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FEATURES OF FORMATION OF STATEHOOD AND LAW IN THE REPUBLIC OF KAZAKHSTAN

Abstract. It is known that during the historical development the Kazakh people have passed the following types of statehood. First type: the nomadic state, which has been abolished after entry into the structure of the Russian Empire. Second type: the Soviet statehood, where Kazakhstan was the part of the former USSR. Third type of the state: independent statehood, sovereign Kazakhstan. The strategy of modern development of the Kazakh statehood is based on the unity of the country, ensuring national security. Here such phenomena as "integrity of the state", "the state and national security", "sovereignty of the state" are recognized as the supreme values of state and legal life. These ideas have been entirely enshrined in the Development strategy Kazakhstan - 2050. The concept "statehood" is wider, than "state". In the theory of state and law the state is defined as the political power with its own territory. At the same time the statehood is the most difficult complex of elements, structures, institutes of the public power and also the components of non-political character, caused by uniqueness of social, economic, political, spiritual and moral conditions of activity at the certain stage of development of the society. Thus, the statehood is the structure of elements and institutes, expressing the maintenance of the society and state.

Keywords: statehood, law, nomadic civilization, activity of the people, unity of the country, national security, integrity of the state, sovereignty of the state, political power, institutes of the public power.

During the many centuries of the historical development, since ancient times to the sovereignty and independence, our state is well-known all over the world; the Kazakh people followed the complicated and original path from the beginning of their ancient history, from the tribal states of the Kangyles and Usunes in Central Asia. These tribal states had close relations with China, the Huns Empire, southern Siberia, and the lands near the Ural Mountains. Economically, the state was based on extensive nomadic farming. The people's culture and language linked them to the branch of Turkish nomad group.

The first Kazakh state system was formed in the 6-th century within the Turkish Kaganate, stretching across lands from the Altai Mountains in the east to the Caspian Sea in the west, and from Semirechie up to Siberia. Most of the Turkish people continued tribal organization and nomadic way of life. There were already large areas of irrigated and cultivated lands occupied with gardening and vineyards. A lot of towns and settlements were established in ancient centuries. Indeed, at the head of the Turkish Kaganate was a Khan, with unlimited despotic power,with his servants, officials and military leaders.

The Usun union began to disintegrate in the 5-th and 6-th centuries, after successive invasions by the Altai Turks. These Kaganates were complex and stratified societies, consisting of aristocrats, urban traders, oasis farmers and pastoral nomads [1].

In the following centuries, the Kaganate was invaded many times, was in vassal dependence on neighboring China and was incorporated into the Karakhanid state (11-th century, until the beginning of the 13-th century). Despite the partial islamization of the Kazakhs in direct contact, the majority of Kazakhstan's tribal people continued their nomadic lifestyle, raising cattle on the vast steppe.The Kazakh ethno type was formed by people in more than 100 tribal divisions and nationalities, belonging to various ethnic, anthropological and racial types. Within the modern Kazakh ethno type, the mongoloid element accounts for about 70%.

At the end of the 15-th century and for most of the 16-th century, the Kazakhs were primarily the political union. The Kazakh Khanate and the Kazakh people were synonymous, as people formed by the

union of previously disparate clans and tribes of Turkish descent. They converged in the steppe lands around the Chu River and the Betpak-Dala Desert, where political void existed.

In the 17-th century under the rule of Khan Kasym, the Kazakh Khanate achieved political independence. The national name Kazakh means "free" in the sense of independence from other states, and freely moving in the vast steppes of Dashti-Qipchak. Thus, from the beginning of its own Kazakh Khanate, the idea of freedom and independence became the national idea of the Kazakh people.

The independent Kazakh Khanate was based on nomadic cattle, breeding and farming. It had a stable economy and ongoing political and cultural relations with its neighbors. The region supplied neighboring China, the Central Asia Khanates and Russia with the products of animal husbandry, such as cattle, skins, wool and fat, in exchange for wheat, textiles, tools and arms. In the Khanate, Jochi's descendants had dominant positions. Only the descendants could become khans or sultans. Representatives of the Kazakh tribal aristocracy (bii) could occupy the positions of tribal and aul chiefs (equivalent to aldermen). Economic, social and political relations were regulated by common law (*adat),* whose rules (ereje), were retained only in oral tradition, and passed from generation to generation, gradually becoming perfected. The*bii* were the experts of the law, who from time to time convened to clarify the rules. At the end of the 18-th century under the guidance of Khan Tauke the law was standardized under the seven most notable experts, who came to be known as*ZhietyZhargy* or "The Seven Rules". In Russian sources they were called the "TaukeKhan's Laws (or Acts)"; they represented as the type of Kazakh Common Law Code,which had great importance in Kazakh legal life [2].

The principles of*adat* were applied unequally; so sultans, tribal chiefs and the bii class enjoyed rather well-protected and privileged lives. Kazakh women, during and after the period of islamization, had much freer social, public and legal existence, than women in other muslim societies. They did not wear the face veil *(chadra),* and the first wife*(baibishe)* was the head of the family.

In spite of the heroic resistance and some military successes attained as the result of a temporary unification of the various zhuz under the three great*bii*leaders, ToleBii, KazybekBii and AitekeBii in 1723, Kazakhstan still remain besieged and had to turn to Russia for military assistance. It received this assistance in return for its eventual (in the 1730-s) incorporation into the Russian Empire [3]. The interests of the Tsar and his government in Kazakhstan and Central Asia primarily revolved around extending the size and reach of the Empire, and consolidating its ownpower at the expense of those peoples conquered.A new phase in the history of the Kazakh people begins with their incorporation into the Russian Empire. Until the 1820-s the Little Zhuz and Middle Zhuz retained their independence, while acknowledging dependence on Russia. However, the Elder Zhuz was finally formally annexed to Russia as the result of invasions against the Kokand and Khiva Khanates. The first conditions agreed to by the Middle and Little Zhuzes as they joined the Empire were:

(1) to recognize the sovereignty of the Zhuzes;
(2) to allow passage of Russian merchant caravans;
(3) to return Russian prisoners and deserters;
(4) to pay annual per capita taxes;
(5) to have relations with other countries only with Russia's express consent; and
(6) khans were force to send sons or other close relations to St. Petersburg as*amanats*(hostages).

The tsarist government, through the Ministry of Foreign Affairs and with the consent of the Military Department, appointed a vice-regent, who resided in Orenburg, exercised power and control in assuring the conditions of the above agreement. At the same time, the Russian military organized the Ural Cossack Army to patrol the border with the Zhuzes. Naturally, the tsar's vice-regent often interfered with the internal affairs of the Zhuzes, and continuously exercised oppression of the khans and local rulers. Nevertheless, these Zhuzes tried to maintain internal independence until the 1820-s. The legal status of these two regions within the Russian Empire resembled that of protectorates, which some Kazakh scholar's dispute [4].

In the 1820-s, Russia carried out pivotal reforms in the Zhuzes in order to establish semi-colonial regime. The khans' powers were nullified; their successors have received the titles of Russian nobility. The captive amanats received very directed and secular Russian military education, and were rewarded with lavish salaries. Furthermore, The Little Zhuz was divided into the regions for territorial administration with the governors, appointed by the vice-regent in Orenburg. The Middle Zhuz was

divided into areas called*okrug* and headed by sultans, elected by the local aristocracy and approved by Russian vice-regents. The Bigger (Elder) Zhuz had been conquered early on and was the subject of Russian military rule until the reforms of the 1860-s.

The Kazakh Khanate was relatively short-lived and generally unsuccessful political institution. The Kazakh state was unable and ill-equipped to maintain strong military presence in the steppe. The Kazakhs, though descendants of an indigenous warrior culture, were primarily pastoralist and more concerned with grazing than fighting. Their military organization, predicated on temporary periods of service, was no match for the Kalmyk forces [4].

In the 1860-s, Russia introduced a number of progressive reforms with the abolition of serfdom being most notable. Others included: universal military service; land and financial reforms; and improvements in citizens' legal status. At the end of the 1860-s a dual natured reform program, having progressive and colonial aspects, was introduced in Kazakhstan. Russia then divided Kazakhstan into three governorships: the first was Turkestan, with its center in Tashkent, which included Semirechie and all of Central Asia. The Steppes governorship, with its center in Orenburg, included a major portion of the Middle Zhuz; and the Siberian governorship, with its center in Omsk, included the territories of North and East Kazakhstan.

The governor's generals were appointed in Saint Petersburg, and all exercised administrative and military power. The general governorships were divided into*oblasts*(large administrative territories), headed by military governors. In Kazakh territories, the governors wielded military and civilian power, while in Russia itself the governors had no such military power. Oblasts were divided into*uezd*(district), governed by uezd heads. The hierarchy governing in Kazakhstan had clearly military/administrative character. The government apparatus consisted of representatives of Russia and all local nationalities. It was aimed at providing order in the Steppe: levying taxes; fighting crime; providing for an economy.

This system of management in Kazakhstan, as a part of the RussianEmpire, was kept with some changes until the 1917 revolutions of February and October. Its rather complicated legal system consisted of: Adat, the Common Law of Kazakhs, as well as Shariat or Muslim Law; and Russian Imperial law.

For the local populations of Kazakhstan, adat was the main source, of course. It better corresponded with the nomadic and semi-nomadic way of life. Norms of ShariatLaw were used mainly for regulation of some family relations, considering serious penalty for crimes against Islamic rules.

Russian Imperial Law had two kinds of norms. The first is civil law through which Kazakhstan was included into the general economic life of the Empire. Naturally, the law of ownership, the obligatory law of Russia did not differ from the analogues of European states and played a positive role in Kazakhstan. Criminal law and Administrative law played positive roles as more humane and civilized than that of Adat and Shariat.

Many works of Eastern, European, and Russian literature were translated into the Kazakh language, and thus the first Kazakh language newspapers were published. However, the Kazakhs continued to experience their formal and legal inequality in the Russian Empire. It was well known in tsarist Russia that social, professional and legally fixed inequality existed among the Kazakhs. Kazakhs had no nobility, nearly no mercantile or industrial class and no urban lower middle class. Further, since they were Muslims, Kazakhs were excluded from the privileges accorded only the Orthodox. Moreover, they had no representation among local elected officials and establishments, or the state Duma. For the Kazakh people, tsarism meant not only violent deprivation of primordial fertile grounds, but also the deprivation of an opportunity to employ their historical, primordial name "Kazakh". Historically, it was noted, that the Russian administration misapplied the term "Kirghiz-Kaisak" as evidenced through the records of imperial Russia.

Only the October Revolution brought some relief in the legal conditions for the Kazakhs and other aboriginal groups in the Russian Empire. The Soviets acquired tsarist territories and perpetuated the administrative structures. However, decisions of national problems were postponed until the establishing congress-UchreditelnoeSobranie. In 1917 Great October Socialist Revolution under the leadership of the Bolsheviks (Communists), headed by V.I. Lenin gaveall the power in the country to the soviet workers, peasants and soldiers' deputies. All the country, including Kazakhstan, entered a new stage of historical development.

The Great Decrees of October adopted at the 2-nd Congress of Soviets in 1917 were entitled "About Peace", "About Land", and also "About Nationalization of Factories, Railways, and Communications". There were also declarations about equality of nations and their right to self-determination, on abolishing

rank and its privileges, about gender equality, and the separation of church and state. For their victory against international armies they paid in millions of lives, destruction of the economy, hunger, and continued poverty.

Kazakhstan, along with the rest of the country, was the scene of fierce military struggles. In 1918, the southern region of Kazakhstan was joined to the Turkestan republic with its center in Tashkent. In 1919, a Provisional Committee was formed in Orenburg to manage the area of Kazakhstan in the ongoing Civil War, and to provide for the people's needs. Here, and other places, the population was largely Russian. Yet there were Kazakh supporters of the Bolsheviks, such as T. Ryskulov and S. Seifullin, as well as more democratic national elements.

In 1924-1925, on the initiative of the Central Committee of the VKP(B) (Communist Party) and the USSR government, a national- territorial demarcation was exercised on Kazakhstan and the Central Asia Republics. Indeed, for the first time in the modern history Kazakhstan now comprised all its historic territory. Thus, Kazakhstan formed its own soviet socialist state system, not complete of course, but still the part of the Russian Federation.

According to the census of 1926, Kazakhstan had a population, which included more than six million Kazakhs. During the first decades of the Soviet power in Kazakhstan new economic policy was exercised. Kazakhs were given back the lands, which had earlier been given to the Russian migrants. The economy quickly reconstituted, illiteracy was reduced, secondary schools and higher education centers flourished, new theaters, clubs, museums and reading halls were opened. Thousands of Kazakhs were sent to study in Moscow, Leningrad, Kiev, Novosibirsk, Saratov and Sverdlovsk to be trained for specialized trades and higher education. In nearly all oblast centers, pedagogical centers opened to train teachers for the national schools in Russian and Kazakh.

During World War II many millionsof people were evacuated to Kazakhstan from the western part of the USSR, a pattern which continued into the 1950-s. By the 1960-s Kazakhs constituted only about 32% of their republic's population. The policy of russification was established. Kazakh language and culture had both suffered: first, the Arabic alphabet variant, used for Kazakh, was replaced by new Latin substitute (distinct from others in Central Asia), and finally by stylized version of the Cyrillic (Russian) alphabet. Teaching of Kazakh in Russian schools ceased.

This period saw the creation of many institutions, including Kazakh State University, the medical institutes, women's pedagogical institutes, industrial, law, and many other institutes, as well as hundreds of specialized and secondary technical schools. The Kazakh Department of the All Union Academy of Sciences was established in 1945 inside the Kazakh Academy of Sciences, with many scientific institutions and research laboratories.

Twenty seven years of Kazakhstan's history as the sovereign state shows the greatest changes in our country. Within its framework, two main directions can be noted. First, there is state governing of the ethnic processes. The 1995 Constitution of Kazakhstan stated such democratic principles as civic approach to defining of people in the preamble. The principles of uniform and equal citizenship were fixed. All the principles of the Supreme Law gave no place for injury and claims of people against one another.

Second direction in the interethnic relations is the emancipation of the creative potential of ethnic groups.New form of ethnic self-determination principally differs from the previous situation in that it shifts stress from the collective level of national rights to a personal level. The role of legacy model, undoubtedly demanding serious conceptual elaboration and propaganda measures, growsrespectively.

In the conclusion we would like to note, that the transformation and modernization of Kazakhstan's society is not a single action, but rather a long process of changes, unfolding and yielding a clearer vision of the modern, independent Republic of Kazakhstan.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ МЕМЛЕКЕТТІЛІК ПЕН ҚҰҚЫҚТЫҢ ҚАЛЫПТАСУ ЕРЕКШЕЛІКТЕРІ

Аннотация. Белгілі болғандай, қазақ халқы тарихи дамуы барысында мемлекеттіліктің келесі түрлерінен өтті. Бірінші түрі: Ресей империясының құрамына кіргеннен кейін жойылған көшпелі мемлекет. Екінші түрі: Қазақстан КСРО құрамына кірді кеңестік мемлекет.Үшінші түрі: тәуелсіз мемлекеттілік, егемен Қазақстан.Қазақ мемлекеттілігінің қазіргі заманғы даму стратегиясы ұлттық қауіпсіздікті қамтамасыз ете отырып, ел бірлігін сақтауға негізделген. Мұнда мемлекеттің және заңды өмірдің ең жоғары құндылықтары «мемлекеттің тұтастығы», «мемлекеттік және ұлттық қауіпсіздік», «мемлекеттің тәуелсіздігі» сияқты құбылыстар деп танылады. Бұл идеялар Қазақстанн-2050 даму Стратегиясында толығымен бекітілген. «Мемлекеттіліктің» тұжырымдамасы «мемлекет» дегеннен гөрі кең. Мемлекет және құқық теориясында мемлекет белгілі бір аумақта саяси билік ретінде анықталады.Сонымен бірге мемлекеттілік – қоғамның дамуындағы белгілі бір кезеңде белгілі бір адамдардың өмірінің әлеуметтік-экономикалық, саяси, рухани және адамгершілік жағдайының бірегейлігіне байланысты элементтердің, құрылымдардың, қоғамдық билік институттарының, сондай-ақ саяси емес сипаттағы компоненттердің күрделі жиынтығы болып табылады. Осылайша, мемлекеттілік – қоғам мен мемлекеттің мазмұнын білдіретін элементтер мен институттардың құрылымы.

Түйін сөздер: мемлекеттілік, құқық, көшпелі өркениет, халықтың тіршілік әрекеті, ел бірлігі, ұлттық қауіпсіздік, мемлекеттің тұтастығы, мемлекеттің егемендігі, саяси билік, көпшілік билік институттары.

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ОСОБЕННОСТИ ФОРМИРОВАНИЯ ГОСУДАРСТВЕННОСТИ И ПРАВА В РЕСПУБЛИКЕ КАЗАХСТАН

Аннотация. Как известно, в ходе своего исторического развития казахский народ прошел следующие типы государственности. Первый тип: кочевое государство, которое было упразднено после вхождения в состав Российской империи. Второй тип: советская государственность, где Казахстан был частью Союза ССР. Третий тип государства: независимая государственность, суверенный Казахстан. Стратегия современного развития казахской государственности основывается на всемерном поддержании единства страны, обеспечении национальной безопасности. Здесь высшими ценностями государственно-правовой жизни признаются такие явления, как «целостность государства», «государственная и национальная безопасность», «суверенитет государства». Эти идеи были всецело закреплены в Стратегии развития Казахстан- 2050. Понятие «государственность» является более широким, чем «государство». В теории государства и права государство определяется в качестве политической власти в рамках определённой территории. В то же время государственность– этосложнейший комплекс элементов, структур, институтов публичной власти, а также компонентов неполитического характера, обусловленных уникальностью социально-экономических, политических, духовно-нравственных условий жизнедеятельности конкретного народа на определенном этапе развития общества. Таким образом, государственность - это структура элементов и институтов, выражающая содержание общества и государства.

Ключевые слова: государственность, право, кочевая цивилизация, жизнедеятельность народа, единство страны, национальная безопасность, целостность государства, суверенитет государства, политическая власть, институты публичной власти.

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