

The Struggle for Kazakh Statehood in 1917-1918 Through the Prism of the History of Constitutionalism*

La lucha por la independencia kazaja en 1917-1918 a través del prisma de la historia del Constitucionalismo

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Abstract: After Kazakhstan's independence, studying historical examples of constitutionalism became relevant. This study analyzes the development of constitutionalism in Kazakhstan's statehood. Using general scientific methods, it was found that constitutionalism has a long history in Kazakhstan. The origins trace back to the Kazakh Khanate laws of the 17th-18th centuries, with significant development during the 1917-1920 Alash Orda period. The decisions of the 1917 All-Kazakhstan Congresses were constitutionally significant. The study's practical significance lies in its relevance to modern Kazakhstan's democratic development.

Keywords: constitution; rule of law; All-Kazakhstan Congresses; Alash party; Alash Orda.

Resumen: Tras la independencia de Kazajistán, hubo un desarrollo de estudio de ejemplos históricos de constitucionalismo. Este artículo analiza el desarrollo del constitucionalismo en la formación del estado de Kazajistán. Usando métodos científicos generales, se encontró que el constitucionalismo tiene una larga historia en Kazajistán. Sus orígenes se remontan a las leyes del

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Kanato kazajo de los siglos XVII-XVIII, con un desarrollo significativo durante el período de Alash Orda de 1917-1920, y específicamente con las decisiones, constitucionalmente significantes, de los Congresos de Todo Kazajistán de 1917. La importancia práctica del estudio radica en su relevancia para el desarrollo democrático del Kazajistán moderno.

Palabras clave: constitución; estado de derecho; Congresos de Todo Kazajistán; partido Alash; Alash Orda.

Sumario: Introduction; 1. Materials and Methods; 2. Results; 3. Discussion; Conclusions; References.

INTRODUCTION

Kazakhstan is a country that has gone through numerous changes, from nomadic tribes to a modern independent republic. The identity of the Kazakh people has been shaped by various historical events and cultural interactions. The first state formations on the territory of modern Kazakhstan appeared in ancient times. In the Middle Ages, there were powerful nomadic empires, such as the Turkic Khaganate, the Karluk Khaganate, and others. One of the key moments in the history of Kazakhstan was the creation of the Kazakh Khanate in the 15th century, which laid the foundations for the national identity of the Kazakh people.

In the twentieth century, during the collapse of the Russian Empire, a national liberation movement known as the Alash-Orda emerged in Kazakhstan. It was the government of an autonomous Kazakh state that existed in 1917-1920. The Alash-Orda was led by a group of Kazakh intellectuals and politicians who sought to defend the interests of the Kazakh people in the face of revolutionary instability. One of the leaders of the movement was Alikhan Bukeykhanov, a prominent politician, economist, and ethnographer. An important event in the history of the Alash Horde was the first All-Kazakh Congress, which took place in December 1917 in Orenburg. This congress proclaimed the creation of an autonomous government of the Alash-Orda and approved a political program. The Second All-Kazakh Congress, held in January 1918 in Semipalatinsk, confirmed the autonomous status of Alash-Orda and determined the directions of development of the autonomous republic.

Having gained independence in 1991 after the collapse of the USSR, Kazakhstan adopted its own constitution in 1993, which enshrined the basic principles of state governance and the rights of citizens. In 1995, a new constitution was adopted, which is still in force today, providing the

legal framework for the functioning of the state and the protection of citizens' rights and freedoms.

As the alienation of the state from society increases in any country, the ideas of constitutionalism, understood as one of the principles of the organization of state and public life, are formulated with varying degrees of acuteness. The essence of constitutionalism is the ideas, and fundamental norms regulating the activities of the state, public institutions, and citizens, reflected in constitutional acts, and the daily practice of their implementation¹. Depending on conformity or non-conformity with public expectations, constitutionalism can be formal when the constitutional provisions are not adequate to the prevailing reality². It became real when the reality and its prospects corresponded to what was stipulated in the constitutional acts. Constitutionalism in Kazakhstan has a long history, its origins go back centuries – to the time of the establishment of the Kazakh Khanate in 1465³. Real constitutionalism in Kazakhstan, in essence, was established in the revolutionary era, when in 1917, through the holding of two All-Kazakhstan Congresses, the Alash Party and the autonomous formation of Alash Orda were created⁴. During the years of Soviet power, constitutionalism in Kazakhstan was mainly formal. The restoration of real constitutionalism in Kazakhstan became possible only with the independence of the Republic of Kazakhstan in 1991 and the adoption of the Constitution of the Republic of Kazakhstan in 1993⁵.

In connection with the development of modern Kazakhstan as a free democratic state standing on the foundation of real constitutionalism, the investigation of its historical examples is relevant. The studies by various

¹ ABDRASULOV, Ermek and GUBAIDULLIN, Murat, “Legal contracts and legal customs in the history of the law of the kazakh society”, in *Journal of Advanced Research in Law and Economics*, 10:7 (2019), pp. 1951-1955.

² JATKIEWICZ, Przemyslaw, “Identifying Factors of an Information Security Management System of Local Self-government Bodies”, in *Lecture Notes in Business Information Processing*, 161 (2013), pp. 50-65.

³ SARSEMBAYEV, Marat Aldangoruly, *The Kazakh Khanate as the sovereign state of the medieval epoch*, Astana, Institute of Legislation of the Republic of Kazakhstan, 2015, pp. 42-49.

⁴ MARTYNENKO, Nataliya, *Alash-Orda: Collection of documents*, Troitsk, Aicap, 1992, pp. 23-28.

⁵ MAMI, Kairat, ROGOV, Igor and MALINOVSKY, Victor, *Republic of Kazakhstan: Chronicle of the establishment of constitutionalism*, Almaty, Kazakh University, 2019, pp. 49-57; TRUSHAJ, Aleks, “Features of the foreign policy of the Republic of Kazakhstan”, in *Foreign Affairs*, 33:5 (2023), pp. 45-51.

scientists are devoted to the history of constitutionalism in Kazakhstan, its establishment, and its functioning. Thus, Zhenis Kembayev⁶ speaks about the difficulties of the establishment of Kazakh constitutionalism. This researcher considers constitutional reforms in the Republic of Kazakhstan, which should finally create a constitutionalist system in modern Kazakhstan, based on historical traditions of the past. The study by Maygul Khafizovna Matayeva⁷ is devoted to the constitutionalism of Kazakhstan in the context of Central Asian countries. The researcher speaks about the importance of constitutionalism in modern society and discusses the historical path of the development of constitutionalism. The researcher conducts a comparative analysis of the construction of constitutionalism in the post-Soviet states of Central Asia, concluding that, despite all the difficulties, due to historical traditions, the countries of Central Asia, among them Kazakhstan, are on the way to building a system of real constitutionalism.

The role of the Alash movement in the history of Kazakh statehood and Alash Orda as a state formation are considered by Tuyakbai Rysbekov et al.⁸. According to the researchers, the existence of the Alash Orda autonomy was a key stage in the establishment of Kazakh statehood. The adoption of legal acts of constitutional significance at that time acquired particular importance. In the process of building real constitutionalism in the Alash Autonomy, its leaders relied both on the principles and traditions of Kazakh law and the main positions of Western constitutionalism. Ainur Ramazanqyzy Kumarbekova⁹ discusses the history of the Constitution of Kazakhstan and the development of Kazakh constitutionalism. The researcher focuses on the history of the adoption of the Constitution of the

⁶ KEMBAYEV, Zhenis, “Recent constitutional reforms in Kazakhstan: A move towards democratic transition?”, in *Review of Central and East European Law*, 42:4 (2017), pp. 294-324.

⁷ MATAYEVA, Maygul Khafizovna, “Constitutional regulation of the parliaments of Kazakhstan and countries of Central Asia”, in *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 2:56 (2019), pp. 22-31.

⁸ RYSBEKOV, Tuyakbai, RYSBEKOVA, Saltanat and SHINTIMIROVA, Bayan, “West Alash and its role on the way to the idea of Kazakh statehood”, in *Bulletin of L.N. Gumilyov Eurasian National University. Historical Sciences. Philosophy. Religion Series*, 1:138 (2022), pp. 75-92.

⁹ KUMARBEKOVA, Ainur Ramazanqyzy, “Constitution of the Republic of Kazakhstan is the fundamental act of the state: From theory to experience of reform”, in *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 4:71 (2022), pp. 261-267.

Republic of Kazakhstan and its reform in recent years. It is emphasized that in the era of independent Kazakhstan, real constitutionalism was de facto restored, as opposed to the formal constitutionalism that operated in Kazakhstan during the Soviet years.

The study Svetlana Kovalskaya and Sergey Lyubichankovskiy¹⁰ is devoted to the historical forms of Kazakh statehood and the legal culture of that time. These researchers discuss the attempts of the Kazakhs in the early 20th century to create their modern democratic state based on the principles of real constitutionalism, and that these attempts were interrupted by the Bolsheviks, who put Kazakhstan on the path of formal constitutionalism. The general theory of constitutionalism, its practice, and methodology are considered by Sonia Moano-Foadi and Stelios Andreadakis¹¹, Angelo Golia Jr. and Gunther Teubner¹², Dimitrios Kyritsis and Stuart Lakin¹³. These researchers consider the origins of constitutionalism, and the development of the constitutionalist idea, and also highlight the importance of implementing constitutionalist practices in states with a young democracy.

The purpose of the study is to investigate the establishment and functioning of real constitutionalism in the history of Kazakhstan. According to the goal, the following tasks are set: to consider the forms of real constitutionalism in the history of Kazakhstan; to investigate the historical origins of real constitutionalism in Kazakhstan.

MATERIALS AND METHODS

The study applied various methods of scientific research: general scientific methods of analysis and synthesis, generalization, historical and critical, comparative, and dialectical methods.

¹⁰ KOVALSKAYA, Svetlana and LYUBICHANKOVSKIY, Sergey, "Phenomenon of the movement in the life and culture of Nomadic Kazakhs across the Frontier Zone, late 19th to early 20th century", in *Oriental Studies*, 16:1 (2023), pp. 59-74.

¹¹ MOANO-FOADI, Sonia and ANDREADAKIS, Stelios, "Expanding theories of constitutionalism and legal pluralism: «Integration through rights» in Europe", in *Protection of fundamental rights in Europe: The challenge of integration*, Cham, Springer, 2020, pp. 25-56.

¹² GOLIA JR., Angelo and TEUBNER, Gunther, "Societal constitutionalism: Background, theory, debates", in *ICL Journal*, 15:4 (2021), pp. 357-411.

¹³ KYRITSIS, Dimitrios and LAKIN, Stuart, *The methodology of constitutional theory*, London, Bloomsbury Publishing, 2022, pp. 101-106.

Using the analysis, it was possible to investigate the features of real constitutionalism, and its fundamental principles, to trace the process of the origin of constitutionalism in Kazakhstan, and to understand its prerequisites. The analysis helped to assess the constitutional acts that became the basis for the formation of modern constitutionalism in Kazakhstan. The synthesis revealed the commonalities in the development of constitutionalism in different countries at one time or another and determined the main motives for the creation of the first constitutional acts in young states. The synthesis helped to present a general picture of the development and functioning of real constitutionalism in various periods of the history of Kazakhstan.

The generalization provided an opportunity to obtain specific data on constitutional acts in the history of Kazakhstan and their subsequent implementation. The generalization allowed the investigation of the characteristics of constitutional acts adopted in various periods of the history of Kazakhstan to understand how much they influenced public life and contributed to the development of Kazakh statehood. The historical and critical method allowed the study to consider the constitutional acts adopted in various epochs in Kazakhstan from a critical angle, based on the specific historical situation and the context in which these acts were adopted. The historical and critical method highlighted the difference between formal and real constitutionalism, and at the same time, indicated in which epochs of Kazakhstan's history constitutionalism was real and in which formal. Moreover, using the historical and critical method, it was possible to find out how realistic certain provisions in the constitutional acts were, and how much they corresponded to a specific historical situation and the spirit of the times.

Using the comparative method, it was possible to contrast the constitutional processes during the establishment of young nation-states that arose after the collapse of the Russian Empire with the constitutional process that took place in Kazakhstan at that time. The comparative method provided an opportunity to understand the similarities and differences in these constitutional processes, and how close Kazakhstan was to establishing real constitutionalism on its territory, compared with other states that emerged after the collapse of the Russian Empire. The comparative method showed to what extent the constitutional acts adopted in Kazakhstan in specific historical epochs were progressive, and how far they lagged behind the requirements of the social and historical realities of that time in comparison with the constitutional acts of other young states.

The dialectical method provided an opportunity to study real constitutionalism in the history of Kazakhstan in the context of the emergence and development of constitutionalism as such. By contrasting the data, it was possible to investigate the essence of real constitutionalism and explore its development in Kazakhstan. The dialectical method helped to understand the reasons for the establishment of constitutionalism in Kazakhstan and the difficulties with which it was possible to implement constitutional norms in life. Using this method, it was possible to comprehend the consequences of the adoption of certain constitutional acts in Kazakhstan.

The current state of research on constitutionalism highlights the importance of historical context and comparative analysis in understanding the evolution of legal frameworks. This study focused on specific bibliographical works due to their comprehensive examination of constitutional development in post-imperial states, particularly those emerging after the collapse of the Russian Empire. By selecting these works, the research aimed to draw parallels and contrasts between the constitutional processes in Kazakhstan and other young nation-states, providing a deeper insight into the unique aspects and common challenges faced during the establishment of constitutionalism.

RESULTS

In 1991, after the collapse of the Union of Soviet Socialist Republics (USSR), the Republic of Kazakhstan gained state independence. The young state faced several problems related to the construction of social and economic relations, and the establishment of a political system and structure. In this regard, there was an urgent need to adopt the constitution of the young republic – the Basic Law on which the legislation would be based, and which would establish the foundations of the political and social structure of the country. The first Constitution of the Republic of Kazakhstan was adopted in 1993, however, as practice has shown, it did not fully meet the requirements of the time, and therefore, in 1995, the second Constitution of the Republic of Kazakhstan was adopted by referendum, which is in force to this day.

Thus, after gaining state independence, Kazakhstan embarked on the path of building real constitutionalism, when the social and political reality would correspond to the adopted constitution, and the constitution itself would be the real Basic Law of the state and not a purely declarative act.

The Soviet era, preceding the time of independence, was a period in the history of constitutionalism in Kazakhstan when constitutionalism was not real, but formal¹⁴. The Constitutions of the Autonomous Kazakh Soviet Socialist Republic of 1926 and Kazakh Soviet Socialist Republics of 1937 and 1978, although they established the principles of parliamentarism, democracy, a just society, and the rule of law, nevertheless, were often purely formal acts, because the real power was essentially not with the people and the Councils elected by them, but with the top of the Communist Party¹⁵.

Nevertheless, the history of Kazakhstan shows that real constitutionalism was inherent in the pre-Soviet forms of Kazakh statehood, and Russian imperial and Soviet domination interrupted the progressive development of Kazakh constitutionalism, which has its deep roots¹⁶. Its origins go back to the time of the establishment of the Kazakh Khanate in 1465. The beginning of constitutionalism in Kazakhstan is directly connected with the action of historical monuments of law adopted and operated under the Kazakh khans Kasym, Yesim, and Tauk. These khan's "steppe constitutions" reflected the fundamental features of the Kazakh statehood, which corresponded to the way of life of the nomadic Kazakh people and the norms of the customary law of the Kazakhs. Such documents undoubtedly include the Code of laws of the Kazakh Khanate "Zheti Jargy", adopted during the reign of Tauke Khan in the early 18th century. However, the progressive development of Kazakh constitutionalism was interrupted due to the colonization of Kazakhstan in the 18th-19th centuries by the Russian Empire, which incorporated the lands of the Kazakh Khanate into its composition, and deprived the Kazakhs of freedom and their rights¹⁷.

Constitutionalism in Kazakhstan began to be filled with new real content after the beginning of the revolution in the Russian Empire in

¹⁴ COHEN, Ariel, *Kazakhstan: The road to independence (Silk Road Studies Program) (Central Asia-Caucasus Institute Silk Road Studies Program)*, Washington-Stockholm, Central Asia Caucasus Institute, 2008, pp. 39-42.

¹⁵ KUMM, Mattias, "Global constitutionalism: History, theory and contemporary challenges", in *Revista Direito e Práxis*, 13:4 (2022), pp. 2732-2773.

¹⁶ GÜR, Fatih, "The effect of the Bolshevik Revolution on Turkistan", in *Oriental Renaissance: Innovative, Educational, Natural and Social Sciences*, 1:2 (2021), pp. 218-225.

¹⁷ PODOPRIGORA, Roman, APAKHAYEV, Nurlan, ZHATKANBAYEVA, Aizhan, BAIMAKHANOVA, Dina, KIM, Elina, SARTAYEVA, Kaliya, "Religious freedom and human rights in Kazakhstan", in *Statute Law Review*, 40:2 (2019), pp. 113-127.

1917. This page in the history of the state and law of Kazakhstan is inextricably linked with the activities of the national patriotic party Alash and the creation of the autonomous entity of Alash Orda on its initiative (Figure 1). During this period, acts of constitutional significance were adopted, designed to consolidate the legal foundations of public education. The attractive power of such acts was that they set a model for the future of society and the state, and defined their strategic goals and objectives. In addition to their legal constitutional value, these acts had a huge potential for ideological impact on public consciousness, especially during periods of sharp historical turns.

Figure 1. Leaders of Alash Orda (third right (seated) – Alikhan Bukeykhanov, Head of the Alash Orda government).



Source: AMAZHOLOVA, Dina, "About visual sources on the history of the Alash movement", in *Bulletin of L.N. Gumilyov Eurasian National University. Historical Sciences. Philosophy. Religion Series*, 1:138 (2022), pp. 25-39

One of the first acts of constitutional significance were the decisions of the regional and all-Kazakhstan Congresses held in 1917, dedicated to the establishment of new state authorities on the territory of Kazakhstan and the regulation of their activities. They were ahead of their time and at

the same time orientated themselves toward federative democratic Russia which was anticipated in the near future, but failed. The regional congresses considered the regions as autonomous administrative-territorial units of the supposed democratic Russian Republic, directly subordinate to the Provisional Government and having broad autonomous powers. This is evidenced by their decisions on the independent approval of local authorities in the form of aul, volost, county, and regional committees, essentially local executive bodies. In addition, the regional congresses included on their agenda and discussed the election of deputies to the Constituent Assembly of Russia, primary education, courts, zemstvo, press, religion, and agrarian issues. Thus, constitutionalism in Kazakhstan, interrupted by its colonization, began to gain real meaning due to these legal acts and the practical activities of the population based on them.

Since the second half of 1917, constitutionalism in Kazakhstan has received a new impetus due to the increased political activity of the advanced intelligentsia of the Kazakh people. They were the initiators of the convocation of two All-Kazakhstan Congresses. The decisions of these congresses and the political documents of the Alash Party were aimed at creating the constitutional foundations of the future statehood of the Kazakhs. On July 21-28, 1917, the First All-Kazakhstan Congress was held in Orenburg. It extended to all regions of Kazakhstan the strategic course for regional autonomy adopted before the Turgai and Ural regional congresses. The resolution of the Congress noted that the Kazakh territories should become autonomous as part of a democratic federal Russia. Thus, the First All-Kazakhstan Congress proclaimed a course for the autonomy of the regions of Kazakhstan as part of a possible Russian Federation in the future. Consequently, constitutionalism in Kazakhstan was closely linked with constitutionalism in the expected democratic Russia. The delegates of the Congress envisaged the establishment of a single autonomous supreme body of state power for Kazakhstan. However, the implementation of these acts became impossible because the federal Russian Republic, which would include the regions of Kazakhstan, did not appear. Divergent political currents prevented the creation of a unified state authority on the territory of the former tsarist empire. The country has established a plurality of powers: oblasts, autonomists, Cossack governments, and Soviet power¹⁸.

¹⁸ YENSENOV, Kanat, KARASAYEV, Gani, DYUSEN, Seitkali, NAIMANBAYEV, Bekmurat, ISLAMOV, Marat, "The model of interethnic accord in the Republic of

Under these conditions, the political forces of Kazakhstan have chosen a different way of reviving constitutionalism in Kazakhstan. On December 5-13, 1917, the Second All-Kazakhstan Congress was held in Orenburg with the participation of delegates from all regions of Kazakhstan, the Bukey Horde, and the Altai province. At this congress, it was decided to form a national-territorial autonomy called Alash, including all regions of the Kazakh territory and adjacent Kazakh volosts of the Altai province. To adhere to the idea of a federal Russian Republic in the future, the congress decided that the future Constitution of the Alash Autonomy would be approved by the All-Russian Constituent Assembly. The next decision of constitutional significance was the establishment of the supreme executive body of autonomy – the Provisional People's Council of Alash Orda, numbering 25 people. Among other things, he was charged with the duty to prepare a draft constitution of the Alash Autonomy and submit it to the Constituent Assembly of the Autonomy for consideration.

This development of constitutionalism in Kazakhstan was largely predetermined by the ideology of the Alash Party. In the speeches of its leaders and program documents, the prospects of Kazakhstan in the form of autonomy within the Russian Federation were clearly outlined. If such a variant of autonomy development was impossible, the way of creating a sovereign democratic republic was allowed. Assessing the political situation of that time, the Alash Party at the same time realized the difficulties that it would inevitably have to face. Subsequently, considering the correlation of political forces and the loss of unified state power in Russia, the Alash Autonomy gradually turned into an independent democratic republic with a pronounced constitutional regime.

On November 21, 1917, the Kazakh newspaper, the former printing organ of the Alash Party, published the party's program, which demonstrated how the party saw the constitutional structure of the Kazakh state. This program had a great influence on the decision of the Second All-Kazakhstan Congress, which proclaimed the creation of the Alash Orda, noting the options for the constitutional consolidation of Kazakh autonomy. The program became a kind of ideological platform for the decisions taken by Congress.

Kazakhstan (1991-2018): Historical research aspect", in *Analele Universitatii din Craiova - Seria Istorie*, 35:1 (2019), 79-92.

According to the published program, Alash Orda was to become an autonomous state entity within Russia, which, in the view of the Alash Party, was to become a democratic federal parliamentary republic. In the spirit of real constitutionalism, the document highlighted issues of local public administration, the judiciary, taxation, the armed forces, education, and spiritual development of the people that are relevant for Kazakhstan and standard for the democratic world community¹⁹.

Similar political and constitutional processes took place during the revolutionary years not only in Kazakhstan but also in other regions of the former Russian Empire, whose people embarked on the path of self-determination and building their statehood. During the years 1917-1920, the Ukrainian People's Republic, the Belarusian People's Republic, the Siberian Autonomy, the Far Eastern Republic, etc. were established. Just like the leaders of the Alash Orda, the leaders of similar state formations initially saw them as autonomous within the renewed federal Russia. For example, when November 20, 1917, the Third Universal of the Central Rada proclaimed the Ukrainian People's Republic; it, like the Alash Orda, was proclaimed as an autonomy within Russia. However, the policy of the Bolsheviks who seized power in Russia, hostile to such entities, and external circumstances contributed to the revision of the vision of the state structure by the political leaders of the national republics. The leaders of the Alash Orda did not dare or did not have time, to declare the full independence of Kazakhstan. The Fourth Universal of the Central Rada of January 22, 1918, proclaimed the Ukrainian People's Republic an independent state.

This turn of events was largely conditioned by the peace talks in Brest, which were conducted with the Central Powers by representatives of Soviet Russia and representatives of the Ukrainian People's Republic, each for its part²⁰. However, there was no such external factor that would become a catalyst for the declaration of independence in Kazakhstan. The acts of constitutional significance adopted at the All-Kazakhstan Congresses could not be reincarnated into a full-fledged constitution. In Ukraine, the four Universals of the Central Rada were acts of a constitutional nature that established an independent Ukrainian People's

¹⁹ UBIRIA, Grigol, *Soviet nation-building in Central Asia: The making of the Kazakh and Uzbek nations*, London, Routledge, 2015, pp. 67-74.

²⁰ AKPANBET, Nurgul, SADYKOV, Tilegen and ZHARKENOVA, Aigul, "The role of Kazakhstan in world association", in *Anthropologist*, 26:1-2 (2016), pp. 12-17.

Republic, and on April 29, 1918, a full-fledged Constitution of the Ukrainian People's Republic was adopted²¹. However, its progressive provisions, due to subsequent political vicissitudes, could not be implemented²². Thus, although Ukraine went further than Kazakhstan in building constitutionalism in the revolutionary era, nevertheless, it was also not possible to fully implement the principles of real constitutionalism here. Due to the establishment of Soviet power, the effect of real constitutionalism in Ukraine and Kazakhstan was interrupted, and real constitutionalism was replaced by the formal one.

With the disappearance of the autonomy of Alash Orda from the political map and the gradual Sovietisation of the entire territory of Kazakhstan, real constitutionalism was rejected. Only with the adoption of the Constitutional Law "On the State Independence of the Republic of Kazakhstan" of 16 December 1991, which became the basis for the Constitution of the Republic of Kazakhstan in 1993, and the Constitution of the Republic of Kazakhstan of 1995, Kazakhstan has returned to the path of real constitutionalism²³. These legal acts, in which universally recognized human and civil rights are consolidated at the highest level, are the normative and ideological basis of constitutionalism in modern independent Kazakhstan.

DISCUSSION

The establishment and functioning of real constitutionalism in Kazakhstan were investigated by various researchers who considered different aspects of this issue. Most researchers were inclined to believe that real constitutionalism in Kazakhstan has deep historical roots. The foundations of constitutionalism were established in the era of the Kazakh Khanate, and during the existence of the Alash Orda autonomy, real constitutionalism acquired its outlines. Proceeding from this, in modern independent Kazakhstan there is a process of revival of the practices of real constitutionalism.

²¹ REID, Anna, *Borderland: A journey through the history of Ukraine*, New York, Basic Books, 2015, pp. 97-101.

²² KOTSUR, Lesia, "Formation of national pride is a necessary component of Ukrainian statehood", in *Society. Document. Communication*, 8:1 (2023), pp. 182-198.

²³ PEIMANI, Hooman, *Conflict and security in Central Asia and the Caucasus*, London, Bloomsbury Academic, 2009, pp. 111-120.

The issue of building constitutionalism in the countries of the Islamic world is the subject of a collective work by Oxford scholars Rainer Grote and Tilmann Röder²⁴. The researchers focus their attention on the problems faced by the countries of the Islamic world in building modern real constitutionalism. According to the researchers, even though state leaders often really want to implement Western-style constitutionalist principles, constitutionalism essentially remains formal because constitutions largely do not consider the features of public life and legal traditions of Islamic countries. Speaking about constitutionalism in Kazakhstan, the researchers emphasize the increasing role of the presidency. The researchers correctly noted the specific features of constitutionalism in each of the Islamic countries, and it is quite possible to agree with the main theses. However, it is hardly worth fully agreeing with the theses of the relative fact that constitutionalism in many countries considered by the authors remains, in fact, formal. The researchers investigated mainly the modern experience of building constitutionalism, not considering that constitutionalism in the countries they studied had its historical roots. Historical experience largely determines the basis for the construction of constitutionalism in modern times. For Kazakhstan, this experience is represented by the existence of real constitutionalism in the Alash Orda autonomy.

Kazakhstan's difficult path to independence and building a modern state is devoted to the work of Ariel Cohen. The researcher talks about the historical roots of the Kazakh statehood, focusing mainly on the modern era. The researcher discusses the difficulties faced by modern Kazakhstan, which has embarked on the path of building a free independent state. The researcher emphasizes that the modern legislation of Kazakhstan is based on the principles of the policy of equality, tolerance, and multiculturalism. In general, the authors agree with the key theses of the researcher concerning the construction of modern Kazakhstan on the foundations of democratic constitutionalism and the difficulties faced by the current Kazakh state as these principles are implemented. On the other hand, it should hardly be assumed that the difficulties experienced by Kazakhstan are largely determined by historical experience. Anyway, Kazakhstan had a positive experience of state-building in its history, which was forcibly interrupted by external interference.

²⁴ GROTE, Rainer and RÖDER, Tilmann, *Constitutionalism in Islamic countries*, Oxford, Oxford University Press, 2012, pp. 28-34.

Özgecan Kesici discusses the Alash Orda as one of the most important historical forms of Kazakh statehood, the Alash movement itself, and its influence on the establishment of the Kazakh nation²⁵. The researcher considers the policy of the Alash movement as key in the historical turn from the traditional tribal structure of the Kazakh people to the creation of a modern political nation. The leaders of the Alash Orda, according to the researcher, in their policies and laws, pointed to common characteristics that united all Kazakhs regardless of social or tribal origin. It is impossible not to agree with the researcher's opinion regarding the important role of representatives of the Alash movement in the establishment of a modern Kazakh political nation. The legislation of Alash Orda, regarding the national issue, had an advanced character, which, in turn, influenced the fact that the current Constitution of the Republic of Kazakhstan includes the principle of equality of all citizens. Thus, modern Kazakhstan is a state in which equal participation in public life of all national and social groups of the population is ensured.

The issue of real constitutionalism in Kazakhstan and its relationship to the construction of a sovereign Kazakhstan is the subject of the study by Khuandag Bazhay and Akhmet Bergengul²⁶. The researchers consider the establishment of real constitutionalism in Kazakhstan through the prism of the emergence and spread of the ideas of Western constitutionalism of the 18th and 19th centuries. The growing popularity of advanced constitutionalist ideas could not bypass Kazakhstan, where its constitutionalism was established considering national and historical features. One of the most important principles of Kazakhstan's constitutionalism is the equality and free development of all ethnic groups inhabiting Kazakhstan, which is a multinational state²⁷. The researchers outlined the key positions of modern Kazakh constitutionalism. The researchers also clearly identified the influence of the ideas of the 18th and 19th centuries on the development of constitutionalism in Kazakhstan. On

²⁵ KESICI, Özgecan, "The Alash movement and the question of Kazakh ethnicity", in *Nationalities Papers*, 45:6 (2018), pp. 1135-1149.

²⁶ BAZHAY, Khuandag and BERGENGUL, Akhmet, "Ideas of national sovereignty in the Constitution of Kazakhstan and their implementation", in *International Journal of Innovative Technologies in Social Science*, 1:29 (2021).

²⁷ SPYTSKA, Liana, "Criminal Prosecution as a Tool of Political Pressure on Opposition Forces by Authoritarian Regimes: From the Origins to the Present", in *Pakistan Journal of Criminology*, 15:2 (2023), pp. 259-274.

the other hand, the researchers did not clearly express the influence of Kazakh legal traditions on modern Kazakh constitutionalism.

The construction of modern Kazakh constitutionalism is the subject of the study by Nora Webb Williams and Margaret Hanson²⁸. The researchers investigated constitutional reforms in Kazakhstan in recent years, which should contribute to the development of a system of real constitutionalism. They studied the restoration in Kazakhstan of such an important institution as the Constitutional Court, which occurred after the adoption of amendments to the Constitution of the Republic of Kazakhstan in a referendum in 2022. The Constitutional Court replaced the Constitutional Council, which operated from 1995-2022. The researchers consider the Constitutional Court as an instrument of real constitutionalism, while the Constitutional Council is seen as an attribute of formal constitutionalism. The researchers correctly assessed the process of strengthening constitutionalism in Kazakhstan as part of the 2022 reform. However, one can hardly agree with their position regarding the weak development of constitutionalism during the functioning of the Constitutional Council. The researchers did not consider the historical experience of building a constitutionalist system in Kazakhstan and did not correctly determine the stage of Kazakhstan's transition to the path of real constitutionalism, which occurred at the beginning of the independence era.

Thus, most researchers see progress in building real constitutionalism in modern Kazakhstan, identifying unambiguous historical roots of this process, both in constitutionalist ideas that developed in the Western world and legal acts and documents of previous historical formations of the Kazakh statehood. Researchers see a special significance in the history of Kazakh constitutionalism in the laws of the constitutional significance of the Alash Autonomy, which existed from 1917-1920. In turn, the leaders of the Alash Orda, when building constitutionalism, were guided by the legal traditions that existed back in the Kazakh Khanate. Agreeing with the main theses of most researchers, it is worth noting that often scientists who studied the history of constitutionalism in Kazakhstan did not pay attention to the problems faced by Kazakh national leaders who wanted to build a modern constitutional model in Kazakhstan. It is also hardly possible to agree with the opinion that in the era of the Kazakh Khanate or the Alash

²⁸ WILLIAMS, Nora Webb and HANSON, Margaret, "Captured courts and legitimized autocrats: Transforming Kazakhstan's constitutional court", in *Law & Social Inquiry*, 47:4 (2022), pp. 1201-1233.

Orda, Kazakh constitutionalism was fully established and functioning. Because the progressive development of real constitutionalism in Kazakhstan was forcibly interrupted, the laws of Alash Orda could not take shape into a full-fledged constitution. The investigation of this topic showed the need for further in-depth research of historical forms of real constitutionalism in the history of Kazakh statehood.

CONCLUSIONS

The history of constitutionalism in Kazakhstan has deep roots. In various periods of the history of the Kazakh statehood, processes took place that led to the establishment of a system of real constitutionalism. The first acts that had constitutional significance in the history of Kazakhstan were the codes of laws of the Kazakh Khanate. However, the time of the establishment of full-fledged real constitutionalism in the history of Kazakhstan can be considered 1917-1920, when, as a result of revolutionary events, the Kazakh national autonomy of Alash Orda was created. The leaders of the Alash Party, who proclaimed the Alash Orda, drew up a program in which they saw the future constitutional structure of Kazakhstan as a democratic sovereign republic. The decisions of the two All-Kazakhstan Congresses held in 1917, which resulted in the establishment of the Alash Autonomy, were legal acts of constitutional significance that created conditions for the functioning of real constitutionalism in Kazakhstan.

The unfavourable historical situation did not allow the laws of Alash Orda to form into a full-fledged constitution. In 1920, the Bolsheviks took power in Kazakhstan, and the Soviet government liquidated the Alash Orda. In the Soviet years, constitutionalism in Kazakhstan was not real, but formal. Only with the declaration of independence in 1991 and the subsequent adoption of the Constitutions of the Republic of Kazakhstan in 1993 and 1995, did Kazakhstan return to the path of building a system of real constitutionalism.

The scientific originality of this paper is conditioned by the fact that it raises for the first time the question of the progressive development and functioning of real constitutionalism in the history of Kazakhstan and the role of laws of the Alash Autonomy as documents of constitutional significance that influenced the creation of a system of real constitutionalism in modern independent Kazakhstan. The practical

significance of the study is that its materials can be used for further research on the history of Kazakh constitutionalism.

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