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Convergence of Customary Law and Sharia in the Kazakh Steppe Based on Russian Reports (First Half of the 19th Century)

Convergencia del derecho consuetudinario y la sharia en la estepa kazaja según los informes rusos (primera mitad del siglo XIX)

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RESUMEN

En el siglo XVIII, el Imperio ruso entró en tierras kazajas. Contribuyó a la difusión del Islam entre los kazajos. A principios del siglo XIX, el pluralismo legal apareció en el territorio de la Estepa. El derecho consuetudinario y la sharia se mezclaron en el proceso de desarrollo paralelo, se complementaron y finalmente encontraron la opción más aceptable para la convivencia. La elección entre diferentes prácticas judiciales, es decir, la sharia o el derecho consuetudinario, en el territorio de la Estepa llevó al hecho de que el gobierno ruso finalmente apoyó el adat para reducir la influencia del Islam en la población local.

Palabras clave: Sharia, derecho consuetudinario, pluralismo jurídico, biys

ABSTRACT

In the XVIII century, the Russian Empire entered Kazakh lands. It contributed to the spread of Islam among the Kazakhs. By the beginning of the 19th century, legal pluralism appeared on the territory of the Steppe. Customary law and Sharia mixed up in the process of parallel development, complemented each other, and eventually found the most acceptable option for coexistence. The choice between different judicial practices, i.e., Sharia or customary law, on the territory of the Steppe led to the fact that the Russian government eventually supported the adat in order to reduce the influence of Islam on the local population.

Keywords: Sharia, customary law, legal pluralism, biys.

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INTRODUCTION

The history of traditional nomadic societies has constantly attracted the attention of the research community. The interest of both domestic and foreign scholars is observed both in the early historical time and at the present stage (Asfendiarov, Kunte: 1935, 298; Pochekaev: 2008, 51-58; Mazhitova: 2014, 129-136; Mazhitova et al.: 2016, 1-7). Among the issues that arouse great interest of researchers are the issues of the functioning of the legislation intended for the constituent parts of the empire.

In the paper general scientific and specific methods of historical and historiographic research are used that include the methods of objectivity and comparative analysis.

In historical science, it was firmly established that Islam by the beginning of the 19th century was not widespread among Kazakhs. The main reasons for this conclusion of researchers were the following factors. Firstly, the Kazakhs, engaged in nomadic and semi-nomadic cattle breeding, were on the periphery of Muslim civilization. The seasonal nature of the economy made it impossible to study the basic canons and norms of Islam, so it did not find favorable soil for its development. Secondly, the norms of customary law that existed among the local population regulated patriarchal-tribal relations, thereby meeting the requirements of the Kazakhs and allowing the integrity of the nomadic collective to be maintained. The basic norms of the adat law were interpreted by the biys, to which Kazakhs resorted to help to resolve conflicts. None of the reforms that were carried out on the territory of Kazakhstan at different historical periods on the islamization of the population had a positive result – only a few zealously adhered to its canons: the adat continued to play a leading role in relation to Sharia in resolving legal issues in a nomadic society.

The adat maintained its priority position until the 18th century. At this time, the entry of Kazakh lands into the Russian Empire actualized the task of studying the Kazakh society, including those traditional institutions that played a decisive role among nomads, before the Russian government. The scarce ethnographic materials available did not allow to fully create an objective picture of the life of new subjects, which significantly complicated the work of conducting administrative and legal measures in the region. Even the decree of Catherine II of April 30, 1778 on the drafting of the customary law of the Kazakhs did not solve the problem. The difficulty of the task was the lack of a written codification of customary law; the nomadic way of life of the Kazakhs also interfered. Therefore, as N.A. Sukhomlinov noted, it is not surprising that even at the beginning of the twentieth century the right of the Kazakhs “has remained “a dead letter” so far! Of course, the codification of foreign customs is not an easy task, it’s 120 years, whatever you say” [Russian State Historical Archive (RSHA). Fund 427, Inventory 1, Case 283, Sheet 5].

ACTIVITIES FOR THE ISLAMIZATION OF THE KAZAKHS IN RUSSIA

One of the steps to include the region in the scope of Russian relations was the Islamization of the Kazakhs, which was considered by the Russian government as a civilizational factor of the empire in relation to the nomadic outskirts. To this end, the territory of the Kazakh steppe became subordinate to the Spiritual Administration of Muslims of Russia, which opened in 1788, one of the functions of which was the spread of Islam among the Kazakhs. In addition, the construction of mosques, the appearance of mullahs was supposed by the Russian administration to help strengthen the position of Islam among nomads.

How successful the process of Islamization of the population was can be judged on the basis of customary law fixed in several versions by Russian researchers at the beginning of the 19th century. Thus, in the note by Y.P. Gaverdovsky, who visited the western regions of the Kazakh steppe (1803–1804), it is written that the main dogmas of Islam were seen by the Kazakhs in “... polygamy, which is brought here ... to extremes and <not to> eat pork meat. Praying and ablution are performed very rarely, sometimes instead of water they are wiped with dust, sand”. All this allowed Y.P. Gaverdovsky to conclude: “The Mohammedan faith does not produce any disagreement in them, nor general enthusiasm, as in other peoples professing this faith”

(Haverdovsky: 2007, 440-441). In addition to the indifferent attitude of the Kazakhs to Islam, in the materials of Y.P. Gaverdovsky, the information on Sharia norms is not found. There are none of them in the record of the foreman of the Zhappas clan, K. Shukuraliyev, recorded by G. Spassky and published in the journal "Siberian Herald" in 1820.

The first written codification of Sharia norms is found in the collection of the Siberian Committee (1824) and in the work of A.I. Levshin (1832), which, for example, indicated the application of Islamic law relating only to crimes such as blasphemy, apostasy, as well as punishments for these crimes (stoning, deprivation of inheritance).

Data on the law of the Kazakhs of the Younger Zhuz, collected in the 1840s by officials of the Orenburg Border Commission, speak of strengthening the position of Sharia. The fact is that the available materials did not give a complete picture of the administration of the region about the activities of the courts of biys. In the 1820s – 1840s, the Russian administration carried out a number of reforms ("Charter on Siberian Kyrgyz", "Charter on Orenburg Kyrgyz", "Regulation on Orenburg Kyrgyz", "On a separate Administration of Siberian Kyrgyz"). Their goals were weakening the executive, judicial and legislative powers of leaders of nomadic communities; the creation of a local administrative administration that is trusted by the population and implements decisions of the Russian authorities in a nomadic environment; modernization of traditional legal (customary law, court of biys, etc.) institutions with subsequent painless incorporation into Russian legislation and legal proceedings. However, the reforms carried out in these decades only partially solved the goals that were set, they became a kind of the first stage in this direction.

COLLECTION AND SYSTEMATIZATION OF THE DATA IN THE WRITTEN CODE OF THE ADATS OF THE KAZAKH SOCIETY

The upcoming modernization of Kazakh society and the further incorporation of customary law into the scope of all-Russian legislation have again updated the tasks of collecting information and drawing up a complete written code of adat on their basis. Therefore, in 1844, the Orenburg Border Commission was entrusted with an important mission to collect materials on the Advocate Law of the Kazakhs. As a result, at the end of 1845, the Orenburg Border Commission invited its officials serving in the Kazakh steppe to collect oral information about the customs of the people that have the force of law and submit the collected material to the Border Commission by April 1, 1846. Received reports from Lieutenant Aitov, the provincial secretary Beglov, the junior interpreter Lukin, the trustees of Alexandriyskiy, Kostyrin, the correspondence clerks Yachmenev, Sosnovsky, Belozyerov, Polovorot are in many respects similar and had the character of official letters. Despite this, the material presented is of some interest. Thus, in Aitov's report, in the section on the marriage relations of the Kazakhs, the following provision is found that "the marriage is performed in the aul of the bride according to the Mohammedan rite". In the course of the proceedings, the biys used the oath as a means of proving the guilt or innocence of one of the parties, while relatives "known for their best behavior and tested in knowledge of the rules of the Mohammedan law" took part in it (Materials on Kazakh customary law: 1998, 103-105). According to Lieutenant Aitov's report, the provisions of the Sharia were also applied in the burial of the dead. Similar information can be found in the reports of other officials of the Border Commission.

However, as mentioned above, the information was incomplete and fragmentary. Therefore, to eliminate these shortcomings, in 1846, the Orenburg military governor Obruchev made a decision to send special assignment officials, d'Andre and Shershenevich, to the Kazakh steppe to complete the collection of materials. Before the trip to the steppe, the officials were given an instruction in which, in addition to the importance of "... a government goal, for which it is proposed to collect and put in order the customs of the Kyrgyz (hereinafter – the Kazakhs. – Authors)" [Central State Archive of the Republic of Kazakhstan (CSA RK). Fund 4, Inventory 1, Case 2380, Sheet 163], in paragraph 11 it was stated that "the biys and other persons who appear to ...

repair the court or reprisal – in sentences and decisions are guided by provisions based on a special interpretation of the person's duties under Sharia (underlined in the document), therefore, on the Alcoran, the original source of the legislators, as well as on the stories inextricably with it, or a collection of legends about the sayings of Mohammed and his disciples, recognized by Muslims as saints. A search for the root foundations of Kyrgyz people's law and, if possible, a determination regarding Alcoran would be very useful" [CSA RK, Fund 4, Inventory 1, Case 2380, Sheet 166]. Therefore, the officials were suggested not only to separate the Sharia from the adat (the fundamental foundation of Kazakh law), but to a certain extent confront them with each other.

In the funds of the Border Commission, cases were found, in which only drafts, reports and reports of d'Andre were presented. Having stepped into the steppe on July 13 from the Iletskaia Zashchita fortress, together with a detachment of Colonel Blaramberg, d'Andre proceeded to question the biys of the Western and Middle parts, "known in the horde for their knowledge of Kyrgyz customs". Just a few days later he wrote a report to the Border Commission, in which he asked to translate the Kazakh law applied by nomads from Arabic, as "... the college secretary Grigoryev (he participated in the trip as a translator. – authors) was recalled back due to his ignorance of the Arabic language at all" [CSA RK, Fund 4, Inventory 1, Case 2380, Sheet 47]. After spending two and a half months in the steppe, questioning the famous biys gathered by the sultans-rulers, d'Andre in September of the same year, summing up his work, wrote to the Border Commission that "he achieved his goal, questioning in detail about everything that corresponded to the programs based on the instructions given by Your Excellency" [CSA RK. Fund 4, Inventory 1.401, Sheet 142 turnover].

Already in November 1846, d'Andre presented the collected material in the form of a code of customary law. One can imagine how difficult he was facing the task of separating Sharia from the adat, since the codex he wrote was in many places depleted with references to the Koran. For example, he wrote: "In unimportant cases, the basis of the trial of biys is our own mind and experience. For matters of more importance, the biy resorts to Alcoran" [CSA RK, Fund 4, Inventory 1, Case 2794, Sheet 54]. Or cases of special importance "are no longer served according to customs, but on Alcoran" [CSA RK, Fund 4, Inventory 1, Case 2794, Sheet 54, Sheet 64]. Drafts of d'Andre give examples of Sharia punishments. For example, "Alcoran's determination of the number of 100 and 80 strokes for an important and 3 strokes for an unimportant crime cannot be canceled by biy" [6, p. 170]. The fixation of Sharia norms in resolving conflict issues did not at all preclude the use of adat, which remained common in a nomadic environment. At the same time, the materials of d'Andre allow to trace the emerging tendency towards a relative merger of the legal norms of adat and Sharia. Of course, the norms varied both in the degree of punishment, and in assessing the severity of an act. However, their mutual influence can be traced on the example of penalties. Thus, "punishment for any guilt (other than a crime against the faith) can be replaced by a ransom (tuguz). Alcoran", or "the measure of punishment when repeating the same misconduct does not change up to 3 times. For the commission of the same act for the 4th time, the death penalty or payment (ransom) was determined" (Materials on Kazakh customary law: 1998, 170). In these and other cases, the norms of adat and Sharia are seen complemented each other, forming a mixed system of law. Moreover, Sharia and adat have found the most acceptable variant of coexistence. It consisted in the fact that, according to Sharia, matters relating to religion and family relations began to be resolved, all other issues were regulated according to customary law. In confirmation of the words said, we can cite examples of funeral rites, wedding ceremonies, which had local patriarchal and patrimonial features, but at the same time had the obligatory procedure – recitation of holy prayers from the Koran. A kind of reception of Sharia norms into the adat took place, the interweaving of legal norms was so strong and natural that, on the one hand, we can talk about the beginning of the process of Islamization of customary law and, on the other hand, about the absence of legal differentiation, since the biys judged cases both in accordance with the adat and Sharia.

At the same time, it would be wrong to consider the Sharia court to be accessible to the general mass of nomads. The same d'Andre, noting the existence of Sharia norms in Kazakh law in his report of November 4,

1846, wrote "a court based on Alcoran is almost not accessible to the proceedings generally accepted in the Horde, partly because the biys are not able to perform Magomed' suras stricter, as well as from the fact that the Kyrgyz themselves cannot be called zealous fans of their prophet" (Materials on Kazakh customary law: 1998, 162). d'Andre was convinced that the Sharia was designed for educated people who know the written language, the Kazakhs were "... still so wild, concepts ... so underdeveloped in relation to moral" (Materials on Kazakh customary law: 1998, 163), that the inculcation of Sharia norms among nomads seemed to be a matter of an uncertain future: adat positions were strong in it. Although progress in this direction in the set presented to him already existed.

In 1847, the Orenburg Border Commission decided to send d'Andre to the three parts of the Younger Zhuz to supplement and bring the common law of the Kazakhs into a single system [CSA RK, Fund 4, Inventory 1, Case 3543, Sheet 15]. This time, d'Andre immediately asked to provide him with "the following books: 1. Description of the Kyrgyz steppes of Levshin's composition; 2. Description of the Orenburg Territory of Eversman and 3. Alcoran translated into Russian or French" [CSA RK, Fund 4, Inventory 1, Case 3543, Sheet 31]. However, the set of Kazakh customary law d'Andre compiled was met with disapproval by the regional administration. For instance, the Commission created by order of Orenburg military governor "... found the report d'Andre unsatisfactory, firstly, because the collection did not have the correct system, and the articles are not connected by sequence, and secondly, important articles are missing and the articles themselves incomplete" [CSA RK, Fund 4, Inventory 1, Case 3543, Sheet 69 turnover]. We believe that the formal words of the commission are the official condemnation of the official d'Andre by the administration of the Orenburg Territory in connection with a certain idealization of the court of biys (which is not the subject of research in this article) and the demonstration of the successful coexistence of two different rules of law: Sharia and Adat.

Therefore, in 1849, this work was entrusted to the official of the Asian Department of the Ministry of Foreign Affairs, the collegiate secretary O.A. Osmolovsky, "... who studied other Eastern languages besides Kyrgyz, familiar in some way with the faith of Islam, with the history of the East, its beliefs and traditions, and therefore more capable of fulfilling this order than any other" [CSA RK, Fund 4, Inventory 1, Case 3543, Sheet 70 turnover]. Instead of 3 months assigned to him for work, O.A. Osmolovsky spent much more time on the territory of the Younger Zhuz. Such a delay in terms is associated, in our opinion, with the fact that O.A. Osmolovsky discovered a certain difference in the rule of law. So, he wrote: "I could not resist making a general view of Kyrgyz customs and defining their relationship to Alcoran and Sharia in general, or Muhametan laws, because the Kirgыз of the eastern part of the horde, in which I compiled a collection, are noticeably different from the Kirgыз of other parts both in their education and lifestyle; besides, it cannot be said that the Kirgыз of the Eastern part, who have unceasing relations with other peoples in their trade turnover, such as the Bukhara, Khiva, Kokand, and finally the Russians, were not affected by an alien influence that could significantly change the original character of the people, and, consequently, its customs" [CSA RK, Fund 4, Inventory 1, Case 3543, Sheet 111 turnover]. Obviously, the influence of the culture of neighbors (Muslims of Bukhara, Khiva, etc.) on the Kazakhs of the Younger Zhuz was so serious that O.A. Osmolovsky in 1850 again to recheck his collection went to the Middle, Western parts and the Bukeev Horde in order to find an explanation "to those Kyrgyz customs that might seem strange and incredible, but actually existing, and show the attitude of these customs towards Muslim Laws, or Sharia" [CSA RK, Fund 4, Inventory 1, Case 3543, Sheet 194 turnover].

His note on the customary practice of the Kazakhs was discovered by us in the Russian State Historical Archive. Its comparative analysis with previous entries by officials of the Orenburg Border Commission suggests that the "updated" code of Kazakh law confirmed and somewhere strengthened the position of Sharia in legal practice of those Kazakhs who bordered on the Central Asian peoples, which, in the context of the policy of incorporating local law into Russian legislation, was considered undesirable.

Let us consider some provisions of Osmolovsky's note. First of all, it is noteworthy that if earlier in a note to d'Andre it was noted that "the court and the punishment of the biys are not always based on the rules set forth in Alcoran and on the interpretations of the followers of the Mohammedans. Such rules are not always

applicable to the Kyrgyz people” (Materials on Kazakh customary law: 1998, 165), then Osmolovsky later wrote: “The *biy* in his decisions is guided by the rules of the alkoran, Sharia, folk customs and, finally, by his own mind” (italics added by authors) [RSIA, Fund 853, Inventory 2, Case 65, Sheet 47, turnover]. And while d’Andre, emphasizing the litigation issue, focused on that the bias “in resolving litigations or disputes are based on customs”, Osmolovsky differently looked at the judicial practice of *biys* – they applied, first of all, Sharia norms to resolve judicial disputes.

In his note, Y. Osmolovsky placed the chapter “On Deanery in the Auls”, in which a special attention should be paid to the section “On warning against violation and non-fulfillment of dogmas prescribed by Islam”. In paragraph 538 of this chapter, it was noted that “Mullahs are obligated to exhort and direct true Muslims who shy away from the rites prescribed by Islam; in the case of the invalidity of their exhortations to complain to the judges” [RSIA, Fund 853, Inventory 2, Case 65, Sheet 67]. Note that earlier the function of creating a favorable moral and psychological climate among ordinary nomads belonged to the *biy*. So, d’Andre noted that “the *biy* combines the rights of the *Kaziya*, Mullah and in some way the power of the Sultan in the sense that neither kind of claim, nor the importance of the crime can prevent him in his court. The main duty is to set him up and maintain calm in the auls by immediate consideration of complaints and through this to stop the contention at the very beginning, without giving rise to hostility or a lengthy argument” (Materials on Kazakh customary law: 1998, 165), or “the horde resident, convicted of any blasphemous sayings against his faith or the prophets, is subject to the exhortation of the *biy*” (Materials on Kazakh customary law: 1998, 172–173). Judging by these provisions, the *biy* in his subordinate aul was entrusted not only with spiritual affairs, but also with questions of ensuring the vital activity of the nomadic community.

In general, in the reports of the Border Commission officials regarding family and marriage relations, one can trace the idea that “there is no crime (other than crimes against the faith) that could not be redeemed by cattle or things, the horde resident does not strictly condemn acts relating to adultery, I’m ready to exchange the honor of my wives and daughters for several sheep’s heads, etc.” (Materials on Kazakh customary law: 1998, 176). Literally three years later, in Osmolovsky’s notes we find a different sentence for such crimes: “The comments made in the Middle and Western parts of the Horde say that if the groom proves that someone raped his bride, then the guilty person will be punished with Sharia” [RSIA, Fund 853, Inventory 2, Case 65, Sheet 35 turnover].

One more thing we would like to draw attention to is that prior to Osmolovsky’s note, in reports of the Border Commission officials it was mentioned that the *biys* and honorary Hordes dealt with judicial issues: “All cases requiring reprisals in the horde are carried out mainly by the *biys*, as the main representatives of popular law” (Materials on Kazakh customary law: 1998, 164). In the materials of O. Osmolovsky, who also attributed *biys* to “people’s judges. They have the right to decide cases involving misconduct and crime; the definition of punishment depends on them,” it was also said about the mullahs, who “at the request of the disputing parties are included in the proceedings of unimportant claims of the Kyrgyz” [RSIA. Fund 853, Inventory 2, Case 65, Sheet 45]. Osmolovsky wrote in his note that “these people (mullahs, aksakals, all kinds of faces. – authors) included in the proceedings (§§ 264, 265 and 266) cannot be considered people’s judges, they are only conciliators of the claiming parties” [RSIA. Fund 853, Inventory 2, Case 65, Sheet 47]. Nevertheless, Osmolovsky singled out the mullahs as possible mediators of controversial disputes. Most likely, the actors of the trial appealed to them in the hope of resolving the controversial issue of Sharia.

Osmolovsky’s notes allow to conclude that gradually the positions of Sharia in the Kazakh judicial practice began to take on increasingly stronger positions. Note that, on the one hand, there was a kind of restriction in the activities of the institution of *biys* – part of the issues related to spiritual affairs was transferred to the mullahs and *kadi*. There was a kind of professional specialization in litigation practice. On the other hand, the *biys* used both the norms of *adat* and *sharia* in their judicial activity.

For a long time Osmolovsky’s recordings were not accessible to the scientific community, partly due to the fact that “the publication of the collection may be a step “towards the establishment of Mohammedanism

in the steppe” and impede “the improvement of the public and moral life of the Kyrgyz people over time”. Along with this, “awareness by the 1840s the fundamental difference between adat and sharia (even if it exists mainly only in theory) was used by different groups within the imperial administration and various social elements in the steppe in an ode of numerous conflicts of interest. These conflicts were given the appearance of fundamental disagreements, and the “correctness” of resolving the issue of the relationship between adat and Sharia was often resolved by which side of the conflict took up in the apparatus or political intrigue” (Sartori, Shabley: 2015, 92–93).

Strengthening the position of Sharia in the region, legal reforms of the empire in the first half of the 19th century (the scope of application of Russian laws was very limited: treason, robbery, etc.) and the local adat proper led to the emergence of normative pluralism as a legal system. Each legal subsystem, in turn, due to internal and external factors, of course, influenced the neighboring one. Obviously, the process of Islamization of the law of adat at the turn of the 18th – 19th centuries was so visible, and the authorities’ measures to include the Kazakh territory in the Russian legal space were just as insensible that this process caused concern in imperial Russia.

The attitude of the authorities to Sharia can be expressed in the words of N. Maximov, who said that adat “is a vital product and capable of developing with the further development of the people’s horizons. The Sharia, having as its basis an immovable the Koran, containing the alpha and omega of Muslim wisdom, is dead material, neither capable to development nor concession, and also irreconcilably hostile to *gyauru*, that is, to any Christian” (Maksimov: 1897, 64).

It can be seen from the quote that the Sharia with its “value” principles did not fit into the Russian concept of legal pluralism, therefore, one can understand the neutral attitude of the authorities towards the adat and gradually growing negative towards the Sharia. How much the Russian authorities feared the influence of Sharia on the right of nomads can be judged from one archival source. At the end of the XIX century in the name of Stepnoy Governor-General G.A. Kolpakovsky received a report from the military governor of the Semirechensk region Ivanov, in which he informed the authorities about the reluctance of the rulers, biys and foremen to wear official signs, referring to “... that the signs have images of the cross above the Imperial Crown, as a result of which they doubt whether the Mohammedan religion permits them to wear such signs” [CSA RK. Fund 4, Inventory 1, Case 440, Sheet 1]. The document stated that the Kazakhs asked for a two-month period so that “they could ask the Orenburg Mufti at that time whether they can wear the indicated signs by their religion” [CSA RK. Fund 4, Inventory 1, Case 440, Sheet 1, turnover]. The collective statement of the local authorities alarmed the regional administration so much that it was decided to send a special assignment official to Issyk-Kul County, who was charged “immediately from under the arm, by secret means, to familiarize himself with such a strange phenomenon and, if necessary, take timely and energetic measures to eradicate evil in the bud” [CSA RK. Fund 4, Inventory 1, Case 440, Sheet 7]. In a letter to G.A. Kolpakovsky emphasized the indifference of the Kazakhs in religious affairs, therefore, he saw the reason for the appearance of such disturbing phenomena as “propaganda harmful to the Russian authorities in the steppes of the Tatar mullahs, or, perhaps, of any immigrants from neighboring Muslim countries, for example: from Afghanistan, which is very possible in view of the border position of Issyk-Kul district and a significant influx of Kashgars, Bukharas, Sarts there, including Afghans-Emissaries of Abdurakhman. Under the last assumption, the present case, in my opinion, deserves special attention of the chief head of the region” [CSA RK. Fund 4, Inventory 1, Case 440, Sheet 6, turnover]. The anxieties and concerns of the Russian authorities turned out to be unnecessary. The investigation showed that the usual “party struggle” between the clan groups for a place in the lower ranks became the whole reason. The situation arose and Russian officials explained to the Kazakhs that “on the same sign is the moon - the sign of faith of Mohammedan, under the patronage of the Monarch” [CSA RK. Fund 4. Inventory 1, Case 440, Sheet 14], shows that, on the one hand, the government was concerned about the possible influence of Islamic states on the southern regions of Kazakhstan, on the other, it understood and supported the “indifferent” attitude of Kazakhs to religion.

CONCLUSION

Thus, in the first half of the 19th century on the territory of the Kazakh steppe during the collection of customary law by officials of the Orenburg Border Commission, the emergence of legal polyjuridism is observed, which includes the norms of the law of adat and Sharia, as well as some provisions of Russian law. Customary law and Sharia in the process of parallel development were mixed, complemented each other, as a result, found the most acceptable option for coexistence. It consisted in the fact that, according to Sharia, cases relating to religion and family relations began to be resolved, all other issues were regulated according to customary law. However, this was not part of the Russian legislation's goal of incorporating the rights of the local population into Russian law. Therefore, when conducting reforms, the official authorities left the adat to the Kazakhs, at the same time, fearing the influence of Sharia, they began to gradually displace it from the legal practice of the Kazakhs.

After the establishment of Soviet power in 1917, the Soviets initially tried to use the experience of the Russian Empire through a neutral attitude to customary legal institutions and the consolidation of mixed adat-Soviet legislation. This was expressed in the fact that the biys court (aksakalsky court) acquired the status of an official judicial body. However, the victory of the Bolsheviks in the civil war in 1920 led to a decisive turn in relation to the courts of biys: the Soviet government saw them as a dangerous political force. Therefore, from this time on, a systematic struggle begins with the Aksakal courts, which led to their complete abolition in the late 1920s (Abashin: 2011, 1-11; Saktaganova et al.: 2018, 103-114).

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