

ANNOTATION

Thesis for the degree of Doctor of Philosophy (PhD)

«6D030100 - Jurisprudence»

OTARBAYEVA ASSEL TANATAROVNA

«Problems of development and functioning of the legislative power in Kazakhstan (historical and theoretical analysis)»

Research relevance. The process of forming a new state-legal system and radical renewal of the entire social life of the country that began with the acquisition of independence and sovereignty of the Republic of Kazakhstan continues to the present day. Moreover, this process has not yet been fully completed, since such reforms require a certain time and adequate changes in public administration and legal regulation, as well as in the public consciousness and establishing strong social and ideological landmarks. In this regard, the problems of the formation and strengthening of the new state power, its democratization, the support of the people, the elimination of the flaws in it are of a great importance in the conditions of modern Kazakhstan.

In modern political and legal science research of various concepts of power covers not only existing, formed realities of state-legal reality, but also certainly the processes of their formation and development up to the present qualitative level. The formation of statehood in Kazakhstan implies the definition of the optimal mechanism for the constitutional separation of branches of power and the development of its own type of developed constructive democracy in accordance with the Kazakhstan specificity. A special place in the process of state formation of Kazakhstan belongs to the legislature. The study of nature, essence, organization, structure and forms of manifestation makes it possible to form not only a theoretical but also a solid factual base for in-depth study of the range of actions and localization of its activities in the sphere of state-power relations, in the regime of an independent, differentiated branch of power.

The relevance and importance of studying the nature of the legislative power is related to its special position in the state mechanism, the functions performed, the specific conditions and the order of the activity. The special place of the legislative power in the system of separation of powers is conditioned by the role of law, legislation, their understanding, formation, implementation. Formation and functioning of the legislative power is an organic part of the process of consolidating democracy and creating a rule-of-law state, which presupposes the regulation by the law of the most important social relations, including the relations of power. Thereby, the search and determination of ways and forms of using the powerful potential of this branch of government for the sake of social progress, the basic social criterion of which is the well-being of the population, acquire special significance.

One of the most important problems concerning the organization of state power is the issue of the formation and legal regulation of the activities of the Parliament of the Republic of Kazakhstan and its transformation into a strong, efficient, highest working representative body with a legislative function.

The formation of the Kazakhstan parliament has its own peculiarities connected with the way of election to the legislative body, the structure of the parliament, the

powers of the chambers, the specifics of the discussion and passing of the bills, the approval by the president of bills and the role of the president in the legislative process as a whole; in the system of separation of powers under the current Constitution, as well as the increasing role of parties in the supreme representative body and in the socio-political life of the country, the change in the status of the Parliament on constitutional reforms of 2007 and 2017, require a new comprehension, clarification and a broader understanding of parliamentarism and a certain status and function of Parliament in the political system of the state.

The above-mentioned circumstances undoubtedly testify the fact that the study of the theoretical and historical aspects of the development and functioning of the legislative power acquires not only relevant, theoretical, cognitive, but also practical and political-legal significance.

The aim of research. The aim of the research is to disclose the main aspects of the formation, functioning and development of the legislative power in the Republic of Kazakhstan, considered in a comprehensive and systemic manner.

To achieve this aim it is necessary to solve the following objectives:

- to justify a modern conception of organizationally-legal power structure (unity, division, mutual control and authorities interaction) in view of change of the nature of the state and public authority in the latest time;

- to reveal the nature and content of the legislative power on the basis of historical, legal and theoretical analysis;

- to highlight the stages of development of the newest Kazakh political process, justify their features, consider the system of organization of state power and the mechanism for the formation of Parliament at these stages;

- to analyze the conditions and general patterns of the formation of Kazakhstan's parliamentarism from the Soviets to a professional bicameral parliament, determine the legal mechanism of formal interactions and interference of the Parliament with other elements of state power;

- to identify the features of parliamentarism in Kazakhstan;

- to consider the prospects of further development of the legislative power acceptable for the Kazakhstani society.

The object of research is the process of formation and functioning of the legislative power in the Republic of Kazakhstan and the features of its development at the present stage.

Methodological and theoretical bases of the research. The methodological basis of the dissertation research is a systematic and integrated approach to the study of political and legal phenomena, which in turn are based on the dialectical-materialistic method of cognition of state reality. The historical and legal specifics of the work stipulated the application of the historical method, and also legal-sociological, structural-functional, formal legal, comparative legal methods and methods of scientific research of state and legal phenomena, methods of analysis and synthesis were used in the work.

The theoretical basis of the study is the works of the above-mentioned domestic and foreign scientists.

The scientific novelty of the thesis is that it is one of the first works carried out in the domestic legal science at the level of the dissertation research on the problems of development and functioning of the legislative branch of power in the Republic of Kazakhstan, in the conditions of carrying out political and constitutional reforms. The approach of the author itself to a consideration of such a complex political and state category as the legislative power has a certain novelty. Based on the systematic approach to the study of state-power relations, the author conditionally singled out three stages in the development of the newest Kazakh political process, substantiates their features, and examines the legislative power in the structural-functional and legal-sociological aspects. It reveals a number of rather important, at least the most discussed aspects of the problem of interaction and interference of the Parliament with other elements of the system of state power, since previously the legal basis of these interactions, the moments of cooperation, contradictions and conflicts between the bicameral Parliament and government bodies were not considered in a comprehensive and systematic way.

The novelty of the work along with the methodological approaches to the disclosure of the problem under consideration are also determined by the development of historical and legal ideas about the ways of the formation of Kazakhstan's parliamentarism: from the Soviets of People's Deputies to the bicameral Parliament. The formation of the fundamental and political and legal foundations of the institution of parliamentarism in the Republic of Kazakhstan is considered, proposals are made to further strengthen and expand the degree of its influence on the further development of society and the state. The author, on the basis of an integrated approach, carried out an initial development on study of constitutional changes in Kazakhstan at the current stage, which implies an increase in the role of the Parliament, the transfer of certain functions of the President to Parliament and the Government, strengthening the accountability mechanism and government control over the Parliament as positive phenomena that are consistent with the logic of previous political and constitutional reforms.

The following basic provisions are made for defense:

1. One of the most important problems related to the organization of state power for several centuries is the question of unity and separation of powers. In both cases, we are talking about the organizational and legal and social aspects of the problem. The modern concept of the organizational and legal structure of power is increasingly receiving a new sound: unity, separation, mutual control and interaction of the authorities. This formulation of the question is increasingly reflected in the norms of the new constitutions, although as a general principle it is almost never documented in a clear formulation. The most complete expression of this thesis was in the Constitution of Kazakhstan of 1995 (Article 4, paragraph 3 states: "State power in the Republic of Kazakhstan is unified, implemented on the basis of the constitution and laws in accordance with the principles of its division into legislative, executive and judicial and their interaction between by using a system of counterweight checks "). The actual implementation of such a formula has enormous political significance, including for the legalization and legitimating of the state power itself. Historical

experience shows that neither unity nor separation of powers can have absolutely "pure" forms of implementation.

2. The concept of the legislative power has several meanings. Legislative power is: 1. the authority to issue binding obligatory legal acts, belonging to the people, or delegated by the people to their representatives in the parliament; 2. the bearer of people's sovereignty, the expression of people's will, people's interests; 3. system of state bodies having the right to pass laws. In the modern state, the legislative power, as a rule, is a representative. Based on the elections, the people transfer power to their representatives and thus authorize representative bodies to exercise state power. In this sense, we can talk about the primacy of representative bodies in the mechanism of state power, their priority and supremacy: the legislative power is the first among equals. A thorough and in-depth study of the history of the legislative power, the history of knowledge about power, character, strength and the degree of influence made it possible to assess its real ability to represent the vital interests of society, through the legal regulation of the most important social relations.

3. In the modern history of Kazakhstan the Supreme Council of the Kazakh SSR of the 12th convocation and the Supreme Council of the 13th convocation take an important place, laying the preconditions for the further development of parliamentarism in Kazakhstan.

The Supreme Council of the 12th convocation, formed in the summer of 1990 in the period when the totalitarian regime of the USSR was developing, played a special role in the history of the formation of parliamentarism in Kazakhstan. This was reflected in the adoption of a number of important legal acts, the legislative provision of state policy in the 1990s, the formation of new political institutions (the President, the Parliament) aimed at democratization of society and the development of economic reforms corresponding to the political course. For incomplete 4 years of the existence of the Parliament, a legislative basis for the sovereignty and independent development of the young state was created. The work analyzes the prerequisites, conditions, origins and causes of the dramatic events around him as a legislative body, which showed that there was a positive and not a few flaw in the work of the Parliament. Relative stability in relations between the President, legislative and executive branches of government did not mean lack of disagreement. The non-working mechanisms of counterbalance checks, dual power in the regions, led to a conflict situation associated with the struggle for the predominance of real power in the system. The result of the confrontation was the early dissolution of local representative bodies, and afterwards the Supreme Council itself.

The Supreme Council of the 13th convocation became the first professional Parliament in which the deputies worked on a permanent basis. After working for a little less than a year, it was deemed an illegal, because The Constitutional Court recognized that certain provisions of the electoral legislation, in conformity with which the election of deputies were held, were not in accordance with the Constitution. The Supreme Council of the 13th convocation was a kind of compromise between the old and new political system, a reflection of the attempt to introduce a model of Western democracy on the post-Soviet basis that had been built for centuries, when the mechanism for the separation of branches of power was not

brought to its logical completion, the system of checks and balances had not filled with real content, the status of the Supreme Council, the President and the Government has not been determined to the end, the Constitution of the Republic of Kazakhstan of 1993 initially contained contradictions in it. It should be assumed that all these factors, during a difficult period of state building, led to the second parliamentary crisis, as a reflection of internal contradictions in the relations between the branches of power.

Modern researchers believe that Kazakhstan's version of self-dissolution of the Parliament has no analogue in the history of the states not only of the CIS members, but of the world, no matter how difficult conditions were. Our country, always adhering to the tactics of caution in making such serious political decisions, in this case was in the forefront of the states that have ever survived the parliamentary crisis. There is no doubt that the researchers will investigate many other causes of such extraordinary phenomena in the history of national statehood and hundreds of analytical works on these issues will be written.

4. The process of formation of developed democracy is uneven in Kazakhstan and, according to a number of researchers, will take a long time. Kazakhstan's parliamentarism in its modern form - a comparative new phenomenon in the political system of our society. During the period of independence, we have passed from the Soviets of People's Deputies to a professional bicameral Parliament. But at the present stage strengthening of the legislative authority is one of the indispensable conditions for economic prosperity, social well-being, and the formation of civil society. Experience shows that the formation of parliamentarism is a complex process. The first parliament of independent Kazakhstan, having entered into insurmountable contradictions with the executive power, self-dissolved. The second parliament was declared illegitimate on the basis of the decision of the Constitutional Court on violation of legislation in the conduct of elections. With the adoption of the Constitution of the Republic of Kazakhstan in 1995, the Parliament operates on a bicameral basis.

Parliamentarism exists only in those states where there is a parliament that is endowed with not only legislative, but also organ-forming and control powers. Parliamentarism is a representative government. If we approach to the problem strictly, proceeding from the objective requirements of political science and law, from the practice of parliamentarism in other countries, and consider this problem deeper, comprehensively, it is clear that we have no reason to speak about the final confirmation of parliamentarism as a political and democratic institution, as a method of implementation of power.

Historical experience shows that the formation of parliamentarism did not proceed smoothly in any country and there are no ideal forms of representative democracy. The Institute of Parliamentarism is a permanently improving mechanism that implements the function of developing democracy.

5. In the development of the newest political process of Kazakhstan (past, present and future) three stages are conventionally identified. The study substantiates their features, and examines the role of the state, the system of organization of state power and the mechanism for the formation of Parliament at these stages.

The first stage coincided with the initial processes of sovereign development of Kazakhstan. There are complex social changes in society, social relations develop spontaneously. The role of the state is insignificant, because of this there is a weakening of the political and social basis of power.

At the second stage, the search for an optimal state system began, the need for the strengthening of the role of the state in the life of society, in its active transformational activity, and in effective, strong state power became objectively ripe. In this regard, the state fulfills two tasks: the reorganization of the state mechanism and the reform of society, the economy and its subsystems. Integrating factor uniting the society and the state is the institution of a strong President, for this purpose the Head of State is endowed with arbitration and coordination powers. At the present time, a mechanism has been created for the interaction of branches of power that work in the public interest, the basic set of reforms has been completed, a solid, economic and legal basis has been created to ensure the further sustainable development of the state and society. Nevertheless, the system of separation of powers under the current Constitution of the Republic of Kazakhstan is generally asymmetrical and unbalanced, with a clear skew in favor of the powers of the President and his dominant role in the system of higher state bodies.

Thus, Kazakhstan as the majority of the CIS countries at the present stage is oriented toward a model of governance with strong presidential power and the dominance of the executive power. State power acts as a strong and centralized one. This circumstance is typical for the second stage of political and state development of Kazakhstan. In the chronology of the systemic transformations of the state power in general, and its legislative branch in particular, the constitutional reforms of 2007 and 2017 became landmarks.

With a view to moving to the third stage, making irreversible the positive results of the reforms, there is a need to decentralize power, expand the powers of representative government, and develop institutions of self-government. This allows to intensify participation of civils in solving important issues in the life of society, to assess the possible orientation of the forms of governments in the future to a semi-presidential or parliamentary form of government.

6. In the system of the three main branches of state power, the Parliament, formed during the centuries-long history of political development of mankind, still occupies a priority place in it. Its significance increases due to the dynamism, variability, complications of the times of internal and external conditions, which is typical for modern state public structures. The peculiarity of the legislative branch of power lies in the fact that in it the public and state power converge –“the relations of power and lieges” – as the main sphere of manifestation of democracy, including within power structures and relations. In this connection, Kazakhstan is searching for ways of Kazakhstan's parliamentarism, which are reflected in the context of the modernization of the political system of the society being carried out in the Republic, the main principles of which are outlined in the President's Address to the People of February 28, 2007, “New Kazakhstan in the New World”, Constitutional Reforms of 2007 and 2017.

Approbation of work and publication. On the subject of the research 10 works

were published, including 3 articles in journals recommended by Committee for Control in the Sphere of Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan, 1 article in the journals included in the Scopus database, 1 article in the materials of foreign conferences, 4 articles in the materials of international conferences held in the Republic of Kazakhstan, 1 article in a scientific journal.

Practical significance of the research results. The main provisions and conclusions formulated in the thesis can be used in improving the current legislation, the activities of representative bodies at all levels, the process of further scientific research on this topic. The results of the research can be applied in the teaching of the general theory of the state and law, constitutional law, the history of the state and law of the Republic of Kazakhstan and foreign countries.

The structure and volume of thesis are determined by the aim and objectives of the thesis research. The thesis consists of an introduction, three parts, combining 10 subparts, conclusion and a list of sources references. The volume of the thesis paper is 140 pages.