

**Prof., Dr. Farkhad Karagussov,**  
chief researcher at the Scientific and Research Institute of Private Law  
of Caspian University (Almaty, Kazakhstan),  
associate member of the International Academy of Comparative Law

## **Jurisdiction of the Republic of Kazakhstan: story of its formation and perspectives of its development**

(presentation at the Conference “Focus Eastlaw” – “Fokus Ostrecht” organised by the Institute of East European Law / Institut für Osteuropäisches Recht (Christian-Albrechts Universität zu Kiel, Rechtswissenschaftliche Fakultät) and held during 12–14 February 2026)

1. An issue of what constitutes the jurisdiction of the Republic of Kazakhstan and, most importantly, what are the prospects for its development, became relevant after 2012 and has now become more urgent, as a referendum for adoption of a new Constitution of Kazakhstan was announced and which draft was published on 12 February this year for the purpose of voting.<sup>1</sup>

Heated discussions with opposing views, that have been going on throughout this period (especially at current stage), quite clearly indicate a crisis of legal identity of our nation, and show an urgent need to have a truly modernized basis for the national legal order which would ensure preservation of Kazakhstan’s statehood and sufficiently independent sustainable development of our country as a sovereign State and a free people with our unique historical traditions and aspirations for the future.

The problem has been complicated by a number of objective and subjective factors. No objective factors will be mentioned here. But among the subjective ones, a political will of the ruling establishment to strengthen the influence of the state apparatus on lives of citizens and existence of the domestic society, on the one hand, and an obvious decline of quality of knowledge in the field of law, on the other, can be noted.

In particular, a confusion (or, may be, a deliberate refusal to see a significant difference?) between the concepts of ‘jurisdiction’ and ‘legal regime’ could be mentioned among the signs of an insufficient level of understanding of (or correspondence to) those well-known legal concepts. Besides, a lack of understanding of modern approaches to defining the economic fundament for functioning of modern democratic states with a market economy and civil society, as well as of a sufficient awareness of various ways for improvement of a national legal system can be seen after making oneself familiar with the aforementioned draft.

2. The draft of a new Constitution retains the existing fundamental norms of the acting Constitution of 1995 regarding Kazakhstan as a republic with the

---

<sup>1</sup> В Казахстане опубликовали проект новой Конституции [A draft of the new Constitution was published in Kazakhstan] (12.02.2026), <<https://www.zakon.kz/sobytiia/6507597-tokaev-obratilsya-k-kazakhstanskim-spetsnazovtsam-posle-triumfa-v-dubae.html>>. All internet websites referenced to in this article were accessed as of 12.02.2026

presidential form of governance, as a unitary, democratic, secular and social state based on the rule of law, where a written legislation remains a predominant (almost exclusive) source of law and where a human being, his or her life, rights and freedoms have been declared as the highest values of the State.

What is proposed to change is the structure of the State by introducing a one-chamber parliament, a post of Kazakhstan's vice-president, a new advisory body as a representative of interests of the people of Kazakhstan, re-distribution of powers between different state bodies and authorities, as well as a lot of changes or re-formulation (sometimes essential, but unclear and confusing) concerning constitutional guarantees of fundamental rights and human rights and some other aspects.

However, talking about a definition and development prospects of Kazakhstan's legal system and legal culture, the following two amendments worth to be noted.

The first one is the statement that a 'desire to preserve a continuity of the millennial history of the Great Steppe' would serve as one of few specifically designated grounds for the people of Kazakhstan to adopt a new Constitution. This phrase is included into the preamble of its draft.

The other important amendment (in this context) proposes that a special legal regime in the financial sphere or a special legal regime of an 'accelerated development city' can be established in certain regions of Kazakhstan which may provide for 'peculiarities of the state administration and the functioning of the judicial system' within the respective region (section 6 of article 5 of the draft).

3. With regard to the first of the above-mentioned aspects, it is important to affirm the historical context of the ancient statehood of the Kazakh people on their ancestral land (or, to be precise, on the remnants of their ancestral territory that remained after centuries of being part of the Russian Empire and the Soviet Union). This is an essential matter in the process of restoring our national identity.

However, the language proposed in the draft Constitution sounds ambiguous if one would try to understand how the state structure and national legal system of Kazakhstan should develop.

It is true that Kazakhstan is the successor to the great state of the Golden Horde (Altyn Orda) and its eastern wing - the White Horde (Aq Orda). However, with the formation of the Kazakh Khanate as an independent state of Kazakhs after 1465, a tribal non-territorial organisation became the fundament of that statehood, where each Kazakh clan represented a basis structural unit of the entire state, all material wealth was concentrated at the clans' level. In turn, Kazakh khans were elected by clans to perform mainly the functions of military commanders and play a role of certain diplomatic representation in international relations. *Adat* (the oral non-religious customary law of Kazakhs) was formed and existed based on strict observance of the rules of nomadic life established by their ancestors, consistently and invariably followed by Kazakhs out of respect

for their ancestors (and not because of some divine or other law was imposed from outside).

Despite the fact that starting from the beginning of XIX century the Russian authorities began to transform Kazakh steppes into their administered territory and purposefully erase the remnants of the Kazakh statehood, *Adat* and the traditional judicial system were applied, though to a limited extent, until the beginning of XX century. This is explained by the fact that Russian civil laws, designed for a sedentary population, were not adapted to framework a life of the nomadic people, and the metropolitan authorities even found the use of the court of *biys* and application of *Adat* as beneficial to their colonial policy (until Kazakhs, remained loyal to the nomadic horse-breeding, would turn to a sedentariness).

4. The customary law of Kazakhs and courts of *biys* disappeared without a trace with the establishment of Soviet power in Kazakhstan.

After 1920 Kazakhstan became a part of soviet Russian Federation and, later, part of the Soviet Union. Until 1964 the Civil Code of Russian Soviet Federative Socialist Republic adopted in 1922 was in effect in Kazakhstan, and only in December of 1963 the Civil Code of the Kazakh SSR was introduced into its force. However, in essence, until collapse of the USSR the entire legal framework in Kazakhstan was created based on what was set forth in Moscow.

When the Republic of Kazakhstan gained its state sovereignty and independence in 1991, its Civil Code (which is still in effect) was adopted.<sup>2</sup> It was imitated from the CIS Model Code which was drafted as a model of a code of 'transition period' from the socialistic economy to market economy. As a result, the Civil Code of the Republic of Kazakhstan (albeit being amended numerous times) still contains many concepts and legal constructs from Soviet law, but does not regulate a number of institutions that are common today in developed market-based democratic states (or regulate it differently, still reflecting the soviet legal doctrine).

5. In turn, the current Constitution of Kazakhstan was adopted in 1995.<sup>3</sup> It was drafted borrowing a lot of ideas and norms from the Constitution of France as a model. However, such borrowing mainly concerned a structure and competence of state bodies and institutions, and to a noticeably lesser extent - consolidation of fundamental rights and human rights and provision with corresponding constitutional guarantees.

But, among some other important constitutional provisions, it did not provide for the existence and protection of the public interest as well as the did not recognise a difference in legal regimes of public and private (including state) property. That led to the accumulation of enormous problems in development of the national economy and private entrepreneurship, managing of state property

---

<sup>2</sup> The portal of the Legal information system of Regulatory Legal Acts of the Republic of Kazakhstan, <[https://adilet.zan.kz/eng/docs/K940001000\\_](https://adilet.zan.kz/eng/docs/K940001000_)>.

<sup>3</sup> *Id.*, <<https://adilet.zan.kz/eng/docs/K950001000>>.

and protection of investors' rights; it also caused complications for further socio-economic development and in fight against corruption.

Precisely on this matter the initial draft of a new Constitution published on 31 January 2026 assumed to provide for a complete continuity and conformity with the current constitutional norms, reproducing them in full in their post-Soviet transitional period wording (which period has dragged on for 35 years!).<sup>4</sup> In the final draft of the Constitution, however, paragraph 1 of article 8 has been re-formulated to 'acknowledge, guarantee and protect ownership of all forms', and together with the requirement included in paragraph 2 of the article that 'use of property must meet interests of the State and the society' it leaves a room for a hope that the public interest would finally find its legislative protection to a fuller extent and an adequate legal regime of public property will be set forth in Kazakhstan's Civil Code.

6. Nevertheless, the said above gives a ground to claim that modern Kazakhstan is the jurisdiction of civil code. This is a consequence of the historical process during which an imposition of Russian Imperial and Soviet laws had taken place. According to contemporary doctrinal writings, in regard to both private and public law, Kazakhstan now belongs to the family of legal systems of civil law, and the Kazakhstan's national legal tradition has been deeply rooted in German law.<sup>5</sup>

It seems highly probable that the further development of the legal system of Kazakhstan will take place following, to the most extent, legal traditions of contemporary Western countries (whether they are civilian traditions or common law, or some 'mixity' of those two).

Therefore, when discussing the continuity of the history of the Great Steppe in relation to the legal system and structures of the modern state of Kazakhstan, it should be understood that revival of *Adat* and the court of *biys* is not a perspective for further development of the legal system and jurisdiction of the Republic of Kazakhstan.

7. However, we can admit that a component of our historical past can be said having found its embodiment in modern law of Kazakhstan providing for mediation with participation of elders or other respected citizens using generally accepted moral norms.

Moreover, some legal traditions emerged based on *Adat* could serve as an additional motivation for development of our civil law. For example, we could recollect an allocation of a certain aggregate of assets as a community property to serve as a source to cover certain common expenditures of the people, or

---

<sup>4</sup> Official website of the Constitutional Court of the Republic of Kazakhstan, <<https://www.gov.kz/memleket/entities/ksrk/press/news/details/1152063?lang=ru>>.

<sup>5</sup> Сулейменов М.К. и Дуйсенова А.Е. 'Государство Республика Казахстан как смешанная юрисдикция', в Мороз С.П. (ред.), *Субъекты гражданского права и реформа системы юридических лиц* (Алматы, 2021) [Suleimenov M. and Duisenova A., 'The State of the Republic of Kazakhstan as a Mixed Jurisdiction', in Moros S. (ed.), *Persons of Civil Law and a Reform of the System of Legal Entities* (Almaty 2021)] 44 (in Russian).

recognition of property rights to land which belonged to the entire community as an independent person of law. It can be viewed as a historical ground for the formation of a legal regime of public property and introduction of a concept of legal entities of public law in Kazakhstan's Civil Code. We also can mention acknowledgement by *Adat* of possession as a fact (not only as a component of the ownership right to things). It would also show a precedent from our own legal past (not only from the Western law) to improve existing obsolete legal concept of the right of ownership and the system of property rights.<sup>6</sup>

8. During the entire period after 1991, the Kazakh legal community advocated for keeping the Civil Code and the legal system of Kazakhstan itself within the family of legal systems of Continental Europe. And up to a certain point, this was quite successful.

But in 2014 the Government of Kazakhstan undertook an attempt to, as it was formulated, implement elements of English law into the legislation of Kazakhstan. Kazakhstani civil law scholars strongly opposed this initiative and struggled for preservation of the national system of private law as a domain of the civil code tradition.

That initiative ended with no result. Finalized draft of the amending law as of 2022 retained a very few of the previously proposed novelties from English law, and has remained unsubmitted to the Parliament.

However, successful was the undertaking to create a jurisdiction as a realm of English law in the part of Kazakhstan's territory allocated for it. Particularly, in 2015 the Constitutional Statute 'On the 'Astana' International Financial Centre' was adopted.<sup>7</sup>

9. According to the AIFC Statute, the AIFC is governed and administered by the AIFC bodies which are not law-making or governmental authorities of Kazakhstan. Regulatory acts of the AIFC are not part of the acting law of Kazakhstan, but they form the so-called 'AIFC law' which is fundamentally different from the law of Kazakhstan as it 'is based on international standards and principles of laws of England and Wales'. The AIFC law regulates civil, civil procedural and financial relations arising between the AIFC participants, as well as administrative and procurement procedures established for the AIFC bodies and involving participation of only the AIFC participants and their employees.

The Court of the AIFC is not part of the judicial system of Kazakhstan. It enjoys exclusive jurisdiction to resolve disputes indicated in the AIFC Statute, and such disputes may not be resolved by courts of Kazakhstan. When resolving disputes, it is guided by the AIFC law and applies it, but it may also take into

---

<sup>6</sup> Пален К.К. 'Обычное право кочевников (1910 г.)' и Макутин А.И. 'Юридически быт киргизов (1910)', в Зиманов С.З. (ред.), *Қазақтың ата заңдары: Құжаттар, деректер және зерттеулер* (Алматы 2005) 6 том [Palen K.K., 'Customary Law of Nomads (1910)' and Makutin FF.I., 'Legal life of Kirgizys (1910), in Zimanov S.Z. (ed.), *Ancient Law of Kazakhs: Documents, Materials and Research* (Almaty 2005) vol. 6] 439 - 483 (in Russian).

<sup>7</sup> The portal of the Legal information system of Regulatory Legal Acts of the Republic of Kazakhstan, <<https://adilet.zan.kz/eng/docs/Z1500000438>>.

account earlier decisions of the AIFC Court on specific disputes and effective decisions of courts of other common law jurisdictions. In addition, it resolves not only commercial but also other disputes, and has the right to resolve disputes submitted for resolution by agreement of the parties. In connection with that, the Court of the AIFC even cannot be considered as an international commercial court because it does not fully comply with all the generally recognised characteristics of such courts.

The AIFC law is a legal framework distinct from laws of Kazakhstan. The law of Kazakhstan is a foreign law for the AIFC jurisdiction.

Academician Maidan Suleimenov expressed the opinion that, with the creation of the AIFC, Kazakhstan can be considered a hybrid or mixed jurisdiction.<sup>8</sup> My view is that the AIFC shall be considered an exorbitant jurisdiction existing in Kazakhstan independently and in parallel with Kazakhstan's national legal system.

10. The AIFC Statute was adopted in violation of the Constitution of Kazakhstan in effect, both formally and in essence. In 2017, the Constitution was amended to state that 'within the territory of the city of Astana a special legal regime in a financial sphere can be established in accordance with a constitutional law'. It was believed to have made the AIFC Statute to conform with the Constitution. And that is where section 6 of Article 5 of the proposed draft of new Constitution comes from.

But one should note, that Kazakhstan's legislation has been establishing a great variety of specific legal regimes in different spheres of social and economic relations, including the financial sphere. And there are no doubts that some specific regulation can be set forth in the territory of Astana (albeit the question remains why it should be a constitutional law for that). However, even with such amendment, the Constitution does not allow allocation of a part of Kazakhstan's territory to create a jurisdiction other than the jurisdiction of the Republic of Kazakhstan over it.

It remains a clear fact that, in essence, the AIFC is a type of separate jurisdiction because the law of the AIFC is not recognised as a component of the effective law of Kazakhstan, as well as structures of the AIFC governance and administration of justice are not part of Kazakhstan's state governance and judicial systems.

11. Whatsoever, it should be recognised that with formation of the AIFC a new legal creation emerged in Kazakhstan.

It seems that the concept of legal pluralism is hardly suitable in this case. The view that Kazakhstan can be recognised as a hybrid or mixed jurisdiction cannot be shared as well.

Kazakhstan's national legal system itself still remains mainly a civil law jurisdiction in terms of both private and public law, though certain legal ideas or

---

<sup>8</sup> Сулейменов М.К. *Нормы гражданского права* (Алматы 2025) [Suleimenov M., *Norms of Civil Law* (Almaty 2025)] 490 (in Russian).

legislative constructs from common law have been borrowed from time to time. There two legal systems exist in Kazakhstan in parallel, and their interaction is permissible only in very limited aspects.

Peculiarity of this situation is that establishment of both of these jurisdictions in the territory of the Republic of Kazakhstan happened after collapse of the Soviet Union and, in general, was a free choice of our State (not the result of an introduction or imposition from outside, or similar historical process).

However, such coexistence of the Kazakhstani jurisdiction with the exorbitant jurisdiction of the AIFC in a long-term perspective is not expedient, as it negatively affects the stability, efficiency and reliability of Kazakhstan's national system.

Nevertheless, liquidation of the AIFC is not feasible now.

But a wilful and reasonable transformation of Kazakhstan's legal system into a truly effective mixed jurisdiction or another creation with a legal pluralism would be a rational perspective.

In this regard, it seems highly relevant for comparative law to focus on what legal mechanisms could be developed, and how they could be used, to effectively facilitate such transformation based on well-thought and commonly agreed ideas and concepts from various (though advanced and effective) legal systems.

12 February 2026