

# Concept of Constitutional Law

Constitutional Law of RK is a body norms of law which regulates:

- ▶ Legal Status of Individuals

- ▶ Constitutional Principles of RK

- Form of Governance;
  - Form of State Structure;
  - Form of Political Regime;
  - Basics of Political Structure;
  - Basics of Economic Structure.

- ▶ Legal Status of the State Organs

- President;
  - Parliament;
  - Government;
  - Constitutional Council;
  - Judicial Bodies;
  - Organs of Local Administration and Self-Administration.

# What is Constitution?

Constitution is the major source of Constitutional Law.

Constitution is the basic law of the state which has the supreme juridical force and regulates the most important social relations.

## Functions:

- ▶ Establishing Function
- ▶ Organizational Function
- ▶ Stabilizing Function
- ▶ Programmatic Function

## Features:

- ▶ Fundamental Character
- ▶ Supreme Juridical Force

# Constitutional Basics of RK

- RK is a Sovereign State;
- RK is a Rule-of-Law State;
- RK is a Democratic State;
- RK is a Presidential Republic;
- RK is a Unitary State;
- RK is a Social State;
- RK is a Secular State.

# Legal Status of Individuals

Legal Status of an Individual is defined by:

- Constitutional rights and freedoms
  - Personal Rights;
  - Political Rights;
  - Social, Economic and Cultural Rights.
- 
- and
- Constitutional Obligations.

# Legal Status of Individuals

- Human rights and freedoms belong to everyone by virtue of birth
  - Foreigners and stateless persons have the same rights and responsibilities as citizens of Kazakhstan except for political rights and responsibilities.
- Human rights and freedoms may be limited by laws to the extent necessary for protection of:
  - constitutional system,
  - defense of the public order,
  - human rights and freedoms,
  - health and morality of the population,
  - interethnic concord.

# Personal Rights

- Right to life;
- Right to freedom and dignity;
- Right to equality;
- Right to inviolability of private life;
- Right to use native language and culture;
- Right to freedom of speech and to freely receive and disseminate information;
- Right to freely move and freely choose a place of residence:
- Right to freedom of conscience;
- Right to protect rights and freedoms (including the right to self-defense; to judicial defense and to qualified legal assistance);

# Political Rights

- Right to freedom of forming associations.
- Right to assemble; to hold meetings and demonstrations.
- Right to elect and be elected into state bodies
- Right to participate in an all-nation referendum.
- Right to serve in a state office.
- Right to address appeals to state bodies.
- Right to protection and patronage by RK outside its boundaries.

# Economic Rights

- Right to freedom of labor, and the free choice of occupation and profession.
- Right to safe and hygienic working conditions.
- Right to just remuneration for labor without discrimination.
- Right to social protection against unemployment.
- Right to individual and collective labor disputes including the right to strike.
- Right to rest.
- Right to property, including the right of inheritance.
- Right to freedom of entrepreneurial activity.

# Social and Cultural Rights

- Right to guaranteed free secondary education in state educational establishments.
- Right to receive on a competitive basis a higher education in state higher educational establishments.
- Right to pay and receive an education in private educational establishments.
- Right to protection of health.
- Right to free, guaranteed, extensive medical assistance.
- Right to a minimum wage and pension, and guaranteed social security in old age, in case of disease, disability or loss of a breadwinner and other legal grounds.
- Right to housing.
- Right to protection of marriage and family, motherhood, fatherhood and childhood.
- Right to care of children and their upbringing.
- Right to the environment favorable for the life and health.

# Constitutional Obligations

- **Everyone must observe the Constitution, legislation of the RK and respect the rights and freedoms of other persons.**
- **Everyone must respect the state symbols of the Republic.**
- **Everyone must pay legally established taxes, fees and other obligatory payments.**
- **Citizens have a sacred duty to defend the Republic.**
- **Citizens of the RK must care for the protection of historical and cultural heritage, and preserve monuments of history and culture.**
- **Citizens of the RK must preserve nature and protect natural resources.**

**Also Constitution provides that:**

- **Able-bodied children of age must take care of their disabled parents.**
- **Secondary education is obligatory.**

# President of Republic of Kazakhstan

The President is:

- ▶ The head of state who represents RK within the country and in international relations;
- ▶ The highest official of the state who determines the main directions of the domestic and foreign policy of RK;
- ▶ The arbiter who ensures concerted functioning of all branches of state power and responsibility of the institutions of power before the people.
- ▶ The symbol and guarantor of inviolability of the Constitution.
- ▶ The President, his honor and dignity are inviolable.

# Election of the President of RK

- The President is elected by:
  - universal,
  - equal and,
  - direct suffrage,
  - under a secret ballot,
  - by the citizens of the Republic who have come of age.
- A citizen of the Republic is eligible for the office of the President of the RK if he is:
  - citizen of RK by birth,
  - not younger than forty,
  - has a perfect command of the state language,
  - has lived in Kazakhstan for not less than fifteen years.

# Election of the President of RK (2)

- **Regular elections of the President are held on the first Sunday of December.**
  - **First Round based on Absolute Majority (the candidate who receives more than 50 percent of the votes is deemed elected).**
    - **If none of the candidates receives more than 50 percent of votes, a second round of elections is held between the two candidates who obtained the largest number of votes.**
  - **Second Round based on Relative Majority (the candidate who receives the larger number of votes is deemed elected).**
- **President is elected for a five year term.**
- **One and the same person may not be elected as the President of the Republic more than two times in a row.**
  - **Note: This rule does not apply to the First President of the RK.**

# Taking the Office

- The President of the RK takes office from the moment of swearing to the people the following oath:

"I solemnly swear that I will faithfully serve the people of Kazakhstan, strictly observe the Constitution and the laws of the Republic of Kazakhstan, guarantee the rights and freedoms of the citizens, honestly perform the high duties of the President of the Republic of Kazakhstan entrusted to me."
- President swears on the Constitution.
- The oath is taken in a ceremonial atmosphere on the second Wednesday of January.

# Competence of the President

- Foreign Policy
- Defense and Security
- Regarding Parliament of RK
- Regarding Government of RK
- Other most important functions

# Foreign Policy

## President of RK:

- negotiates and signs international treaties;
- appoints and recalls heads of diplomatic embassies of the Republic;
- receives letters of credentials from ambassadors of foreign states.

# Defense and Security

## President of RK:

- acts as the Commander-in-Chief of the Armed Forces of the Republic;
- appoints the Chairperson of the Committee of National Security of the RK with the consent of the Senate of Parliament; releases him from office;
- takes measures caused by a state of emergency in the event of a serious and immediate threat to the the RK;
- imposes martial law in the case of aggression against the Republic or immediate external threat to its security.

# Competences Regarding Parliament

## President of RK:

- signs laws of Republic of Kazakhstan,
  - promulgates laws or returns them for a second discussion and vote;
- may dissolve the Parliament.

# Competences Regarding Government

## President of RK:

- appoints a Prime Minister with the consent of the Mazhilis; releases him from office;
- appoints and releases from office members of the Government;
- presides at the meetings of the Government on especially important issues.

## ALSO:

- appoints the Chairperson of the National Bank with the Parliament's consent;
- appoints the Procurator General with the consent of the Senate.

# Other most important functions

- annually addresses the people of Kazakhstan with a message on the main directions of the domestic and foreign policy of the RK;
- approves state programs of the Republic;
- adopts a resolution on conducting the all-nation referendum;
- awards state decorations and confers honorary, military, diplomatic and other ranks;
- resolves issues of citizenship of the Republic, and political asylum;
- exercises pardon of citizens.

# Premature release and Discharge (Impeachment) of the President

- Premature release from office is possible in the case of continued incapacity to perform duties due to illness.
  - The decision is adopted at a joint session of the Parliament's Chambers by the majority of 3/4 from the total number of deputies of each Chamber.
- Discharge is possible only in the case of high treason.
  - The final decision is adopted at a joint session of the Parliament by the majority of 3/4 of each Chamber,
  - The failure to arrive at a final decision within 2 months results in the rejection of the accusation against the President.

# Released or Discharged: What next?

- In case of premature release or discharge of the President from office as well as in case of his death the powers of the President are transmitted:
  - to the Chairperson of the Senate for the rest of the term;
  - if the Chairperson of the Senate is unable to assume the powers to the Chairperson of the Majilis;
  - if the Chairperson of the Majilis is unable to assume the powers to the Prime Minister.

# Parliament of RK

- ▶ Parliament of RK is the highest representative body of the Republic performing legislative functions.
- ▶ Parliament consists of two Chambers acting on a permanent basis:
  - the Senate and
  - the Mazhilis.

# Structure of the Parliament of RK

- The Senate is composed of deputies:
  - Elected in twos from each regions (14 oblasts+Astana and Almaty), at a joint session of the deputies of all representative bodies of the regions.
  - 15 deputies of the Senate are appointed by the President.
- The Mazhilis consists of 107 deputies.
  - 98 deputies are elected on the basis of the Party Lists.
  - 9 deputies are elected by the Assembly of People of Kazakhstan.
- Term of the powers of deputies of the Senate is 6 years.
- Term of the powers of deputies of the Mazhilis is 5 years.

# Elections

- Elections of the deputies of the Mazhilis is carried out on the basis of:
  - Universal,
  - Equal,
  - Direct electoral right (suffrage)
  - Under secret ballot.
  - Only those political parties which received not less than 7 percent of votes are admitted to distribution of deputy mandates on the basis of Party Lists.
- Elections of the deputies of the Senate are carried out on the basis of:
  - Indirect electoral right
  - Under secret ballot.
  - Half of the elected deputies of the Senate are re-elected every three years.

# Status of the Deputies

- They have no right
  - to be a deputy of another representative body,
  - to hold other paid offices, except teaching, research and creative activities,
  - to engage in entrepreneurial activity,
  - to enter a managing body or a supervisory board of a commercial organization.
    - Violation of these rules results in the termination of a deputy's powers.
- During the term of office, they may not be arrested, detained, arraigned on an administrative or criminal charge without the consent of a respective Chamber
  - except for the cases of being apprehended on the scene of a crime or committing grave crimes.

# Most Important Competences of the Parliament

- to amend the Constitution by the majority of 3/4 of votes at the proposal of the President;
- to adopt laws and in particular to approve the republican budget and taxes
  - to conduct a 2nd round of voting on the laws that were vetoed by the President;
    - confirm by the majority of 2/3 of votes the decision adopted earlier - In this case the President must sign the law within 7 days.
- to give consent to the appointment of the Prime-Minister (done by Mazhilis).
- to express a vote of no confidence to the Government (done by Mazhilis)
  - by a majority of votes at the initiative of no less than 1/5 of the total number of deputies.
- have the right to hear reports of the members of the Government,
  - adopt an appeal to the President to discharge a member of the Government from office by a majority of the deputies.
- to issue acts of amnesty to citizens;
- to ratify and denounce international treaties.
- to decide issues of war and peace;
  - and of the use of the Armed Forces abroad at the proposal of the President.

# Legislative Process: Initiative and Stages

The right of a legislative initiative belongs to:

- the deputies of Parliament,
- the Government; and
- the President (who may charge the Government to prepare a draft of law)

## STAGES:

- 1) A draft of law is considered by the deputies of the Mazhilis and if approved by the majority of votes;
- 2) It is transmitted to the Senate where it is considered for no more than 60 days. If it is approved by the majority of votes of deputies of the Senate;
- 3) It may be considered by the Constitutional Council with respect to its compliance with the Constitution (*if the Council is requested to do so!*) ; If the draft is approved,
- 4) It is submitted to the President to be signed within ten days. Laws of the Republic come into effect after they are signed by the President.

# Legislative Process: Powers of President and Government

- The President has the right:
  - to declare consideration of a particular draft of law urgent
  - in this case Parliament must consider this draft within a month from the day of its submission.
  - if the Parliament does not meet this requirement, the President has the right to issue a decree having the force of law which will be in effect until Parliament adopts a new law.
- The Prime-Minister has the right:
  - to raise an issue of non-confidence in the Government in the case when of a draft of law submitted by the Government is not adopted,
  - If the call for a vote of no confidence does not receive the necessary number of votes, a draft of law is deemed adopted without voting.
  - The Government may not use this right more than twice a year.

# Dissolution of the Parliament

- The President may dissolve:

- the Parliament or
- the Mazhilis of the Parliament

after the consultations with the Chairpersons of the Chambers of the Parliament and the Prime-Minister.

- The Parliament may not be dissolved in the period of:

- a state of emergency or martial law,
- during the last six months of the President's term, as well as
- within a year after a previous dissolution.

# Government of Republic of Kazakhstan

- The Government implements the executive power of the Republic of Kazakhstan;
- In its entire activity it is responsible before the President;
- It may be also accountable to the Parliament
  - The Parliament may appeal by a majority of votes to the President to discharge a member of the Government from office in the case of non-observance of the laws of the Republic.
  - If the President rejects, after the expiry of 6 months the Parliament may re-appeal to the President on the same issue.
    - In this case the President must discharge a member of the Government from office.

# Formation of Government

There are the following stages:

- Consultations of the President with the fractions of the political parties represented in the Mazhilis,
- Introduction of a candidacy of the Prime Minister by the President to the Mazhilis;
- Appointment of the Prime Minister by the President with the consent of the Mazhilis;
  - President may also anytime release him from office;
- At the proposal of the Prime Minister, President determines the structure of the Government and appoints its members.
  - Suggestions about the structure and composition of the Government has to be submitted to the President by the Prime Minister within ten days after his appointment.
  - At his own discretion, the President appoints Ministers of Foreign Affairs, of Defense, of Internal Affairs, of Justice.

# Functions of Government

## Government of Republic of Kazakhstan

- Elaborates main directions of the state policy in the spheres of:
  - Socio-economic development;
  - Defense capability and security;
  - Public order;
- Develops measures for the conduct of the foreign policy of RK;
- Introduces a draft of the republican budget to the Parliament and ensures its implementation;
- Introduces drafts of laws into the Mazhilis;
- Ensures the enforcement of laws;
- Manages state property;
- Manages the activity of ministries and other central and local executive bodies;
- May terminate or suspend the effect of acts of ministries and other central and local executive bodies of the Republic;

# Status of Members of Government

- A member of the Government who does not agree with the policy, pursued by the Government, or who does not pursue it must resign or be subjected to release from his office.
- Members of the Government do not have right:
  - to be deputies of a representative body,
  - hold other paid offices except teaching, scientific and other creative activities,
  - engage in entrepreneurial activity,
  - enter governing body or a supervisory board of a commercial organization.
- The members of the Government take an oath to the people and President.

# Termination of Powers

- The President may any time terminate powers of the Government and release any of its members from their offices.
  - The release of the Prime Minister from office denotes the termination of the powers of the entire Government.
- The Government must submit its resignation to the President in the event that Parliament passes a vote of no confidence in the Government.
  - The President within a period of 10 days considers the issue of accepting or declining the resignation.
  - Acceptance of the resignation denotes the termination of the powers of the Government.

# Structure of Government

<ol style="list-style-type: none"><li>1. Ministry of Foreign Affairs;</li><li>2. Ministry of Defense;</li><li>3. Ministry of Internal Affairs;</li><li>4. Ministry of Finance;</li><li>5. Ministry of Justice;</li><li>6. Ministry of Agriculture;</li><li>7. Ministry of Labor and Social Protection;</li><li>8. Ministry of Education and Science;</li><li>9. Ministry of Transport and Communication;</li><li>10. Ministry of Energy and Mineral Resources;</li><li>11. Ministry of Health Care;</li><li>12. Ministry of Industry and Trade;</li><li>13. Ministry of Environment Protection;</li><li>14. Ministry of Economics and Budget Planning;</li><li>15. Ministry for Emergency Situations</li><li>16. Ministry of Culture and Information;</li><li>17. Ministry of Tourism and Sport</li></ol>	<ol style="list-style-type: none"><li>1. Agency for Statistics</li><li>2. Agency on Informatization and Communication</li><li>3. Agency on Management of Land Resources</li><li>4. Agency on Regulation of Natural Monopolies</li><li>5. Agency on Affairs of State Service</li><li>6. National Space Agency</li><li>7. Agency on Protection of Competition (Anti-Monopoly Agency)</li><li>8. Agency for the Regulation of the Activities of the Regional Financial Center Almaty</li><li>9. Agency for the Issues of Construction and Municipal and House-Building Economy</li></ol> <p>► Chancellery of Prime Minister.</p>
---	---