

KİTAP ÖZETİ/BOOK REVIEW

THE HISTORY OF STATE AND LAW OF KAZAKHSTAN*

By Zhamaladen.I. Ibragimov; Ministry of Education and Science of the Republic of Kazakhstan, L.N Gumilyov Eurasian National University, Astana, 2009. ISBN 9965-31-086-6.

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In generally, book gives information about the development of Kazakh law in different periods of history which is related with political, historical situations. The content of book consist of nine chapters. The proposed book about the History of state and law of the Republic of Kazakhstan includes basic information about the first state structures and legal systems which were formed on the territory of Kazakhstan, the political and legal structure of the Kazakh khanate, the political and legal development of Kazakhstan as part of the Russian Empire, the formation and development of the state and legal system in Soviet Kazakhstan and the formation of state and legal structure of independent Kazakhstan. As above mentioned, according to the content of book, the history of law and state of Kazakstan is divided for four terms.

Firstly, at the beginning of book, the author answer to questions about how the first states are appeared in the territory of Kazakhstan. In the first Millennium BC the territory of Kazakhstan was inhabited by Sak-Scythian tribes. They were called "Scythian" from the Greek Scriptures, and "Scythian" from the Persian Scriptures. Scythian tribes were divided into several associations, formed the first state and their

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characteristic legal systems¹. Their records are found in the writings of Herodotus. In Sak tribe's state was developed military-legal system, based on the Royal power. The development of nomadic society in III century BC led to the formation of Empire in a complex state-legal system. In Kazakstan territory were many empires which were formed by various nomadic tribes. For example, Turk kaganat, it means the state of Turk. After them one of the main state structure which was formed on the territory of Kazakhstan is the state of the Huns.

But, according to book of, russian historic with turk origin, L.Gumilev, huns appeared in Central Asia, exactly in the borders of Mongolia and China², on the another hand at the moment kyrdyz historics relate its origin with Hun Empire.

This was the first most powerful state of nomadic tribes. As we know from world history, Empire of Huns was powerful, independent which could get international relations with another empires like China, Persia. The main point of it was a legal system of Hun's Empire. The emergence of a complex state system has allowed the society to appear legal regulation. The source of the legal basis of the Huns was custom. According to Chinese notes, the laws of the Huns were "easy and easy to execute". The trial lasted for 10 days and the number of prisoners did not exceed ten. For committing serious crimes, the death penalty was imposed, the property of persons who committed theft was confiscated, and huns put a seal on the face who committed serious negative actions. At the same time, Huns had a code of laws which regulated all legal system in daily life. Therefore, according to the code of law issued by Atylla, the death was a punishment for violation of military discipline and refusal of military service. With regard to the right of ownership, the nomadic societies was common to all properties. For example, the property of a private

¹ Zh.I. Ibragimov; Ministry of Education and Science of the Republic of Kazakhstan, L.N Gumilyov Eurasian National University. - Astana: -, 2009. - 134, [2] p. : picture, scheme. - The bibliography: b. 127-129. - ISBN 9965-31-086-6.

² Gumilev L.N. Hunnu. The Three Kingdoms in China. Huns in China. - M.: Iris-press, 2008. -- 624 p. - (Library of history and culture). ISBN 978-5-8112-3115-7.

family, communal property, military-Patriotic associations and state property were unusual phenomena. In addition, it was the Empire of Genghis Khan, which had a huge impact on the formation of the ancient Kazakh law. He made a number of changes to both the established state system and the legal system. With the arrival of the Mongols, in the Kazakh legal system introduced a set of new laws and rules as "Great YASA" of Genghis Khan which separated military power and civil power³. In the system of state administration of the great Empire, at first its ruler was considered a Kagan. The system of government is divided into military, legislative and administrative. After the collapse of Genghis Khan's Empire, many states were created by different nations, like Kazakh khanate Uzbek khanate. It was a combination of customary laws and shariat.

We can say that the formation of a separate Kazakh khanate in the 15th century was the beginning of the real Kazakh law. Because the Kazakh khanate formed its own legal system. In 1465-1466 on the basis of various political and economic conditions on the Kazakh land the Kazakh khanate was created. The Supreme head of state of the Kazakh society became Khan. The Supreme legislative power of the Kazakh khanate became the Congress of representatives of maslikhat or Kurultai-sultans and communities. Most of the population gathered in the work of the Congress, so in some records the maslikhat was called the people's Assembly. On the other hand, Khan had a military and civil power. Khan was considered as a judge of the supreme court. And He was able to say judgement to disputes between different nationalities, tribes⁴. The court system consisted of two stage: first is Khan's court, which means the Royal court and second one is court of bie. Bies are people who elected by population to decide of diputes. In my opinion some elements of Kazakh state legal system is a bit similar with parliamentary governance. In resolving court cases, Khan guided to usual rules of law. The Khan's court consisted of 6

³ Hara-Davan E. Genghis Khan as a commander and his legacy. Elista, Kalmyk book. Ed., 1991, 196 p.

⁴ Taishigasova S. Public Buildings of the Kazakh Khanate (XV-XVIII centuries) // Kazakh History. - 2009. - № 2. - p. 57-59.

members. Regions were headed by sultans, who had a military and administrative power. According to the state structure, the Kazakh khanate was considered as a unitary state. On the territory of Kazakhstan for hundreds of years used its own law, customary rights-rituals and traditions. It were built on a regulative basis through state power and formed public relations. The customary daily rights of the Kazakhs were established by their custom. For many years the established habit or law developed in connection with the basic life of nomadic society in socio-economic and political-social life. Between XV-XVIII centuries legal system of Kazakhs was based on traditional custom. There were three code of laws which announced by Khans, and regulate relations in society.

It consist of seven chapters: the first was a land dispute; it established property rights and norms for the use of pastures and water resources, the second was the conflict about widowed womens;, The third was family and marriage law, fourth, the rules that systematize the judicial process, fifth, the rules of law relating to public administration and military affairs, sixth and seven, the rules of criminal law related to the payment of value. Also this chapters had subsections which considered disputes deeper⁵.

In general, some Russian authors described Kazakh society as an undeveloped because of unfair trade relations where Russian sellers appreciate their goods very expensive. However S.Zimanov, person who is considered as a builder of Modern Kazakh law, said in his book about various kind of arrangements and brances of law⁶. The author of this book also refers to aforesaid informations and depicts ancient Kazakh law as systemized and powerful.

The weakening and external position of the Kazakh khanate in 30s of the XVIII century contributed to the entry of its part into Russian Empire. The Kazakh

⁵ Margulan A. Kassym Khan's legal way. - The Kazakh Soviet Encyclopedia. 6 volumes. - Almaty: School, - 42 p.

⁶ Zimanov S.Z. The ancient world of Kazakh law and its origins. – Almaty.

khanate consisted of 3 parts and at the same time the Kazakh-Dzungarian war weakened the position of the khanate and it began to gradually become part of the Russian Empire. The first agreement was concluded in 1731 and it appeared as an allied agreement between the two States, but the Russian Empire began to colonize Kazakhs in this way. Regarding of this decision of authorities in that time, there are many disputes between historicists, politics.

During this period, Kazakh state did not cease to exist, but Russian Empire has always exerted its influence to domestic policy. And against this were such khans as Abylay, Kenesary, and were great rebellions from the site of inhabitants. From 1822 to 1824 the Russian Empire made great reforms to the legal and administrative system of Kazakh state ⁷. The goal was to eliminate the Khan's power in Kazakh state. The bie court, which was formed in ancient times, was abolished, instead of it introduced the military courts of Russian type. In generally, Russian Empire ruined the Kazakh legal system which based on customs and traditions. The Russian Empire divided the Kazakh land into various administrative-territorial units and independently appointed their leaders, allowing them to regulate domestic and foreign policy.

The change in Court system consisted traditional court but Russian Empire tried to destroy them by forming courts of instances:

- 1) Criminal: treason, robbery, barymta, clear disobedience to the established authorities
- 2) Claims: dealt with the participation of biys in villages
- 3) The complaints to the regional administration

In Kazakhstan, the law and court of Russian Empire were put into force, although the customary law and the court of Biy remained partially in force, which

⁷ Kasymbayev Zh.K. The history of Kazakhstan. - Almaty, 1997.- p. 59-60;

were limited and adapted to the new system of government. There were a establishment of a new judiciary, military and the judicial Commission. Russian government limited the influence of the Islamic religion. Religious Affairs of the Kazakhs were governed by the Orenburg mufti. The mullahs were subordinate to the General civil administration and through it to the Ministry of the interior. After the October revolution of 1916-1918, Kazakhstan became an integral part of Soviet Russia⁸.

From this period began to take shape a new system of law which existed more than the seventy-year, until 1991, Kazakhstan belonged to the legal family of the so-called "socialist law". This system was called as totalitarian system and Communist ideology. It was officially interpreted as class, expressing the interests of workers; seen as an instrument of political regime; it ensured the dominant interests of the state over personal and private property; the legal system was dominated by party directives, not laws; the principle of separation of powers did not apply, because the party which had a power subordinated to itself legislative, executive and judicial branches.

On March 26, 1937, the Congress of Soviets of Kazakhstan adopted the Constitution of the Kazakh SSSR.

The main provisions of the new Basic law repeated the norms of the all-Union Constitution, which was due to the priority of the Union law over the Republican legislation. The most important event was that Kazakhstan received the status of a sovereign state and the right to withdraw from the Union. Of course, these rules were largely formal and it was impossible to implement.

The Constitution of 1937 defined the following Supreme bodies of power and administration: the Supreme Soviet of the Kazakh SSR; the Presidium of the Supreme Council, which had the right to explain laws and adopt decrees within its

⁸ The Great October Socialist Revolution in Kazakhstan: Chronicle of events. Alma-Ata, 1967.

competence; the Council of Nation's Commissars, which is the highest Executive and administrative body of state power of the Kazakh SSR. The strengthening of the regime of Stalin's personal power led to the fact that a narrow circle of the dictator's confidants replaced not only the constitutional authorities, but also the party structures. This was especially evident during the great Patriotic war of 1941-1945⁹.

Serious changes in the system of public administration began only in the mid-50s, after the death of Stalin. The rights of the republics in the field of economy, financial and budgetary issues, issues of administrative and territorial structure were significantly expanded. In General, the new Constitution was based on the same principles and provisions as the old one. The Constitution of the Kazakh SSR of 1937 established the following links of the judicial system:

- Nation's court;
- Regional court;
- Supreme Court of the Kazakh SSR;
- Special court.

In the sphere of civil law, the USSR Constitution of 1936 and the Constitution of the Kazakh SSR of 1937 prohibited citizens from engaging in entrepreneurial activities and did not provide for the institution of private property.

Criminal procedure law also had the main purpose of applying repressive measures to suppress negative phenomena in the economy and public life.

In 1977, the Kazakh SSR adopted a new Constitution. The legal status of Kazakhstan under the new Constitution was dual. On the one hand, the Kazakh SSR was declared a sovereign state with the relevant rights and powers, on the other-the Constitution of the USSR enshrined the "unity of sovereignty of the USSR and all

⁹ A.V. Sharipov: History of Constitution Law of Kazakhstan: Article. KazNPU-2010
Almaty

Republics". In General, the new Constitution was based on the same principles and provisions as the old one.

In General, the development of law can be divided into two stages. In Stalin's time, until the early 50's the main trend was strengthening criminal repression and mass violation of legality, then with the mid-50's, the development of law to improve democratic principles.

The General crisis of the Soviet economic and political system led to the recognition by the authorities in the mid-80s that all system need for fundamental reforms. The government of Kazakhstan has started independent steps to reform the own political system.

In general, when author describe history of Kazakhstan under Russian Empire and USSR, in the most cases he emphasize disadvantages and sorrowfull, unfair actions to Kazakh nations. On the other hand, the opinion of Russian presses is against to them. They think that Kazakhstan got a lot of things being as a part of USSR. They gave this phrase as an evident. "The phrase attributed to Winston Churchill about the role of Stalin in the history of the Soviet Union is widely known: "He accepted Russia with nothing, and left it with an atomic bomb." And although Churchill did not say this, the essence is accurately and succinctly reflected. In fact, these are the words of the historian Isaac Deutscher from an obituary published on March 6, 1953 in the Manchester Guardian: "The essence of Stalin's historical achievements is that he got Russia plowing with wooden plows and leaves it equipped with nuclear reactors." In addition they asked: In your understanding, what does the era of Stalin mean for Kazakhstan?"¹⁰

The most important legal act was the "Declaration about the state sovereignty of Kazakhstan", adopted on October 25, 1990¹¹. In 1991 Kazakhstan

¹⁰ <https://ehonews.kz/chto-dala-sovetskaya-epoha-kazahstanu-mnenie-istorika/>

¹¹ [articlekz.com>article/7108](http://articlekz.com/article/7108)

announced its independence and signed its first constitution in 1993¹². The legal system of Kazakhstan is part of the Romano-German legal family. The development of constitutional law was strongly influenced by the French doctrine. The national law of Kazakhstan consists not only of normative acts adopted by the state bodies of the Republic of Kazakhstan, but also of international treaties and other obligations of the Republic. The Constitution of the Republic of Kazakhstan is the basic law of the state. It is also the legal basis for all other (constitutional and customary) laws and regulations. The constitutional Council exercises control over the constitutionality of all laws and regulations in the Republic of Kazakhstan. One of the most important features of the legal system of the Republic of Kazakhstan is the principle of supremacy of the Constitution. Kazakhstan is a state with a presidential form of government. The governmental power is divided into 3 points: legislative, executive, judicial power.

Conclusion

In conclusion, according to the content of book the formation of Kazakh law begins with the period of the Kazakh khanate.

Customary law (ADAT) system was dominated in the territory of Kazakhstan until the 1920s. It existed mainly in oral form, which was understandable for population. Customary law was archaic and contradictory, and its rules corresponded to the needs of the Patriarchal society of nomads. Some disagreements were in the decisions of bie court which use the decision of another case for a bit similar case. Also the influence of Shariat norms was in customary law of Kazakhs. Because Islam norms used with customary law in appropriate ways in terms of populations mentality. During the Soviet period, the reception of socialist law of the USSR was actually carried out in Kazakhstan until the end of the 1980s. The official

¹² Sartaev S.S., Nazarkulova L.T. The formation of the Constitution of the Republic of Kazakhstan: problems and prospects. - Almaty, 2002. -- 408 p.

legal system of the Kazakh SSR copied the law of other Union republics. And now, the legal system of Kazakhstan is a bit similar with another state-parties of USSR.