



Legal Culture of Soviet Kazakhstan

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Abstract

The article discusses the history of the formation of the legal culture of Kazakhstan in the Soviet period. The article illustrates both the progressiveness of the reform as well as the consequences of the introduced innovations for Kazakhstan. In general, there is noted a positive role of Soviet transformations in the formation of the legal culture of Kazakh Soviet Socialist Republic. One of the positive factors is the abolition of some of the traditional institutions of Kazakh customary law, improvement of the social status of women and formation of a new Soviet concept of citizen rights.

Keywords: Kalym, Kun, Barymta, Levirate marriage, Polygamy, Court of biys, Aksakal courts, Provincial courts, Nomadic form of development

1 Introduction

The formation of the legal culture of Soviet Kazakhstan was characterized by such important social processes as transition to a settled way of life, development of various types of agriculture, urbanization and, respectively, a change in the entire legal system of Kazakh society. The situation in the region began to change after the October Coup. In 1917 – mid 1930s there were taking place truly revolutionary changes in Kazakhstan: formation of the command-administrative state system; change of the political-legal, material, spiritual foundation of culture; transformation of the social image of Kazakh society [1].

2 Materials and Methods

The study is based on the narrative method (descriptive – narrative), which is necessary to be used in the study for the presentation of historical facts. The formation of the legal culture of Soviet Kazakhstan and the study of the texts of legal acts - all made it possible to penetrate the experience of the pre-revolutionary nomadic legal culture of the Steppe territory. The article uses the comparative method as one of the main research methods, which made it possible to investigate the historiography of traditional institutions of Kazakh customary law. The problem-chronological method of study helped to divide the subject of the study into a number of problems because of which there used to arise discussions and disputes in the historiography of Kazakhstan, mainly regarding the process of collectivization and transition from a nomadic form of development to a settled way of life.

3 Discussion

An important role in the formation of the legal culture of Soviet Kazakhstan was played by Alash party. The vision on the future of Kazakhstan was embodied in the program of the

party with the idea of the future constitutional structure and status of Kazakhstan from the point of view of “Kazakh liberal democrats” [2]. The program consisted of 10 points and was a combination of socialist and bourgeois-democratic ideas [3]. For the first time in history, the program enshrines new foundations of the state system and the legal status of the indigenous population. The program indicated that Russia should become a democratic federal republic with Kazakh autonomy, religion should be separated from the state, and that fundamental rights, freedoms, legitimate interests and duties of citizens, legal principles, guarantees of the legal status of a citizen should be established. At the same time, the court of biys was still a just model of the national court in Kazakh society for members of Alash party.

The Alash party left portion of the legal proceedings under jurisdiction of the traditional court, simultaneously introducing the institution of a jury trial, which they rightfully considered as an attribute of a democratic republic and considered the future of Kazakhstan to lie in this legal institution. The innovative ideas of the members of Alash party radically changed the foundations of the traditional legal culture of Kazakh society.

With the advent of Soviet governance, a task was set to change the legal system of Kazakhstan, based on ideas of Soviet legality and justice. The formation of the Soviet legal culture began with an improvement of the pre-revolutionary judicial system. The new court system in Kazakhstan experienced great difficulties and suffered numerous costs while being established. There was a complete liquidation of all judicial bodies, law enforcement agencies, advocates, and prosecutors. The legal basis for the new structure of the judiciary was a signing of the Decree dated July 10, 1919, which stipulated activity of the arbitral tribunal, county court, district court and revolutionary tribunal. Before introduction of the codified Soviet criminal law, courts were guided by the “revolutionary justice” while considering cases, in other words, courts independently used to determine the corpus delicti and sanctions. At the same time, courts of biys, also called “Aksakal” courts, which examined cases on the basis of the customary law, continued to operate in Kazakh regions [3].

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The governing Bolshevik party believed that Kazakh society was being held “in captivity” by the patriarchal tribal remnants, therefore, taking into account the existing traditions and customs of the indigenous population, the party recognized the legality of the traditional courts and allowed customary law to remain in force, since none of them contradicted Soviet law [4]. At the beginning of the 20th century, the legal system of Kazakhstan was syncretic: Soviet judiciary blended into traditional courts. In the process of state revolution in 1917-1920, during conditions of the state crisis, the court of biys grew in influence as they were once more involved in criminal cases, including murder charges. Some traditional institutions such as kun and barymta were also being revived. Along with the ascension of the Soviet governance there were also taken measures to improve the judicial system in the territory of Kazakhstan. In the year 1923 there was introduced the “Regulation of the Judicial System of the Russian Soviet Federative Socialist Republic (RSFSR)”, 1922.

As a result, there were introduced new legal acts as well as new legal institutions, which were being consolidated on a legislative basis and while replacing the old system of customary and imperial law, resulted in the formation of a new Soviet legal system.

However, it should be noted that there was a considerable doubt in regards to adoption of the new legal system in Kazakhstan. The court of biys, which acted as the arbitration court since the establishment of the Soviet governance, soon was banned. It was noted by Kazakhstan researchers of Kazakh customary law Z.Zh. Kenzhaliev and S.O. Dauletova that in terms of politics and activities of the Councils on the abolition of customary law and traditional legal institutions the court of biys went through three stages before leaving the historical arena and giving way to the “new” Soviet law. The first stage – began at the moment of the establishment of the Soviet governance until the formation of the Kazakh Autonomous Soviet Socialist Republic (1917 – 1920), during which the Soviet government recognizes the common law of the Kazakhs, demonstrating tolerance to traditional institutions of the people of Kazakhstan. The second stage – began at the moment of the formation of the Kazakh Autonomous Soviet Socialistic Republic (1920 – 1925), when permissive policies on the part of the governing political party and state bodies turned to the idea of combating remnants of the patriarchal-feudal norms of the adat, abolishing the institutions of barymta, kun, kalym, polygamy, amenguerism, and abolishing the court of biys as well as the Aksakal court. The third stage – began in the year 1925 when there was a struggle with the Aksakal courts on the basis of the federal criminal law [5]. In chapter X of the article 203 of the Criminal Code of the RSFSR there was imposed a sanction on making decisions in accordance with the customs of the indigenous people. Despite survivability of the customary law since joining the Russian Empire, the court of biys was abolished in the Soviet period.

After abolishment of the arbitration courts as well as revolutionary tribunals in the year 1923, there was introduced the “Regulation of the Judicial System of the RSFSR”, 1922. The new court system was as follows: a people’s court composed of one judge; a people’s court composed of one judge and two lay assessors; provincial court; Kazakh branch of the Supreme Court of the RSFSR with cassation and judicial boards [3]. New people’s judges, unlike biys, were elected by the executive committees of the provincial councils. The composition of the elected lay assessors, was mainly represented by workers, peasants, representatives of medium-sized farms, prosperous peasants, traders, however, this judicial body was not represented by the industrialists. The people’s courts under the Regulation of the Judicial System were

recognized as a new source of lawmaking. The people’s court was absolutely free and guided, first of all, by its legal consciousness, as a result of its main objective - criminal repression [6].

In our opinion, Kazakh customary law was at first convenient for the new government for several reasons. Firstly, the period was marked by a general crisis of the new judicial system. Secondly, the introduction of legal proceedings by arbitration courts filled only gaps in the legal regulation of the Soviet legal system. However, there was introduced a new concept of revolutionary law into practice, and in accordance with it, the work of traditional courts began to complicate the work of arbitration courts. The successful operation of the court of biys as well as the Aksakal courts did not give way for arbitration courts to develop in the region, as a result, these courts were declared as relics of the patriarchal-feudal norms of the Adat and stood in opposition with Soviet legal system. The period of 1926 to 1934 was marked by the fact that judicial functions were carried out by punitive bodies, such as the Emergency Commission to Combat Counter-Revolution and Sabotage, afterwards known as the State Political Directorate under People’s Commissariat of Internal Affairs of the Russian Soviet Federative Socialist Republic and the Special Council with judicial functions [7]. Thereby, at the beginning Soviet judicial system approved traditional courts, however, subsequently it abolished them and was further presented as a three level judicial system.

National-state demarcation of the Central Asia was one of the most important events of the first years during development of the Soviet state and law. In the year 1921, there was a delimitation of the territories of Kazakhstan in the west and north of country as well as Western Siberia. On September 16, 1924, the Emergency Session of the Central Executive Committee of Turkmenistan adopted a resolution on the national-state demarcation of the republics of Central Asia [8]. As a result of the national-state demarcation of Central Asia, the unification of Kazakh lands in a single Kazakh Soviet state was completed. Due to these events, there occurred an increase of the population and the territory in its historical borders and as well as there was increased economic potential of Kazakhstan. In December 5, 1936, Kazakhstan, being an autonomy of the Russian Soviet Federative Socialist Republic, was transformed into a union republic and became known as Kazakh Soviet Socialist Republic (Kazakh SSR) [9].

Historically Kazakhstan was a country with a nomadic form of way of life; as a result, the task to enforce adoption of the settled way of life by the nomadic as well as semi-nomadic herders became an acute matter. In August 1931, leadership of Kazraykom instructed local party and Soviet authorities to facilitate the process of collectivization of semi-nomadic and nomadic Kazakh peasants as well as to facilitate the process of their transition to settled way of life. By the year 1938 the process of transition of Kazakh nomads and semi-nomads to settled way of life was basically completed [10].

In our opinion, there were not taken into account the laws of the traditional Kazakh economy in the process of the Soviet reform in Kazakh Autonomous Soviet Socialist Republic during transition to a settled lifestyle. The prevailing nomadic form of development, which combined stall and free pasture livestock since ancient times, was irreparably damaged. As a result, there took place mass migration of Kazakh population outside Kazakhstan borders, the number of livestock decreased, transition to agriculture was carried out by violent methods, there also took place an outbreak of epidemics and hunger. The settlement process that ended by the year 1938 is regarded by many contemporaries, state scientists and historians of both Kazakhstan and other members of Commonwealth of

Independent States (CIS) as a deep economic depression and tragedy of Kazakh people.

Along with reforms to eliminate nomadic economy, there was formed a new system of law based on the system of principles of Soviet law. This system, first of all, denied the continuity between the legal system of the Soviet state and pre-revolutionary tsarist law, and therefore Romano-German law as well. Secondly, the concept of natural law; division of the right into private and public; rights and freedoms as a human as well as a citizen as the highest legal value; equality of all forms of ownership – all of these were denied by the Soviet lawmakers. Thirdly, there was officially established the priority of state interests over public and private interests [11].

The legal system of Kazakhstan underwent a thorough reform, in connection with the emergence of a new concept for the development of the Soviet state and law. Such legal institutions of Kazakh common law as *kun* and *kalym* become abolished. In 1920, there were adopted decrees of the Council of People's Commissars and the Central Executive Committee of the KASSR "On the abolition of *kun*" and "On the abolition of *kalym*", which stipulated criminal liability for violation of these decrees. *Kalym* was recognized as a relic of antiquity, reducing the status of a woman to the position of a product. The decree "On the punishment of polygamy and forcing a woman to marry a Kyrgyz" became a normative act that provided for criminal liability for compliance with legal customs and traditions. This Regulation recognized polygamy as a criminal offense; as a result, not only people entering into a marriage were recognized as guilty parties, but also officials who registered such marriages. This demonstrates a high legal level of this legal act, which stipulated criminal liability of special entities - officials. In the Decree "On the marriage law of the Kazakhs" polygamy is stated as a custom that deeply humiliates the moral dignity of a Kyrgyz woman and that creates enslavement and exploitation of her personality. In the year 1921, this policy of combating remnants of the patriarchal-feudal norms of the *adat* was continued by the adoption of the Decree of the Central Executive Committee "On Combating Cattle Breeding", which was directed against the implementation of *barymta*. *Barymta* has existed in traditional Kazakh society since ancient times and was used as a method to restore a person's violated rights. C.Ch. Valikhanov wrote that *Barymta* is an institution of Kazakh customary law, resorting to which there had to be a reason, while for recognition of its lawfulness – there had to be a compliance with certain conditions governed by traditional Kazakh law [12]. The abolition and prohibition of legal institutions of Kazakh customary law has changed the whole future fate of Kazakhstan. Soviet governance abolished the following: the nomadic way of life, Kazakh customary law and private ownership of livestock and rangelands. Taking into consideration all repealed and abolished legal institutions of Kazakh customary law with the help of new decrees and decisions of the Soviet government, it can be stated that there was embedded a new concept of revolutionary, proletarian law in Kazakhstan as a means of implementing the dictatorship of the proletariat.

In the year 1922, during the period of the new economic policy, there were introduced first Soviet codes such as: the Code of Criminal Procedure (May 25), the Criminal Code (May 26), the Civil Code (October 31). The new Criminal Code was distinguished by a high legal technique in the field of criminal law. Despite the complexity and inconsistency of the period of formation of Soviet criminal law and its codification, a lot of norms and institutions embedded in it turned out to be viable, which indicates the continuity of the provisions prevailing pre-revolutionary science and law [13]. A legislator

of that time uses the achievements of the criminal-law science in subsequent adopted normative acts, for example, dispositions of the articles on property crimes did not undergo any special changes. The Civil Code of 1922 consisted of 435 articles and included four sections: the general part, property law, law of obligations, inheritance law, which were divided into chapters (except for inheritance law). A special feature of this codified act was that it was the first civil code in the world of a socialist state. The legislation introduced three types of ownership: state, cooperative and private, therefore, special emphasis was placed on the form of ownership.

Thus, new codified acts in Kazakhstan shaped the formation of the Soviet criminal and civil law. During the period of the new economic policy socio-political changes as well as changes made to the legal structure led to significant changes in the legal culture of Kazakhstan.

During this period Kazakhstan actively participated in the rule-making process, trying to reflect the specifics of the republic in the adopted normative legal acts. In the year 1928 chapter X "On crimes constituting the remnants of a tribal life" is incorporated into the Criminal Code of the RSFSR. By the end of the 20s of the XX century, various governmental bodies adopted a significant number of regulations and as a result, there increased an urgent need to systematize law. In the year 1930 there was introduced "Systematic Collection of Laws of the Kazakh Autonomous Soviet Socialist Republic in force until 01.01.1930" and all laws as well as provisions were recognized as invalid [14].

The progressive development of Soviet legislation is evident, as Soviet legal idea achieved tremendous success in the field of codification of normative legal acts. The prerequisites for these successes were such processes occurring in Soviet law as a change in the sphere of legal regulation, differentiation and integration of the legal regulation of public relations, which between 1960-1980 consequently led to the development, codification and adoption of such progressive normative legal acts, from a legal point of view, as the Civil Code, Fundamentals of Civil Legislation, the Code of Labor Laws, the Code on Marriage and the Family, a collection of current legislation in fifty volumes and, finally the Constitution [15].

The legal status of women in Kazakhstan should be noted as a separate issue. Until the beginning of the 20th century women in Kazakhstan were deprived of suffrage. Soviet modernization emancipated women, separated religion from the state, and formed a different pathway of social life. Sustainable models of gender relations also underwent modifications with the beginning of the Soviet transformations. It was women who were exemplary model of consciousness, discipline and responsibility. The historic achievement was the emancipation of the women of the East. The Tajik Autonomous Soviet Socialist Republic adopted normative legal acts enshrining the legal status of women: the Decree "On the Rights of Workers and Revolutionary Legality" of October 9, 1925, the Decree "On the Rights of Working Women of the Tajik Autonomous Republic and the Need to Combat Their Enslavement" of December 12, 1926, the Decree "On the provision of benefits to women to protect them through judicial institutions against violence and insults regarding the removal of the *burqa*" [16]. On June 14, 1921, for the first time in history there was adopted a Decree of the Central Executive Committee of Turkestan Soviet Socialist Republic on the abolition of *kalym* in Kazakhstan; in the year 1922 there was established a legislative responsibility for coercion to a marriage; in the year 1924 there was passed a law prohibiting bigamy and polygamy; in the year 1925 there was adopted a law on punishment for marriage with minors, bride kidnapping

and amengerstvo [17]. Since year 1924 there was introduced a holiday "Day of the abolition of kalyam" in Kazakhstan as well as other republics of Central Asia (Amanzholova, 1930). With the beginning of the Soviet transformation, women began being more involved on economic and political level as well as in social structures and relations.

In our opinion, the new system of governance fundamentally changed the idea of the social purpose of women by creating all the conditions for their participation in all spheres of public life.

4 Conclusion

In 1921 – 1922 there was carried out a land reform in Kazakhstan, as a result of which, most of the land was transferred to the working people of Kazakhstan. A consequence of this reform, Kazakhstan was provided with cattle drive paths, summer and winter pastures as well as hayfields.

There took place the abolition of obsolete traditional institutions of Kazakh customary law, such as kun, kalyam, polygamy, amengerstvo, barymta and the process of emancipation of Kazakh women. There also was created a national Kazakh statehood in the form of a union republic.

As a result of collectivization and transition from a nomadic form of development to a settled way of life, the negative outcome included a catastrophic reduction in the number of livestock, a decrease in the Kazakh population due to mass migrations, starvation and epidemics.

Conclusion. Summarizing the above, the following should be noted:

- Abolishment of the customary law and traditional legal institutions;
- Creation of a new concept of law and formation of the Soviet legal culture;
- Elimination of patriarchal hierarchical value and structural stereotypes in relation to women;
- Collectivization and transition to sedentary habits are regarded as a deep economic depression and tragedy of Kazakh people, however, at the same time, there is a progressive economic development of Kazakhstan;
- Development of the Soviet state and law, development of constitutionalism in the Kazakh SSR and as a consequence, adoption of a new normative legal acts, and the creation of a new court system in Kazakhstan.

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