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Legal views of the nomads

Annotation. *The article discusses the tools for regulating social relations in the Kazakh state, formed by the dominant system of patriarchal-feudal relations from the middle of the 15th century to the beginning of the 17th centuries. Historically, the primary type of legal system in the Kazakh society is associated with the emergence of the Kazakh Khanate.*

Key words: *ulus, Kazakh ethnos, Kazakh khanate, steppe law, biy justice, adat, custom.*

The dominant system of patriarchal-feudal relations developed in the Kazakh state, from the middle of the 15th century to the beginning of the 17th century, the tribal unions united into ulus headed by the sultans. Small and large uluses formed a military-political ulus alliance, in other words a state led by Khan. An economic basis was formed for the association of nomadic communities, individual clans and tribes into tribal unions and the formation of zhuzes from the beginning of the 17th century.

The tool for regulating social relations in the Steppe was a system of genealogical kinship based on the priority of ethnic and tribal relations. Zhuz is defined as the historically established ethno-territorial associations of Kazakh nomads, an economically and geographically relatively separate region inhabited by a group of communities, which before the formation of the Kazakh ethnic group was the territory of a tribal union. At the head of the zhuzes were biys. One of the oldest institutions of a judicial nature was the biy court, which played a key role in shaping the customary law of the Kazakhs. The Council of Biys was convened in special cases for the coordination and resolution of important social economic, military-political, and legal issues. Neglecting the opinion of the biys always led to a decline in prestige and isolation of the khanate dynasty.

The skin and mullahs played an important role in the spiritual life of the Kazakhs, which helped maintain the foundations of Islam among the nomads. Hereditary privileges gave them the right to conduct ritual ceremonies.

In traditional Kazakh society, the status of a person was determined not by the property, but by his social status. Thus, Chingizids (kaz. – төпе), the descendants of Genghis Khan acquired the title of Sultan and the right to occupy the Khan's throne by birth. In the nomadic farming system, the functions of pasture distribution and the organization of the nomadic livestock farming cycle were carried out by the organs of the feudal state: the khans, sultans, biys. The right to land was the main right and privilege of the khans and sultans.

The history of the formation of law in the Kazakh society is associated with the emergence of the Kazakh Khanate. Legal relations were regulated by the norms of the customary law «adat», which incorporated the codes of the codified customary law of the Mongols «Yassa» (1206). Sharia law functioned with customary law, which was bound with the spread of Islam in the Kazakh Steppe. Sharia law was taken for granted by society under the influence of patriarchal ideology and the authority of public opinion.

Customary law is a historically primary type of legal system, which establishes social norms that had important social regulatory, managerial, unifying, protective and humanistic significance and can be qualified as legal. The norms of the customary law of the Kazakhs were an instrument of reconciliation of people and communities. They were aimed at preventing disputes and conflicts, i.e. not punishing, not separating people, but rallying in vast territorial spaces. They were also aimed at taking measures to prevent conflicts, and in the event of their occurrence a timely decision based on the ideas of justice and equality prevailing in the society.

Sources of customary law of the Kazakhs were legal practice, laws, decisions of congresses of biys, judicial decisions.

Steppe law possessed syncreticity, the Kazakh law norms acted as a standard of behavior, actions, discipline and order, their observance was ensured by traditions, religious consciousness, morality, public opinion, self-consciousness of a person who was aware of the responsibility not only for his life, but also for the lives of his fellow tribesmen. Within a kind of person could enjoy guaranteed legal assistance that provided a system of generic mutual aid.

One of the sources of customary law is custom. Most of the customs were of a general, democratic nature, serving the needs and interests of all members of society. In Kazakh society, customary law developed within society itself, rooted in the social life of nomads, in their worldview and way of thinking, formed within the framework of a nomadic civilization. It was formed on the basis of the legal views of the nomads, their customs, and the cultural traditions of the Great Steppe, which were adequate and adapted to the conditions of nomadic

associations. For example, in disputes, the parties could use the right to express «dat», express their disagreement, objection with the decision or actions of representatives of the khan's government. The right of the «dat» was strictly observed when the biy courts decided. The one who will say the word «dat» should have been publicly heard.

The first written legislative monuments, which established the relations in the Kazakh Khanate, include the statute «Қасым ханнын қасқа жолы» («Kasym's High Road»), the law set «Есім ханнын ескі жолы» («The Ancient Road of Khan Esim») and the ancient Legislative monument «Жеті Жарғы» («Law Code of Khan Tauke», «Laws of Khan Tauke») the real name of Tauke Khan is Tavvakul-Muhammad Batyr Khan.

The right of the court, legal regulation of economic, social, administrative, criminal, civil and other relations in society began to be performed by public authorities for the first time by Tauke law.

During the reign of Khan Kenesary Kasymov judicial and legal reform was carried out. «The legislative activity of Kenesary contributed to the elimination of tribal hostility and made major changes in the customary law of the enmity between themselves contributed to the cessation of feudal civil strife» [1, p. 291]. During Russian colonialism, the customary laws of the Kazakhs lose their power.

According to the adat, the central place in the judicial process in the Kazakh Steppe was occupied by biys, whose functions included the resolution of inter-tribal disputes, the unification and consolidation of Kazakh society living in vast territories, and ensuring on the basis of justice and humanity of national unity. Shokan Valikhanov in his work «The court in the ancient folk form» wrote about the Biy justice: «... only deep knowledge of judicial customs, combined with oratory, gave the Kirghiz (Kazakhs) this honorary title <...> The biy court was made verbally, publicly and in all cases allowed the bar. He was so respected by the people that he did not require and still does not require any disciplinary measures» [2].

The status of the biy court as a judiciary was formed and established among nomads who occupied a large territory of the Steppe Territory. The history of the formation of biy justice is organically linked with the development of a nomadic society. The role of biys as authoritative justice in the administrative and management system and in the political life of Kazakh society was officially recognized under Khan Tauka. «ЖетіЖарғы» of Khan Tauke in the system of ideas about the steppe law became the ideological basis for the formation of the nomadic legal consciousness, the source of the legal ideology of the nomads.

Biysesecuted educational function, organizational, ideological, law enforcement. The biy institute was a public, social institution, since the basis of their legal culture was public opinion, which was placed higher than the Khan and Sultans.

The legal support of the Biy court was case law exercised on the basis of customary law, based on the principles of justice, humanism, openness, publicity, judge integrity, knowledge of the laws of nomadic nomadic life, public speaking, high morality, respect for the legal practices of ancestors, publicity, democratic and fair judicial process and all subsequent law enforcement, voluntary execution of decisions of the biy as the initial principles of the legal coexistence of the people. Biys resolved intrageneric conflicts, inter-tribal disputes, played a consolidating role in the life of Kazakh society, ensured national unity, and reconciled the hostile with their decision. The decision of the biy was not disputed and was binding.

Biys knew the life of the nomadic life well, enjoyed the mutual trust of the plaintiff and the defendant. In legislative activity biys founded on folk legends. They correlated the legal reality with the legal ideology of the medieval Steppe region. It is not by chance that the «ЖетіЖарғы» law code (Seven Ordinances), created at the beginning of the 18th century under Tauke Khan with the participation of the most famous biys Tole bi (Senior zhuz), Kazybek bi (Middle zhuz) and Aiteke bi (Young zhuz), represented the meeting oral proverbs and sayings that every carrier of power – khan, sultans, judges, foremen and aksakals of the Kazakh clans were obliged to know.

In the process of legal proceedings, the instrument of the biys was a reasoned, wise word, «memorable, like a rock inscription» [3, p. 38]. The norms of legal custom were passed on from mouth to mouth, from generation to generation in the form of proverbs, sayings, aphorisms: Даудышешенбітірмейді, шебербітіреді (lit.: Litigation does not stop the speaker, but experienced judge); Ақ сұңқардан хан болса, алтын тұғұр би болар (lit.: If the khan is a white falcon, then a biy should be a golden seat) [4]. They reflected the basic legal ideas and principles, the fundamental values of society, based on which, we can develop the rule of law [5, p. 80]. With the help of proverbs and sayings biys resolved litigations and litigation: Аздың теңдігі болса да, төресі жоқ (lit.: A lonely person, although he is right, will not find a court); Қарындасдауықаранғыда, қатындауытөсекте (lit.: Disputes about the sisters are resolved in the dark, and litigation arising for wives is resolved in bed in secret); Қонақкелсеесікке, жүгіріпшық, кешікпе (lit.: If a guest comes, run to the door, do not be late), etc. [4].

An important principle in biy justice was the principle of compromise, balance, bringing the dispute to the amicable settlement, preserving peace within the community. The legal culture of the biys as the elect of the people was manifested in a respectful, fair attitude to the disputing parties. The trial was distinguished by publicity, adversarial process, the participation of representatives of the conflicting parties, the use of public opinion. In the customary law of the Kazakhs there was no sentence as deprivation of freedom or imprisonment.

Summary. The history of the formation of law in the Kazakh society is associated with the emergence of the Kazakh Khanate. The early sources (15-17 centuries), containing the legal views of the nomads, traditionally

include ancient Turkic writings, works of oral folk art, Genghis Khan's sayings, sentences of Kasym Khan, Yessim Khan, Khan Tauke, improvised verbal contests of Kazakh biys. Legal relations were regulated by the norms of the customary law of adat, sharia law. Sources of customary law of the Kazakhs were legal practice, laws, decisions of congresses of biys, judicial decisions.

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РЕЗЮМЕ

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Правовые взгляды кочевников

В статье рассматриваются инструменты регулирования социальных отношений в Казахском государстве, сложившиеся господствующей системой патриархально-феодальных отношений с середины XV до начала XVII вв. Исторически первичный тип правовой системы в казахском обществе связан с возникновением Казахского ханства.

Ключевые слова: улус, казахский этнос, Казахское ханство, степное право, бийское правосудие, адат, обычай.

ТҮЙІН

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Көшпенділердің құқықтық көзқарастары

Мақалада реттеу құралдары әлеуметтік қатынастар Қазақ мемлекетінде қалыптасқан өзіндік ерекше сипат жүйесімен патриархалды-феодалдық қатынастар ортасынан XV басталғанға дейін XVII ғғ. Тарихи алғашқы типі құқықтық жүйесі қазақ қоғамында байланысты пайда болған Қазақ хандығы.

Түйінді сөздер: ұлыс, қазақ этносы, Қазақ хандығы, дала құқығы, би Сот төрелігі, адат, әдет-ғұрып.