



Role and place of the parliament of Kazakhstan in the system of checks and balances



Timur Kanapyanov

Department of Political Science, L.N. Gumilyov Eurasian National University, Astana, Kazakhstan

ARTICLE INFO

Article history:

Available online 13 February 2018

Keywords:

Parliament of Kazakhstan
Separation of powers
Checks and balances
Constitutionalism
Parliamentarism

ABSTRACT

This article examines the system of checks and balances in post-Soviet Kazakhstan in general and the role of the Parliament of Kazakhstan in that system in particular. As opposed to the scientific mainstream in Kazakhstan which explains established system of checks and balances as a result of formal constitutional reforms, this article undertakes broader analytical framework and examines the system of checks and balances in Kazakhstan taking into account a correlation of formal and informal practices. The goal of the article is to show that in post-Soviet Kazakhstan the separation of powers is established without proper checks and balances. The inference drawn from the article is that the separation of powers in Kazakhstan is blocked by the strong constitutional and informal powers of the President, which allows him to control and interfere in affairs of all branches of power.

© 2018 The Regents of the University of California. Published by Elsevier Ltd. All rights reserved.

1. Introduction

With the collapse of the Soviet Union almost all post-Soviet and post-communist countries had decided to become a democratic state with market economy and with modern political institutions adhered to the principle of separation of powers. Conventional wisdom of political science suggests that the separation of powers usually goes hand in hand with the system of checks and balances. However, we have myriad of scholars who illustrates that in some former totalitarian or authoritarian countries the separation of powers can be established without proper checks and balances.

The Republic of Kazakhstan is one of the fifteenth states which had appeared after the dissolution of the Soviet Union. These states were faced with a huge task of building democratic state institutions, which was not an easy thing to do. From that time Kazakhstan has enacted two Constitutions (in 1993 and 1995) and there were several essential amendments to the current Constitution (in 1998, 2007 and 2011). Today according to the Constitution Kazakhstan proclaims itself a democratic state, where the state power is executed 'in accordance with the principle of its division into the legislative, executive and judicial branches and a system of checks and balances that governs their interaction' (Article 3). In theory all three branches of powers should function and interact through the system of checks and balances. This system implies that the branches should have an ability to act on their own, at the same time, to regulate and be regulated by each other. Nevertheless, in majority of post-communist countries the real situation indicates that in practice the separation of powers with the system of checks and balances is not always properly realised. All legislative power in Kazakhstan is vested in the bicameral Parliament of Kazakhstan which was created with the new Constitution of 1995. Therefore this article aims to study the role of the Parliament of Kazakhstan in the system of checks and balances and tries to give an answer for the question whether there is real separation of powers in Kazakhstan and what is needed to improve the functioning of the system of checks and balances

in terms of parliamentary development. Before going to the main body of the study we would like to identify a concept and the very meaning of the system of checks and balances in democratic states.

2. Theoretical framework

The system of separation of powers and checks and balances was designed by philosophers of liberal thought and historically meant to prevent usurpation of absolute power by one person or any institution. Political scientists identify two types of relationship between the legislative and executive branches of government in terms of power separation. The first one is based on 'the idea of a balance between the two powers, the most famous formulation of which is found in the works of Montesquieu; on the other hand, there is the more democratic idea of a subordination of the executive to the legislative power, first proposed by Rousseau in the *Social Contract*' (Lauritsen, 2010). Today we can see that model of Montesquieu has transformed into presidential government inspired by the Constitution of the United States of America, whereas the model proposed by Rousseau has become the basis of parliamentary government in most European states. The American understanding of the principle of separation of powers is based on James Madison's vision on the system of checks and balances (Madisonian system). He defined it as follows

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions (Calabresi et al., 2012).

Nevertheless, both conceptions of the separation of powers implemented an effective and accurate system of checks and balances which in turn allows realizing main principles of liberal democracy. As a New Zealand professor of law and philosophy Jeremy Waldron has put it, 'the principle of checks and balances means that the exercise of power by any one power-holder needs to be balanced and checked by the exercise of power by other power-holders' (Waldron, 2013). In other words the system should be built so that the legislative power maintains the checks and balances on powers of the executive and judicial branches, and vice versa. The definition of the separation of powers used in the present study is based on the definition proposed by M. J. C. Vile (1998) in his classic book *Constitutionalism and the Separation of Powers*. He formulates a 'pure doctrine' of the separation of powers in the following manner:

It is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments, the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch. In this way each of the branches will be a check to the others and no single group of people will be able to control the machinery of the State (Vile, 1998).

So what gives us the system of checks and balances and the principle of separation of powers? First of all, it secures citizens of a given country against the potential of tyranny (Campbell, 2004). In transitional countries there has always been a threat that strong presidential power will lead to the personal rule and authoritarian government. It is even more applicable to the post-Soviet countries since almost all of them have implemented presidential or presidential-parliamentary form of government with presidential dominance (Chirkin, 2014). Despite the fact that most of these countries declare adherence to the separation of powers, Presidents often seek more freedom on their actions and strive to have less accountability and checks on their influence. According to some scholars 'in testing the limits of their power, Presidents may subvert constitutional and legal structures designed to check and balance them' (Rose-Ackerman et al., 2010).

While the essence of democracy is the principle of separation of powers with the system of checks and balances, politicians in most transitional countries were able to argue for strong presidential power trying to diminish the checks and balances on President. This mostly resulted in a weak legislature with not applicable checks and balances for executive branch in practice. Many scholars explain that the dominance of one branch over other branches of power happens because checks and balances imposed on them do not operate properly. More often it is the case when the judicial and legislative checks on President are being abolished by the Constitution and constitutional laws with or without the consent of a population.

It is clear that in order to investigate the system of checks and balances we must address a constitutional framework of a given country and to see how the system is regulated by constitution. In many established democracies the separation of powers and the system of checks and balances is not explicitly written. Nevertheless, these features are indispensable parts of their political systems. Whereas, in Constitutions of post-authoritarian and post-totalitarian states the principle of separation of power usually receives verbal forms (Alebastrova, 2014). It does not necessarily mean that in practice the system of checks and balances has been eagerly upheld by political actors of that states. Above-mentioned discussion in post-Soviet countries regarding the improper system of checks and balances may be applied to Kazakhstan as well. Therefore, following passage is going to investigate when and how the principle of separation of powers and the system of checks and balances were established in post-Soviet Kazakhstan in terms of constitutional development. This constitutional analysis will allow us to see how the system established in Kazakhstan corresponds to the classical Madisonian system of checks and balances.

متن کامل مقاله

دریافت فوری ←

ISIArticles

مرجع مقالات تخصصی ایران

- ✓ امکان دانلود نسخه تمام متن مقالات انگلیسی
- ✓ امکان دانلود نسخه ترجمه شده مقالات
- ✓ پذیرش سفارش ترجمه تخصصی
- ✓ امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
- ✓ امکان دانلود رایگان ۲ صفحه اول هر مقاله
- ✓ امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
- ✓ دانلود فوری مقاله پس از پرداخت آنلاین
- ✓ پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات