

## Some Constitutional and Legal Issues for Local Self-Government Development in the Republic of Kazakhstan

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### Abstract

The article examines some topical issues that independent countries, including the Republic of Kazakhstan, are facing. They are as follows: effective form of local self-government selection issue. A developed and strong local self-government is one of the conditions for forming a civil society. Its place in the public authority system is determined by the fact that the local self-government has two beginnings: social and governmental. In accordance with the estimation of expert communities, governmental beginning is dominant in Kazakhstan, while social beginning is dominant in Kyrgyzstan. The Constitutions of these countries have a prime importance in solution of these issues.

**Keywords:** System of government agencies, local state government, local self-government, the President, the Government, maslikhats, akimats, the principle of powers separation, the system of local government administration, local keneshi, the European Charter of Local Self-Government.

## 1. Introduction

Issues related to establishment and development of local self-government institute in the Republic of Kazakhstan at the current stage of state and legal construction acquire special importance and relevance. This institute being at the junction point between the state and the civil society requires further enforcement and development. Particularly, taking into account an accumulated experience, it is necessary both to distinguish the functions of state government and local self-government, and to extensively attract local self-government authorities to participate in implementation of state functions of local importance, which becomes impossible without decentralization and deconcentration.

Decentralization as a political and legal occurrence is often interpreted as:

- transfer of administration functions from central government authority to local authorities, enhancement of powers of lower level government authorities on account of upper level government authorities;
- administration system, opposite to centralization, i.e. expansion of control limits and powers of local administrative bodies and public self-government institutions;
- transfer of functions to local authorities accountable to citizens.

In this context, decentralization is firstly represented as a transformation instrument of the whole administration system, suggesting introduction of changes in state authority policy. Consequently, political intentions to decentralize and deconcentrate the state authority should be reflected in the regulatory framework of the country, including, first and foremost, in the Principal Law of the country, i.e. the Constitution. Thus, some targeted changes may possibly be required to be introduced into the Constitution, particularly, for clear justification of maintaining local self-government systems (Kalisheva, 2013).

### 1.1 Literature Review

Legal aspects of the formation of the system of local government, the role of local representative bodies in the mechanism of the state, its structure and competencies are considered in G.S. Sapargaliyev's work "Constitutional Law of the Republic of Kazakhstan" (Sapargaliyev, 2003), A.T. Ashcheulov's work "Constitutional Law of the Republic of Kazakhstan" (Ashcheulov, 2001). In this paper Sabikenova S.N. "Right comparative government" the author discusses

the various models of local government in foreign countries and in depth the experience of formation and development of local governments of a number of states, including the CIS countries (Sabekenov, 2000). The formation and development of the system of local government devoted to such works like Zhanuzakova L.T., as the monograph "Constitutional and legal problems of organization and activities of local representative bodies in the Republic of Kazakhstan" (Almaty, 2003) and the textbook "The legal framework of local government in the Republic of Kazakhstan and foreign countries" (Zhanuzakova, 2008).

It should be noted that substantial monograph of Duysenov E.E., Kuldysheva G.K. "The reform of local government in Kyrgyzstan," into which the authors analyzed the main trends and stages of the reform of local self-government, as well as some of the problems of legal regulation of local self-government in Kyrgyzstan (Duisenov & Kuldysheva, 2003)

We would like to note the following dissertations devoted to the problems of formation and development of local government in Kazakhstan: doctorate Zhanuzakova L.T. (2003), master's theses, V.A. Kalyuzhnyy (1999), Zhumadilovoy A.B. (2005), Baranova M.N. (2005) J.S. Aydapkelova, Musina M.B. and a number of other papers.

However, the papers devoted to a comprehensive review of the problem of the formation and development of local government in the Republic of Kazakhstan, is relatively small, and the scientific analysis of the forms of local government after the adoption of constitutional and legal reforms of 2007-2009. Which do not exist in our country. All this has caused the need for research and analysis of the problems of formation and activity of local governments.

## 2. Materials and Methods

### 2.1 Message from the President of Kazakhstan on the system of governance.

The President of the country N.A.Nazarbayev, in his Message to the people of Kazakhstan on December 14, 2012, justified a new line of policy of the established country and pointed out ways of solving a wide range of social and economic problems of the country. One of such measures is a decentralization of state administration. "Our goal is to form a new type of state administration. It should meet new tasks of serving the society and strengthening the nationhood, it is necessary that the population through the local self-government bodies has an opportunity to make independent and responsible decisions of local importance. I approved the local self-government development concept. It will allow improving the management quality at aul, village level and extending participation of citizens in the issues of local significance". We must conduct a correct decentralization administration. The essence of decentralization is to grant the rights and required resources for making decisions from the center to regional government authorities" ("Message of the President of the Republic of Kazakhstan", 2012).

It is a local self-government that will improve the administration quality at aul, village level and extend participation of citizens in the issues of local significance. Thus, the village akims are being authorized with additional powers, their influence on the situation in auls is being increased. Moreover, as early as this year, the electivity of aul'sakims through maslikhats are being implemented in order to increase the influence of citizens on the situation. The total number of akims who will be elected is 2 533, including akims of rural districts, villages, and 50 akims of the cities of regional importance. It makes 91,7% of a total number of akims of all levels. The elected heads of local authority obtain all necessary financial and human resources. The population obtains a possibility of taking decisions of local significance directly, as well as requiring reports from the heads of administration elected by them.

However, the President, in his Message, admonishes of one-sided reformation of the state administration system: "However, decentralization shall not be considered exclusively as a process of creating new government authorities at a local level to transfer certain powers. Decentralization is primarily a quality change of state administration system, change of problem solving system at a local level. At the same time, decentralization shall not result in weakening of vertical power, decreasing of executive discipline and order. It is unacceptable. Local akims, the Government must keep it under special control" (Romaniuk, 2003).

Methodological basis of the research is sociological, philosophical, constitutional-legal, administrative-legal, other sector researches, directly and indirectly related to the selected subject. General scientific and individual scientific methods of studying the state-legal phenomenon such as historical and logical methods, comparative law, functional, formal and legal methods have been used in this article.

### 2.2 On the issue of decentralization in the Republic of Kazakhstan.

The decentralization process in the Republic of Kazakhstan has the following characteristics:

- in general, the distribution system of the governmental functions and competence of each state agency have

not been exhaustingly consolidated in corresponding legislation acts. As a result, an uncontrolled expansion of functions of the state agencies occurs, occasionally, contrary to the law;

- functions and powers between central and local levels of state administration are not clearly separated, a duplication of function still takes place. There is "hierarchical pyramid of competence", i.e. match of competence and responsibilities, in certain sectors of state administration. Some functions intercross between territorial subdivisions of central state bodies and local state government agencies, functioning in similar directions;
- applicable legislation specifies competence and powers of local state government in general, and not clearly regulated. As a result, distribution of powers at "oblast-region" level has no uniform and stable character, as a matter of fact, this process is transferred to the discretion of oblast authorities.

The need for separation of functions of state government and local self-government, being enforced this provision in the Constitution of the Republic of Kazakhstan, occurs therefore. Otherwise, development of regulatory framework of local self-government would not be properly advanced.

The section VIII of the Constitution of Kazakhstan simultaneously deals with local state government, as well as with local self-government. In accordance with p. 2 art. 89, execution of governmental functions may be delegated to the local self-government bodies, according to the law, while p. 4 of the same article guarantees "independence of local self-government bodies within its competence specified by the law". It is necessary to note that it quite originally presents the elements of decentralization, where governmental functions but not the powers of state agency are being delegated. The Law "On local state government in the Republic of Kazakhstan" as of January 23, 2001 specifies the structure of local administration bodies, however, distribution of functions between central and local levels of authority has not been clearly distinguished.

### 2.3 *Local government in the formation of civil society.*

Developed and strong local self-government is one of the conditions for formation of civil society. Its place in the public authority system is determined by the fact that local self-government has two beginnings: social and governmental. In accordance with the estimation of expert communities, governmental beginning is dominant in Kazakhstan.

The Constitution of the Republic of Kazakhstan of 1995 has consolidated the model of local regulatory bodies, having divided them into local state government and local self-government. This fact is proved by the article 33 of the Constitution, where it states that citizens can send individual and collective appeals to the state bodies and local self-government authorities, citizens have right to elect and be elected in state bodies and local self-government authorities.

Article 89 p. 1 of the Principal Law of the country notes: "local self-government, providing independent decision making on the issues of local significance by the population, is recognized in the Republic of Kazakhstan". In accordance with the Constitution, local self-government is jointly performed by local representative and executive bodies by integrating efforts of the representative bodies being elected by public – maslikhats, and executive bodies – akims and akimats, on the solution of national issues at a regional level. Local representative bodies – maslikhats, local executive bodies is headed by akim of the corresponding administrative-territorial unit, who is a representative of the President and the Government of the Republic, they form a part of the common executive bodies system of the Republic of Kazakhstan.

Local regulatory bodies in Kazakhstan have been for a long time performed by local representatives and executive bodies. However, in May of 2007, some changes and amendments, in accordance with which maslikhats have been recognized as a local regulatory body, were introduced into the Constitution of the Republic of Kazakhstan. In addition to this, they reserved the previous powers, which they exercised being exclusively state agencies. At the same time, the Constitution of the Republic of Kazakhstan provides a possibility of delegating certain functions to local self-government bodies, including maslikhats. Based on that, Kazakhstani researcher L.T. Zhanuzakova made the following conclusion: "at this stage, we can state that maslikhats are state-public formations" (Zhanuzakova, 2008, p.151-154).

It is hard to agree with this statement, as it contradicts to the p. 2 of art.5 of the Constitution of the Republic of Kazakhstan preventing merging of state and public organizations.

Specifics on the change of the Constitution, which have been taken into account when the Parliament passed the Law on May 21, 2007 "On introduction of changes and amendments into the Constitution of the Republic of Kazakhstan", were focused on several directions, including the fact that they were aimed at developing LSG (consolidation of the legal status of maslikhats as basis of local self-government, fixing the term of powers of maslikhats for the period of five years; appointment of akims of oblast, cities of republic importance, capital, as well as akims of other levels by approbation of corresponding maslikhats; facilitation of the procedure of expressing the vote of non-confidence in akim by maslikhat). However, the local self-government system failed to obtain a clearly described and distinct constitutional and legal status

after introduction of the amendments into the Constitution.

#### 2.4 *The main conclusions about the significance and position of local government.*

Thus, due to powers, organizational structure, material and legal guarantees of the country, the local state government has the leading position and operational significance at the local authority level in the Republic of Kazakhstan. Local self-government as means of performing local authority is present, though it has a support role being at the formation stage. While in Kyrgyzstan, development and implementation of legal basis of local self-government are aimed at gradual reduction of local state government.

Such a condition of Kazakhstani local self-government system allowed some experts declare that the constitutional consolidation of local self-government in the Republic of Kazakhstan mainly does not correspond to the requirements recognized by international instruments, particularly, by the European Charter of Local Self-Government.

The Charter gives a definition of local self-government: "Local self-government means the right and actual capability of the local self-government bodies to regulate a significant part of state affairs and govern it in accordance with the law within its responsibility and in the interests of the local population (Duisenov & Kuldysheva, 2003). This definition determines important elements of local self-government. It is common knowledge that the formation and activity of local self-government is executed under the law, which means that the law specifying provisions of local self-government together with regulation of other issues, must be passed. Second of all, such a law grants the right to local self-government bodies to regulate significant part of state affairs and manage these affairs. Consequently, local self-government bodies perform the functions of twofold character: state and non-state functions. Moreover, according to the scientist, state affairs take a significant part in the scope of work of local self-government, while non-state affairs take a minor part.

#### 2.5 *European Charter of Local Self-Government*

After making an analysis of some provisions of the European Charter of Local Self-Government adopted by the European Council on October 15, 1985, academician G.S. Sapargaliyev expressed his disagreement with this statement (Zhanuzakova, 2003, p.210-227). His arguments are as follows: the European Charter suggests that local self-government bodies are authorized to make decisions, they have extended autonomy within their competence and required financial and other means connected herewith. It is necessary to note that the European Charter pursues the idea of state-public nature of local self-government. The statement of the European Charter of "significant part of state affairs" regulated and managed by local self-government gives reason to think that local self-government is, to a considerable extent, an extension of the state power. At the same time, local self-government is performed with participation of local population; therefore it has a public nature as well. Consequently, the European Charter does not separate local self-government from state administration and logically merges them at a lower level.

G.S. Sapargaliyev indicated continuity of connection between local state government and self-government: "it is possible to technically separate local state government from self-government, but as a matter of fact it turns out to be impossible". Notwithstanding the adoption of law "On local state government in the Republic of Kazakhstan", it is impossible to separate local state government from self-government due to the elements of their absolute connection" (Zhanuzakova, 2003, p.512).

Interaction and joint competence of representative and executive bodies may be found in a range of branch laws of the Republic of Kazakhstan. Due to this fact, the concept "local executive bodies" has a double meaning and is defined in the Constitution and legislation as: akimat is a collegiate executive body, headed by akim of oblast (cities of republic importance, capital), region (cities of oblast importance), executing within its competence local state government in the corresponding territory. In an extended sense- collegiate executive body (akimat), akim, executive bodies being financed from local budget, akim apparatus. It is a known fact that akimats, as well as maslikhats, are created only at an oblast level (cities of republic importance, capital), region and cities of oblast importance and headed by akims. They are not formed at a lower level of administrative and territorial division (Kalyuzhniy, 1999, p. 241-243).

G.S. Sapargaliyev made a conclusion that "despite all the diversity of local self-government in different countries, they have one feature in common, which shows the essence of local self-government. It is represented in the fact that local self-government is connected with local state government; it is an extension of administration of local affairs by the state. Due to this very factor, the government participates in financing of local self-government; state officials (elected, appointed) participate in administration of local affairs; the leading role in administration of local affairs is performed by local population, bodies elected by it; local self-government bodies have different degrees of independence"

(Zhumadilova, 2005, p.39-47).

In order for local self-government to have an advanced development, it is primarily required to create an economic basis. Today, the Constitution of the Republic of Kazakhstan consolidates only two patterns of ownership- state and private, while communal is a constituent part of the state ownership. In order for democratic institutions to have a further development, it is required to constitutionally consolidate the municipal ownership.

## 2.6 Local government in foreign countries

In the developed countries, e.g. Germany, the lands, being relatively independent object of the federation, independently determine the structure of their executive bodies. As a rule, the parliaments- landtags elect the heads of such structures, who are the prime-ministers of the lands, which form land government (Baranov, 2005).

Legal regulation of local administration in the Anglo-Saxon Law countries has specific features. Thus, particularly in the USA, the most important legal resource for regulating creation and operation issues of local self-government bodies is the municipal charters. It is necessary to note that the American law determines two interpretations of the term "charter":

- 1) common document integrating all standards, regulating the activity of a specific municipality;
- 2) combination of all state laws, regulating the activity of a corresponding municipal subdivision, even if they are not integrated into one document (wider interpretation) ("Message of the President of the Republic of Kazakhstan", 2012, p.265).

Thus, the charter, in a broader sense, means all corresponding provisions of the state Constitution, laws and provisions of general law in addition to the document which is directly recognized as a charter ("Message of the President of the Republic of Kazakhstan", 2012, p.268).

The right of the municipality to develop, adopt and amend the charter of its administration (Romaniuk, 2003, p.117) may be determined both by the constitution, and the laws passed by the legislative body of the state. Presently, 48 states have charters of self-government for all or, at least, some of their municipalities (Astana. KAZINFORM, 2012, p.31).

Social and legal meaning of the charters in the USA amounts to the fact, in accordance with G.B. Barabasheva, that the latter:

- represents the essence of self-government as an opportunity for self-formation and self-regulation;
- provides a great weight of opinions and wishes of population, stimulates interests of the citizens to the local administration and participation in its execution;
- limits interference of the legislative bodies of the states with local affairs;
- guarantees pluralism of the local self-government forms, allows population to elect versions of local authority structures acceptable for population;
- is able to facilitate codification of the legislation.

Municipal codes of the states and other legislation, affecting the status of the local self-government bodies are difficult of access for nonexperts. The charters of local self-government produce and adapt to local conditions numerous legal provisions, represent them in an organized form, provide comments and explanations (Adrian, 1972, p.268-271).

## 2.7 On the concept of local self-government

In November of 2012, the President of Kazakhstan NursultanNazarbayev signed Local Self-Government Development Concept. The head of the country informed hereof at the meeting with akims in the Akorda. "Today, akims of regions and cities are being appointed by approbation of corresponding maslikhats. For further boost of the role of local representative bodies, we introduce electivity of village akims of a lower level, first through maslikhats. Earlier, reforms of local self-government to which we approached several times were "wound down". Oblast akims failed to transfer budgets to a village level. This is not an easy issue all over the world. It is necessary to study the international experience", - stated N.Nazarbayev. The President gave an order to the Ministry of Economic Development and Ministry of Trade and Finance to transfer necessary means and human resources to village akims, as well as consider a question of allowing a part of taxes at the disposal of akims of village districts (Sapargaliyev, 2005).

The Ministry of Regional Development, which has been recently created, is invoked to assist in formation of local self-government, electivity of local authority, including heads of executive structures. The substantial activity of the Ministry of Regional Development appears to be presented in a transfer of some reforms to a regional level; in development of special reform programs for regions with special conditions for development. For this purposes, it is necessary to optimize the system of local self-government, responsible for both the interests of the local societies, and interests of the whole country.

### 3. Results

Thus, we evaluated the enforcement by local representative and executive bodies, on the basis of which we attempted to address not only the content of legal norms laid down in the legislation on local government, but also we considered the actual state of application of these standards in practice;

- it shows that the creation of legislation on local public authorities and self-government is impossible without solving the problems of decentralization of power in the republics, and redistribution in the direction from the center of the field. Replace the Soviet principle of fusion of legislative and executive power in the sovereign Kazakhstan and Kyrgyzstan was the principle of separation of powers.
- the necessity of strengthening the role and status of the representative bodies in the field and the ways to solve this problem was proved;
- there was discussed the organization of the activities of local representative and executive bodies, local self-government, the problem and the concept of their interaction, guarantees of independence.
- the necessity of the development and adoption of legislation on administrative-territorial division was proved, and there was showed the general and the particular in the development of local governance and self-government in these republics.

The results of the study may be of interest to further development of the theory and practice of the functioning of local government, local government, and also used in the processing of training programs for administrative and municipal law for law schools, with training and retraining of civil servants in the Academy of Public Administration under the President of the Republic of Kazakhstan.

### 4. Discussion and Conclusions

Thus, the general principle of formation and performance of legal policy in the sphere of local self-government is its institutionalization providing a well-organized development and modification. Availability of independent system of self-government beyond any administrative dependence on state authorities and obligations of the country to provide conditions for its normal development shall specify an exclusive influence method of the government on the activity of the local self-government, i.e. a legal influence. Due to the use of it, the government determines new principles of interaction with local self-government, creating a model by using of which an attempt to preserve certain degree of independence of local self-government and, in addition to that, the influence of authorities and officials of state authority on the organization and functioning of local authority system significantly increase.

The studies and analysis of a legal status of collegiate and sole command bodies of state government and local self-government in the Republic of Kazakhstan, in a comparative aspect with development of local administration in other countries, allowed us to make the following conclusions:

Thus, domination in state government of collegiate bodies results in decentralization of state authority and, on the contrary, while predominance of sole command bodies results in its centralization. Decentralization is an independent creation by the population of administrative-territorial units in unitary and federal government, as well as community of constituent territory of the federation of its state authorities without interference of state central bodies.

In our opinion, local self-government or self-government in general needs to be interpreted in the sense of democracy, i.e. government by the people and public administration. Democracy and local self-government have been also identified by English scientist D. Hill, who considered local government as an important element of democratic political system. Thus, in his monograph "Theory of democracy and local government", he noted that local democracy fails to exist independently from nationwide democratic system and justify its designation only as a combination of self-government communities. Democratic authority system includes a range of state and private bodies and institutions, one of which is a local self-government (Zippelius, 1980, p.17-18).

Decentralization perceived as an independent election of the heads of local executive bodies by local representative collegiate bodies without interference of central state authorities occurs under representative collegiate government, as it has been previously mentioned. In such cases, a part of power authorization from the center is transferred to local bodies, equal distribution of political power takes place around the whole country, and there is no hullabaloo around central state authority, which prevents the consequences mentioned above. Original system of checks and balances between central and local state governments is created. Under such government, political elite has a possibility of working both as local representative collegiate and executive bodies, and implement its managerial, professional abilities and capacities, exposing them to judgment of local representative collegiate bodies and local population.

Thus, though in accordance with the legislation, powers of state authority and local self-government bodies are separated, particularly, their executive bodies perform state functions. Local self-government bodies can be reasonably called state government bodies. In our opinion, it is necessary to change the concept that the state authorities are the ones which operate from regional to republic level of government. Recognition and relation to local self-government bodies as state bodies and independent creation of executive body by local collegiate representative body would have approached us closer to democracy.

History proves that the main factor of merging the state into associations and confederations is predominance of collegiate bodies in state administration of these countries. It is a known fact that confederations are evanescent, either they break down or transform into federation. Such confederations as United States of North America (1781-1787) and Switzerland (1815 – 1848) due to predominance and further development of collegiate bodies in their state administration, which serve in the interest of the people, but not to restricted interests, transformed into federations. The European Economic Community being created as a confederation has gradually transformed into a federation. In other words, state collegiate government in the world results in integration, while sole command state government results in separation and disintegration.

Thus, collegiate bodies should predominate in regard to authoritative relations in the state mechanism, where decisions are made in accordance with agreement and voting. Collective selection, which will bring the society to the prosperity, has been proved by high living standards in the countries, where parliamentary system is well developed, e.g. the USA, Great Britain, Canada, Germany, Italy, France, Japan etc., where collegiate bodies dominate in state government (Condorcet, 2004).

It is necessary for Kazakhstan model of interrelationship of state government and local self-government to be functionally connected, but institutionally separated.

It is important to point out some main features at the legislation level for this purpose:

- availability of legal, economic, political and structural interrelation of its structural components;
- initiation of relationships both of coordinating and subordinating forms;
- availability of special influence mechanisms of the state on operation of local self-government; availability of public power of local self-government sub-system within the integrated system, which has a certain degree of independence (special formation procedure, own competence, self-control).

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