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## The Post-Soviet Transition: Constitutional Structuring and Political Reality (CIS Countries Case-Study)

### La transición postsoviética: construcción constitucional y realidad política (case-study de la CEI)

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**RESUMEN:** El artículo ofrece un análisis político-jurídico de las Constituciones de los miembros de la Comunidad de Estados Independientes, que comenzaron a construir su Estado independiente después de la caída de la URSS. Los autores realizaron un análisis comparativo de tales instituciones en la CEI, como el Parlamento, la Presidencia, los tribunales, y llegaron a la conclusión de que las características institucionales estudiadas podrían describirse como “tradicionalismo moderno”. Al mismo tiempo se daba predominio (o superioridad) a prácticas políticas informales (clanes, grupos de interés, redes políticas) que garantizaban el proceso político en aquellos países. Los mecanismos e instituciones informales, compitiendo con las instituciones constitucionales, sentaron las bases para la “toma del Estado” y la formación del neopatrimonialismo. En el artículo se describen varios

**ABSTRACT:** *The given article offers a political and legal analysis of the constitutions of the members of the Commonwealth of Independent States that began constructing their independent statehood after the collapse of the USSR. The authors conducted a comparative analysis of such institutions in the CIS as the parliament, presidency, courts and found out that the studied institutional features could be described as “modern traditionalism.” At the same time prevalence is given to informal political practices (clans, interest groups, and political networks) that facilitate the political process in these countries. By opposing the traditional constitutional institutions, these informal mechanisms and structures could be able to “seize the government” and cause the emergence of neopatrimonialism. The paper describes various*

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modelos de regímenes neopatrimoniales que permiten partir de una descripción simplificada de estos regímenes como “autoritarios”, y encontrar nuevas instituciones “híbridas”, que acumulan tanto el poder formal como el informal.

**Palabras clave:** CEI, Constituciones post-soviéticas, tradicionalismo moderno, presidente, Parlamento, (neo)patrimonialismo, corrupción, grupos de interés, clanes, redes políticas.

*models of the neopatrimonialism regimes which allows to depart from a simplified description of these regimes as being “authoritarian” and find new “hybrid” institutions, that accumulate both formal and informal power.*

**Keywords:** CIS, post-Soviet constitutions, modern traditionalism, president, parliament, (neo-)patrimonialism, corruption, interest groups, clans, political networks.

It is becoming more problematic to predict the future of democracy by looking only at its past.<sup>1</sup>

Richard SAKWA

SUMMARY: I. *Introduction.* II. *The institution of presidential authority in the CIS members: in search of stability.* III. *The institution of parliamentarism in the CIS models: modern traditionalism?* IV. *The judiciary: modernization under conditions of legal pluralism.* V. *The organization of local governments as a special form of the CIS institutional design.* VI. *Beyond formality: state-capture and neo-patrimonialism.* VII. *Final remarks.* VIII. *Bibliography.*

## I. INTRODUCTION

At the end of the 20th century, important political events took place on the territory of the former Soviet Union and this led to the formation of new sovereign nation states, twelve of which formed the Commonwealth of Independent States (CIS) in 1991. By 2019 the following countries were participating in the CIS: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Uzbekistan. Georgia had withdrawn the CIS in 2009. Turkmenistan and Ukraine have a special status due to not ratifying the CIS Charter.

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<sup>1</sup> 22 *Ideas to Fix the World: Conversations with the World's Prominent Thinkers, Ivan Krastev Talks with Richard Sakwa*, Moscow, Moscow University Press, 2014, p. 309 (In Russ.).

The CIS is a union of quite different states for their social, political, economic and religious aspects. Professor Manuel Becerra Ramírez (UNAM) wrote a book about legal and political transformation from the USSR towards the CIS.<sup>2</sup> This book basically covers the concepts of the rule of law, and economic and political transformations; in the interesting chapter, it addresses the problem of nationalities, which was undoubtedly the mainstay of the transition process.<sup>3</sup> The author emphasized the different levels of social, economic, cultural development of the Soviet republics.

This remains the main feature of the present-day post-soviet new democratic systems, so these national differences remain in the CIS, also. For instance, the CIS includes Russia with the population of 146 million people and Armenia with 3 million citizens; Central Asian republics Tajikistan and Kyrgyzstan with the annual population growth of 6.2% and 5.2% respectively, and Ukraine with decreasing population. Most people in Central Asian republics are followers of Sunni Islam; in Azerbaijan, they profess Shiite Islam; Russia, Belarus, Moldova and Ukraine are predominantly Christian countries. Kazakhstan, Azerbaijan, Turkmenistan and Russia have the economies based on oil and natural gas production while the economic development of other CIS members is based mainly on agriculture.

Nevertheless, it's possible to conduct a comparative scientific analysis of their political and constitutional construction after the collapse of the USSR, because of their common historical past. The Caucasus and Central Asian republics became part of the Russian Empire since the 18th and 19th centuries. The same was with Belarus, Ukraine and Moldova. For example, Moldova ruler Dimitrie Kantermir pledged allegiance to Russia in 1711.<sup>4</sup> Kazakhstan was divided into three “zhuz” (tribal-territorial divisions) – Junior, Middle and Senior, and in 1860 all these three “zhuz”

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<sup>2</sup> Becerra Ramírez, M., *El factor jurídico en la transformación de la Unión Soviética a la Comunidad de Estados Independientes*, México, UNAM, Instituto de Investigaciones Jurídicas, 1992, p. 266.

<sup>3</sup> Maldonado Siman, B., “Bibliografía de Becerra Ramírez, M., “El factor jurídico en la transformación de la Unión Soviética a la Comunidad de Estados Independientes”, *Boletín Mexicano de Derecho Comparado*, México, nueva serie, año X, núm. 78, septiembre-diciembre de 1993, núm. 78, p. 1016. DOI: <http://dx.doi.org/10.22201/ijj.24484873e.1993.78>.

<sup>4</sup> Baar, V. and Jakubek, D. “Divided National Identity in Moldova”, *Journal of Nationalism, Memory & Language Politics*, 2017, vol. 11, issue 1, pp. 58-92.

joined the Russian Empire.<sup>5</sup> For 700 years the Turkmen people had no independent homeland of their own as a state: wars and foreign invasions led to temporary loss of national statehood and mass migration of Turkmen people, who today are scattered all over many countries of the East. Only in the period of 1869-1885, the territory of present-day Turkmenistan joined Russia under the name of Trans-Caspian Oblast (or Region), etcetera.

Moreover, some researches consider “imperial legacy” (not only the Soviet, but the Russian, Prussian, Austro-Hungarian, Romanian, and Polish-Lithuanian empires, also) as an influential factor of forming specific features of post-soviet polities in different former Soviet Union republics.<sup>6</sup> This creates some fancy “cocktail” of formal institutions and informal practices, political and governmental traditions and social expectations. This makes the post-soviet state-constructing in the whole and the constitutional design a very interesting and important research subject.

The Soviet rule was established in Russia in October 1917 (although the first Russian Socialist Constitution was adopted in 1918). Further on, the formation of the national Soviet republics in the different regions during the early 1920’s was objectively an important step in creating their own national statehood. The Constitutions of these national Soviet Republics were the first constitutions in their entire history, but the Soviet period was characterised by the absence of the division of powers, and the existence of ideological unity and one-party system. With the establishment of the Soviet power began to pursue a policy of erasing tribal differences in the republics of Central Asia.

To understand the present-day political processes in the CIS, it’s necessary to describe the political culture of its member-states. So far, these member-states still retain non-institutional practices, including family relationships and tribal differences. This can be seen in the Kazakhstan web-site consisting of 748 525 family names, by which any citizen can track down information of his relatives to the seventh-generation ancestors. In this way, tribal divisions are still maintained to this day.<sup>7</sup>

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<sup>5</sup> Uzo, M., *Kazakhstan History: Early Tribal Movements, Population, Ethnic Groups, The Economy, Government*, Create Space Independent Publishing Platform, March 8, 2016, p. 130.

<sup>6</sup> Meleshkina, E. Y., “Post-Imperial Spaces: Particularities of the Formation of States and Nations”, *Political Science*, 2013, vol. 3, pp. 23 and 24 (In Russ.).

<sup>7</sup> The Kazakhstan people carried out and preserved through the centuries “shezhire”

The CIS members began to change their political systems by implementing constitutional reforms and adopting new constitutions – based on which they also developed constitutional law. New post-Soviet Constitutions were adopted in 1992 in Turkmenistan and Uzbekistan, in 1993 in Kyrgyzstan, Kazakhstan and Russia, in 1994 in Belarus, Moldova and Tajikistan, in 1995 in Azerbaijan, Armenia, Georgia, in 1996 in Ukraine.

It marked their first use of such democratic tools as referendums and national debate. Having gained their independence, all the former Soviet republics developed increasingly complicated and stratified political processes in the 1990s and 2000s, exercising their first opportunity to develop national political practices of their own. Due to the influence of historical factors, however, many CIS countries came up with very original approaches to individual constitutional legal issues such as the organization of political authority, the state structure, the system and structure of state bodies, and local government.

We can confidently state that a new political landscape has taken shape in the CIS region – often a sort of “terra incognita” for political and legal science. Its main features include president-centric forms of government (with variations of “competitive” and “non-competitive”),<sup>8</sup> efforts at various reforms to expand the power of parliament as a counterweight to the president, ideological pluralism, and the creation of special bodies of authority with national characteristics, designed to ensure some stability and commitment to national traditions and political culture.

The international political discourse usually characterizes the CIS members as authoritarian regimes that offer nothing of interest for scholarly analysis: experts note only the low level to which democracy has developed in these countries.<sup>9</sup> Suffice it to recall how political scientists

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–a kind of common memory of their ancestors– available at: <https://www.elim.kz/about/>, accessed on: June 15, 2019.

<sup>8</sup> Borisov, N. A., “Institutional choice in the late-Soviet Political Systems: Presidency Models Formation”, *Political Science*, 2017, vol. 3, pp. 80-104 (In Russ.).

<sup>9</sup> Linz, J. J. and Stepan, A., “Modern Nondemocratic Regimes”, *Essential Readings in Comparative Politics*, NY, WW Norton, 2004; Schedler, A., *Electoral Authoritarianism: The Dynamics of Unfree Competition*, London, Lynne Rienner Publishers, 2006, available at <http://www.fpri.org/article/2014/01/electoral-authoritarianism-the-dynamics-of-unfree-competition-book-summary/>; Levitsky, S. and Way, L. A., *Competitive Authoritarianism: Hybrid regimes after the Cold War*, Cambridge, 2010; Chirun, S.N. “Experience of participation in the fifth international conference in Torun (Poland) on the studies of post-Soviet landscape Russia —Neighboring— EU”, *Tomsk State University Journal*

define the present-day political regime in Russia: as “electoral authoritarianism”, “personalistic regime”, “imitation democracy”, “bureaucracy-run state”, “feudal archaism”, “handout economy”, etcetera.<sup>10</sup> This is a rather simplistic approach.

CIS members are similar in their low socio-economic level, their common Soviet history, and their partial return to national traditions to this day. After the collapse of the Soviet Union, they shaped a particular, legal and political culture. The latter consists of democratic modernization along with traditionalism, which at times is associated with independence.

The democratic transit in the CIS members demonstrated the complicity of democracy as a political and legal phenomenon. Democracy can not be a matrix, into which, one puts constitutional structures of different states. To become vital, the new democratic regimes must fit in with the legal and political cultures of these particular states. This has been particularly stressed by the English political scholar, Richard Sakwa, who urged one not to focus on the existing political models but to considering the entire diversity of democracy.

To develop a political and legal analysis of the constitutional processes and an informal institutional political practice in the CIS members, at first, its necessary to identify the main trends in their institutional design, classify the main models of political regimes, and predict the main vectors in which they will likely develop.

## II. THE INSTITUTION OF PRESIDENTIAL AUTHORITY IN THE CIS MEMBERS: IN SEARCH OF STABILITY

Professor Manuel Becerra Ramírez made legal and political analysis of the disintegration of the USSR process. The author holds that reforms of the Communist Party’s relationship with the public administration were started in 1988 and they began to search for the Western-style constitutional concept of weights and counterweights of power. All this created formidable dilemma to separate the Communist Party from the state.<sup>11</sup>

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*of Philosophy, Sociology and Political Science*, 2017, num. 38, pp. 229-239 and others (In Russ).

<sup>10</sup> Makarenko, B. I., “Neocorporativism in Modern Russia”, *Comparative Politics in Russia*, 2011, num. 2, pp. 90 and 91 (In Russ.).

<sup>11</sup> Brom, J., *¿Por qué desapareció la Unión Soviética? De la Rusia de Kiev (siglo IX) al fin de la perestroika*, México, Grijalbo, 1992, p. 120.

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So, the former Soviet republics had to cope with similar political and legal problems, after the “renovation of the socialism”, as Professor Manuel Becerra Ramírez wrote. Professor Alonso Gómez-Robledo Verduzco (UNAM) justly noted still in 1993, that these transformations could lead to chaos and numerous victims in the future, which really occurred later.<sup>12</sup> So, the Mexican scholars warned about this dangerous problem of social instability after the collapse of the USSR.

In these conditions of social instability almost all the CIS members have established president-centric forms of government. Russia introduced a mixed form of this when it made the government responsible to the State Duma in 2009.<sup>13</sup> Even Kyrgyzstan, Georgia, and Armenia, that switched from a presidential to a parliamentary form of government in 2010, 2013 and 2018 respectively, initially developed according to the presidential model for a long time.

This indicates not only that the presidential form is stable in the CIS area, but also that it tends towards the personalization of authority. In almost every CIS member, the president is the head of state (as well as the head of the executive branch in Azerbaijan and Turkmenistan), the commander-in-chief of the armed forces, directs domestic and foreign policy, serves as the guarantor of the country’s independence and territorial integrity, declares a state of emergency and martial law, approves the state’s economic and social programs (Azerbaijan), enforces the constitution and laws (Turkmenistan), issues decrees carrying the force of laws (Belarus), and so on.

Moreover, there is a tendency to extend the term of the presidency,<sup>14</sup> and some republics have even removed the prohibition of one person serving as president for more than two consecutive terms from their constitutions (such as Belarus in 2004). The Kazakhstan Constitution forbids one person to be elected president for two consecutive terms – but this rule

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<sup>12</sup> Gómez-Robledo Verduzco, A., “Becerra Ramírez, M., El factor jurídico en la transformación de la Unión Soviética a la Comunidad de Estados Independientes, México, UNAM, Instituto de Investigaciones Jurídicas, 1992, 266 pp.”, *Boletín Mexicano de Derecho Comparado*, 1993, núm. 76, p. 252. DOI: <http://dx.doi.org/10.22201/ijj.24484873e.1993.76>.

<sup>13</sup> Article 103 *Constitution 1993 of the Russian Federation*, available at: <http://www.constitution.ru/en/10003000-06.htm>, accessed on: June 14, 2019.

<sup>14</sup> In Tajikistan, the term has been extended from 5 to 7 years (since 2003), in Russia from 4 to 6 (since 2012), in Turkmenistan from 5 to 7 (since 2016), in Azerbaijan from 5 to 7 years (since 2017).



does not apply to the country's first president, N. Nazarbayev.<sup>15</sup> In 2016, Turkmenistan repealed its rule that nobody over the age of 70 could serve as president and that provision, service, and guard of the president and his family shall be carried out to the state's expense.<sup>16</sup> In the Constitution of Azerbaijan there is, too, such an article on provision of the president, his family and former president shall be carried out at the state's expense.<sup>17</sup>

Also in 2016, Tajikistan passed amendments removing limitations on President Emomali Rahmon (as the "Founder of Peace and National Unity and Leader of the Nation", as the Constitution named him) regarding the number of times he could be re-elected and lowering the minimum age for a president from 35 to 30.<sup>18</sup>

In the same year, Azerbaijan established the post of vice president to be appointed by the president,<sup>19</sup> and on February 21, 2017 Mehriban Aliyeva, wife of Ilham Aliyev, the president of the Republic of Azerbaijan, was appointed to the post of the first vice-president. The president was also granted the authority to dissolve parliament and delegate the right to sign international treaties to the vice president, members of the Cabinet of Ministers, or other individuals at his discretion.

Most political scholars (H. Lienz, D. Horowitz, A. Lijphart, S. Meyvaring and others) agree that the presidential form of government complicates the process of consolidating democracy as a country makes the political transition from dictatorship, whereas the parliamentary (or half-parliamentary and half-presidential) form contributes to it.<sup>20</sup> At first, this does seem to be the case: extending the length of the presidential term and removing the limit to the number of terms in office does seem like a move toward authoritarian practices.

<sup>15</sup> Article 42, *Constitution of the Republic of Kazakhstan*, available at: [http://www.akorda.kz/en/official\\_documents/constitution](http://www.akorda.kz/en/official_documents/constitution), accessed on: June 14, 2019.

<sup>16</sup> Article 74, *Constitution of the Republic of Turkmenistan*, available at: [http://min-just.gov.tm/ru/mmerkezi/doc\\_view.php?doc\\_id=8124](http://min-just.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8124), accessed on: June 14, 2019.

<sup>17</sup> Article 108, *Constitution of the Republic of Azerbaijan*, available at: <https://en.president.az/azerbaijan/constitution>, accessed on: June 14, 2019.

<sup>18</sup> Article 64, *Constitution of the Republic of Tajikistan*, available at: <http://www.president.tj/en/taxonomy/term/5/28>, accessed on: June 14, 2019.

<sup>19</sup> Article 103, *Constitution of the Republic of Azerbaijan*, available at: <https://en.president.az/azerbaijan/constitution>, accessed on: June 14, 2019.

<sup>20</sup> For further information see: *Presidential government, multiparty system and democracy: complicated combination. Theory and practice of democracy. Selected texts*, Moscow, 2006 (In Russ.).

For the CIS members, however, even more pressing than the problem of moving from authoritarianism to democracy is the issue of constructing institutions and consolidating the political regimes—in other words, the issue of political stability and control—. It's worth recalling in this regard that a bloody civil war raged in Tajikistan in 1992-1999 that also caused financial losses of more than \$10 billion. Another case is Kyrgyzstan, where over the 25 years of its' independence, the country's government changed 28 times, or more than once per year on average.

An analysis of the political processes of democratic transit in the CIS region suggests that the classical framework of “democracy vs. dictatorship” is too limited in the postmodern era. Inasmuch as none of the CIS members can be considered consolidated democracies, it would be more correct to distinguish between them according to “whether their political regimes are consolidated and stable”.<sup>21</sup> The consequences of globalization have forced societies to adapt by adopting a wide array of institutions and practices—including traditional—. This is the perspective from which to analyze the various political and legal models that have appeared in the CIS area.<sup>22</sup> It's especially important to understand this in view of the fact that the daily lives of the people in these former Soviet republics are guided by a new and very wide spectrum of norms, values and attitudes.<sup>23</sup>

The principles, mechanisms, and institutions of governance in such unconsolidated societies differ significantly from those in politically homogeneous societies. Apparently, the desire to consolidate the societies of the former Soviet republics of the CIS considerably outweighs the desire for a formal democracy. It's clear that consolidation and stability can be achieved only by responding to popular opinion. Whereas the greatest demand in the 1990s was for democratization as an alternative to the Soviet regime, by the 2000s, post-Soviet society in the CIS members had largely overcome its posttraumatic shock syndrome caused by the collapse of the Soviet Union. For example, although different groups in Russia hold a diversity of views

<sup>21</sup> Huntington, S., *A Political Order in Changing Societies*, Moscow, 2004, p. 21 (In Russ.).

<sup>22</sup> Colliard, Jean-Claude, “El poder en el semipresidencialismo”, *Cuestiones Constitucionales. Revista Mexicana de Derecho Constitucional*, núm. 20, enero-junio, 2009.

<sup>23</sup> For example, a share of etatistes-authoritarians among Russians does not only exceed half of the population (59%) but several times exceeds the share of consistent liberals in the Russian society (8%)—See: *Russian society in the context of new realities (main theses)*, Moscow, 2015, p. 8.

regarding models of social adaptation, they are nevertheless almost unanimous (96%) in their desire for social justice.<sup>24</sup> Regardless of their ethnic or religious affiliations, Russians' system of values and norms is based firmly on traditionalist foundations.<sup>25</sup> This characteristic is even more common among the former Soviet republics of Central Asia —Tajikistan, Kazakhstan, Kyrgyzstan, Uzbekistan, and Turkmenistan—. They all have a nearly complete lack of experience of statehood during the pre-Soviet period, lack of interstate consensus on state borders, politicized Islam, the threat of terrorism, and proximity to the unstable state of Afghanistan.

This political-legal phenomenon could be called “modern traditionalism”. It's expressed as an orientation on widespread social practices common among a majority within society. It could just as likely be pre-Soviet as Soviet-era practices. What is important is that they have become firmly fixed in the post-Soviet public mind as “normal and natural”. For example, the Azerbaijani Constitution states that the president “represents the unity of the Azerbaijani people and provides continuity of Azerbaijani statehood”.<sup>26</sup> It also states that the president is “the guarantor of the independence of judicial power”. The Preambles to the Constitutions of both Moldova and Kyrgyzstan also speak of adherence to traditions. The former refers to “the continuity of the statehood of the Moldavian people within the historical and ethnic framework of its development as a nation”,<sup>27</sup> while the latter speaks of “acting at the behest of our ancestors to live in peace and accord, in harmony with nature”.<sup>28</sup>

Thus, the institution of presidency is the key institution determining the transformation, consolidation, and stability of the new democratic regimes of the former Soviet republics of the CIS. It can be described as the strong personal power which corresponds to the political culture of these republics and can provide political stability during the transition period. At the

<sup>24</sup> *Idem.*

<sup>25</sup> 71% of Russian citizens expressed their support for return to national traditions, 55% were for strong, hard power, see: *Russian society in the context of new realities (main theses)*, Moscow, 2015, p. 30.

<sup>26</sup> Article 8 *Constitution of the Republic of Azerbaijan*, available at: <https://en.president.az/azerbaijan/constitution>, accessed on: September 2, 2019.

<sup>27</sup> *Constitution of the Republic of Moldova*, available at: <http://www.presidente.md/eng/constitution>, accessed on: September 2, 2019.

<sup>28</sup> *Constitution of the Republic of Kyrgyzstan*, available at: <http://www.president.kg/ru/konstituciya>, accessed on: September 2, 2019.

same time, it can be argued that the consolidation of the political regime of any particular state depends primarily on the degree of the institutionalization or depersonalization of the institution of the presidency.<sup>29</sup> So this statement can be regarded as the task of the future democratic development in the CIS region.

### III. THE INSTITUTION OF PARLIAMENT IN THE CIS MODELS: A CASE OF “MODERN TRADITIONALISM”?

All CIS’s constitutions proclaim that the people hold sovereignty and are the sole source of state authority. They exercise that authority directly through elections and referendums, as well as through the system of state bodies and bodies of local government. The Constitutions also uphold the principle of the separation of powers.

At the same time, the constitutional legislation of the various CIS members is distinguished by a several number of peculiarities. For example, the Constitution of Kyrgyzstan is particularly interesting, it declares: “National customs and traditions which do not infringe upon human rights and freedoms shall be supported by the State”, and “Respect for the elderly and caring for family and close relatives shall be the obligation of each citizen”.<sup>30</sup> “Democracy in the Republic of Belarus shall be exercised on the basis of diversity of political institutions, ideologies and views” —says the Constitution of the Republic of Belarus—.<sup>31</sup>

This diversity and fidelity to national traditions is seen even more strongly in the institution of parliament, the various versions of which can largely be characterized as “modern traditionalism”.

National elements appear in the names of the parliaments of Central Asia and Azerbaijan: Mazhilis (Kazakhstan), Majlisi Oli (Tajikistan,) Jogorku Kenesh (Kyrgyzstan), Majlis (Turkmenistan), Milli Majlis (Azer-

<sup>29</sup> Borisov, N. A., “Institution of presidency in the Central Asian Countries: personalization vs. institutionalization”, *Central Asia and Caucasus*, 2011 vol. 14, 4th ed., p. 55 (in Russ.).

<sup>30</sup> Article 37, *Constitution of the Republic of Kyrgyzstan*, available at: <http://www.president.kg/ru/konstituciya>, accessed on: June 23, 2019.

<sup>31</sup> Article 4, *Constitution of the Republic of Belarus*, available at: <http://law.by/document/?guid=3871&p0=V19402875e>, accessed on: June 23, 2019.

baijan), and Oliy Majlis (Uzbekistan).<sup>32</sup> In all of these states, this organ has representative, legislative (and in Russia and Armenia —controlling) functions. Each also holds elections based on the universal, free, and equal right to vote directly through secret ballot.

Russia has a bicameral parliament, which is quite logical because the country is structured as a national-territorial federation. The parliaments of Belarus, Kazakhstan, Tajikistan and Uzbekistan, however, also have two chambers, even though those countries are not federations. For example, the parliament of Belarus consists of two chambers —the Chamber of Representatives (110 deputies) and the Council of the Republic (with 8 representatives from oblasts (regions) and the capital)—. The Parliament of Kazakhstan consists of Majlis (107 deputies) and Senate (with 2 representatives from oblasts and the capital). The Parliament of Tajikistan Majlisi Milli (the upper chamber, the National Council, 63 members) and Majlisi Namoyandagon (the lower chamber, the Chamber of Representatives, 33 members). The Parliament of Uzbekistan consists of the Legislative Chamber (the lower chamber, 150 deputies) and the Senate (the upper chamber, 6 representatives from regions).

Interestingly, in each of these countries, the president participates directly in forming the second chamber, the chamber devoted to territorial representation. In Belarus, for example, the president appoints eight members to the Council of the Republic. In Kazakhstan, the president appoints 15 members of the Senate “taking into account the necessity of maintaining representation of national-cultural and other significant interests of society to the Senate”. In Uzbekistan, six members of the Senate are named “from among the most authoritative citizens with significant practical experience and special merits in the areas of science, art, literature, manufacturing and other spheres of state and public activity”. In Tajikistan, the president names one-fourth of the members of the upper chamber, and every former president becomes a member of that body for life.

Each CIS member has established a minimum age limit at which citizens are eligible to vote. In Armenia, Azerbaijan, and Turkmenistan, the minimum is 25 years of age. In Kazakhstan, it's 30 and in Kyrgyzstan, 21. In Tajikistan it's also 30, but voters are required to have a higher education.

<sup>32</sup> Majlis (majli) is “a meeting” in Arabian.

Several national characteristics appear in the parliaments of a range of CIS members. For example, the institution of public rule that has existed since ancient times among the Turkmen now influences the formation of a distinctive system of government and administration in Turkmenistan. The country has a special, essentially traditional political institution — the Halk Maslahaty (People’s Council). It’s the highest representative body of Turkmenistan and was in existence from 1992 until 2008. It consisted of 2,507 members, some of whom were elected, with the others appointed by the president. Formally, it possessed “the powers of the highest state authorities and administration” and the authority to amend the Constitution. The provincial (“velayat”), regional (“etrap”) and cities each had their own Halk Maslahaty.<sup>33</sup> Amendments to the Constitution dissolved this body in September 2008, but it was reinstated according to the Constitutional law of that country on October 9, 2017. In accordance with a presidential decree of October 10, 2017, the first meeting of the new Halk Maslahaty took place in the city of Ashgabat in 2018. Another interesting aspect of the legislative process of Turkmenistan is the principle by which the parliament (Majlis) can grant the president the right to pass laws on certain issues, although the Mejlis must give final approval.

Kyrgyzstan is a parliamentary republic in which modernist political practices combine in the most unusual way with traditional approaches. For example, Article 52 of the Constitution grants citizens the right to participate in people’s “kurultays” (assemblies) for “the discussion and adoption of laws and decisions of republican and local significance”.<sup>34</sup> Decisions of the “kurultay” are sent to the relevant authorities as recommendations. At the same time, a referendum in 2016 expanded the authority of the deputies of parliament in that country. In accordance with Article 72 of the Constitution, the prime minister and his deputies have the right to retain their mandates as deputies, meaning that they can reclaim their seats in parliament if they are dismissed from their Cabinet posts.

The political and legal systems of several CIS countries also have a number of unusual characteristics, rooted in traditional practices. Kyr-

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<sup>33</sup> Articles 109 and 110. *Constitution of the Republic of Turkmenistan*, available at: [http://minjust.gov.tm/ru/mmerkezi/doc\\_view.php?doc\\_id=8124](http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8124), accessed on: June 23, 2019.

<sup>34</sup> *Constitution of the Republic of Kyrgyzstan*, available at: <http://www.president.kg/ru/konstituciya>, accessed on: June 23, 2019.



gyzstan, for example, has a post of ombudsman that takes its special name —“akykatchy”— from national traditions. Article 74 of the Constitution of Azerbaijan states that loyalty to the Motherland is sacred<sup>35</sup> —something that hardly accords with the fact that Azerbaijan is officially a secular state. It’s also interesting that Kazakhstan, Turkmenistan, and Tajikistan do not recognize the principle of dual citizenship, whereas Armenia instituted that right through a referendum in 2005.

Article 6 of the Constitution of Kazakhstan offers a particularly unusual rule. It declares: “Property ownership entails obligations and use of this property must simultaneously benefit society”. It’s noteworthy that such social responsibility occurs infrequently as a constitutional principle and is the lawful heritage of the Weimar Constitution (Germany, 1919).

Thus, the degree of political institutionalization has a major influence on the stability and consolidation of political regimes. This provides a rationale for political institutions as sustainable, influential, and reproducible forms of behavior. Parliament is one of the political institutions in the CIS members with a significant degree of institutionalization. In the former Soviet republics of Central Asia, parliamentary practices combine well with traditional, pre-Soviet national practices, promoting greater stability and contributing to the consolidation of society.

#### IV. JUDICIAL AUTHORITY: MODERNIZATION UNDER CONDITIONS OF LEGAL PLURALISM

Since the CIS republics recreated their judicial systems almost from scratch after the disintegration of the USSR, each new Constitution includes a chapter on the judicial system and the principles guiding its activities. The judiciary is independent and protects individual rights and freedoms, the interests of the state, organizations, the law, and justice. The constitutions specifically forbid the creation of “emergency courts”.

The Constitutional Court is an entirely new institution in the CIS region. Russia, Azerbaijan, Armenia, Belarus, Moldova, Tajikistan, and Uzbekistan all have Constitutional Courts, but it’s worth noting that Kazakhstan and Kyrgyzstan organize constitutional justice in very specific ways.

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<sup>35</sup> *Constitution of the Republic of Azerbaijan*, available at: <https://en.president.az/azerbaijan/constitution>, accessed on: June 23, 2019.



In Kyrgyzstan, a Constitutional Chamber operates within the Supreme Court. As a result of a referendum in 2016, the country introduced Article 26 to the Constitution that granted citizens the right to trial by jury. Article 24 declares that every individual who has been taken into custody “...shall be granted an opportunity to protect himself/herself personally, or qualified legal aid from a lawyer as well as have an attorney”. Another new feature is the rule that no statute of limitations can apply to crimes of genocide and ecocide.

In addition, in accordance with Article 59 of the Constitution, Kyrgyz citizens have the right to establish courts of aksakals (“the elders”).<sup>36</sup> A separate law spells out the procedure for establishing such courts, their powers, and activities.

The referendum of 2016 also resulted in changes to the Preamble of the Constitution that includes a detailed list of the state’s highest values. Whereas before it mentioned only individual rights and freedoms, it now speaks of “the individual, his life and health”. At the same time, the provision was stricken from the Constitution that obligated Kyrgyzstan to carry out the decisions of international human rights bodies and compensate for damages. Article 36 introduces a prohibition on same-sex marriages and defines a family as the union of a man and woman. The spouses now enjoy equal rights and obligations in the marriage and the family. This is very significant for the Oriental mentality and represents something new for the Constitution of Kyrgyzstan. Article 23 emphasizes that the Republic of Kyrgyzstan prohibits slavery, human trafficking, the exploitation of child labor, and forced labor.<sup>37</sup>

One unique feature of the judicial system of Kazakhstan is the Constitutional Council, a quasi-judicial body with the authority of a Constitutional Court. The Council has seven members who serve five-year terms, with all former presidents of the country serving as members for life. The president appoints the chairman of the Constitutional Council. Another unique feature of Kazakhstan’s judicial system is the Supreme Judicial Council whose members include the President of the Republic (who heads

<sup>36</sup> Aksakal - the head of a family, an elder, a respectful old man for Turkic peoples in Central Asia and the Caucasus. Literally from the Turkic language it means “a white beard”.

<sup>37</sup> *Constitution of the Republic of Kyrgyzstan*, available at: <http://www.president.kg/ru/konstituciya>, accessed on: June 15, 2019.

the Council); the chairman of the Constitutional Council; the chairman of the Supreme Court; the Prosecutor General; the Justice Minister; senators, judges; and other individuals appointed by the President of the Republic. The High Judicial Council manages human resources: appoints judges to posts, prepares their promotion, demotion, imposes disciplinary measures, recommends the Senate of Kazakhstan (on the nomination of the president) judges, the president of the Supreme Court, chairpersons and judges of regional courts.

As part of its Constitutional reforms in 2005, Armenia introduced the institution of individual constitutional appeals.<sup>38</sup>

Thus, the judicial system in the CIS region is very distinctive, combining elements of modern justice with a legal pluralism that reflects the traditionalism of the CIS members.

#### V. THE ORGANIZATION OF LOCAL GOVERNMENT AS A SPECIAL FORM OF THE CIS INSTITUTIONAL DESIGN

The rejection of Soviets as the basis of the political system made it necessary to create a new institutional framework for the CIS political regimes. All the of the CIS countries took the same approach: based on the newly-adopted principle of local self-government, new municipal authorities were created that were not part of the system of state authorities.

The CIS countries, however, drew in part on their national traditions in this area also. For example, “gengesh” and bodies of territorial public self-government form the local government in Turkmenistan. The “gengesh” are representative bodies whose members reside in that particular administrative district and are elected to serve three-year terms. A gengesh at a corresponding territory: determines general directions of economic, social and cultural development; forms and approves the budget, makes reports on its implementation; sets taxes and charges and the order of their collection; manages its property, determines measures for rational use of natural resources and environmental protection; assists in public order; solves other issues. The “gengesh” elects one of its members as an “archin” who supervises the work of the “gengesh” and is answerable to it. The “archin”

<sup>38</sup> Article 53, *Constitution of the Republic of Armenia*, available at: <http://www.parliament.am/parliament.php?lang=eng&id=constitution>, accessed on: June 15, 2019.

ensures the implementation of the decisions of the “gengesh” and orders of the state authorities and administration, and deals with other issues of local importance.<sup>39</sup>

In Tajikistan, the Majlis of People’s Deputies is the local representative body in the regions and districts. It’s headed by a chairman and its deputies serve five-year terms. The Majlis of People’s Deputies approves the local budget, determines the socio-economic development plan, taxes and fees for that locality, and establishes the methods for managing and owning communal property.<sup>40</sup>

In Moldova, elected local councils and mayors who act as independent governing authorities and decide the public affairs of villages and towns, serve as the public administration authorities and exercise local autonomy. The order of election of local councils and mayors and their functions are determined by the law. District Councils manage district affairs by coordinating the activities of village and city councils.<sup>41</sup>

Out of all CIS republics, Belarus draws most heavily on its Soviet experience. There, citizens exercise local and self-government through local Councils of Deputies, each member of which is elected to a four-year term. The Councils, or “Soviets,” constitute a single coordinated system, with the higher Councils holding the right to cancel the decisions of the lower Councils.<sup>42</sup>

In Armenia the bodies of local government are the Councils of elders (from five to fifteen members) and the Head of the Council, who are elected for a three-year term.<sup>43</sup>

The Russian Federation has also accumulated its own unique experience with organizing local government. There are six types of territorial units that carry out local governance: the rural and urban settlement, mu-

<sup>39</sup> Articles 116 and 117, *Constitution of the Republic of Turkmenistan*, available at: [http://minjust.gov.tm/ru/mmerkezi/doc\\_view.php?doc\\_id=8124](http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8124), accessed on: June 14, 2019.

<sup>40</sup> Article 77, *Constitution of the Republic of Tajikistan*, available at: <http://www.president.tj/en/taxonomy/term/5/28>, accessed on: June 14, 2019.

<sup>41</sup> Article 112, *Constitution of the Republic of Moldova*, available at: <http://www.presedinte.md/eng/constitution>, accessed on: June 15, 2019.

<sup>42</sup> Articles 117 and 118, *Constitution of the Republic of Belarus*, available at: <http://law.by/document/?guid=3871&p0=V19402875e>, accessed on: June 15, 2019.

<sup>43</sup> Article 105, *Constitution of the Republic of Armenia*, available at: <http://www.parliament.am/parliament.php?lang=eng&id=constitution> accessed on: June 23, 2019.

nicipal district, urban district, the inter-settlement municipality, and the federal city territory.<sup>44</sup> The institution of local referendums is also used.

Thus, the institution of local government in the CIS members also has well-defined national features. This institution also actively combines both modern and traditional features as the whole political and legal systems of the CIS members in general.

Summing up the comparative analysis of the constitutional structuring of the CIS countries, we can speak about a combination of traditional, Soviet and modernistic features in their political and legal systems. In certain countries, there is a predominance of Soviet legacy (Belarus), in others—traditional and patriarchal (Turkmenistan), and in others—modernism (Moldova and Armenia). Almost everywhere we can see the personalization of power and the strengthening of the national (or religious) factor. This can be explained by the inefficiency of the new institutions in conditions of political instability. Thus, the elites of the CIS countries in conditions of democratic transit increasingly began to use informal political institutions.

## VI. BEYOND FORMALITY: STATE CAPTURE AND NEO-PATRIMONIALISM

Although, the post-Soviet states of the CIS required varying amounts of time to construct their Constitutions after the disintegration of the Soviet Union—due also, in part, to having to overcome internal political conflicts—all had largely completed the process by 1995.

However, this was not the end of constructing the new political institutions. It quickly became clear that the constitutional institutions they had created were not as effective as, for example, informal structures and mechanisms.

After the disintegration of the Soviet Union, the post-Soviet states found themselves in a period of transition from the socialist political and economic system to democracies with market economies. These countries had to carry out economic reforms (moving from command to market economies) simultaneously with institutional reforms (abandoning the communist and Soviet system of government). With the end of the

<sup>44</sup> Article 131, *Constitution 1993 of the Russian Federation*, available at: <http://www.constitution.ru/en/10003000-06.htm>, accessed on: June 23, 2019.

Cold War, Western experts hastened to christen these processes the “third wave of democratization” and “the end of history”.<sup>45</sup> The initial euphoria, however, gave way to cruel disappointment: according to Western experts, most of the former Soviet regimes (with the exception of the Baltic states that joined the EU) became authoritarian<sup>46</sup> and Western scholars generally described their newly-formed economic and governance systems with such terms as “petrostate,” “kleptocracy” and “corrupt”.<sup>47</sup> Certainly, all the post-soviet states cannot be judged equally due to their historical, cultural and socio-economic specific, however common features of the soviet legacy strongly influence their post-soviet transition.

To understand what happened, it’s necessary to consider the conditions under which this transition occurred. We will focus primarily on the socio-economic and political context. The socio-economic conditions were the most difficult for all the republics in the 1990s. Regardless of the reform model they chose —whether “shock therapy” or successive economic reforms— all of the countries experienced a severe and prolonged economic decline. During the first 10 years (1989-1999) of their post-Soviet economic reforms, GDP fell by one-third in Moldova (30.5%), Georgia (33.8%), and Ukraine (35.8%), or by an average of 7%-9% annually.<sup>48</sup>

Ukraine suffered the longest decline (10 years), and Armenia the shortest (4 years).<sup>49</sup> In terms of GDP decline/growth the Baltic countries have demonstrated the same results as Armenia, Belarus and Uzbekistan during the first and second post-soviet decades.<sup>50</sup> The new “market” mechanisms did not always work quickly, and none of the former Soviet republics, including the Baltic countries, have even now managed to completely overcome Soviet traditions, informal behavior patterns and economic structures. The most recent and obvious example is the scandal in which the Estonian branch of Swedbank allegedly laundered criminal funds from

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<sup>45</sup> Hale, Henry E., *Patronal Politics. Eurasian Regime Dynamics in Comparative Perspective*, Cambridge University Press, 2014, p. 2.

<sup>46</sup> *Ibidem*, p. 3.

<sup>47</sup> Miller, Chris, *Putinomics. Power and Money in Resurgent Russia*, The University of North Carolina Press, 2018, Kindle edition.

<sup>48</sup> Vardomskii, L. B. *et al.*, “New Independent States: Comparative Results of a Socio-Economic Development”, *Rossiiskii ekonomicheskii zhurnal*, 2012, issue 3, pp. 39 and 40 (In Russ.).

<sup>49</sup> *Idem*.

<sup>50</sup> *Idem*.

former Soviet republics.<sup>51</sup> That has an explanation: most of influential Baltic businessmen and politicians came from soviet political elite and bureaucracy (*nomenklatura*) and have strong business ties with Russian<sup>52</sup> and other post-soviet elites, both in formal and shadow economy.<sup>53</sup> However, particularly Baltic countries have reached the most impressive results in institutional building, yet mostly by joining EU.

Their economies destroyed, countries such as Kyrgyzstan, Moldova, and Tajikistan became exporters of labor, and the earnings that those workers send home accounts for a significant percentage of GDP (up to 50% in Tajikistan).<sup>54</sup> Such significant flows of labor migration contributed to the spread of informal connections across borders—from mutual support among members of diasporas to quasi-underground and even criminal business practices.

The structure of the post-soviet economies in the CIS has changed dramatically. Having lost mechanical engineering and light industry, most of them (despite of being energy exporters or energy importers) have experienced multiple increase in the share of the fuel and energy complex (for example, from 5 to 30% in Armenia and from 4 to 32% in Georgia).<sup>55</sup>

As the economy became more primitive and the role of the fuel and energy complex and commodity exports grew, it became increasingly possible to concentrate economic and political power, and for such phenomena to appear as “state capture”, clientelism, corruption, and kleptocracy. The consolidation of political power, however, did not contribute to the devel-

<sup>51</sup> Schwarzkopf, F., Magnussen, N., *Browder Says Europe May Be Looking at \$1 Trillion in Dirty Money*, available at: <https://www.bloomberg.com/news/articles/2019-03-06/browder-files-criminal-complaint-against-swedbank-for-laundering>, accessed on: March 17, 2019.

<sup>52</sup> Grigas, A., *Legacies, Coercion and Soft Power: Russian Influence in the Baltic States*/ Chatham House Briefing Paper, August 2012, p. 11, available at: [https://www.chathamhouse.org/sites/default/files/public/Research/Russia%20and%20Eurasia/0812bp\\_grigas.pdf](https://www.chathamhouse.org/sites/default/files/public/Research/Russia%20and%20Eurasia/0812bp_grigas.pdf), accessed on: June, 15, 2019.

<sup>53</sup> Mitrakhovich, S., *Lithuanian-Belorussian alliance opposes Russia*, National Energy Security Fund, February 10, 2011. Available at: <http://www.energystate.ru/eng/news/375.html>, accessed on: June, 15, 2019.

<sup>54</sup> *From Turkmenistan to Central Asia. Political Future of the Countries of the Region. Center for Crisis Society Studies Report*. Ed. by Alexey Krivopalov. Moscow, 2016, pp. 74 and 75 (In Russ).

<sup>55</sup> Vardomskii, L.B. and others. “New Independent States: Comparative Results of a Socio-Economic Development”, *Rossiiskii ekonomicheskii zhurnal*, 2012, issue 3, pp. 39 and 40 (In Russ).



opment of political institutions —just as those institutions were incapable of consolidating political power— and informal practices turned out to be more successful and effective in both politics and business throughout the former Soviet region.

Tensions in the political context were just as high. The collapse of the Soviet Union led to an increase in conflicts —both between the former Soviet republics (Armenia and Azerbaijan over Nagorno-Karabakh) and with the republics themselves (Transnistria in Moldova, Abkhazia and South Ossetia in Georgia, Chechnya in Russia, and ethnic tensions in Kazakhstan, Kyrgyzstan, Uzbekistan). The growth of ethno-nationalism and the need for building mono-national-type states led to the need for ethno-political mobilization (as in Kazakhstan).<sup>56</sup> This, in turn, led to the active use of informal mechanisms, including clan-related practices. Under these conditions, informal structures became an instrument for effective political struggle, the survival of elite political groups, and the seizure and control of political and economic resources. But none of it contributed to effective institutional building.

Thus, due to the influence of socio-economic and political factors, the course of political processes was not conducive to more effective constitutional institutions. The strengthening of large financial groups —powerful informal groups inside the central and regional bureaucracies— and the huge increase in their influence on politics led to the phenomenon of “state capture” in the 1990s, both in many post-communist states<sup>57</sup> and in the former Soviet republics.<sup>58</sup>

According to a study conducted by the World Bank in 2000,<sup>59</sup> “state capture” occurred in 10 of the 15 post-Soviet countries (including Azerbaijan, Georgia, Kyrgyzstan, Moldova, Russia and Ukraine). This phenomenon

<sup>56</sup> Henry, E. Hale, *Cause without a Rebel: Kazakhstan's Unionist Nationalism in the USSR and CIS*, Nationalities Papers, 2009, pp. 1-32, DOI: 10.1080/009059908023736.

<sup>57</sup> Kitschelt et al., *Post-Communist Party Systems: Competition, Representation and Inter-Party Cooperation*, Cambridge, Cambridge University Press, 1999, pp. 38 and 39.

<sup>58</sup> Daniel C., Bach, “Patrimonialism and neopatrimonialism: comparative trajectories and readings”, *Commonwealth & Comparative Politics*, 2011, 49:3, p. 287.

<sup>59</sup> Hellman, J. S. et al., *Measuring Governance, Corruption, and State Capture: How Firms and Bureaucrats Shape the Business Environment in Transition Economies*, Policy Research Working Paper. The World Bank, 2000, April, 2312, p. 23, available at: [https://openknowledge.worldbank.org/bitstream/handle/10986/18832/multi\\_page.pdf?sequence=1&isAllowed=y](https://openknowledge.worldbank.org/bitstream/handle/10986/18832/multi_page.pdf?sequence=1&isAllowed=y), accessed on: March 22, 2019.



was seen in the high level of corruption there—including the passage of legislative and presidential acts in the interests of individual companies and groups—the bribing of judges, the non-transparent system of financing political parties, and cronyism in staffing practices.<sup>60</sup> Researchers found, for example, that in the countries of Central Asia, “power cliques that surround the president and informally influence him have ‘captured’ key ministries and sectors of the state, particularly major state enterprises, the ministries responsible for taxation, customs, border guards, the police, the banking system and agriculture”.<sup>61</sup>

Economic problems were not the only burden for new institutional building—the imperial legacy was almost the main one. The researches show, that the “empire type” of the state, unlike its opposing version “nation-state”, is more relied on indirect rule and informal relations, that are almost impossible in the nation-state with its tendency towards rationalization of politics and standardization of public administration.<sup>62</sup> The post-imperial transition brings institutional degradation,<sup>63</sup> which, alongside with imperial legacy, provides the conditions for different informal practices, including corruption and state capture.

Most of the problems regarding institutional degradation and state capture, however, were largely overcome in the 2000s: partly due to oil prices growth, partly due to institutional reforms, that were part of elite consensus.<sup>64</sup> Despite modest progress in rule of law, political stability and control over corruption according to World Governance Indicators,<sup>65</sup> number of countries made steady progress in developing institutions for regulating economic activity, consistently climbing in the Doing Business (DB) or

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<sup>60</sup> *Idem*.

<sup>61</sup> Collins, Kathleen, “Economic and Security Regionalism among Patrimonial Authoritarian Regimes: The Case of Central Asia”, *Europe-Asia Studies*, 2009, 61:2, p. 262, available at: <http://dx.doi.org/10.1080/09668130802630854>, accessed on: March 22, 2019.

<sup>62</sup> Meleshkina, E. A., “Post-Imperial Spaces: Particularities of the formation of states and nations”, *Political Science*, 2013, vol. 3, pp. 13-15 (In Russ.).

<sup>63</sup> *Ibidem*, p. 17.

<sup>64</sup> Vilisov, M., “How institutional reforms (don’t) work in Russia,” *Outlines of global transformations: politics, economics, law*. 2016, 9(3), pp. 75-89 (In Russ.), available at: <https://www.ogt-journal.com/jour/article/view/247>, accessed: on June 21, 2019.

<sup>65</sup> Meleshkina, E. Y., “Stateness of Postsoviet Territorial polities”, *Comparative Politics*, 2012, 3 (1(7)): 118-132 (In Russ.), available at: [https://doi.org/10.18611/2221-3279-2012-3-1\(7\)-118-132](https://doi.org/10.18611/2221-3279-2012-3-1(7)-118-132), accessed on: September, 2, 2019, pp. 120 and 121.

Global Competitive Index (GCI) ratings. An interesting situation arose in which, according to assessments, there was almost no correlation between the quality of political regimes (essentially a measure of the political institutions of democracy), the level of corruption, and the degree to which economic institutions had developed (see Table 1).

TABLE 1

Country	Political regime <sup>66</sup> (Freedom House Nations in Transit 2018)	Doing Business 2019 (2018) <sup>67</sup> , rank	Corruption Perception Index (Transparency International) 2018 (2017) <sup>68</sup>	Global Competitiveness Index <sup>69</sup>
Azerbaijan	Consolidated Authoritarian Regime	25 (57)	152 (122)	35
Armenia	Semi-Consolidated Authoritarian Regime	41 (47)	105 (107)	73
Belarus	Consolidated Authoritarian Regime	37 (38)	70 (68)	Out of ranking
Georgia	Transitional Government or Hybrid Regime	6 (9)	41 (46)	67
Kazakhstan	Consolidated Authoritarian Regime	28 (36)	124 (122)	57
Kyrgyzstan	Consolidated Authoritarian Regime	70 (77)	132 (135)	102
Latvia	Consolidated Democracy	19 (19)	41 (40)	54
Lithuania	Consolidated Democracy	14 (16)	38 (38)	41
Moldova	Transitional Government or Hybrid Regime	47 (44)	117 (122)	89
Russia	Consolidated Authoritarian Regime	31 (35)	138 (135)	38

<sup>66</sup> *Confronting Illiberalism. Nations in Transit 2018* / Freedom House, 2018, available at: <https://freedomhouse.org/report/nations-transit/nations-transit-2018>, accessed on: March 22, 2019.

<sup>67</sup> *Doing Business Rankings, 2018, 2019. The World Bank*, available at: <http://www.doingbusiness.org>, accessed on: March 22, 2019.

<sup>68</sup> *Corruption Perception Index, 2017, 2018. Transparency International*, available at: <https://www.transparency.org/cpi2018>, accessed on: March 22, 2019.

<sup>69</sup> *The Global Competitiveness Report 2017-2018*, World Economic Forum, available at: <https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018>, accessed on: March 22, 2019.

Tajikistan	Consolidated Authoritarian Regime	126 (123)	152 (161)	79
Turkmenistan	Consolidated Authoritarian Regime	Out of ranking	161 (167)	Out of ranking
Ukraine	Transitional Government or Hybrid Regime	71 (76)	120 (130)	80
Uzbekistan	Consolidated Authoritarian Regime	76 (74)	158 (157)	Out of ranking
Estonia	Consolidated Democracy	16 (12)	18 (21)	29

The situation in Azerbaijan, Kazakhstan, and Russia is particularly noteworthy. These countries have consolidated authoritarian regimes and high levels of corruption, and yet they rank highly for ease of doing business and global competitiveness. This despite the fact that Azerbaijan and Russia were both once listed as countries where “state capture” had occurred.

How is it possible to form effective economic institutions in countries known for clientelism and cronyism? Had those countries managed to overcome these negative phenomena, or were they so non-obtrusive as to be overlooked when these indices were formulated? And how does the structure of the economy—including the “resource curse”—affect the situation?

The answer to the last question is the most obvious: energy-exporting countries have a major economic advantage, explaining why Azerbaijan, Kazakhstan, and Russia ranked highly on the Global Competitiveness Index (although the absence of Turkmenistan and Uzbekistan from the list makes it difficult to test this hypothesis). This explanation helps little, however, in explaining their standing on the DB ranking—that does not measure macroeconomic indicators but focuses primarily on institutions that regulate business activity—. And it does so from the viewpoint of investors, including foreign investors—according to which the positions of Azerbaijan, Kazakhstan, and Russia differ markedly from that of Uzbekistan—. It’s also interesting that for all three countries, the index measuring perceptions of corruption has worsened over the last two years, even as their DB rankings have improved. Leaving aside questions regarding the accuracy of the indices themselves, this suggests that an additional factor or phenomenon influences the development of economic institutions when the level of political institutional development and corruption remain unchanged.

In our opinion, that phenomenon could be neo-patrimonialism, precisely, some of its special types. Certainly, that cannot be considered as the only explanation model:<sup>70</sup> there is a broad enough set of explanations the specific features of post-soviet authoritarianism,<sup>71</sup> different levels of “stateness” (or state capacity) among post-soviet polities<sup>72</sup> and different indexes of institutional development and sovereignty,<sup>73</sup> but has relatively high potential to explain the ability of some non-democratic regimes to have more advanced institutional design in some spheres in comparison with the others.

This phenomenon goes back to the rational-legal order described by M. Weber. That order is characteristic of industrial societies and capitalism —which Weber contrasted to the patrimonial order that preceded it—. In an attempt to describe the appearance of patrimonial orders in modern societies —primarily in post-colonial, and later in post-communist countries— researchers introduced the term “neo-patrimonialism”. It should be emphasized that his phenomenon is not associated with tradition and traditional authority. It often coexists with modern phenomena, including modern rational bureaucracy.<sup>74</sup> That is, any type of non-democratic political regime could also include a rational-legal bureaucracy that could ensure, for example, the effectiveness of institutions for regulating business. This is, in essence, neo-patrimonialism, that can be considered the phenomenon, presenting in most of the post-soviet countries, except of Baltic states and, probably, Georgia. These visible features are: the politi-

<sup>70</sup> Gelman, V., “Post-Soviet Transitions and Democratization: Towards Theory Building”, *Democratization*, 2003, vol. 10, num. 2, pp. 87-104.; Gelman, V. Ya., “Institutional Construction and Informal Institutions in Modern Russian Politics”, *Polis. Political Studies*, 2003, num. 4, pp. 6-25 (In Russ.). DOI: <https://doi.org/10.17976/jpps/2003.04.02>; Gelman, V., Starodubtsev, A., “Opportunities and Constraints of Authoritarian Modernization: Russian Policy Reforms in the 2000s”, *Europe-Asia Studies*, 2016, 68:1, 97-117, DOI: 10.1080/09668136.2015.1113232 (In Russ.).

<sup>71</sup> *Idem*.

<sup>72</sup> Meleshkina, E.Y., “Stateness of Post-Soviet Territorial Polities”, *Comparative Politics*, 2012, 3 (1(7)): 118-132 (In Russ.), available at: [https://doi.org/10.18611/2221-3279-2012-3-1\(7\)-118-132](https://doi.org/10.18611/2221-3279-2012-3-1(7)-118-132), accessed on: September 2, 2019.

<sup>73</sup> Borisov, N., “Institutionalization of Presidency and Prospects for Consolidation of Political Regimes in Post-Soviet Space”, *Politeia*, 2011, num. 4 (In Russ.), DOI: 10.30570/2078-5089-2011-63-4-93-103.

<sup>74</sup> Gero, E. and Ulf, E., “Neopatrimonialism Reconsidered: Critical Review and Elaboration of an Elusive Concept”, *Commonwealth & Comparative Politics*, 2007, 45:1, pp. 95-119, DOI: 10.1080/14662040601135813, accessed on: March 22, 2019.

cal regime, that is considered non-democratic, and relatively high level of corruption. Actually, those features can be easily identified in Table 1.

In terms of political transition and institution building neo-patrimonialism means the combination of informal practices, that undermine formal institutions in political, administrative and economic spheres and considered natural or appropriate for particular society. For post-soviet countries that comes from soviet informal practices like *blat* (colloquial term to denote ways of getting things done through personal contacts, associated with using connections, pulling strings and exchanging favors),<sup>75</sup> that existed partly as adaptation to totalitarian regime in order to provide survival for close circle of relatives and friends and further transformed into *otkat* (a colloquial term used to describe a form of corruption in Russia, that literally means “rolling back” and is the equivalent of the English term “kickback”)<sup>76</sup> as purely corruption practice.<sup>77</sup> All of this finally led to formation of *sistema* (or system) as a kind of informal governance, for example, in Russia, based on neo-patrimonial practices, that help consolidate resources and influence —sources of a real power.<sup>78</sup>

In his study of neo-patrimonialism in the countries of Africa, South America, East Asia and Southeast Asia, as well as in post-communist and post-Soviet countries, Daniel Bach noted the diverse nature of this phenomenon, its many varieties, and its influence on the development of the institutional environment and even the economy. Bach identifies two important types of neo-patrimonialism. The first is “regulated”, in which elements of a neo-patrimonial regime —where interpersonal relationships take precedence over institutional ties— combine with the development of separate formal institutions (a rational bureaucracy, professional army, developed economic institutions). The second is “predatory” neo-patrimonialism that almost completely neutralizes the effectiveness of all formal

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<sup>75</sup> Ledeneva, A. (ed.), *The Global Encyclopaedia of Informality: Understanding Social and Cultural Complexity*, vol. 1, London, UCL Press, 2018, p. 44, DOI: <https://doi.org/10.14324/111.9781911307907>.

<sup>76</sup> Ledeneva, A. (ed.), *The Global Encyclopaedia of Informality: Understanding Social and Cultural Complexity*, vol. 2. London, UCL Press, 2018, p. 274, DOI: <https://doi.org/10.14324/111.9781787351899>.

<sup>77</sup> Ledeneva, A., *Can Russia Modernise? Sistema, Power Networks and Informal Governance*. London: Cambridge University Press, 2013. p. 85-115. DOI: <https://doi.org/10.1017/CBO9780511978494>.

<sup>78</sup> *Idem*.

institutions—even when the relevant legal regulations ostensibly protect them. This leads first to institutional degradation, and later, to the decline of the state.<sup>79</sup>

Studying the relationship between government administration, bureaucracy, and political regimes with neo-patrimonial relations, Engel and Erdman proposed categorizing neo-patrimonial political regimes as a separate sub-type of authoritarian regime in which a personalistic type of leadership combines with a neo-patrimonial organization of bureaucracy. This differs fundamentally from a different sub-type of authoritarian regime—the bureaucratic, in which the bureaucracy is based on legal and rational foundations, and only the government has personalistic features.

Returning to the previous example, it can be assumed that the economic institutions in Azerbaijan, Kazakhstan, and Russia received high rankings because those countries built this very type of system —“rational neo-patrimonial”—, that combines a personalistic and legal type of government with a legal and rational type of bureaucracy in certain key areas of government, including in the regulation of economic activity. Some experts suggest that the level of the bureaucracy development has transformed Kazakhstan from neo-patrimonial to bureaucratic regime,<sup>80</sup> unlike its neighbor Uzbekistan, that is considered sultanistic neopatrimonialism. Russia (under Putin and Medvedev) and Belarus are also demonstrate more bureaucratic neopatrimonialism in comparison with Russia under Yeltsin, that was of oligarchic type.<sup>81</sup>

On what is the rationalism of this neo-patrimonialism based? The simplest approach in this case is to refer to the resource economy again. In their study, Luong and Weinthal showed how political, economic, and domestic factors shaped different strategies for the fuel and energy complexes of the post-Soviet countries.<sup>82</sup> The experts found that a direct foreign presence in nationalized industries and the privatization of an industry, regardless of

<sup>79</sup> Daniel C., Bach, “Patrimonialism and neopatrimonialism: comparative trajectories and readings”, *Commonwealth & Comparative Politics*, 2011, 49:3, pp. 287 and 288.

<sup>80</sup> Sapper M., Weichchel V., Huterer A. (Hrsg.) *Machtmosaik Zentralasien. Traditionen, Restriktionen, Aspirationen*, Bonn, BPB, 2007.

<sup>81</sup> Fisun O., “Rethinking Post-Soviet Politics from a Neopatrimonial Perspective”, *Demokratizatsiya. Journal of Post-Soviet Democratization*, 2012, 20(2), p. 94 (In Russ.).

<sup>82</sup> Luong, P. Jones, and Weinthal, E., “Prelude to the resource curse. Explaining Oil and Gas Development Strategies in the Soviet Successor States and Beyond”, *Comparative Political Studies*, vol. 34, num. 4, May 2001, pp. 367-399.

the type of foreign participation, create a significantly higher need for the development of rational-legal regulatory institutions. That is, the groups of ruling elites are willing to develop rational-legal institutions?<sup>83</sup> Why?

Examining the model of the Philippines and South Korea, D. Bach concludes that none of the groups could dominate the others completely. As a result, all were forced to compromise and move in the direction of the “common good” and the development of the country.<sup>84</sup> As Bach notes, the need to strike a balance is one of the reasons for forming regulated neo-patrimonialism—that develops mainly in societies where it’s necessary to ensure the peace between ethnic and religious groups, or else to maintain a balance between political and economic interests through the redistribution of power and economic resources.

Richard Sakwa describes this phenomenon with reference to Russia and the idea of a “dual state”. He writes,

Today, there are still groups of siloviki and liberals, but a system has been established in which neither side can dominate, and at the same time, the central figure will always remain V. Putin. This is what I call the “Putin Constitution” —when no single faction, neither the siloviki (the Armed Forces and Police in Russia) nor the liberals— holds complete power to be able to eliminate their rival, but are equally capable of influencing the course of the state. A system of checks and balances between various factions has existed within a single state for a long time. And therein lies the genius of V. Putin”.<sup>85</sup>

The need to achieve a political balance under a personalistic regime creates the opportunity to form regulated neo-patrimonialism, primarily in those areas where it’s necessary to provide a balance between internal political actors, or else in interactions with the global economy. At the same time, from the economic standpoint, this creates a system in which businesses can act freely provided they do not hinder the consolidation of

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<sup>83</sup> Juberías Flores, Carlos and Pérez Torres, Mercedes, “Los tribunales constitucionales y su papel en la protección de los derechos fundamentales en las nuevas democracias de la Europa Central y Oriental”, *Cuestiones Constitucionales. Revista Mexicana de Derecho Constitucional*, num. 5, July-December 2001.

<sup>84</sup> Daniel C., Bach, “Patrimonialism and neopatrimonialism: comparative trajectories and readings”, *Commonwealth & Comparative Politics*, 2011, 49:3, pp. 287 and 288.

<sup>85</sup> Sakwa, Richard, “Russia Turned out to be more a Victim of the Current Crisis...”, *Vlast*, 2009, num. 7, p. 11 (In Russ.).



the political authorities and financial resources needed to ensure social and political stability.<sup>86</sup>

Thus, it seems that “rational neo-patrimonialism” has a good chance for transformation and creates opportunities for institution building — and not only in the sphere of economic regulation.<sup>87</sup> The most important task of “rational neo-patrimonialism” is to provide platforms for negotiations to achieve a political balance. When formal institutions (primarily parliament as well as government) cannot always act as such, the role increases of “hybrid institutions” that can carry out those functions. In this case, “hybrid” refers to having the formal and legal status and ability to bring together all of the actual (including informal) political players, that distinguishes it from the concept of Politburo 2.0, elaborated by Russian political consultant E. Minchenko in order to describe informal center of power in Russia.<sup>88</sup> The most typical examples are the Security Council<sup>89</sup> and the State Council<sup>90</sup> of Russia, that include the most powerful political actors in order to form decision-making centers. Both institutions have legal and even constitutional (Security Council) status and act officially, but in parallel with parliament and government.

In Kazakhstan, that country’s Security Council might play a major role in the transfer of power after Nazarbayev steps down as president in March 2019<sup>91</sup> and new president Kassym-Jomart Tokayev was elected in June 2019.<sup>92</sup> After leaving the post of president of the Republic of Kazakh-

<sup>86</sup> Chris, Miller, *Putinomics. Power and Money in Resurgent Russia*. The University of North Carolina Press, Kindle Edition, 2018.

<sup>87</sup> Adalid Melgar, Mario, “Hacia un auténtico Tribunal Constitucional”, *Cuestiones Constitucionales. Revista Mexicana de Derecho Constitucional*, num. 11, July-December, 2004.

<sup>88</sup> *Politburo 2.0: Renovation Instead of Dismantling*, Communication Group “Minchenko Consulting”, 2017, available at: [http://www.minchenko.ru/netcat\\_files/user-files/2/Dokumenty/Politburo\\_2.0\\_October\\_2017\\_ENG.pdf](http://www.minchenko.ru/netcat_files/user-files/2/Dokumenty/Politburo_2.0_October_2017_ENG.pdf), accessed on June, 21, 2019.

<sup>89</sup> Kryshstanovskaya, Ol’ga and White, Stephen, “The Sovietization of Russian Politics”, *Post-Soviet Affairs*, 25:4, 2009, pp. 283-309.

<sup>90</sup> Whitehouse, Mark, *What comes after Putin could be trouble (An interview with Ol’ga Kryshstanovskaya)?*, available at: <https://www.bloomberg.com/opinion/articles/2018-08-25/putin-s-succession-plan-could-be-trouble-for-russia>, accessed on March, 11, 2019.

<sup>91</sup> Gizitdinov, Nariman, *Kazakh Leader Nazarbayev Quits Presidency, Retains Key Posts*, available at: <https://www.bloomberg.com/news/articles/2019-03-19/kazakh-president-nazarbayev-resigns-after-nearly-30-years>, accessed on March, 11, 2019.

<sup>92</sup> Higgins, Andrew, *Kazakhstan Gets New Leader, but Old System’s Grip on Pow-*

stan, Nazarbayev retained the posts of head of the Security Council and Chairman of the ruling party “Nur Otan”, and also remained a member of the Constitutional Council of Kazakhstan. All this helps Nazarbayev to maintain control over siloviki and use his hybrid (formal and informal) power as elbasy (the first president and the leader of the nation according to the Constitutional Law of the Republic of Kazakhstan of July 20, 2000 “On the First President of the Republic of Kazakhstan – Elbasy”).<sup>93</sup>

## VII. FINAL REMARKS

The issue of constructing institutions (and Constitutions) in the former Soviet republics — CIS members are very complicated and requires deep and comparative research. These countries faced a unique set of challenges that required them to affect a serious constitutional, economic, social, and political transformation in what, by historical standards, was a relatively short time. Attempts to assimilate Western democratic institutions formally ran up against the need to adapt them to the very diverse social and cultural realities of the post-Soviet societies — that turned out to be largely conservative and traditional. As a result, informal institutions and mechanisms quickly offset the weaknesses of the institutions that the various countries had begun to form. These informal structures began competing with constitutional institutions, set the stage for “seize the government”, and led to the formation of neo-patrimonialism. Study of this phenomenon in connection with the features of constitutional and economic institutions makes it possible to identify the phenomenon of “rational neo-patrimonialism”. This, in turn, provides a deeper understanding of many phenomena of the post-Soviet political and legal democratic transition of the CIS members.

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*er Remains* the New York Times, June 10, 2019, available at: <https://www.nytimes.com/2019/06/10/world/asia/kazakhstan-president.html>, accessed on June, 15, 2019.

<sup>93</sup> Constitutional Law of the Republic of Kazakhstan of July 20, 2000, “On the First President of the Republic of Kazakhstan–Elbasy” available at: [http://www.akorda.kz/ru/official\\_documents/constitutional\\_laws/o-pervom-prezidente-respubliki-kazahstan-lidere-nacii](http://www.akorda.kz/ru/official_documents/constitutional_laws/o-pervom-prezidente-respubliki-kazahstan-lidere-nacii), accessed on June, 23, 2019.

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