

Review Paper

Constitutional and Legal Stages in the Development of Electoral Law in the Recent History of the Republic of Kazakhstan and the Kyrgyz Republic

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Received: 18-12-2022

Revised: 03-04-2023

Accepted: 29-04-2023

ABSTRACT

A study of the history of electoral law development provides a clear understanding of how it will evolve in the future, especially in the post-Soviet space. The purpose of the study is to identify the legal stages of the development of electoral law through the adoption of constitutional norms in the Republics of Kazakhstan and Kyrgyzstan and to carry out a comparative analysis of these stages between the countries studied. The main methods used are the historical and legal method, which analyses the development of constitutional and legal norms and identifies the stages in the development of electoral law, and the comparative-legal method, which compares the constitutions and electoral law norms in the two countries. The result of the study is an identification of the specific stages of change in constitutional provisions relating to the electoral law, and an analysis of these changes and their impact on electoral law and the political regime in post-Soviet Kazakhstan and Kyrgyzstan. A description of the amendments that have been made to the Constitution in the context of electoral law has been carried out, and the consequences of the adoption and amendment of the Basic Law for the change of the political regime in the state have been identified.

HIGHLIGHTS

- Practices of constitutional change in Kazakhstan and Kyrgyzstan were also compared and the countries' experiences of transition to democratic principles of state-building were studied. The study has both theoretical and practical significance in providing a detailed and structured understanding of the development of electoral law in post-Soviet countries.

Keywords: Direct democracy, Constitution, constitutional development, civil society, authoritarian regime, electoral law

Following the collapse of the USSR, former Soviet republics experienced political shifts and regime changes, with a focus on establishing democratic systems. The adoption of constitutions and the conduct of fair and transparent elections were crucial steps in achieving democracy. Kazakhstan and Kyrgyzstan, both former Soviet republics, embarked on constitutional reforms simultaneously but took different paths. Kyrgyzstan pursued the immediate establishment of an independent democratic state,

resulting in the adoption of a constitution aligned with international electoral law norms since 1993. Meanwhile, Kazakhstan, until recently, maintained a *de facto* autocratic regime, making only formal changes to its constitution (Constitution..., 1995).

How to cite this article: Dossumov, S. and Adilov, A. (2023). Constitutional and Legal Stages in the Development of Electoral Law in the Recent History of the Republic of Kazakhstan and the Kyrgyz Republic. *Econ. Aff.*, 68(Special Issue): 909-915.

Source of Support: None; **Conflict of Interest:** None



The study delves into three key stages in the recent post-Soviet history of these republics, focusing on the development of constitutional and legal norms.

A sufficient number of scientists have been studying this issue. For example, A.D. Tolysbayeva (2021) describes the experiences of establishing the rule of law in Kazakhstan in her study. M. Nassimov (2021) analyses the conduct of presidential elections in Kazakhstan in 2011 and 2015. H. Masaaki (2022) devoted his study to electoral reforms in countries with autocratic regimes. Polish scientist E. Shukalsky (2022) discusses current electoral law issues in some Central Asian countries. D. Asanbekova *et al.* (2021) describe the historical events that preceded the adoption of the Constitution in Kyrgyzstan. Most of the studies by authors from other countries, for example, L.P. Markowitz (2021), D.G. Lewis (2021), relate to the history of the formation of the rule of law, and the development of the norms of the Constitution, however, none of the studies have identified the stages of development of the electoral right, which is enshrined in the Constitution. The aim of this study is to focus specifically on the adoption, amendment, and supplementation of constitutional and legal norms related to electoral law in Kazakhstan and Kyrgyzstan. By examining the historical development of these norms, the study aims to provide a clearer understanding of their formation and analyze them within the context of democratization. Furthermore, the study aims to conduct a comparative analysis of the development of electoral law in these two countries, which have undergone contrasting changes in their respective directions.

In countries where electoral law meets democratic requirements, its enforcement in practice is a significant concern. The ruling elites in the countries under study have established a governance model that raises doubts about whether constitutional changes genuinely aim for democratic goals. As a result, there is a limited number of comprehensive studies on the development of electoral law in Kazakhstan and Kyrgyzstan over the past 30 years. This could be attributed to the minimal progress in this area. Given the intricate nature of political processes in post-Soviet states, studying this topic requires a multifaceted approach, encompassing legal, historical, and political assessments.

MATERIALS AND METHODS

The study drew on the research contributions of Kazakh and international scholars who have explored constitutional and legal norms in the post-Soviet region, specifically in Kazakhstan and Kyrgyzstan. Scholarly articles and publications were reviewed to examine the development of electoral law in states with autocratic regimes. The study adhered to the principles of objectivity, systematicity, and historicism.

The investigation proceeded through several stages. Initially, the constitutional norms adopted in Kazakhstan and the Kyrgyz Republic during the post-Soviet era were reviewed to identify their relevance to the development of electoral law. Historical events and political factors that influenced constitutional amendments were also examined. By studying the chronological adoption of constitutional amendments, distinct stages in the formation of constitutional law in both countries were identified. The subsequent stage involved a comprehensive analysis of the development of electoral law in the Republic of Kazakhstan. This entailed studying the main constitutional amendments, as well as examining the reasons and consequences of their adoption. A similar study was conducted to explore the constitutional and legal framework in the Kyrgyz Republic. Following these individual examinations, a comparative legal analysis was conducted to evaluate the development of electoral law within the constitutional provisions of both states. This analysis focused on the impact of constitutional changes on the institutions of direct democracy. In conclusion, the study identified the crucial role of direct and transparent elections in challenging autocratic power and establishing democracy, both formally and in practice.

RESULTS

The Constitution of a democratic state plays a crucial role in upholding democratic principles, including the right to vote. The proper and comprehensive inclusion of the right to vote in a country's constitutional framework determines the true commitment to people's rule. The right to choose is fundamental in democracy as it forms the basis for other rights. The transition from totalitarianism to democracy was most evident

in the post-Soviet states after the collapse of the Soviet Union. Alongside constitutional adoption and amendments, electoral law evolved, emphasizing the significance of elections for heads of state, parliaments, and self-governing bodies in the post-Soviet Central Asian countries. International legal instruments and national constitutions serve as important sources of electoral law, with national legislation aligning with international principles and provisions (Amandykova *et al.* 2021).

Following the dissolution of the Soviet Union, the Republic of Kazakhstan and the Kyrgyz Republic, among other newly independent countries, embarked on a transition to democracy. Constitutions were adopted and democratic institutions were established in each state. While these countries exhibited unique characteristics in their system and principles of electoral law, there are common stages observed in the development of constitutional and legal norms. The constitutional development of Central Asian nations like Kazakhstan and Kyrgyzstan has been dynamic, progressing through several stages within a relatively short time-frame in their journey towards democratization. This intensive development of fundamental laws has had a significant impact on electoral law, leading to substantial changes. The manner in which electoral rights are enshrined in the Constitution reflects the level of democratic orientation and the degree to which the concentration of power is reduced, empowering society. Notably, Kazakhstan and Kyrgyzstan lacked experience with written constitutions before the 1970s, relying on customary law for social governance prior to the Soviet era. The socialist-era constitutions were largely symbolic in nature (Pistan, 2020). The development of constitutional and legal norms in electoral law can be categorized into three stages, albeit with variations in how Kazakhstan and Kyrgyzstan experienced these phases while sharing commonalities.

The first stage, referred to as the post-communist era, commenced with the collapse of the USSR. During this stage, the constitutional norms were largely copied from the Soviet Constitutions. Despite gaining independence and expressing a commitment to democratic principles, the Constitutions effectively consolidated an authoritarian regime. In Kazakhstan, the initial Constitution was adopted in 1993, establishing a parliamentary-presidential

republic with three branches of government. However, in 1995, President Nursultan Nazarbayev initiated a referendum resulting in the adoption of a new Constitution, transforming the country into a Presidential Republic with power vested in one individual. This new Basic Law included provisions such as an age limit of 65 for presidential candidacy and a two-term limit on holding office (Constitution..., 1995). Nevertheless, in 1998, around 20 amendments were introduced that eliminated these restrictions, granting the then president unrestricted power indefinitely. Consequently, the Soviet Union's legacy was fully preserved, and the electoral rights of citizens became merely nominal (Amandykova *et al.* 2021).

The development of constitutional and legal norms in the Kyrgyz Republic has followed a similar pattern. The first Constitution, adopted on May 5, 1993, is one of the most important documents for the formation of the statehood of Kyrgyzstan because it consolidated the status of a legal, social, democratic state (Constitution of the Kyrgyz..., 2021). Rules were also enshrined that provided for restrictions on the presidential candidate and restrictions on the re-election of the head of state, thus preventing the usurpation of power. However, in 1996, on the initiative of then President Askar Akaev, constitutional amendments were initiated. By means of a national referendum, the provisions of the Constitution concerning the election of the President were changed, namely, the norm on limiting the number of times of re-election was abolished. That is, similar to Kazakhstan, the movement towards a democratic regime of government has stopped, as an autocratic regime has been clearly established (Duishonbaeva *et al.* 2021).

The second phase, occurring in the early 2000s, represents a transitional period marked by "colour revolutions" in certain post-communist countries. In Kyrgyzstan, the Tulip Revolution emerged in March 2005, driven by the desire for political change and increased political diversity within society (Dilshod, 2021). The ousting of President Askar Akayev and the election of Kurmanbek Bakiyev as the new leader led to significant constitutional amendments concerning the right to vote. The revised Constitution introduced a 90-member parliament, with 50 percent of its members elected through proportional representation (Constitution

of the Kyrgyz..., 2021). While these constitutional changes indicated a shift towards democracy, the President's powers remained substantial. The President's authority was reinforced, governmental accountability to the President was established, and the heads of government were appointed upon the President's recommendation. In contrast, Kazakhstan experienced constitutional changes that further consolidated President Nazarbayev's unilateral authority. In 2007, electoral legislation introduced the concept of the "First President" and "Leader of the Nation," solidifying the President's unlimited lifetime tenure, introducing unlimited terms in office.

Formally, the electoral legislation met all international legal norms, but in practice, all these provisions were not implemented. During this period, suffrage came to a halt as a political regime deeply entrenched and tried by all means to level out all institutions of democracy (Sayabayev, 2016).

The third stage is characterized by the period of liberalization and democratization. In Kyrgyzstan, this stage occurred earlier than in Kazakhstan, specifically in 2010 with the adoption of a new Constitution. The new Constitution establishes electoral laws that encourage active citizen participation in the formation of representative bodies. Kyrgyzstan operates as a parliamentary republic under the 2010 Constitution, allowing for multi-party systems and enabling opposition parties to participate in parliament. The Constitution of Kyrgyzstan safeguards the principles of free elections, ensuring citizens' freedom to participate in elections without coercion or pressure from any source (Siegel, 2021). It also mandates the binding nature and regularity of parliamentary elections, establishing specific terms and frequency dictated by law. This period witnessed the alignment of electoral legislation with international democratic principles, facilitating the development of a democratic society. Presently, it is evident that public policy in Kyrgyzstan is committed to nurturing a democratic civil society, supported by robust institutions of direct democracy (Williams and Hanson, 2022).

However, the October events of 2020 and the subsequent elections of the President and deputies of the Parliament of Kyrgyzstan in 2020 and 2021, respectively, the constitutional reform was carried

out with the adoption of a new version of the Constitution on May 5, 2021, strengthened the vertical of executive power headed by the President, giving him the powers of the executive branch of government (Article 89 of the Constitution). The Institute of Government was transformed into the Cabinet of Ministers (Article 91) (Constitution of the Kyrgyz..., 2021). In Kazakhstan, the period of democratisation began in 2019, when President Nursultan Nazarbayev resigned. Immediately after his resignation, presidential elections were held, in which Kassym-Jomart Tokayev won, but the former President still holds a significant position in the implementation of state policy. International experts recognised the change of power as a mere formality, and the Organisation for Security and Cooperation in Europe commission assessed the presidential elections as being carried out under pressure from the ruling elite (Tipaldou, 2021).

But the advance towards democratisation was imminent. Society needed this, because there was no place for an autocratic regime of government in the modern civilised world. On 5th June 2022, a national referendum was held that proposed fundamental changes to the Constitutional of the Republic of Kazakhstan (1995). The main amendment is that the President is no longer the main figure in the state, the Republic of Kazakhstan is changing from a super-presidential to a presidential form of government with a strong parliament, and relatives of the President are banned from holding high office (Rittmann, 2022). It also radically changes electoral law, as the amendments abolish sole authority, opening up the prospect of further democratisation of state administration and citizen participation in state-making. In total, 58 amendments to the Constitution were envisaged, directly or indirectly affecting the right to vote (Constitution..., 1995). After all, the form of government and the method of electing the ruling elite is the determining factor for the existence of direct democracy and its institutions (Somfalvy, 2020).

These three stages of the constitutional development of electoral law are rather conditional and reflect only the main aspects. It should be noted that electoral law in these two post-Soviet countries has developed very rapidly and dynamically and continues to do so. Although the Republic of Kazakhstan was an autocratic regime and

Kyrgyzstan was not an absolute democracy either, there was still a great leap from a system that offered absolutely no alternative for society to a form of government that did enshrine democratic principles and constantly took steps to implement the constitutional foundations in political reality.

DISCUSSION

Various studies have been examined to identify the stages of constitutional development of electoral law norms in Kyrgyzstan and Kazakhstan. These studies explore changes in political regimes, reasons for adopting or rejecting amendments, and historical perspectives. The investigation covers different time periods and aspects of the republics' recent history. Existing research extensively describes the formation of statehood, constitutional development, and the adoption of specific norms. Attention is given to the development of embryonic democracies in countries with authoritarian regimes, focusing on electoral rights. Comparative analysis of political regimes in post-Soviet countries is also conducted. However, few studies specifically define and analyze electoral law enshrined in the Constitution. Some researchers examine the formation of democracy in post-communist countries and their experiences with implementing democratic principles. Others study presidential elections, assessing them according to international norms.

A. Jafari and H. Azizi (2021) analyze the causes and factors contributing to the strengthening of authoritarianism in post-Soviet Central Asia, exploring the implications for statehood development. C. Pistan (2020) examines the phenomenon of authoritarianism being entrenched through ostensibly democratic constitutions, highlighting how these constitutional changes create an illusion of democratic principles while maintaining a totalitarian system. D.G. Lewis (2021) examines different types of authoritarianism in Central Asia, asserting that, with the exception of Kyrgyzstan, most countries in the region have adopted authoritarian models where elections have limited democratic impact on representative bodies. R. Arabaev *et al.* (2021) study the transition of the Republic of Kyrgyzstan from a parliamentary republic to a presidential one, focusing on the constitutional and legal norms governing government formation and presidential

appointments, and analyzing significant historical events that have shaped the country's political landscape.

E. Joakim and E. Amnå (2021) study the dynamics of continuity of Soviet Union features in Asian countries and how this continuity has influenced the development of constitutional norms and political regime change. They conducted a comparative analysis of the transition of post-Soviet countries to more democratic ways of government and determined the conditions for such a smooth transition. R. Anisov *et al.* (2021) investigate democratic institutions in Kyrgyzstan. Through historical analysis, they carry out a study of the workings of democratic institutions, their principles and basic guarantees for citizens. A. Duishonbaeva *et al.* (2021) describe in detail the constitutional development of Kyrgyzstan, including the Constitution itself and constitutional institutions since the Soviet period.

Electoral law has evolved in conjunction with constitutional norms, as observed in the examination of the subject. While the Constitution serves as the primary source of electoral law, its mere adoption is insufficient to ensure democratic elections. The active engagement of civil society is necessary for the implementation of these norms and the transparent conduct of elections in accordance with international standards. The case of Kazakhstan exemplifies the disparity between legal norms and political reality. Despite a constitution seemingly aligned with democratic principles, an autocratic regime has persisted without significant retreat. Like other authors, this study conducts a historical analysis of post-Soviet countries, exploring the formation of constitutions and their institutions.

This study stands out from others by identifying the stages of development of electoral law within the constitutional norms of post-Soviet Kazakhstan and Kyrgyzstan. Previous studies did not delve into the specific stages of adopting constitutional norms that regulate the right to vote in the recent history of these states. The analysis focused on the adoption of constitutions and amendments aligned with democratic principles, examining their consequences for the progress towards free democracies. The study explored the influence of constitutional norms on electoral law and the electoral process, and their role in transitioning

from autocratic regimes to full-fledged democracies. However, it should be noted that this study only examined the adoption of constitutional norms and did not consider legislative acts that implement these norms.

In line with the views of many authors, it is evident that the Republic of Kazakhstan has embraced an authoritarian model of governance, leaving little room for democratic elections. Despite changes in the ruling elite and some constitutional reforms, the existence of direct democratic institutions in the country remains uncertain. Nevertheless, it is important to acknowledge that Kazakhstan has witnessed certain positive developments towards democratisation, although this process is still in its early stages. On the other hand, Kyrgyzstan has demonstrated a stronger commitment to democratic principles by adopting a parliamentary republic model, even though the role of the president remains significant. Additionally, positive changes have emerged through societal mobilisation during the revolution, contributing to a more vibrant civil society.

CONCLUSION

The Constitutions of Kyrgyzstan and Kazakhstan have progressed through multiple stages of development, continually advancing toward the establishment of democratic governance. Amendments to the Constitution align with historical circumstances, reflecting the political evolution of post-Soviet countries. This study holds practical and theoretical significance as it offers insights into the historical stages of electoral law development in former Soviet Union countries. Such insights facilitate assessing challenges in implementing electoral law and provide valuable lessons for the future. It also sheds light on the significance of suffrage as an institution of direct democracy and the difficulties associated with its implementation in countries previously governed by totalitarian regimes.

The scope of future studies should extend beyond constitutional norms and encompass the examination of comprehensive and diverse special legislation. A promising avenue for investigation lies in the detailed analysis of procedures related to presidential and parliamentary elections, including

the identification of challenges and strategies to address recurring irregularities.

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