

The Architecture Of Executive By-Laws And Informal Hierarchies In Central Asian Countries

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Abstract: This research examines the pivotal role of executive by-laws in shaping the resilient authoritarian legal landscapes of contemporary Central Asia. It argues that while constitutional frameworks provide a formal facade of democracy, a dense layer of administrative decrees dictates the practical boundaries of public life and political activity. The article deconstructs how regimes strategically use legal fragmentation and informal hierarchies to consolidate personalistic rule. Analysis of recent reforms in states like Kazakhstan, Uzbekistan, and Kyrgyzstan illustrates a "modernization" where technical departmental instructions frequently override fundamental constitutional rights.

Keywords: Executive by-laws, parliamentary laws, hierarchy, prerogative, living law.

Introduction: The contemporary global political landscape is increasingly defined by the resilience and adaptation of authoritarian regimes that utilize legal frameworks to consolidate power, a phenomenon often described as authoritarian legality or legalistic authoritarianism.[1] This article focuses on the specific and under-researched role of executive by-laws and normative acts—known in the post-Soviet context as *podzakonnye akty*—in regulating public life across Central Asia. While constitutional and parliamentary laws provide the formal facade of democratic governance, it is the dense, often opaque layer of decrees, resolutions, and administrative orders issued by the executive branch that frequently dictates the lived reality of citizens and the boundaries of political activity.

The primary purpose of this doctoral project is to deconstruct how these executive acts facilitate the centralization of authority, manage social stability through strategic legal fragmentation, and interact with the informal hierarchies that underpin Central Asian societies [2].

The executive branch in states like Kazakhstan and Uzbekistan remains the dominant force determining societal development trends, effectively subordinating the legislative and judicial branches.[3] In such environments, reforms often take on a superficial

nature, where the adoption of international legal standards masks the entrenchment of personalistic rule. By focusing on the "middle-range" of legal production—the by-laws—this study aims to provide a granular analysis of how authoritarian governance operates beyond the high-level constitutional rhetoric.

The theoretical foundation of this study is built upon the burgeoning literature on authoritarian legality, which challenges the assumption that autocracies are inherently lawless. Scholars focusing on China and Southeast Asia have demonstrated that authoritarian leaders frequently embrace law instrumentally to attract foreign investment, facilitate market transactions, and enhance regime legitimacy. This "dual state" model suggests a coexistence between a "normative state," where legal rules are consistently applied to facilitate routine social and economic interactions, and a "prerogative state," where the regime exercises arbitrary power in areas deemed critical to state security or political survival.[4].

In the Chinese context, for example, authorities have strategically used law to manage labor unrest and social conflict while simultaneously de-emphasizing formal adjudication when it threatens social stability, preferring political levers or mediation.[5,6] Similarly, in South Korea, legal frameworks developed under autocratic rule in the mid-20th century demonstrated significant continuity even after democratic transitions,

illustrating how the "legal DNA" of a regime can outlast its political origins.[7] This project applies these insights to Central Asia, where the "prerogative" element is often embedded within the very by-laws that claim to implement constitutional rights.[8]

Research on Central Asian governance has traditionally emphasized the influence of informal structures. The maintenance of tribal or clan-based society structures is frequently cited as a primary reason for the region's authoritarian persistence.[9] Political parties in these states often lack ideological platforms, with their formation instead dominated by regional, clan, and tribal interests. As observed in Kazakhstan, political development has fluctuated between "managed democracy" and more restrictive authoritarian styles, often triggered by economic crises or social tensions.[2]

The work of Rustamjon Urinboyev and colleagues has been pivotal in shifting the focus toward the "living law" of the region.[10] Their research highlights how informal social norms and meso-level legal cultures (e.g., the mahalla in Uzbekistan) often carry more regulatory weight than official state law.[11] Corruption is analyzed not merely as a legal transgression but as a functional "informality currency" that allows individuals to navigate the rigidities of the state apparatus.[10, 11]. Classical socio-legal theories, such as Eugen Ehrlich's "Living Law," [12] provide a foundation for examining how executive acts become the actual rules governing social behavior, regardless of what the formal constitution states. Furthermore, the concept of the "Dual State" (Ernst Fraenkel) is utilized to analyze the coexistence of a "normative state" (bound by laws) and a "prerogative state" (governed by executive discretion). The concept of authoritarian legality challenges the notion that authoritarian regimes operate solely through arbitrary power. Scholars have demonstrated that these regimes often use law strategically to enhance legitimacy, manage dissent, and create a predictable, albeit constrained, environment for economic activity [13]. The "Living Law" is frequently defined by patronalism—informal networks of loyalty, kinship, and elite "clans." While the "State Law" (the formal code) might mandate transparency or judicial independence, the "Living Law" dictates that judicial appointments and business contracts are settled through informal negotiations within the executive's circle. When State Law conflicts with this Living Law of patronalism, the formal statutes often become "dead letters." For example, a constitutional guarantee of freedom of assembly is often neutralized by the "Living Law" of administrative survival, where local officials use technical by-laws to block protests to maintain favor with the central government.

Across the region, the executive branch uses "departmental instructions" to interpret constitutional rights. By setting impossible technical requirements for NGO registration or media licensing, the state can repress dissent while technically claiming to follow "administrative procedures".

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Each Central Asian state utilizes this mechanism slightly differently, reflecting their varying "degrees" of authoritarianism, as explored by scholars like İdil Tunçer-Kılavuz[13].

- **Kyrgyzstan: The Judicial Override.** In 2023, Kyrgyzstan introduced a profound disruption to the hierarchy of norms by allowing the President to "reconsider" or void decisions of the Constitutional Court. This effectively places executive will above the highest judicial authority, turning the Constitution from a supreme constraint into a flexible tool of the presidency.

- **Tajikistan: The "Dual-Track" Hierarchy.** In Tajikistan, the law "On the Leader of the Nation" creates a separate legal track for the ruling family. While the general hierarchy of norms applies to the populace, this specific set of laws grants the President immunity and status that supersede all other statutes, effectively creating a "legal exception" at the heart of the state.

- **Uzbekistan and Kazakhstan: Technocratic Authoritarianism.** In these states, the "modernization" of the legal system often involves a proliferation of departmental instructions. By framing restrictive measures as "technical standards" or "administrative improvements," the regimes can depoliticize repression. For example, a constitutional right to protest is frequently neutralized by a departmental instruction that sets impossible technical requirements for obtaining a permit.

As long as the "Prerogative State" holds the power to define its own boundaries, and as long as the "Living Law" of informal patronage outweighs the written "State Law," the formal hierarchy of norms will remain a facade. True reform requires not just changing the text of the Constitution, but "re-statutizing" the law—moving power back from the opaque world of executive by-laws into the transparent and accountable sphere of parliamentary legislation. By shifting the analytical focus from the "high law" of constitutions to the "low law" of executive by-laws, it provides a realistic account of how power is exercised and contested in Asia. The project's integration of the "Science of Norms" with the "Dual State" theory offers a powerful framework for understanding the resilience of modern authoritarianism. The regimes might move

from "Rule of Law" to "Rule by Law," where the legal pyramid is used as a tool for elite management and the containment of the populace.

In the last five years, Central Asia has witnessed a wave of significant political reforms. From the "New Kazakhstan" initiatives to Uzbekistan's constitutional amendment and Kyrgyzstan's shift back to a strong presidency, the region appears to be in a state of rapid institutional evolution. However, while formal reforms often move toward "democratization" or "modernization", the practical application of law continues to strengthen executive dominance. The recent political reforms in Central Asia have fundamentally altered the formal legal hierarchies of the region, introducing more sophisticated language and institutions. However, the underlying nature of authoritarianism has not been dismantled; it has been modernized. As long as executive by-laws and the "Prerogative State" can override constitutional norms, the legal hierarchy will continue to function as a tool of management rather than a safeguard of justice. For citizens and observers alike, the "Living Law" of the region remains rooted in the discretion of the executive, regardless of the elegance of the written code. The hierarchy of legal norms is not broken; it is hijacked by ensuring that the most impactful regulations are issued as executive by-laws rather than parliamentary statutes.

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