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THE REPUBLIC OF KAZAKHSTAN: SIX YEARS OF INDEPENDENT DEVELOPMENT

Zaure Ayupova*

The independent existence of Kazakhstan began on October 25, 1990, with the acceptance of Article 6 of the Declaration of State Sovereignty, which established that "the state authority in the Kazakh SSR has leadership, independence, and completeness within the Union Republic."¹ On December 16, 1991, in addition to the sovereignty declaration, a new law establishing the state independence of the Republic of Kazakhstan was approved.²

After achieving independence, Kazakhstan faced problems regarding the formation, strengthening, and perfection of its statehood. The disintegration of the Soviet Union, in contrast to other regions of the planet, "has resulted not necessarily in the formation of essentially new states, but in the revival of lost statehood from former times for lands with deep historical roots."³

A sovereign republic must decide many urgent and vital problems such as: (1) transition from one economic system to another, (2) developments in the process of democratization, (3) preservation and strengthening of social and interethnic stability, (4) determination of foreign policy; (5) preservation of territorial integrity, (6) problems of conformity in legislation to accepted models of development, and (7) development of integrated processes in the context of international cooperative frameworks, such as the Commonwealth of Independent States (hereinafter CIS).

The peaceful achievement of independent statehood was a distinctive feature of Kazakhstan's particular variant of sovereignty. This peacefulness allowed state-building to begin upon the old management system. Through gradual reforms the old system underwent a slow and painless transformation to a modern state.

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^{1.} Source on file with the author.

^{2.} Source on file with the author.

^{3.} See N.A. NAZARBAEV, ON THE THRESHOLD OF THE XXI CENTURY 138 (1996).

At the first stage in the construction of statehood, at the end of 1991, significant reforms in economic relations were sought. Laws concerning private property and enterprise were enacted, opening the way to further reforms and privatization initiatives. New social institutions, reflective of and appropriate to new requirements of a varied and changing society, have begun to flourish.

The year of 1992 began the next stage in Kazakhstan's forming statehood. This included: the creation of the armed forces of the new republic; the creation and formal acceptance of new state symbols; and further transformations in the economy, such as liberalization of prices and the increasing commercialization of the separate spheres of manufacturing. It was also a year of external policy triumphs for Kazakhstan. Kazakhstan became a member of the world community of independent nations and was admitted to the United Nations on March 2, 1992. Kazakhstan was also admitted to the United Nations Educational, Scientific and Cultural Organization [hereinafter UNESCO] on May 22, 1992, and on July 10, 1992 signed the final act of the SBSE.⁴ With the establishment of a national agency for foreign investment, the work began in earnest to attract world-wide interest in Kazakhstan's financial development.

A key direction in Kazakhstan's internal policy, which reflects a collective concern for maintaining the strength of its own statehood, is the national discussion of the first Constitution. The first Constitution reflects new economic and political realities. The strategic purposes and basic principles of the document are formulated in President Nursultan Nazarbaev's writings which provide an important conceptual reference on state and national identity in Kazakhstan's multiethnic setting.⁵

The work on the Constitution of Kazakhstan emphasized statehood while encompassing the complex conditions and political disagreements left in the wake of the Soviet Union's demise, as well as social and psychological problems of adaptation in the face of new conditions. The conditions for Kazakhstan's society during this period (characterized by sharp decline of economic conditions aggravated by inflation, rampant non-payments of debts, increasing unemployment, reduced production, deteriorating quality of life) reflected the irony of personal improvement gained by citizenship in a sovereign state. Coupled with the economic downturn was an upsurge of movements based on national and ethnic identities, whose vocal opinions surrounded the constitutional debate. Chief among these opinions were concerns of the ethnic Russians in Kazakhstan and in the neighboring Russian Federation regarding language and citizenship in the new nation. Mass media campaigns on behalf of

^{4.} Source on file with author.

^{5.} See generally, PRESIDENT NURSULTAN NAZARBAEV, STRATEGY AND FORMATION AND DEVELOPMENT OF KAZAKHSTAN AS A SOVEREIGN STATE (source on file with the author).

Kazakhstan's Russians served to cast doubt on the Russian Federation's respect for its new CIS partners.

The new Constitution, accepted January 23, 1993, by a Soviet era government, had a dual character. On one hand, it promoted further democratic transformations in the society and economy. On the other hand, it caused disputes and instability. The Constitution failed to regulate and define the power of the legislative and executive branches. It was necessary to resolve the problems inherited from the old totalitarian system. These problems slowed the creation of conditions necessary for the functioning of a new and improved system. First, the parliament or Supreme Kenges ("supreme body") still embodied the bulky decisionmaking mechanisms of its predecessor, the Supreme Soviet of the Kazakh SSR, and lacked any real mechanism for the execution of legislative initiatives. Second, the exaggerated perpetuation of the ruble zone stymied the formation of independent Kazakhstan's banking system.

The Supreme Kenges subsequently tried to undertake the functions of distribution, shifting the responsibility for reform onto the shoulders of the executive authority. For example, the Supreme Kenges accepted populist political decisions on wage increases and social programs and passed them along to the executive branch for fulfillment, despite the obvious lack of available funds for such initiatives. This process perpetuated the contradictions typical of the Soviet system and slowed progress considerably. This stalemate resulted in the self-dissolution of the 12th Convocation's Supreme Kenges.

Kazakhstan's first Constitution is both a product of Nazarbaev and a testament to him. It creates what the document itself calls "a strong presidential democracy."6 According to the Constitution, the President had the power to appoint: the prime minister and the deputies; the ministers of foreign affairs, defense, and finance; the chief of state security, the security council: the constitutional court and other judges; and the prosecutor general. In late October 1994, Nazarbaev issued a decree that expanded presidential powers to include the right to make decisions of strategic socioeconomic importance. In the absence of a parliament (as was the case from December, 1993 to March, 1994, and again after March, 1995) the President ruled by direct decree. Even with the powers that the Constitution invests in its President, the Republic of Kazakhstan is defined as "a democratic, secular, and unitarian state" arising as a "form of statehood self-determined by the Kazakh nation."7 Unlike the constitutions of the other Central Asian states. Kazakhstan's basic law makes no reference to any special status or role for Islam, but it does specify that the state language is Kazakh. The Russian language is given a somewhat

7. Id.

^{6.} See MARTHA BRILL OLCOTT, THE KAZAKHS 276 (2d ed. 1995).

mysterious status of "language for interethnic communication"8

Kazakhstan's withdrawal from the ruble zone resulted in the November, 1993 establishment of a national currency, the "tenge," which signaled a break with the old Soviet economic community. The independence of Kazakhstan is now also based on a separate financial credit system, and thus began the real management of economic and financial processes and reforms in the steadily more established republic.

A new Supreme Kenges, elected in March, 1994, comprised more professionals and seemed headed on a more productive track. Yet it too, became bogged down in disputes over the imperfection of the Code of Kazakhstan and eventually the Constitutional Court declared this parliament non-legitimate. The Constitution of 1993 was essentially a collection of declarations devoid of real instructions, and did not allow for a system of checks and balances. Moreover, it did not allow for the transition to a more democratic legal structure. In fact, the Constitution exacerbated problems in the market economy and in interethnic relations, particularly with its declaration of Kazakh as the sole official language; effectively denying the (then) majority population of ethnic Russians a "legal" voice.

Early 1995 saw the Republic of Kazakhstan in the midst of a constitutional crisis. The reopening of a civil suit brought by the Central Electoral Commission's representative, Tatiana Kviatkovskaya, resulted in the parliament's dissolution in March. This dissolution was followed in April by a referendum on the expansion of presidential powers and the extension of his term until the year 2000. These events were preceded by efforts in Kazakhstan to work with international experts on the development of a constitution which would displace both the Kazakh SSR document of 1978, as well as the flawed 1993 Constitution of the free state. Among those consulted were Barnabas Johnson, Johnson implemented a model project for former Soviet states which resulted in a group dedicated to the creation of a new constitution for Kazakhstan. Included in this company was: Nyrbulat Masanov (historian and president of the International Fund for Maintenance and Support of Democratic Reforms in Central Asia); Evgenii Zhovtis (executive of the Kazakhstan-American Bureau for Human Rights and Justice); Valentina Sevryakova (president of the independent trade union "Birlesu"); Bamabas Johnson (constitutional expert); and Laurie Whyamen (lawyer and specialist on courts systems). As this group seemed headed toward a successful drafting of a new constitution, their momentum was stalled in July, 1995, by President Nazarbaev's proposal to bring it to an immediate referendum. At the same time Nazarbaev sought to extend existing laws and political structures. Both Nazarbaev and the defunct parliament came under sharp media scrutiny and criticism. Nazarbaev was scrutinized for his unilateral actions.

The prevention of this type of situation was addressed in the work of the group working on the new constitution. They sought limitations of powers in the presidential structures and in parliamentary functions, as well as in the role of the prosecutor's office. At the same time, they addressed issues of private property and interethnic relations. The document was translated into the Kazakh language, but was refused publication by either the official or so-called independent press, and came under criticism from the Constitutional Court and the major democratic political parties and public organizations. After a series of discussions and emendations, the document was officially presented and adopted on August 30, 1995, as the new Constitution of the Republic of Kazakhstan. This same referendum prolonged the term of the President with a 95.46% vote in favor of the measure, with more than 90% of the eligible populace reported as voting.

The Constitution of Kazakhstan legally established a strong presidential republic with distribution of powers among three branches of authority. "Thus, in this country, a steady and successive institution of strong state authority has been created that allows for the stability of all internal political processes"⁹

The Constitution of 1995 states that "the Republic of Kazakhstan approves itself by the democratic, secular, legal and social state, higher values of which are the person, his life, rights, and freedom."¹⁰ The new Basic Law of the independent state predetermines qualitative parameters and steady development of the state. By the constitution, the state of Kazakhstan is characterized as unitary and integral.¹¹ The main characteristic of the unitary state is that it has within it no other nations or independent bodies. The unitary state assumes uniform citizenship, legislation, and a system of state authority. "It is possible to ascertain that after a year, due to the new Basic Law, the fundamental bases of a new statehood have been achieved, including a uniform state authority capable of adjustment, generated by direct public development."¹²

The efficacy of the three-part government of Kazakhstan is expressed in three aspects:

(1) No one government body or political organization can ignore or stop the activity of constitutionally established institutions or uncontrollably carry out imperious functions leading to the abolition of the consti-

- 10. Source on file with author.
- 11. Source on file with author.
- 12. See NAZARBAEV, supra note 3, at 88-89.

^{9.} See N.A. Nazarbaev, Message from the President of the Republic of Kazakhstan to the People of Kazakhstan, KAZAKHSTANSKAYA PRAVDA, Oct. 8, 1996.

tutional system or usurpation of authority by violence;

(2) The functional division of authorities assures the appropriate organization of legislative, executive, and judicial mechanisms. The legislative authority is limited by referendum, by direct choices of the president via his direct veto, and by a Constitutional Council. Its internal restriction is the two-chamber construction of Parliament. Executive authority is limited by the responsibility before Parliament and the valid character of the normative acts it issues. Judicial authority is subordinated to the Constitution and law, and its internal division is embodied in the Constitutional Court's allocation from the general judicial system, the powers of the prosecutor's office, the courts, etc.

(3) The constitution provides legal and economic conditions of state development on the basis of the self-management of various communities: regional, local, ethnic, cultural, social, industrial, religious, etc. In the same vein the division of functions between the economic and political system is carried out.

The Supreme Kenges of the country, carrying out legislative functions, is the Parliament, which consists of two chambers: the Measles (also Mails) and the Senate. The last several years have evidenced a psychological crisis among Kazakhstan's citizens, wherein a nostalgia for the old Soviet Union has given way to a national identification expressed in the new statehood. The gradual affirmation of the notion of Kazakhstan as a common house and common native land strengthens the spirit of patriotism and the ideological consolidation of the whole society.

Kazakhstan is rich in natural resources, with proven oil reserves in the Tengiz fields. These fields alone are about twice those of Alaska's North Slope. Most world oil companies have acquired, or are acquiring, concessions in Kazakhstan while negotiations are underway with various foreign companies to build refineries and pipelines to bring the petroleum to market. However, negotiations are now stalled by Kazakh insistence that Russia should be included as a last-minute partner, at the expense of the foreign partners' share. Oil alone is not the sole resource. The republic can boast of having the entire periodic table of elements in exportable quantities. For example, development has begun of the Bakyrchik gold fields, financed by shares sold on the London stock exchange. Although these developments are being pursued by state owned companies, there is considerable movement of capital into the private sector. Most of it appears to be illegal but sufficient to support the growth of subsidiary service industries such as the Mercedes Benz dealership and service center in Almaty.¹³

^{13.} See Martha Brill Olcott, The New Nations of Central Asia, in THE SUCCESSOR STATES TO THE USSR 213-14 (John W. Blaney ed., 1996).

Just as in Russia and the other republics of the former USSR, the processes of modernization and the transformations of Kazakhstan's economy in six years of independence have passed along a difficult and inconsistent path. The general factors which always distinguish the economies of all the CIS states include, first and foremost, the inheritance of a uniform economic complex, as well as a major disproportion between extractive and manufacturing industries, and between heavy and light industries.

Despite the years of centralized economy and the difficulties attending the period of transition from totalitarian to democratic government. Kazakhstan (at the point of achieving statehood) could claim a potentially powerful industrial base. The Soviet Union's regional policy of economic development worked to the detriment of all its constituent republics in that it thwarted any economic self-sufficiency, guaranteeing a dependence on the center. In Kazakhstan, this regional policy deployed a limited arsenal of tools. The construction of enterprises in the regions at an expense often beyond the state budget's means was basic and fundamental. Another tool was the state's subsidizing of local and republic budgets from the state budget in order to finance social development. In Kazakhstan, the size of the subsidy actually reached 30% to 40% of the budget. The peculiarity of this mechanism of regional development was that because basic investments for social development came from the central budget, there was, consequently, no regional social planning entity, and, moreover, no spatial organization of economic development at the republic level.

In the sphere of industry, a possible optimum variant of development was the creation of labor-intensive (yet non-capital-intensive) manufacturing entities which would effectively use the resources of local labor. But in Kazakhstan the process of management by industrial and nonproductive activity went in the opposite direction and yielded a capitalintensive variant. In Kazakhstan, the rates of cost increases for equipment, labor, and investments were higher than in the European republics. This cost increase was certainly due in part to the large imported labor force, which left the ethnic Kazakh labor component at 35%. The traditionally agrarian pursuits of most Kazakhs were not taken into consideration during the Soviet industrialization of the region. Consequently many were not channeled into the new industrial work force. The irrational structure of the republic's economy taxed its ability to viably pursue the ever-increasing demands of the Soviet center on its extractive industries. Even in the post-Soviet period a rapid rate of modernization was not possible. While the nation stabilizes itself. Kazakhstan's economy remains essentially non-competitive in the world market.

The market reforms and strategic plans for socioeconomic development in Kazakhstan are projected in three stages over a fifteen to twenty year period. During the first period a significant part of state properties were privatized; the consumer markets were normalized; and the macroeconomy stabilized. The following seven to eight years is dedicated to directing the new economy and developing an economic infrastructure supporting an advanced market for goods, capital, and labor. In the third stage, a period of five to seven years, the aim is to develop an open economy and to enter the ranks of the world's industrialized nations.

The strategy of the state economic policy in 1995 included the achievement of macroeconomic stabilization, creation of conditions for normalization of manufacturing and trade, revival of investment activities, and increases in solvent demand. Liberalization of the economy and cutting of budget changes were accompanied by increased attention to the needy within the population. There was a sharp decrease in inflation, and the gain in real wages reached 9%.

Domestic legislation and international legal acts ratified by a state are among the indisputable attributes of nationhood. Now we can ascertain that the primary parts of the 1995 Constitution of Kazakhstan are the conventional norms of international law ratified by Kazakhstan. They include international treaties, conventions, and agreements which have a priority above most national legislation. Thus the 1995 Constitution, being based on the continuity of legal principles declared in the 1993 Constitution, proclaimed Kazakhstan a "democratic, unitarian, secular, legal, and social state."¹⁴ After the legitimization of its sovereignty by the people and recognition by the world community, Kazakhstan will turn its focus inward and work for harmonious social function. This means that Kazakhstan is not a class-based or ethnocratic state, and that it provides social programs and softens interethnic and social conflicts.¹⁵

Perhaps as a consequence, the emerging civic culture of the republic is showing signs of being more encompassing and less restrictive than those of Kazakhstan's neighbors. Unlike Uzbekistan and Turkmenistan, Kazakhstan has given Islam no special status in the republic, and has controlled the activities of religious parties.¹⁶ On the other hand, unlike Kyrgyzstan, Kazakhstan provides constitutional status for Russian, making a legal (though not entirely comprehensible) distinction between the "state language" (Kazakh) and the "language of interethnic communication."¹⁷ Political control in the republic is much more stringent than in Kyrgyzstan, with strict constitutional penalties for "insults to presidential

^{14.} Source on file with author.

^{15.} See The Concept of a Language Policy of the Republic of Kazakhstan, KAZKAHSTANSKA A PRAVDA, Nov. 6, 1996.

^{16.} See FBIS Daily Report: Central Asia (Foreign Broadcast Information Services, Feb. 13, 1993).

^{17.} See KAZAKHSTATISKAYA PRAVDA, Nov. 11, 1992.

dignity" (which were invoked in one case that drew the attention of international human rights monitors). However, it is not the same in Uzbekistan, Tajikistan, or Turkmenistan.¹⁸

Nazarbaev by nature is a manager, and is content to permit diversity of opinion and expression as long as it does not interfere with the state's ability to fulfill its functions. Although Nazarbaev was elected with a Soviet-style 98.9% of the vote, he shows no signs of developing a cult of personality. His timetable for the republic's development implies that he intends to honor the provisions of the new constitution, which will restrict him (and his successors) to two five-year terms. Indeed, after initially rejecting the creation of political parties, Nazarbaev seems to be moving toward forming a party-like civic movement known as SNEK (Russian acronym for the People's Union for Unity of Kazakhstan). SNEK would further institutionalize the development strategy which Nazarbaev has begun, while also providing a mechanism to discipline the abuses of position which have flourished.¹⁹

Basic law, realizing the merger of public and state institutions, creates favorable opportunities for an active and teleological formation of a civil society. Recognition of such ideological and political diversity also allows for the creation of an independent mass media.

Considering the results and prospects of Kazakhstan's achievement of statehood, one can note the following:

(1) As history has witnessed, each society needs a strengthening of statehood in order to achieve stability and prosperity. Statehood itself appears to be the driving force in the development of any people. The present and future of any nation depend on its solidity and perfection;

(2) Kazakhstan, as a new sovereign state, must take into the account the experiences of other nations and of its own past as it grows toward the 21st century. We should note that in "The Concept of Formation of State Identity in Kazakhstan,"²⁰ approved by the order of President Nazarbaev on May 23, 1996, three models of statehood are promulgated as inherent. The first model of Kazakhstan's former statehood should be considered as a positive experience and not just a past legacy, to be the subject of historical and legal research. The next model of statehood places Kazakhstan in the context of the Russian Empire and Soviet dominion. The final model is that of democratic legal statehood throughout the world, to be emulated by Kazakhstan in its new purpose.

The development of Kazakhstan's statehood brings with it the necessity for cultural and social growth in two major areas. The first relates to the economic, social, and cultural integration with the rest of the world

^{18.} See OLCOTT, supra note 6, at 220.

^{19.} See Nezai, ISIMAY-A GAZETA, Feb. 9, 1993.

^{20.} See KAZAKHSTANSKAYA PRAVDA, May 29, 1996.

and the community of nations, as well as social integration within the uniform national state.

Integration with the world implies recognition by a community of Kazakhstan as a fully realized independent state. Integration within the country, likewise, requires the citizenry's collective belief in their nation's independent status. The confluence of these internal and external dynamics are vital to Kazakhstan's own true achievement of independent statehood.

Kazakhstan is the historically motivated initial ethnic center of the Kazakh people. Hence, one may say that state identity must include the preservation and development of the Kazakhs as the main ethnic unit with their culture, way of life, language and traditions. The determination of Kazkhstan as a national state must first recognize this quality in itself. However, one must not forget that the national revival of the Kazakh people, who for centuries populated the territory of modern Kazakhstan, should not be of a nationalistic character.

When the Kazakh Steppe was populated solely by residents of the so-called native nationality, such problems were not a concern. As the territory of modem Kazakhstan became gradually populated by representatives of other peoples, the essential early aspects of Kazakh statehood began to coalesce. Recent demographic accounts of Kazakhstan indicate that the country is experiencing a slowdown in the overall rate of population growth.²¹ This is due not only to the low birthrate of the Slavic population, but also to the steady outflow of non-Kazakhs. Even by the end of 1992, 7,000 ethnic Russians left Kazakhstan.²² To counter this trend, even non-governmental groups are actively trying to reverse the flow. Political activist Kamal Ormantaev's new National Democratic Party (NDP) has, as one of its goals, the inclusion of Russians and other non-Kazakhs in the political affairs of Kazakhstan. Employing such unifying themes as the problems with the environment, particularly the Aral Sea, the NDP hopes that the current situation involving nationality-based parties can be changed. It is ironic that the two states most interested in maintaining liberal minority policies are also those experiencing problems of ethnic flight.

In the spring of 1994, the disaffection of Kazakhstan's Russians with the increasing "Kazakhization" was exacerbated by the Russian government's demands that ethnic Russian citizens of Kazakhstan be allowed to hold citizenship in the Russian Federation. Allowing this type of citizenship would violate the 1993 Kazakhstan Constitution's mandate against

^{21.} See Roger D. Kancas, State Building, and Civil Society in Central Asia in POLITICAL CULTURE AND CIVIL SOCIETY IN RUSSIA AND THE NEW STATES OF EURASIA IN THE INTERNATIONAL POLITICS OF EURASIA 7 (Vladimer Tismaneau ed., 1996).

^{22.} See Foreign Broadcast Information Services, Jan. 12, 1994 (manuscript at 38).

dual citizenship. This provision, in fact, had been agreed upon only after considerably difficult and long discussions among the document's framers. Thus Russia's incursion into this area of Kazakhstan's sovereignty was keenly felt. Apparently encouraged by the Russian electoral successes of Kazakhstan, such as native Vladimir Zhirinovsky and other extreme nationalists just over the border, Kazakhstan's Russians increased their demands for dual citizenship. These demands became even more vocal following a tour of Central Asian capitals by Russian Foreign Minister Andrei Kozyrev. Kozyrev sought to deflect right-wing criticism of his pro-Western policies by displaying concern for the welfare of the Russian populations in the "near abroad." A possible result of this rising level of Russian nationalism might have been that the Russian Federation, the neighbor with which Kazakhstan had the closest of ties, could easily have become the greatest threat to Kazakhstan's national security.²³

The situations of Kyrgyzstan and Kazakhstan were delicate, indeed. The former had a small but important Russian population, which constituting a strong block of support for President Askar Akaev, while the latter's population was at least half Russian. Anxious to develop his republic's oil resources to best advantage, President Nazarbaev was eager to make use of Omani, Iranian, and Saudi technical expertise, but reluctant to acquire any Islamic "baggage" that might come with it.²⁴

The Constitution of Kazakhstan holds that the Republic, as a nationastate, expresses the interests of its whole population independent of ethnic origin. The ideology of universalism, therefore, instead of the principle of internationalism, is of particular significance. The basic idea of universalism is that all ethnic groups are given equal rights and possibilities for development, *i.e.*, none of them are subject to discrimination. Moreover, the proposed ideology of universalism could be the national idea of the Kazakh people as the spiritual leader of the national groups populating Kazakhstan.

The main element for consolidation of the peoples of Kazakhstan, consisting of the Kazakh nation and representatives of the other nationalities, is the Constitution. The Constitution declares equal rights to all citizens of the Republic independent of their nationalities. All state bodies, officials, and citizens should carry out their directives according to this most important constitutional principle in order to achieve the interethnic consent and unity of Kazakhstan's people. Kazakhstan cannot simply follow the example of Western democracies, that would contradict its own process of liberalization and economic modernization and weaken

^{23.} See Bess A. Brown, National Security and Military Issues in Central Asia, in STATE BUILDING AND MILITARY POWER IN RUSSIA AND THE NEW STATES OF EURASIA IN THE INTERNATIONAL POLITICS OF EURASIA. (Bruce Parrott, ed. 1996).

^{24.} See Martha Brill Olcott, Nation Building in Central Asia 218 (1995).

the role of the nation-state as the source of national identity. Incorporation of traditional Kazakh social institutions is vital in creating a state which follows the lead of Western nations yet achieves a model of social and economic development unique among the nations of today's world.