Russian lawyer (Gradovsky A.D., 1895, p. 188).

The principle of constitutionalism enshrined in the constitutions of modern democracies, according to which all power belongs to the people, but does not mean the complete infinity of power of the people. For example, J.-J. Rousseau's theory of unlimited or uncontrollable sovereignty, in which the political power of the people must be virtually uncontrollable, constitutionalism is based on the limited nature of democracy (Rousseau J. J., 1969, p. 168.).

The threat of the formal nature of unlimited people's sovereignty was raised by the Russian philosopher N.A. Berdyaev saw it, he wrote: "When a sovereign people is voluntarily represented, it is not clear what they want, what kind of life they want to build." (Berdyaev NA, 1990, p.159.).

The principle of popular sovereignty should not in any case require unlimited power of the people. The sovereignty of the people should be limited to the rights of the individual, his dignity. The sovereignty of the people is limited to the sovereignty of the individual in a democratic constitutional state. This democratic principle requires tolerance for minority rights. Understanding the totality of all citizens as a population in the legal sense, it should be taken into account that the interests of social groups and funeral rites are different. Because, political representation should not allow the manifestation of diversity of public interests, the growth of inequality and the concentration of power in the hands of one party or a certain group of people. K. Popper noted the inconsistency of individual theories about sovereignty. According to certain types of sovereignty theory, "the smartest, or the best, or the law, or the majority should rule." However, with the Supreme will of people, it is possible to trample first the laws, and then the freedom itself (Popper K., 1971, p.163.).

Results. Therefore, the principle of popular sovereignty can only be accepted with restrictions. At the same time, it should express the decisive participation of the people in the organization of state power and the creation of state institutions as a reflection of the people's connection with the institutions of power. Institutions of representative and direct democracy serve as forms of exercise of state power.

The principle of popular sovereignty in Democratic states has a national color and is associated with the formation of a state – nation. Therefore, the 1993 constitution adopted the theory of national statehood. Thus, in the provision of the first foundation of the constitutional order, the Republic of Kazakhstan is created as a form of statehood of the self-defined Kazakh nation. In addition, the preamble of the constitution enshrines the inviolability of the Kazakh statehood (Constitution of the Republic of Kazakhstan, 1993, (repealed)).

However, Kazakhstan is a multinational state, so the principle of people's sovereignty must be coordinated with its ethnic component, so the constitutional doctrine of Kazakhstan increasingly puts the problem of forming the concept of people's sovereignty on the basis of political ethnicity in the first place. It was necessary to legally switch from the idea of national sovereignty enshrined in the Constitution of 1993 to the idea of national sovereignty through the Constitution of the Republic of Kazakhstan of 1995 (Constitution of The Republic of Kazakhstan, 1995).

Discussion. There is one nation in the Republic of Kazakhstan – Kazakh and dozens of national groups. All of them form a single people of Kazakhstan and are the social basis of the state and the only source of state power. It is a historically fair and politically correct decision not to divide the Kazakh nation into "titular" and "indigenous", but to recognize it as an integral part of the people of Kazakhstan. The Republic of Kazakhstan, as an independent state, was established in accordance with the will of all people living in it, regardless of nationality.

The common historical destiny of the people of Kazakhstan was formed as a result of decades of living together on the territory of Kazakhstan. At different times, ethnic groups moved to Kazakhstan in different ways and in different ways. All of them, together with the Kazakh people, are participants and witnesses of political, economic, social and cultural events that have taken place in Kazakhstan for many generations. After the establishment of the Independent Republic of Kazakhstan, all citizens of Kazakhstan adopted a new state. In this way, they not only confirmed the common historical fate of the past years, but also expressed a desire and readiness for the joint creation of a new society, a new state. Therefore, G. S. Sapargaliyev rightly noted that the state created in Kazakhstan is based not on ethnicity, but on political ethnic principles (Sapargaliyev G., 1998, p. 6.). The concept of "people of Kazakhstan" is of particular importance in the doctrine of Kazakhstan's constitutionalism. The concept of "people of Kazakhstan" should become a formula for political integration of various ethnic groups living in the territory of the Republic of Kazakhstan. The preamble to the Constitution of the Republic of Kazakhstan of 1995 enshrines the concept of "people of Kazakhstan".

In the legal literature of Kazakhstan, the concept of "people of Kazakhstan" is a multi-structured single economy and open way of life, which is united and formed by a common historical destiny with the ancient Kazakh nation; an attempt is made to generalize it as a stable multi-ethnic association of people living and working together on the ancient Kazakh land on the basis of constitutionally established national, religious and civil equality and equal use of state and official languages; different Kazakhstani culture and fraternal mentality, common to the history and future of Kazakhstanis (Kotov AK, 1996, p.85.). At the same time, the population of Kazakhstan can be classified as one of the few subjects whose state of constitutional legal relations is not regulated by the norms of other branches

of domestic law, but is directly regulated only by constitutional law (for example, with the population of administrative-territorial units, Deputies of the Parliament and maslikhats, standing committees, etc.). In the doctrine of modern Kazakhstan constitutionalism, one of its fundamental principles – the principle of "public consent" – is directly related to the implementation of the idea of people's sovereignty.

The principle of social harmony and political stability is proclaimed in Paragraph 1 of Article 1 of the Constitution as one of the principles of activity of the Republic of Kazakhstan, which is a completely new phenomenon in the constitutional doctrine of Kazakhstan.

The principle of public consent, as mentioned above, goes back to the idea of limited popular sovereignty. In this regard, democracy is understood as the degree of clearly permissible participation of various social groups, their associations and citizens in state affairs and at the same time in the management of state affairs of society for the benefit of the people. Democracy depends on the dictatorship of the majority of the average mass of people and the transformation of the social state into totalitarianism by the main feature of this majority. We understand democracy as the degree of possible coordination of diversity of interests in the conditions of maintaining social integrity and participation of Public Associations and citizens in state affairs. Social consent, in our opinion, means a certain political and social agreement. It is based on the Constitution itself. The social purpose of the Constitution is determined in the constructive development of political power, in the Coordination of the interests of society and citizen, in the creation of legal opportunities for the progressive expansion of democracy as a universal way to relieve the tension of unconditional alienation of citizen and state power, society and the state. Constitutionalism cannot be implemented, and therefore the balance of power structures cannot be maintained without the universal consent of various social groups, strata, and the entire population with the established form of government in a given society. Earlier, we put forward the conclusions of the American scientist Arthur Elsworth Dick Howard that one of the principles of constitutionalism is that the government comes out of the people and lives according to them (Howard Dick A. E., 1992, p. 53.).

The consent of the people with the form of government in society largely determines the legal nature of state power. Recognition of the right of holders of power to exercise their functions of power contributes to the observance of constitutional principles in society. Therefore, the legalization of power is an important component of any political system operating on the basis of constitutionalism. In this case, the state achieves and maintains the state of public consent.

Of great importance is the legislative activity of the state and its bodies aimed at strengthening the equal rights of all, regardless of Social, national, racial, religious and other differences, and preventing discrimination for these reasons. Law enforcement activities of state bodies are also of great importance in strengthening public consent.

One of the necessary elements of public consent is the achievement of consensus both between government agencies and between political parties and movements. At the same time, maintaining social harmony is the task not only of the state, its bodies, but also of socio — political institutions, society as a whole. The constitution lays the foundation for a constitutional agreement. Actions on the part of public associations aimed at violating public consent are not allowed. The charters, the rules of socio-political associations should not contain ideas, views that preach the exclusivity of their supporters, put one group of citizens against another, etc. in the presence of such provisions in the charters, socio-political associations are not registered. If socio-political associations take actions aimed at violating public consent in the course of their activities, then the course of such actions should be stopped by the relevant law enforcement agencies.

The state promotes the establishment of relations of mutual tolerance and respect between citizens, as well as between various religious associations. The fundamental principle of constitutionalism "consent of the people" clearly reflects such principles of activity of the Republic of Kazakhstan as political stability and economic development for the benefit of the entire people. The people of Kazakhstan act as an entity interested in the formation of a common political and civic identity. The people of Kazakhstan, as a unity of the Kazakh nation and all national groups connected by a single historical destiny and living in a single state, can "take a worthy place in the world community" if they strive to create a single ideological and civilized whole (Sapargaliev G., Mukhamedzhanov B., Zhanuzakova L., & Sakieva R., 2000., P. 59.).

Conclusions. The creation of a single socio-cultural integrity requires political stability. The Constitution of the Republic of Kazakhstan defines political and legal ideals, socio-cultural values that can unite all members of society and create a solid foundation for political stability. Political stability is possible if the unity of political, legal, cultural and spiritual values is achieved in society. Undoubtedly, the establishment of constitutionalism is impossible without the developed economy of

our state. Therefore, the creation of a constitutional principle of economic development for the benefit of the entire nation is one of the features of the formation of a civilized society.

The Constitution recognizes the role of civil society in the development of economic relations. This follows from the constitutional provision on the recognition of two forms of property: state property and private property - as the basis of the Kazakh economy. The private sector of the economy represented by its subjects should not only take care of their own well-being, but also be responsible for the development of the economy of society. This is not just a good wish, but a constitutional requirement. There was a certain period when the state refused to solve many problems of economic development, believing that the market regulates everything itself. This position, as practice shows, was wrong. The current Constitution of the Republic of Kazakhstan establishes the responsibility of the state for the economic development of society. The state cannot stay away from economic processes and leave society to the preferences of elements of market relations. The development of the economy is impossible without the moderate regulatory role of the state in the sphere of private economic relations, as well as comprehensive regulation and strict management of the public sector of the economy.

The importance of ideological modernization in the context of national ideas of sovereignty in Kazakhstan and their implementation has become particularly important. The essence of the general ideological modernization depended on the following criteria. First of all, it is interethnic harmony. The state of Kazakhstan has managed to set an example for the countries of the world in the idea of interethnic harmony. Secondly, the idea of internal national unity. In this regard, Kazakhstan has done a lot of work to prevent the long-standing division into tribes and tribes, division into regions and other territorial units, and has managed to consolidate internal national unity. Third, the ideology of modernization of Kazakhstan's society has been proclaimed in the state. On the way to the ideology of modernization of Kazakhstan's society, the updated system of ideology, such as the creation of civil society institutions, multi-party, independent media, and non-governmental organizations, has worked effectively. Fourth, with a correct assessment of the potential of religious movements at the state level, we managed to form the principle of religious tolerance and freedom of believers. All these have created opportunities for the formation and successful implementation of the ideas of national sovereignty in the Constitution. As a result, the law "on public councils" was adopted on November 2, 2015. This law regulates public relations related to the legal status of public councils, the procedure for their formation and the implementation of the state policy on the formation of a state accountable to the population, the procedure for organizing the activities of state bodies at all levels, as well as National Management Holdings, National Holdings, national companies, non-profit organizations, ensuring the broad participation of citizens in decision-making. The main goal here is to actively participate in the government of the state, openly expressing the views of civil society on socially significant issues. This is the result of the implementation of the ideas of popular sovereignty in the Constitution.

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REFERENCES

1. Amandykova S. K. (2002.) Formation of the doctrine of constitutionalism in Kazakhstan. - Karaganda: KarGU Publishing House, - 440 p.
2. Retrieved from <http://elib.shpl.ru/ru/nodes/9355-gradovskiy-a-d-sobranie-sochineniy-a-d-gradovskogo-t-1-9-spb-1899-1908>
3. Rousseau J. J. (1969.) *Trektaty*. - M., - p. 168-171.
4. Berdyaev N. A. (1990.) *The philosophy of inequality*. - M., - p. 159.
5. Retrieved from <https://press.princeton.edu/books/paperback/9780691019680/open-society-and-its-enemies-volume-1>
6. Retrieved from https://online.zakon.kz/Document/?doc_id=1010212#pos=0;0
7. Retrieved from http://adilet.zan.kz/kaz/docs/K950001000_
8. *Constitution of the Republic of Kazakhstan: Commentary* / Edited by G. Sapargaliev. - Almaty: Zheti zhargy, 1998.
9. Kotov A. K. (1996.) *Sovereign Kazakhstan: Citizen, Nation, People* (issues of Constitutional Law). - Almaty: Zheti zhargy, - p. 85.
10. Howard Dick A. E. (1992.) *Constitutionalism / The rule of law: Collection / Trans. from English-M.*: Progress, p.53.
11. Sapargaliev G., Mukhamedzhanov B., Zhanuzakova L., & Sakieva R. (2000.) *legal problems of Unitarianism in the Republic of Kazakhstan*. - Almaty: Zheti zhargy, - P. 59.
12. Retrieved from <http://adilet.zan.kz/kaz/docs/Z1500000383>