

## ARTICLES

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### **CONSTITUTIONAL REFORM IN KAZAKHSTAN: STAGES OF HISTORICAL STATE EVOLUTION**

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**Abstract:** In this article, the author analyzes the process of constitutional reform in the Republic of Kazakhstan. The legal system is a necessary attribute of any state applying for sovereign status. The Constitutional Law on State Independence (1991), the first Constitution (1993), laid its foundation and the subsequent development of the new law and the new system of legislation was carried out based on the ideas and norms enshrined in the 1995 Constitution currently in force. At the same time, this document was also subjected to subsequent reform in 1998, 2007 and 2017, which allowed strengthening both the power vertical and the status of the head of state. At the same time, a series of reforms provided for the redistribution of certain power functions, in particular, the transfer from the President to other governing bodies of states, in order to increase the efficiency of the functioning of the state apparatus. It should be noted that the redistribution of powers was carried out as carefully as possible so that, by increasing the effectiveness of the state, in no case should it be weakened.

**Keywords:** Kazakhstan, constitution, reform, statehood, president, management, authority.

The ongoing modernization of the state in the Republic of Kazakhstan done to face modern global challenges and meet national interests of the country is still a relevant course of transformations of the political system, state form, civil society institutions, diverse mutually responsible relations between an individual and the government. This fact is confirmed by key decisions and practical measures taken recently.

The transfer of the supreme power marks the first half of 2019 as a historical landmark in Kazakhstan.

On March 19, 2019, the President of the Republic N. A. Nazarbayev voluntarily announced his resignation and resigned as the current Head of State.

Paragraph 1 of Article 48 of the Constitution states that, in this case, the Chairman of the Senate of the country's Parliament receives the powers of the President of the Republic of Kazakhstan. K.-Zh. Tokaev took an oath to the people and took office as the President of the Republic of Kazakhstan in March 20, 2019.

This marks a new stage in the state, due to the presence of two powerful political institutions in the political system and the state of the Republic of Kazakhstan.

Evidentially, the process of modernizing the country's governance is challenging due to numerous objective and subjective factors hindering the introduction of progressive innovations. Firstly, it is the lack of common approaches in understanding certain terms, phenomena and institutions. Next, it may be due to a divergence of the approaches followed by law representatives, economists, political scientists, sociologists, and other humanities. Practice is ahead of doctrine, and foreign experience is hardly implemented. That is why further in-depth study of theoretical positions using updated arguments and clarification of complex issues is required.

The current Constitution of the Republic of Kazakhstan is timely modernized and ensures the functioning of the state apparatus. The law of the country guarantees the transformation of the state apparatus.

Kazakhstan needed a fundamentally new system of internal organization of social life at the stage of gaining state independence. It was necessary to legislatively determine the spheres of functioning of state bodies and the democracy mechanisms, consolidate the corresponding organizational and legal forms, and subsequently gradually strengthen and develop them.

The formation and development of Kazakhstan as an independent state occurred in a specific historical period and involved certain peculiarities, such as the individual characteristics of human potential, the economic, financial and banking system; the political and legal system; sociocultural relations and psychology; the possibilities of scientists of Humanities; the international conditions, etc.

The above-mentioned social grounds of state power were reformed (or first built) along with the emergence of the state as a special political organization characterized by specific functions, tasks, bodies, organizations, forms and

methods of activity. At the same time, it was inappropriate to plan ahead or slow down.

The legal system is a prerequisite of any state that claims to be sovereign. The foundation of the legal system was laid by the Constitutional Law on State Independence (1991), the first Constitution (1993). The subsequent development of the new law and the new system of legislation was based on the provisions of the current Constitution established in 1995. It ensured political stability, interethnic and interfaith trust, prevention and conflict-free eradication of the social contradictions.

The Constitution of the Republic of Kazakhstan is characterized by recognition of a person, his life, rights and freedoms, the State and people's sovereignty, unity and separation of state power, parliamentarism, election and other institutions of direct democracy, and local self-government as the highest values.

Modern globalization contributes to a deep structural transformation of the State power.

Of particular importance are the norms of the Constitution of the Republic of Kazakhstan, that trace a certain system of checks and balances among the branches of power in order to provide a mechanism for implementing the principles of a democratic, secular, legal and social state, democracy, priority of human and civil rights and freedoms.

The Kazakhstan system of government is based on the presidential form of government, enshrined in the Constitution of the Republic of Kazakhstan in 1995 and modernized during the subsequent reform of the Basic Law in 1998, 2007 and 2017.

Let us briefly recall *the period between 1990 and 1995*, when the country faced a deep reform of the state apparatus due to objective harsh conditions of a change in the social formation. The Kazakhstan state scientists classify varieties of the Kazakh form of government of modern historical development in details.

N. A. Nazarbayev described the reforms of that period in the book 'Era of Independence' in the following way: "I have considered the issue of improving the executive system since the first days of independence. I knew that the country's daily life largely depends on the coordinated work of all the state institutions, and the reforms' success depends on an effective management system uniting central and local government bodies, and I believed that strong power will stabilize the state ... The new executive and administrative system power was built over three years of independence. This system does not oppress but serves the people"<sup>1</sup>. [1, p. 38, 40.]

The works of Kazakhstan researchers help to uncover this issue. We share the opinion of V. A. Malinowski, who suggests four stages of the evolution of state based

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<sup>1</sup> Назарбаев Н. Эра независимости. – Астана, 2017 [Nazarbayev Nursultan, Era of Independence (Astana, 2017)].

on the systemic understanding of the integral construction of Kazakhstan state in specific historical conditions.

The first stage ('Soviet-Parliamentary Republic') is provided in the Law of April 24, 1990 'On the establishment of the office of President of the Kazakh SSR and amendments and additions to the Constitution (Basic Law) of the Kazakh SSR' as follows, "The head of the Kazakh Soviet Socialist Republic is the President of the Kazakh SSR". The second stage ('Soviet-Presidential Republic') is marked with the adoption of the Law 'On improving the structure of State power and administration in the Kazakh SSR and introducing amendments and additions to the Constitution (Basic Law) of the Kazakh SSR', dated November 20, 1990. According to the Article 144: "The President of the Kazakh SSR is the Head of the Kazakh Soviet Socialist Republic, its highest executive and administrative power". The third stage ('The Semi-Presidential Republic with the enhanced Supreme Council') related to the action of Constitution in 1993 and the practical implementation of its rules. Article 75 states that "The President of the Republic of Kazakhstan is the Head of State and the Head of a single system of executive power". The fourth phase ('The fifth Republic') is the implementation of the Constitution of the Republic of Kazakhstan in 1995.

In his opinion, each of the four stages represents a corresponding period of transition of the form of government from the 'Republic of Soviets', which existed for about 80 years, to the new form of government provided for by the Constitution of the Republic of Kazakhstan. It looks like a semi-presidential republic. The first three stages focused on the formation of horizontal and vertical relations in the executive branch of government and among representative and executive bodies. The modern stage focuses on the change in the design of the principles of the unity of state power and the separation of powers, the mission and organization of all branches of power<sup>1</sup> [2, p. 81].

Having briefly studied recent past, we will consider the original form of the government in accordance with the Basic Law and subsequent adjustments. We will analyse the Constitutional status of the President of the Republic, the Constitutional statuses of the Parliament and the Government, the foundations of the relationship between the legislative and executive branches of the government. We will also consider the status of the Constitutional Council, the judicial and the prosecutor's power.

**The provisions of the Constitution of the Republic of Kazakhstan, adopted at the Republican Referendum on August 30, 1995.**

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<sup>1</sup> Малиновский В.А. Лидер: президентская власть в Казахстане на рубеже эпох. – Астана: Норм-К, 2012. [Malinovsky Victor *Leader: presidential power in Kazakhstan at the turn of the eras.* (Astana, 2012)].

*The Constitutional status of the President of the Republic.* According to Paragraph 3 of the Article 3 of the Constitution of the Republic of Kazakhstan, dated 1995, “the right to speak on behalf of the people and the state belongs to the President, as well as to the Parliament of the Republic within his constitutional powers. The Government of the Republic and other state bodies act on behalf of the state within the limits of their delegated authority”.

The President of the Republic of Kazakhstan is the Head of State and the highest official of the State. The Constitution defines the main directions of domestic and foreign policy. It also regulates other functions of the President (Article 40 of the Constitution). The competencies of the President of the Republic define the Head of State as the undisputed leader of the entire executive branch. The government is almost entirely monitored by the President of the Republic.

The public administration system (the ‘Presidential form of government’), established by the Constitution of the Republic of Kazakhstan in 1995, is much alike the Presidential Republic and the Parliamentary Republic. Therefore, the Kazakhstan form of government is a ‘mixed’ or ‘Semi-Presidential’ Republic.

It stabilized the state and the political system as a whole by a dense executive power (in its horizontal and vertical constructions) of the Head of the State and his dominance in the Government, limited possibilities for the influence of the Parliament on the executive branch of the Government and akims (akimats).

Liberalization, carried out during the State independence between 1995 and 2007, also affected the public administration system. It refers to the socio-political foundations and all institutional components in particular. It launched the process of distancing the President of the Republic from the executive branch.

**The constitutional reform introduced by the Law of October 7, 1998 ‘On Amendments and Additions to the Constitution of the Republic of Kazakhstan’** (the first constitutional reform) aimed at the adjustment of certain constitutional regulations stimulated by the results of the first years of the functioning of the public administration system<sup>1</sup>.

*The following changes were made to the constitutional status of the President of the Republic.* Firstly, the qualifications of the Presidential candidate were clarified; the quorum of the turnout of voters was withdrawn to recognize the elections as valid. The institution of transferring the Presidential powers for the remaining term was introduced instead of elections in the event of early dismissal or removal from office or death of the President of the Republic of Kazakhstan. The Head of State

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<sup>1</sup> Закон от 7 октября 1998 года «О внесении изменений и дополнений в Конституцию Республики Казахстан» [The Law «On Amendments and Additions to the Constitution of the Republic of Kazakhstan» (October 7, 1998) available at [https://online.zakon.kz/document/?doc\\_id=1010769](https://online.zakon.kz/document/?doc_id=1010769)].

resigned as Chairman of the Supreme Judicial Council and received the right to make an appointment to this position.

*The terms of office of deputies of the Senate and the Mazhilis* in the Parliament of the Republic of Kazakhstan were increased. The term of office of Deputies of the Senate was also clarified (it depends on the term of office of the Senate, and not Parliament).

One of the most important innovations was the introduction of a proportional electoral system in the elections of some Deputies of the Mazhilis of the Parliament.

The guarantees of control powers of Deputies have been enhanced.

The Parliament was provided with additional guarantees for the adoption of amendments to the Constitution, with which the Head of State does not agree.

*The Constitutional status of the Government of the Republic of Kazakhstan* has also been changed. The development of the Republican budget and the appointment of four members of the Accounts Committee for Monitoring the Implementation of the Republican Budget for five years (Subparagraphs 2 and 9 of Article 66) are excluded from the powers of the Government.

The personal responsibility of the members of the Government (including the Prime Minister) was increased while maintaining the status of the Government as a unified entity.

There are two more changes that allowed *progressive 'short stories' in the judicial system and local government*.

Firstly, Paragraph 2 of the Article 75 is supplemented by the provision that “the jury is introduced to the criminal proceedings in cases provided by law”.

Secondly, Paragraph 4 of the Article 87 changes the following statement “Akims of other administrative entities are appointed by superior akims” into “Akims of other administrative entities are appointed or elected as determined by the President of the Republic of Kazakhstan.”

The first amendment promoted the introduction of jury trials in criminal proceedings, as a worldwide practice; the second amendment initiated the democratization of local government and self-government by introducing elective akims.

**The second constitutional reform, implemented by the adoption of the Law of the Republic of Kazakhstan dated May 21, 2007 ‘On Amendments and Additions to the Constitution of the Republic of Kazakhstan’** continued the liberalization of state power. The Parliamentary involvement in the Presidential form of government was enhanced<sup>1</sup>.

<sup>1</sup> Закон РК от 21 мая 2007 года «О внесении изменений и дополнений в Конституцию Республики Казахстан» [The Law «On Amendments and Additions to the Constitution of the Republic of Kazakhstan» (May 21, 2007) available at <https://www.zakon.kz/87556-zakon-respubliki-kazakhstan-ot-21-maja.html>].

*The Constitutional status of the President of the Republic.* Article 41 of the Constitution of the Republic of Kazakhstan amends the term of the Presidential mandate (a five-year term was set instead of the seven-year period introduced by the Law of the Republic of Kazakhstan dated October 7, 1998 'On Amending and Adding to the Constitution of the Republic of Kazakhstan'). The changes affected the residency qualification presented to the Presidential Candidate (a Candidate should be Kazakhstan residents not only "for fifteen years as a whole," but "for the last fifteen years"). Article 42 adds the following: the established restriction for the same person on being the elected President of the Republic more than two times in a row "does not apply to the First President of the Republic of Kazakhstan". Paragraph 2 'On the obligation of the President to suspend from a political party when exercising his powers' was deleted from the Article 43. Article 44 was added the following powers of the Head of State: to form, abolish and reorganize state bodies directly subordinate and accountable to the President of the Republic, appoint and dismiss their leaders – Subparagraph (5); appoint the Chairperson and two members of the Central Election Commission for five-year posts – Subparagraph (7). The powers stipulated by the new Subparagraphs (5) and (7) were previously enshrined in the constitutional laws on the President of the Republic and on elections. The status of the Assembly of the People of Kazakhstan and the Supreme Judicial Council was changed in Subparagraph (20). Article 46 was supplemented by Paragraph 4: "The status and powers of the First President of Kazakhstan are determined by the Constitution of the Republic and constitutional law." The introduction of a new institution for the early dissolution of the Majilis (only one of the Chambers of the Parliament) was clarified in Paragraph 3 of the Article 47.

By the law of May 21, 2007, the President of the Republic of Kazakhstan is vested with the right of legislative initiative (Paragraph 1, Article 61 of the Constitution).

*The Constitutional status of the Parliament of the Republic of Kazakhstan.* The vast majority of amendments and additions made to the Constitution by the Law of the Republic of Kazakhstan dated May 21, 2007 enhance the Parliamentary involvement in the Kazakhstan government.

The bans on the merge of public and state institutions, as well as state financing by public associations are removed from Paragraphs 1 and 2 of Article 5. The President of the Republic must consult with factions of political parties of the Majilis prior to submitting the candidacy of the Prime Minister to the Majilis. In such a way modern party system and civil society were created. Moreover, political parties were involved into the state mechanism and became the main tool to reveal the people's will and further transform it into the state power.

The representative beginning of parliamentarism was expanded. The significance of the representative function of the Parliament was increased and added additional guarantees.



The statutes of the Mazhilis and the Senate of the Parliament were updated significantly. A number of powers were transferred within the Parliament from joint meetings to the Chambers, from the Chairmen of the Chambers to the Chambers themselves. The composition and activities of the Mazhilis were determined to perform party programs. The the Deputies' responsibility was increased, i. e. a free mandate is evaded and a party may initiate a decision on early termination of a deputy's mandate on the grounds provided for in Paragraph 5 of Article 52 of the Constitution.

The Parliament received additional guarantees through enabling the Head of State to dissolve both the Parliament as a whole, and the Mazhilis, within the continued adoption of the constitutional laws and laws by the Senate, until the new Mazhilis election, etc.

The measures taken caused the expansion of the social representation in the Parliament and increase in the quality of its representative function (in particular, the elections to the Mazhilis on January 15, 2012), legislative and control activities.

The auxiliary office of the chambers was enhanced by the public involvement.

*The constitutional status of the Government of the Republic of Kazakhstan* and the basis of relations between the President, the Parliament and the Government. The Law of the Republic of Kazakhstan dated May 21, 2007 adjusted the role of the Government. Paragraph 2 of the Article 64 states that "As a unified entity the Government is fully responsible to the President of the Republic, and in cases provided for by the Constitution, to the Majilis of the Parliament and the Parliament" (this Paragraph emphasizes the enhanced unified nature of the supreme executive authority). Subparagraph (2) is excluded from the Article (67). The Paragraph stated that the Prime Minister was obliged to report on the Government Program to the Parliament within a month after his appointment (accordingly, the hearing of this report and the consequences of its non-approval by the Parliament were excluded from Article 53). The Article 68 clarifies the inadmissibility of a member of the Government to belong to the governing body or the supervisory board of a commercial organization, unless performing their official duties provided by the law.

Thus, *relations between the Parliament and the Government* were strengthened as follows:

- the role of the Majilis to reflect the interests of voters in the formation of the Government by the President was increased;
- the new mechanisms of the relationship between the legislative branch of government, i. e. the Parliament and the Majilis, primarily, and the executive branch, i. e. the Government were established;
- the powers were redistributed between the President, the Parliament and the Government. It involved gradual stabilization of the Parliament's role



in the Kazakhstan ‘Presidential government’ (the replacement in Article 63 of the Constitution of the specific grounds for dissolution of the Parliament by the President also approved by the Head of State and the Chairmen of the Houses of Parliament and the Prime Minister, etc.).

The Constitutional Council was also enhanced and able to consider resolutions adopted by the Parliament and its Chambers for compliance with the Constitution of the Republic, in accordance with the addition to Article 72 of the Constitution.

The decentralization of the Presidential government is associated with the strengthening of the local bodies of representative power and a brand new local self-government. It allowed the introduction of this essential democratic institution. The Head of the State coordinates the appointment of akims of the Republic’s regions, the capital, the city and the maslikhats.

The law, dated 21 May, 2017 initiated the *judicial authorization of procedural actions by the investigative bodies*. Paragraph 2 of the Article 16 states that ‘Arrest and detention are allowed only in cases provided for by the law and only when approved by the court and with the right of appeal to the arrested. Without sanction, a convict may be detained for no longer than 72 hours’.

The distance between the President and the Government declared at the adoption of the Constitution was confirmed.

The tendency to enhance the Party involvement in the statehood, laid down by constitutional reform, also affected the Presidency. The elected President of the Republic was no longer obliged to suspend activities in a political party as long as he exercises his powers.

In general, constitutional reform offered new conceptual approaches to understand the main socio-political institutions and the prospects for their development. A number of amendments and additions made to the Constitution in their correlation reformulate the purpose of the State power and its functions, determine the principles of relations between the state bodies, public associations and citizens, involve civil society institutions in solving state-significant issues, and establish legal standards accorded with changing public relations.

The second constitutional reform held in 2007 established a set of measures to stimulate the formation of a modern party system, enhance the status of the Parliament, improve its representative function and the legislative activity, and gradually establish the functional and organizational proximity of the Parliamentary government and correlation of the activities of legislative and executive bodies of a single state power. The reform aimed at creating strong relations between the state and the people of Kazakhstan. However, it did not affect the essential foundations of the “Presidential government” of the Republic of Kazakhstan.

**The third constitutional reform was implemented by the adoption of the Law of the Republic of Kazakhstan dated March 10, 2017<sup>1</sup> 'On Amendments and Additions to the Constitution of the Republic of Kazakhstan'.**

In general, the amendments to the Constitution aim at ensuring its supremacy in the existing law and unconditional implementation throughout the country, enhanced protection of the constitutional rights and freedoms of citizens, ensuring their fulfillment of constitutional duties, and improving the state management. Further democratic modernization of the Presidential government involved the enhanced role, independence and responsibility of the Parliament and the Government, redistribution of individual powers between the President, the Parliament and the Government, based on the principle of unity and separation of the State power.

The Constitutional status of the President of the Republic involved the expanded qualification requirements for candidates for the Head of State (Paragraph 2 of the Article 41 of the Constitution). The President of the Republic renounced his reserve legislative powers, which he had never used during the Constitution adopted in 1995.

The Head of State empowered the Parliament with the authority to determine the procedure for being appointed or elected to the Office, as well as dismissing akims of other administrative districts other than regions, cities of Republican significance and the capital (clause 4 of Article 87 of the Constitution). Currently, this order is determined not by an act of the President, but by the law of Parliament.

The state programs and a unified system of financing and remuneration of employees for all budgetary bodies, which will be implemented by the Government in agreement with the Head of State is approved by the Government instead of the Head of State.

At the same time, the functions of the President of the Republic as the highest state official, giving the main directions of the domestic and foreign policy of the state representing Kazakhstan within the country and in international relations, are preserved. He symbolizes and guarantees the unity of the people and state power, the inviolability of the Constitution, the rights and freedoms of man and citizen. The Head of the State coordinates functions of all branches of state power and responsibility of authorities (Article 40 of the Constitution).

*Constitutional status of the Parliament of the Republic of Kazakhstan.* The amended Paragraph 1 of Article 49 of the Constitution states that the Parliament "is the highest Republican representative body exercising legislative power". Given clarification of the purpose of the Parliament stems from the refusal of the Head of State to authorize the laws issuance, legal decrees and the exercise of legislative powers when delegated

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<sup>1</sup> Закон РК от 10 марта 2017 года «О внесении изменений и дополнений в Конституцию Республики Казахстан» [The Law «On Amendments and Additions to the Constitution of the Republic of Kazakhstan» available at [https://online.zakon.kz/Document/?doc\\_id=32937557](https://online.zakon.kz/Document/?doc_id=32937557)].

to him by the Parliament, as well as by ordering the Government to introduce the draft law into the Mazhilis of the Parliament. At the same time, the President of the Republic retains the right of legislative initiative and the right to prioritize consideration of draft laws, i.e. they should be adopted by the Parliament as a matter of priority within two months (Clause 2 of Article 61 of the Constitution).

The role of the Mazhilis of the Parliament in the formation of the Government is increasing. Based on the new procedure for the Government formation, the Prime Minister submits the candidacies of members of the Government to the Head of State having consulted with the Mazhilis of the Parliament. An exception is provided for posts of Ministers of Foreign affairs, Defense and Internal affairs, which are appointed and dismissed by the President independently.

The regulation establishing the abolition by the Government of its powers before the newly elected Majilis of the Parliament is a complete innovation. Evidently, the political parties represented in the Majilis are involved in the Government formation.

*The constitutional status of the Government of the Republic of Kazakhstan.* The enhanced accountability and control of the Government to the Parliament and its Chambers increases the responsibility and effectiveness of the branches of state power. Decisions made by the Deputies, coordination or consultations with the Deputies are present at all stages of the 'life' of the highest executive body.

The independence and responsibility of the Government are ensured by eliminating the right of the Head of State (1) to cancel or suspend the acts of the Government and the Prime Minister, (2) to form, abolish and reorganize central executive bodies and central executive bodies that are not members of the Government, (3) and also due to other powers transferred by the President to the Government. The Head of State keeps the right to preside at meetings of the Government on especially important issues, however the presidency is limited to 'necessity'.

*The powers of the Constitutional Council were expanded, the constitutional foundations of the judicial system and the prosecutor's office were clarified.* The Constitutional review received the right for final decisions on the proposed constitutional amendments (mandatory constitutional review). The Article 81 of the Basic Law states that the Supreme Court does not supervise the activities of local and other courts but considers relevant court cases in cases provided for by law. Paragraph 3 of the Article 79 of the Constitution states that the requirements for judges of the courts of the Republic are determined by Constitution. Paragraph 1 of Article 83 of the Constitution states that "the Prosecutor's Office, on behalf of the state, exercises, in the limits and forms established by law, the highest supervision of compliance with the law on the territory of the Republic of Kazakhstan, represents the interests of the State in court and carries out criminal prosecution on behalf of the State".

The protected constitutional values were added. "The independence of the state established by the Constitution, the unitarity and territorial integrity of the Repub-

lic, its form of government, as well as the fundamental principles of the Republic established by the Founder of independent Kazakhstan, the First President of the Republic of Kazakhstan – Elbasy, and its status are unchanged” (Paragraph 2 of Article 91 of the Constitution). This confirms the historical mission of Nursultan Abishevich Nazarbayev as the Founder of the new independent State of Kazakhstan. He ensured its unity, protection of the Constitution, human and civil rights and freedoms. His constitutional status and personal qualities allowed the formation and development of sovereign Kazakhstan, including the constitutional values of the Basic Law and the fundamental principles of the Republic.

The performed redistribution of powers between branches of government does not affect the Presidential government.

Moreover, the Presidential government is implemented in the presidential vertical in local government (the akims of the respective administrative entities are representatives of the President and the Government), the existing procedure for appointing akims of the Republican regions, cities and the capital by the President with the consent of the relevant maslikhat.

The constitutional reform initiated by the President of the Republic of Kazakhstan, Elbasy, is in line with the logic of the country’s historical evolution and ensures the further democracy, increases the responsibility of the Parliament and the Government, and unchanged Presidential government.

“The constitutional reforms of 2007 and 2017 and the 2015 national plan to implement Five Institutional Reforms,” claims the President of the Republic, Elbasy “correlated the country’s economic growth phase and its political modernization”.

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