

## Democratic Transition or Autocratic Adjustment? Constitutional Amendments in Kazakhstan and Uzbekistan in 2022–2023

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**Abstract:** Central Asian states have recently implemented significant constitutional reforms. In the case of the authoritarian republics of Kazakhstan and Uzbekistan, the nature of the constitutional amendments, introduced in 2022 and 2023, respectively, is hard to accurately assess. On the one hand, they are a step towards democratization and strengthened guarantees of human rights and freedoms; on the other, they reinforce the current undemocratic government mechanisms. This article discusses the most recent constitutional reforms in both countries, distinguishing three main areas of change: ideology, social issues, and governance mechanisms. It is argued that these reforms generally fall within the paradigm of authoritarian constitutionalism and are an adjustment of the countries' constitutions to the current needs of their undemocratic presidents.

Since announcing independence in 1991, the post-Soviet Central Asian republics have been consistently classified as non-democratic regimes.<sup>1</sup> They are plagued by rampant human rights and freedoms violations, imbalance of

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<sup>1</sup> See e.g. “Democracy Index 2022,” The Economist Intelligence Unit, accessed January 12, 2024, <https://www.eiu.com/n/campaigns/democracy-index-2022/>; “Nations in Transit,” Freedom House, accessed January 12, 2024, <https://freedomhouse.org/report/nations-transit>.

power, limited political pluralism, and concentration of power in the hands of the presidents. As such, the political systems of these states are called super-presidential or crown-presidential. The direction in which such political systems evolve is determined by the presidents, whose main goal is to maintain power or to eventually transfer it to a nominee in a fully controlled manner.<sup>2</sup> The consistent authoritarianism of Central Asian republics does not imply passivity or indolence in terms of maintaining the constitutional order. Conversely, constitutional amendments are frequently adopted across all countries in the region. The changes in question concern various salient issues: the axiology of the constitution, the legal position of the individuals and society's organization, the model of relations among state institutions, and governance. This confirms that the Central Asian autocracies "cherish" their institutions and are devoted to a kind of formalism that can be called "autocratic legalism."<sup>3</sup> The assumption that non-democratic regimes are characterized by lower institutionalization of power is no longer valid.<sup>4</sup> In the case of recent amendments to the Central Asian constitutions, it is hard to generalize their scope and content due to their balancing between modernization and re-traditionalization and the introduction of a "global constitutionalism" as well as the quest for a post-colonial national identity and attempts to strengthen state sovereignty.<sup>5</sup> These amendments can be classified as authoritarian constitutionalism – a paradigm of growing popularity among scholars. An empirical basis for this paradigm is mainly the cases

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<sup>2</sup> William Partlett, "Crown-Presidentialism," *International Journal of Constitutional Law* 20, no. 1 (2022): 204–36, <https://doi.org/10.1093/icon/moac006>; Rafał Czachor, "Super-prezydencjalizm jako odrębny system polityczno-prawny," *Przegląd Prawa Konstytucyjnego* 68, no. 4 (2022): 89–98, <https://doi.org/10.15804/ppk.2022.04.07>.

<sup>3</sup> Kim Lane Scheppele, "Autocratic Legalism," *University of Chicago Law Review* 48, no. 1 (2018): 545–84.

<sup>4</sup> Guillermo O'Donnell, "Delegative Democracy," *Journal of Democracy* 5, no. 1 (1994): 55–69.

<sup>5</sup> Rafał Czachor, "Reformy konstytucyjne w państwach Azji Środkowej. Analiza porównawcza," *Zeszyty Naukowe Uczelni Jana Wyżykowskiego. Studia z Nauk Społecznych* 12 (2019): 35–50; Елена Гарбузарова, "Роль конституционных реформ в развитии государств Центральной Азии," *Центральная Азия и Кавказ* 24, no. 3 (2021): 28–39 [Elena Garbuzarova, "Rol' konstitucionnyh reform v razviti gosudarstv Central'noj Azii," *Central'nââ Aziâ i Kavkaz* 24, no. 3 (2021): 28–39].

of Latin American, African and South-East Asian countries.<sup>6</sup> The rise of authoritarian constitutionalism makes it clear that global constitutionalism, based on the presumption of the universalization of liberal democracy, is receding.<sup>7</sup> It is also post-Soviet republics that provide examples of various forms of non-democracy. Here, one common feature is a specific form of constitutional law – one that fulfils the need for the law and the legal system as an important regulator of social relations while simultaneously ensuring political stability and limiting the possibilities of a change of power.

In this context, it seems reasonable to analyze the recent Central Asia constitutional reforms introduced after 2020 and attempt to answer the question of where Central Asian countries are heading at the beginning of the third decade of the 21st century. Are the newest constitutional amendments a manifestation of gradual democratization or just an adjustment of the autocratic model of governance? This study examines the constitutions of Kazakhstan and Uzbekistan, which were amended in 2022 and 2023, respectively. At the same time, the case of Kyrgyzstan, where the constitution was last amended in 2021, is beyond its scope. To some extent, Kyrgyzstan does not follow the logic of the evolution of the Central Asian republics. Frequent political coups (in 2006, 2010, and 2021), accompanied by significant constitutional changes, support the assertion that Kyrgyzstan is the region's "constitutional laboratory." Moreover, it was recently the focus of a separate in-depth study in the context of authoritarian constitutionalism.<sup>8</sup>

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<sup>6</sup> Tom Ginsburg and Alberto Simpser, eds., *Constitutions in Authoritarian Regimes* (New York: Cambridge University Press, 2014); Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Penguin Books, 2018); Mark A. Graber, Sanford Levinson, and Mark V. Tushnet, eds., *Constitutional Democracy in Crisis?* (Oxford: Oxford University Press, 2018); Helena Alvar Garcia and Günter Frankenberg, *Authoritarian Constitutionalism: Comparative Analysis and Critique* (Cheltenham: Edward Elgar, 2019); Günter Frankenberg, *Authoritarianism: Constitutional Perspectives* (Cheltenham: Edward Elgar, 2020).

<sup>7</sup> See e.g. Takao Suami et al., *Global Constitutionalism from European and East Asian Perspectives* (Cambridge: Cambridge University Press, 2018).

<sup>8</sup> Rafał Czachor, "Reforma ustrojowa w Kirgistanie w 2021 roku na tle konstytucjonalizmu autorytarnego," *Studia nad Autorytaryzmem i Totalitaryzmem* 44, no. 2 (2022): 45–63, <https://doi.org/10.19195/2300-7249.44.3.4>.

The 2022 constitutional reform in Kazakhstan<sup>9</sup> continues the tradition of formal amendments to the initial document adopted in 1995. While there had already been six amendments by that point (1998, 2007, 2011, 2017, 2019),<sup>10</sup> the most recent one proved the most significant. Similarly, Uzbekistan introduced yet another amendment to its 1992 constitution – the most radical to date – which officially entered into force on May 1, 2023.<sup>11</sup> Between 2018 and 2021 alone, the Uzbek constitution was amended five times, even though the changes were not significant. The recent reforms in both countries share the same political context. They were held after the long-lasting presidencies of Nursultan Nazarbayev and Islom Karimov came to an end, and so they can be viewed as an adjustment of the constitutional order to the new circumstances and the expectations of the new leaders – Kassym-Jomart Tokayev and Shavkat Mirziyoyev. In both cases, constitutional reforms were approved in nation-wide referenda. In Kazakhstan, where the referendum was held on June 5, 2022, 77% of voters supported the reform, with a 68% turnout.<sup>12</sup> In Uzbekistan, the constitutional

<sup>9</sup> In fact, the reform was introduced in two stages: the bill of 8 June 2022 adopted based on the results of a referendum, comprising 62 amendments to 33 articles of the Constitution and the bill of 17 September 2022, which included 8 amendments to 6 constitutional articles regarding the president (extension of the term of office from 5 to 7 years and banning re-election), judges of the Constitutional Court (8-year term), and restoration of the name of the capital city, Astana. Закон Республики Казахстан от 8 июня 2022 г., “О внесении изменений и дополнений в Конституцию Республики Казахстан,” [Zakon Respubliki Kazahstan ot 8 iúnâ 2022 g., “O vnesenii izmenenij i dopolnenij v Konstituciú Respubliki Kazahstan”], accessed January 12, 2024, <https://adilet.zan.kz/rus/docs/Z220000001K>; Закон Республики Казахстан от 17 сентября 2022 г. №142-VII ЗРК, “О внесении изменений и дополнений в Конституцию Республики Казахстан,” [Zakon Respubliki Kazahstan ot 17 sentâbrâ 2022 g. № 142-VII ZRK, “O vnesenii izmenenij i dopolnenij v Konstituciú Respubliki Kazahstan”], accessed January 12, 2024, <https://adilet.zan.kz/rus/docs/Z220000001K/links>.

<sup>10</sup> Jarosław Szymanek, “Geneza i ewolucja konstytucjonalizmu kazachstańskiego,” *Studia Polilogiczne* 33 (2014): 397–418.

<sup>11</sup> Конституционный Закон Республики Узбекистан, от 01.05.2023 г. № ЗРУ-837, “О Конституции Республики Узбекистан,” [Konstitucionnyj Zakon Respubliki Uzbekistan, ot 01.05.2023 g. № ZRU-837, “O Konstitucii Respubliki Uzbekistan”], accessed January 12, 2024, <http://lex.uz/ru/docs/6449035>.

<sup>12</sup> “Об итогах голосования на республиканском референдуме 5 июня 2022 года,” Центральная избирательная комиссия Республики Казахстан [“Ob itogah golosovaniâ na respublikanskom referendumе 5 iúnâ 2022 goda,” Central’naâ izbiratel’naâ komissia]

amendments were passed through a public vote, since previous constitutional changes had been confirmed by the parliament. Initially, the vote had been scheduled for December 8, 2022 but was delayed due to mass protests against the planned downgrade of the legal status of the autonomous region of Karakalpakstan; it was eventually held on April 30, 2023. The turnout was 84.5%, and 90.2% of the votes were in favor of the amendments to the constitution.<sup>13</sup> In both cases, the public was asked to vote for or against the entire amendment blocks, turning the vote into an act of supporting the rulers and strengthening their legitimacy.<sup>14</sup> The local academic literature generally applauds the reforms, stressing their positive impact on state-building processes and the consolidation of democratic nations ruled by law.<sup>15</sup>

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Respubliki Kazahstan], accessed January 12, 2024, <https://election.gov.kz/rus/news/acts/index.php?ID=7120>.

- <sup>13</sup> “Объявлены окончательные итоги референдума в Узбекистане,” *Газета.uz*, [“Объявлены окончательные итоги референдума в Узбекистане,” *Gazeta.uz*], accessed January 12, 2024, <https://gazeta.uz/ru/2023/05/01/referendum-final/>.
- <sup>14</sup> Андрей Николаевич Медушевский, “Правовое устройство Средней Азии: стратегии маневрирования между глобальными и национальными приоритетами (новейшие конституционные преобразования в Киргизии, Казахстане и Узбекистане),” *Сравнительное конституционное обозрение* 153, no. 2 (2023): 60 [Andrej Nikolaevič Meduševskij, “Pravovoe ustrojstvo Srednej Azii: strategii manevrirovaniâ mezdu globalnymi i nacionalnymi prioritetami (novejšie konstitucionnye preobrazovaniâ v Kirgizii, Kazahstane i Uzbekistane),” *Sravnitel'noe konstitucionnoe obozrenie* 153, no. 2 (2023): 60].
- <sup>15</sup> E.g., Сергей Ударцев, “Конституционная реформа 2022 года в Казахстане: корректировка модели государства, укрепление правозащитных механизмов массовых беспорядков начала года,” *Государственно-правовые исследования* 5 (2022): 59 [Sergej Udarcev, “Konstitucionnaâ reforma 2022 goda v Kazahstane: korrektirovka modeli gosudarstva, ukreplenie pravozašitnyh mehanizmov massovyh besporâdkov načala goda,” *Gosudarstvenno-pravovye issledovaniâ* 5 (2022): 59]; O.З. Мухамеджанов, “Обновленная конституция Республики Узбекистан: особенность, цели и приоритеты,” *Вестник КазНПУ имени Абая серия “Юриспруденция”* 72, no. 2 (2023): 9–16 [O.Z. Muhamedžanov, “Obnovlennââ konstituciâ Respubliki Uzbekistan: osobennost', celi i priorityty,” *Vestnik KazNPU imeni Abaâ seriâ “Ūrisprudenciâ”* 72, no. 2 (2023): 9–16]. For a critical comment, see: Фарход Толипов, “Конституционная реформа в Узбекистане: противоречия и коллизии,” CABAR [Farhod Tolipov, “Konstitucionnaâ reforma v Uzbekistane: protivorečia i kollizii,” CABAR], accessed January 12, 2024, <https://cabar.asia/ru/konstitucionnaya-reforma-v-uzbekistane-protivorečiya-i-kollizii>.

Currently, both countries face similar international and domestic challenges – uncertainty in international politics, religious renaissance and the simultaneous adoption of a neoliberal model of the economy, as well as increasingly widespread consumerism and pressure for modernization.

In both cases, the most recent amendments affected more than 50% of the constitution's text, including the provisions on all main state bodies, inclusive of parliaments, presidents, and governments. One can distinguish three separate blocks of amendments: the ideological-axiological block, the social block, and the governance block. Some scholarly sources assert that the constitutional reforms in Kazakhstan and Uzbekistan were inspired by Russia's 2020 constitutional reform, similar to how the initial versions of their constitutions may have been inspired by the Russian constitution of 1993.<sup>16</sup> The Russian reform of 2020 was intended to fulfil three fundamental goals: the “sovereignization” of Russian law by revising the place of public international law in the system of domestic law and suppressing the cosmopolitanism of the political elites; the correction of the political system by a return to conservatism and centralism; and the introduction of a new format of the social contract aimed at reinforcing the legitimacy of Russia's peculiar system, referred to by some scholars as “Putinism”.<sup>17</sup> As argued in this paper, the most recent amendments to the constitutions of Kazakhstan and Uzbekistan were drafted for other purposes. This assertion contributes to the thesis that, with respect to constitutional law, the general category of “post-Soviet states” has less and less explanatory power due to different development trajectories. Consistently, a common feature of Central Asian states is a neo-patrimonial model of social organization, characterized by

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<sup>16</sup> Cf. Михаил Александрович Краснов, “Постсоветские государства: есть ли зависимость политического режима от конституционного дизайна?,” *Сравнительное конституционное обозрение* 99, no. 2 (2014): 29–45 [Mihail Aleksandrovič Krasnov, “Postsovetskie gosudarstva: est' li zavisimost' političeskogo režima ot konstitucionnogo dizajna?,” *Sravnitel'noe konstitucionnoe obozrenie* 99, no. 2 (2014): 29–45].

<sup>17</sup> Rafał Czachor, “Reforma konstytucyjna w Federacji Rosyjskiej w 2020 roku,” *Przegląd Prawa Konstytucyjnego* 61, no. 3 (2021): 261–76; Richard Sakwa, “Is Putin an Ism?,” *Russian Politics* 5, no. 3 (2020): 255–82; Михаил Александрович Краснов and Илья Георгиевич Шаблинский, *Российская система власти: треугольник с одним углом* (Москва: Институт права и публичной политики, 2008) [Mihail Aleksandrovič Krasnov and Il'ja Georgievič Šablinskij, *Rossijskaâ sistema vlasti: treugol'nik s odnim uglom* (Moskva: Institut prava i publicnoj politiki, 2008)].

the domination of the presidents over the political systems. The presidents, acting as patrons-in-chief, inspire and push forward the constitutional processes.<sup>18</sup>

## 1. The Content of Kazakhstan's and Uzbekistan's Most Recent Reforms

### 1.1. The Ideological Block

For Central Asia, the existence of modern political entities is quite a new phenomenon. This makes it clear why contemporary constitutions play an important role not only in state-building processes but also in nation-building, by consolidating various ethnic and religious groups around state institutions. These tendencies are accompanied by the formation of a new, post-Soviet, identity which involves recalling mythologized “multi-century traditions” of own statehood, embodied by Chinggis Khan in Kazakhstan and Timur Tamerlan in Uzbekistan.<sup>19</sup> Thus, the ideological background of the constitutional reforms features both simultaneous modernization and re-traditionalization. It is emphasized that Kazakhstan's recent reform, which is in line with the “Concept of the Legal Politics of Kazakhstan until 2030” announced on October 15, 2021,<sup>20</sup> reflects “local mentality and legal traditions.”<sup>21</sup> The constitutional assumptions were presented by the president of

<sup>18</sup> Henry E. Hale, *Patronal Politics: Eurasian Dynamics in Comparative Perspective* (Cambridge: Cambridge University Press, 2015); Alexander A. Cooley and John Heathershaw, *Dictators without Borders: Power and Money in Central Asia* (New Haven: Yale University Press, 2017); Alexei Trochev and Alisher Juzgenbayev, “Instrumentalization of Constitutional Law in Central Asia.” In *Research Handbook on Law and Political Systems*, eds. Robert M. Howard, Kirk A. Randazzo, and Rebecca A. Reid (Cheltenham: Edward Elgar, 2023), 139–68.

<sup>19</sup> The current version of the preamble to the Constitution of Uzbekistan refers to “over 3,000 years of experience in the development of Uzbek statehood, and the cultural heritage of great ancestors.”

<sup>20</sup> Указ Президента РК от 15 октября 2021 г. № 674 “Об утверждении Концепции правовой политики Республики Казахстан до 2030 года,” [Ukaz Prezidenta RK ot 15 oktâbrâ 2021 g. № 674 “Ob utverzhdenii Konceptii pravovoj politiki Respubliki Kazahstan do 2030 goda”], accessed January 12, 2024, [https://online.zakon.kz/Document/?doc\\_id=39401807&pos=3;-109#pos=3;-109](https://online.zakon.kz/Document/?doc_id=39401807&pos=3;-109#pos=3;-109).

<sup>21</sup> Кабдулсамих Айтхожин, “Конституционная реформа в Казахстане: реалии и перспективы,” *Фемида. Республиканский юридический научно-практический журнал* 322, no. 8 (2022): 6 [Kabdulsamih Ajthožin, “Konstitucionnaâ reforma v Kazahstane: realii i perspektivy,” *Femida. Respublikanskij ūridičeskij naučno-praktičeskij žurnal* 322, no. 8 (2022): 6].

Kazakhstan on March 16, 2022 in his speech “A New Kazakhstan – a Way of Renewal and Modernization.” He justified the proposed reform by the will to revive “the tradition of the Great Steppe, the basis of national unity” and the need for economic reforms and sustained development.<sup>22</sup> Uzbekistan’s 2023 reform is in keeping with the series of previous, minor, constitutional amendments adopted under the program “Strategy of the Development of a New Uzbekistan.”<sup>23</sup>

The value of sovereignty and territorial integrity played an important role in the reforms in both countries. A provision was introduced in Kazakhstan’s constitution confirming that “the state’s independence, unitary character and territorial integrity shall not be subject to revision” (Article 91). In turn, the recent amendment to the constitution of Uzbekistan introduced a provision affirming the existence of “one nation of Uzbekistan” (in the preamble), the purpose of which is to “maintain social harmony, understanding and tolerance between nations and religions.” The document also declares “the integration into the world and Islamic civilization” as a state policy goal (Article 61). Initially, the lawmakers had planned to remove the constitutional provisions regulating the autonomous status of Karakalpakstan; however, after violent public protests in Nukus in June 2022, the idea of depriving this administrative unit of a special status was abandoned.<sup>24</sup>

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<sup>22</sup> The scope of the reform extended to 10 main areas, including: the president’s political position, reorganizing the relations between branches of power, developing the party system, strengthening legal protection mechanisms, strengthening civil society, and decentralization. “Послание Главы государства Касым-Жомарта Токаева народу Казахстана” [“Poslanie Glavy gosudarstva Kasym-Žomarta Tokaeva narodu Kazahstana”], accessed January 12, 2024, <https://akorda.kz/ru/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1623953>.

<sup>23</sup> Указ Президента Республики Узбекистан, от 28.01.2022 г. № УП-60 “О стратегии развития нового Узбекистана на 2022–2026 годы” [Ukaz Prezidenta Respubliki Uzbekistan, ot 28.01.2022 g. № UP-60 “O strategii razvitiâ novogo Uzbekistana na 2022–2026 gody”], accessed January 12, 2024, <https://lex.uz/docs/5841077>; Przemysław Sieradzki, “Reformy społeczno-polityczne w Uzbekistanie w czasie prezydentury Szawkata Mirzijojeva,” *Nowa Polityka Wschodnia* 28, no. 1 (2021): 104–27.

<sup>24</sup> In its current version, Article 70 states that “the Republic of Karakalpakstan is part of the Republic of Uzbekistan,” but the phrase “the sovereign Republic of Karakalpakstan” and the provision that “the sovereignty of the Republic of Karakalpakstan is protected by



On a symbolic level, the constitutional reforms in both countries did not break with the legal and political traditions of the current presidents' predecessors. In both cases, the positive impact and heritage of Presidents Nazarbayev and Karimov in developing constitutionalism and strengthening public institutions was stressed. Nonetheless, there were some critical comments regarding Nazarbayev's model of governance. Indeed, the very idea of a constitutional reform emerged after mass protests related to, among other things, the political legacy of the former president who retained the official title of the First President and Elbasy – “the Leader of the Nation.”<sup>25</sup> Under the constitutional reform, the institution of Elbasy was removed from the text of the constitution, after which the relevant bill was deemed unconstitutional. This brought some additional legal consequences since the First President had previously been granted the right to preside over the Security Council and the Assembly of People of Kazakhstan for a lifetime; he was also the head of the ruling party “Nur Otan” and a member of the Constitutional Chamber. In this way, the 2022 constitutional reform ended the period of the dual power of the current and the former president, which started in 2019 with the resignation of Nazarbayev and the election of Tokayev. Further, the amendment to the constitution banned the president's relatives from holding higher state positions (Article 43.4) and established the Supreme Chamber of Auditors to ensure the transparency of public assets and finances. This is how the idea of a “just Kazakhstan,”<sup>26</sup> announced by Tokayev in the above-quoted speech, was implemented. The previous name of Kazakhstan's capital city – Astana – was restored in place of Nur Sultan, marking a symbolic end to the cult of Nazarbayev (Article 2.3).

In Uzbekistan, the cult of President Karimov is formally continued but is seen as a phenomenon of a concluded period of the formation of an independent state. While constitutional norms do not refer directly to political elites related to the former president and his family, the establishment by

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the Republic of Uzbekistan” have been deleted. They have been replaced by a provision stating that “the Republic of Karakalpakstan is part of the Republic of Uzbekistan.”

<sup>25</sup> Rafał Czachor, “Instytucja ‘lidera narodu’ w republikach Azji Środkowej. Analiza prawnoporównawcza,” *Wrocławsko-Lwowskie Zeszyty Prawnicze* 10 (2019): 245–57.

<sup>26</sup> “Послание Главы государства.” [“Poslanie Glavy gosudarstva“].

the constitutional amendment of the Anticorruption Agency whose members are assigned by the president and answer to the parliament does not seem accidental.

In both cases, the recent constitutional reforms are considered breakthrough moments in the countries' contemporary development, marked by a stage of the state's petrification and a subsequent step towards democratization. It is asserted that Kazakhstan has transitioned from a super-presidential to a presidential model of governance and has introduced a sustained, balanced model of power of "the strong President, influential Parliament and accountable government."

## 1.2. The Social Block

The constitutional amendments that fit into this category result from the obligations accepted by both countries along with the adoption of general international legal acts on human rights and freedoms and other guarantees that protect social interests.

Kazakhstan's 2022 reform has not brought major changes in this area. It has been declared that the soil, water, and natural resources are the property of the nation (they had formerly been deemed state property; Article 6.3). This has given rise to some controversies among legal scholars since the Constitution recognizes only two forms of property – private property and state property – and contains no references to the "nation's property."<sup>27</sup> One important amendment abolished the death penalty and forced labor (Articles 15.2 and 24.1).<sup>28</sup> Notably, the legal position of the ombudsperson has been strengthened and the Constitutional Court has been restored, with both acting as guarantors of individual rights and freedoms (this is discussed in the section on governance).<sup>29</sup>

<sup>27</sup> М.К. Сулейменов, "Поправки в Конституцию: революционные изменения или косметические улучшения?" [M.K. Sulejmenov, "Popravki v Konstitucii: revolucionnye izmeneniâ ili kosmetičeskie ulučšeniâ?"], accessed January 12, 2024, [https://online.zakon.kz/Document/?doc\\_id=39137222&pos=6;-109#pos=6;-109](https://online.zakon.kz/Document/?doc_id=39137222&pos=6;-109#pos=6;-109).

<sup>28</sup> This is a consequence of the ratification in January 2021 of the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.

<sup>29</sup> Before the reform, there was a Constitutional Council. Cf. Andrzej Bisztyga, "Pozycja ustrojowa, organizacja i kompetencje Rady Konstytucyjnej Republiki Kazachstanu," *Przegląd Prawa Konstytucyjnego* 18, no. 2 (2014): 41–53, <https://doi.org/10.15804/ppk.2014.02.03>.

The amendment to Uzbekistan's Constitution declares the country to be "humanistic, democratic, legal, social and secular." Guarantees regarding compliance with international law were announced, including in such areas as respect for the dignity of human persons, inviolability of basic rights, the right to life due to the abolition of the death penalty (Article 24), as well as equality and non-discrimination (Article 37) and *habeas corpus* norms (Article 25). Additionally, the amendment provided for the right to a fair trial, professional legal assistance (Article 26<sup>1</sup>), the *ne bis in idem* principle (Article 26<sup>2</sup>), and political rights. A new norm that stipulates "sustainable social development" was also introduced (Article 14). It should be construed as a basis for the principles of the social state and free-market economy (Article 37).<sup>30</sup>

Improvements in the area of human rights and freedoms are part of a growing trend that began after 2016.<sup>31</sup> Generally, an important component of the Uzbek 2023 reform was the emphasis on the responsibilities of the state toward individuals and their rights and freedoms. These include the state's obligation to respect the dignity of persons, their rights and freedoms, the direct application of provisions guaranteeing individual rights and freedoms, and the constitutional protection of "democratic rights and freedoms" (Article 13). The state is obliged to care for its citizens abroad (Article 22), provide free medical services (Article 40) and higher education (Article 41<sup>1</sup>), enable the development of physical culture and sports, as well as the spiritual and moral development of children and youth (Article 42<sup>1</sup>), sustainable economic development, freedom of economic activity, favorable investment conditions, and free movement of goods, services, employees, and capital (Article 53), among other things. One interesting innovation is granting everyone the right to access the Internet and use

<sup>30</sup> Медушевский, "Правовое устройство Средней Азии," 43 [Meduševskij, "Pravovoe ustrojstvo Srednej Azii," 43].

<sup>31</sup> Азиз Аминжонович Исмаатов, "Конституционные права человека в Узбекистане: позитивизм, традиционализм и осторожный разворот в сторону международно-правовых стандартов," *Сравнительное конституционное обозрение* 141, no. 2 (2021): 94–130, <https://doi.org/10.21128/1812-7126-2021-2-94-130> [Aziz Aminžonovič Ismatov, "Konstitucionnye prava čeloveka v Uzbekistane: pozitivizm, tradicionalizm i ostorožnyj razvorot v storonu meždunarodno-pravovyh standartov," *Sravnitel'noe konstitucionnoe obozrenie* 141, no. 2 (2021): 94–130, <https://doi.org/10.21128/1812-7126-2021-2-94-130>].

it freely (Article 29) as well as the right to “a healthy and clean natural environment” (Article 40<sup>1</sup>).

The re-traditionalization and patriarchization of social relations in Uzbekistan are evidenced by the constitutional amendment that regulates the *makhalla* – a traditional local government institution with an elders’ council as a lawmaker and conflict-resolution body.

### 1.3. The Governance Block

The recent constitutional amendments in both countries have brought significant changes in mutual relations among the main state bodies. By no means have these been groundbreaking. Rather, they have clarified the competencies and mechanisms of decision-making and accountability.

In Kazakhstan, the re-shaping of relations between the branches of power has consisted mainly in strengthening the parliament’s position, as well as clarifying the mechanism of cooperation between the parliament’s two chambers, the competencies of the president, government, and ombudsperson, and restoring the Constitutional Court. The basic constitutional provisions in this area, including the presidential system of governance, in which the president is elected in general elections for one seven-year term (Article 41.1, Article 42.5), have become unamendable after the recent reform (Article 91.2). The reform has strengthened the president’s legal position as a representative of the whole nation by prohibiting the president from joining any political party (Article 43.2).

The number of MPs in the first chamber of Kazakhstan’s parliament, the Majilis, has decreased from 107 to 98. MPs are now elected in a mixed electoral system of party lists and single-seat districts, and the option for voters to recall their deputies has been introduced as well (Articles 50–52). The structure of the Senate, the parliament’s second chamber consisting of 49 members, is still complex: each administrative-territorial unit has two representatives; additionally, the president delegates his own nominees. The number of senators appointed by the president has also decreased from 15 to 10, including 5 appointed at the request of the Assembly of People of Kazakhstan (Article 50). The share of presidential representatives in the Senate has thus decreased from 30% to 20%. Bills are proceeded separately in each chamber. The procedure for adopting legislation has also changed: now the Majilis adopts bills and the Senate approves them

(previously, it was the other way round). The Majilis has gained the right to hear reports of the government and the Audit Chamber twice a year. The Majilis has also obtained the right to override the Senate's legislative veto with a two-thirds majority of votes, and a special commission may be appointed to resolve contradictions in the legislative process (Article 61). The strengthened role of the Senate is confirmed by its right to approve or reject the president's appointment of senior state officials, including the Chairman of the Constitutional Court, the Supreme Council of the Judiciary, the Audit Chamber, the ombudsperson, the prosecutor general, and the right to question candidates for the Chairman of the National Security Committee and the Central Bank (Article 95).

The legal and political position of the Majilis has also been strengthened by a change in one of the sources of Kazakh law – constitutional bills, which regulate the most important issues and are adopted at joint sessions of both chambers of Kazakhstan's parliament (previously, the constitutional bills adopted by the Majilis were approved by the Senate; Article 53). Further, a mechanism for overriding the president's veto on constitutional bills has been introduced as well (Article 53). The government has gained the right to announce, on its own responsibility, binding legal acts equal in power to bills, which are approved or rejected *ex post* by the parliament. These may only concern situations requiring “a quick response to circumstances threatening the life and health of the population, the constitutional order, the protection of social order and the economic security of the state” (Article 61.2–3).<sup>32</sup>

The new constitutional regulations of 2022 also affect the institution of the ombudsperson, which was introduced in Kazakhstan in 2017. Its status has since been upgraded to a constitutional body and regulated in Chapter 7 of the Constitution, together with the judiciary and prosecution. Here, the goal is “cooperation for the rehabilitation of violated human and citizen rights and freedoms, supporting the promotion of human and

<sup>32</sup> This amendment was criticized by some Kazakhstani legal scholars due to the alleged serious violation of the principles of a democratic state. Муслим Ханатович Хасенов, “Реформирование Конституции Республики Казахстан. Часть 2. Анализ конституционной реформы 2022 года” [Muslim Hanatovič Hasenov, “Reformirovanie Konstitucii Respubliki Kazahstan. Čast' 2. Analiz konstitucionnoj reformy 2022 goda”], accessed January 12, 2024, <https://online.zakon.kz/m/amp/download/38439767>.

citizen rights and freedoms.” The ombudsperson is protected by immunity, provided with guarantees of independence in the performance of official tasks and not subordinate to other state authorities (Article 83–1). For the first time, regulations regarding the Prosecutor’s Office were introduced to the constitution of Kazakhstan. The former State Budget Performance Control Committee has been transformed into the Audit Chamber.

The constitutional reform of Uzbekistan’s governance system is similar. It encompasses changes in the legal position of the bicameral parliament, more detailed regulation of the law-making process, and the introduction of two separate types of bills – constitutional and ordinary. The presidential term has been extended from five to seven years. The range of the president’s competencies has been expanded to include creating and heading the Security Council and establishing the president’s administration and other constitutional organs (Article 93). The Legislative Chamber, the first chamber of Uzbekistan’s parliament – Oliy Majlis – has been granted additional competencies, including establishing the government and exercising its responsibilities like implementing the budget. The Senate has acquired the right to appoint, on the president’s request, the Supreme Council of the Judiciary, the prosecutor general, and the heads of anti-corruption and anti-trust institutions, as well as to approve the president’s decrees regarding the government’s structure (Article 80). Each chamber of the Oliy Majlis can adopt a resolution of self-dissolution by the majority of two-thirds of its members. In the case of the dissolution of the Legislative Chamber, the Senate remains fully responsible for the legislative process. The government, called the Cabinet of Ministers, has also gained new powers and the scope of its duties has increased to include such things as ensuring governance efficiency, fighting poverty, and protecting the natural environment (Article 115). The government’s new tasks also comprise implementing youth and family-friendly policies, preserving traditional values, and supporting civil society institutions (Article 98). The government’s activities in the field of domestic and foreign policy are defined by the president of Uzbekistan. The head of government is approved by the first chamber of the Oliy Majlis and the candidate is presented by the president. If the parliament rejects a prime minister candidate three times, the president can dissolve the Legislative Chamber (Article 118). The president also has the right to propose to the Senate candidates for Constitutional Court judges, as well as appoint

the head of the Anti-Corruption Agency and other bodies (Article 93). The reform has significantly expanded the range of entities that can initiate legislative procedures by including at least 100,000 citizens, the Senate, the ombudsman and the Central Electoral Commission in this category (Article 98).

The recent constitutional reforms in both countries envisaged the strengthening of local governments. In Kazakhstan, the president has lost the right to repeal legal acts of the *akims* – heads of local executive bodies (Article 44). Their legal acts and decisions may be repealed by the judiciary, the government or higher-level *akims* (Articles 86–88). *Akims* have been included to a greater extent in local government mechanisms since they are no longer appointed directly by the president but elected by *maslikhats*, local decision-making bodies, from among candidates presented by the president or higher-level *akims*. *Maslikhats* have been granted the right to a vote of no confidence in the *akims*. In Uzbekistan, local governments have been strengthened by the above constitutional regulation of the legal situation of *machalla*. The Constitution states that “they are not part of the system of state bodies,” which, however, should be construed rather as their independence from the central authorities and local government guarantees (Article 105). The combined functions of *khokims* (local executive bodies) and chairmen of *kengash* (local legislative bodies) have been abolished.

The recent constitutional reforms in both countries have increased the role of the Constitutional Courts. Constitutional justice had not been given due importance during the long period of existence of Central Asian independent states. In Kazakhstan, the Constitutional Court, previously in place between 1992 and 1995, has been restored and has replaced the Constitutional Council. The Constitutional Court reinstated in 2022 comprises 11 judges, 4 of whom are appointed by the president and 3 by both chambers of the parliament. The Chairman of the Constitutional Court is appointed by the president with the consent of the Senate. The term of office for judges is eight years (Article 71). The Court in question is authorized to declare as unconstitutional any binding legal act that violates the Constitution (Article 74). The right to challenge a legal act’s constitutionality before the Constitutional Court has been retained by those who had previously been able to do so before the Constitutional Council and has also been

granted to the prosecutor general and the ombudsperson. To safeguard the rights and freedoms of citizens, the institution of a constitutional complaint has been introduced (Articles 71–72). The decisions of the Constitutional Court are final.

While a constitutional judicial body was established in Uzbekistan by the 1992 Constitution, it has been virtually inactive over the past 30 years. The recent reform has introduced the possibility of an individual constitutional complaint (Article 109).

## 2. Final Remarks

The latest constitutional reforms in Kazakhstan and Uzbekistan should be viewed as a milestone in the two countries' development as independent states, opening new stages in their history by validating the systems of government of the new presidents – Kassym-Jomart Tokayev and Shavkat Mirziyoyev – symbolically and practically alike. The Kazakh reform has brought normative changes aimed at stabilizing the political situation after a serious crisis of legitimacy and the January 2022 protests against government policy that were bloodily suppressed. Nonetheless, the reform has not changed the mechanisms of exercising power. In Uzbekistan, the background of the reforms was not as turbulent. Indeed, they were but an adjustment of the system aimed at ensuring the regime's stability. Overall, both cases should be assessed as an evolutionary transformation of the power model, in contrast with the revolutionary experience of neighboring Kyrgyzstan and its 2021 constitutional reform.

Officially, the reforms in Kazakhstan and Uzbekistan were justified by the need to broadly modernize society and improve the legal mechanisms of the economy and the system of power. Yet, their nature is not easy to assess accurately to answer the question posed in this paper's title. On the one hand, the recent reforms in both countries contained elements typical of global constitutionalism: constitutional confirmation of individual rights and freedoms, democracy, the rule of law and social justice. On the other, they restored institutions specific to local traditions of governance and patriarchy. It can be argued that the *ratio legis* of the reforms is to adapt the institutional system of the state to new concepts of personalized power, in which the president retains a dominant position above the other bodies of legislative and executive power, thus violating the principle of separation



of powers. The introduction of new regulations as part of the ideological and social blocks, including emphasizing the sovereignty of the state and guarantees of individual rights and freedoms within the specific context of Central Asian constitutionalism, is not in conflict with the authoritarian model of power. Finally, it can be concluded that the constitutional dynamics in both countries are determined not by the power-sharing bargains between the executive and the legislature, but are a byproduct of the ambitions of powerful presidents – chiefs of neopatrimonial pyramids of dependencies that keep the Central Asian social structures alive.

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