

ADMINISTRATIVE AND TERRITORIAL CHANGES AND LEGAL REFORMS IN THE KAZAKH STEPPE IN THE 19th CENTURY

Part II

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This article describes the certain peculiarities of the introduction of the Russian Empire's legislation in the Kazakh steppe as well as administrative and territorial changes in the steppe region, which negatively affected the nomadic way of life, and together with other factors led to the phased sedentarization of the Kazakh population. The paper shows the process of the elimination of the khans' power and its replacement by a colonial administration. The author pays considerable attention to the peculiarities of the legal regulation of the relationship to nomadic Kazakh society.

Key words: the Charter on Siberian Kirghiz, administrative and territorial reforms, khans' power, *biy* court, law

For the consolidation of the political system of Russian autocratic rule in 1822 and 1824, the decrees of the government of Alexander I cancelled the khans' power in the Middle and Junior Zhuzes in 1845 in the Bukeyev (Internal) Horde, and a number of regulations were adopted for integration into the empire-wide management system. In particular, there were successful enactments of the Charter on Siberian Kirghiz (1822), the Charter on Orenburg Kirghiz (1824), the Regulations of the Separate Control of Siberian Kirghiz (1838), the Regulations of Control of Orenburg Kirghiz (1844), the Regulations of Control of the Semipalatinsk Region (1854), the Instructions on the Control of Prisyrdarya Kirghiz (1855 – 1856), the Regulations of Control of the Alatau Region, and others.

It is general knowledge that “the authorities appointed by colonizers are often guided by liberal principles.”¹ One such creator of liberal reforms in Russia, and a governor-general of Siberia from 1819 to 1821 was M.M. Speranski, the author of the draft Charter on Siberian Kirghiz, which was introduced on 22 June 1822. Under the reform of M.M. Speranski in 1822, Siberia was divided into Eastern Siberia, with Irkutsk as its controlling centre, and Western Siberia, which comprised the Tobol and Omsk regions. The latter included the territory of the pastures of the Middle Zhuz and partly the Senior Zhuz and was called the Region of Siberian Kirghiz.

It should be noted that the situation which had developed in Siberia by 1822 was dismal. This is how it was described by S.M. Prutchenko:

“The governance of the Siberian region was continuously suffering from shortcomings of management, from the ghost of responsibility of officials, a lack of administrative justice and the following weakness of law in administration, insecurity and the one-sidedness of the administrative structure, a lack of self-government bodies, and a perverted relationship between the population and the authorities. The attitude of the administrative staff to the public permeates as an object for practising power over the entire Siberian history. Too often the encouragement of ambition was complicated by instincts of self-interest, and then the population of the area was an object of exploitation in the eyes of the people engaged in management.”²

The Charter on Siberian Kirghiz of 1822 was not a spontaneous legal act. During prolonged and repeated contact with the local ruling elites of the Kazakhs, the tsarist government was convinced of the inability of the latter to concentrate all power in their hands, and due to the failure of the measures taken to improve the status and strengthen the powers of the Kazakh khans, it moved towards the abolition of the institute of the khans' power in the steppe.

The fall of the khans' power was predetermined by the course of development of economic, social and political relations in Kazakhstan. From the mid-18th century there were signs of the decline of the old system of power that were deeply rooted in Kazakh society and a symptom of stable internal changes.

The growing influence of Russia led to the emergence of new elements in the steppe in the socio-economic relations of Kazakh society. The khans' power, which aimed to preserve the old forms of social relations, could not resist the onslaught of the new. Efforts undertaken by part of the political elite and

¹ HICKS J., *op.cit.* (supra, n. 37), p. 207.

² PRUTCHENKO, S. *Sibirskie okrainy. Oblastnye ustanovlenija, svyazannye s Sibirskim Uchrezhdeniem 1822 g., v stroe upravlenija russkogo gosudarstva (istoriko-juridicheskie ocherki)*, pp. 120 – 121.

supported by the colonial authorities to adapt the institute of the khans' power to new realities ended in failure.³ Sources from the early 19th century certified the complete decline in the khans' power in the steppe. For example, in 1820 G.I. Spassky (1783 – 1864), in referring to the admissions of Kazakhs themselves, wrote that khans and sultans held little power over the Kazakhs.⁴

According to the testimonies of I.P. Shangin (1783 – ?), “Khans could no longer use the rigour of the laws against crimes and therefore there was no longer a need for them and laws for the Kirghiz.”⁵ The elimination of the khans' power in the Middle Zhuz was carried out without any problems. After the death of Bukei Khan (1817) and Vali Khan (1819), the imperial administration decided not to elect new khans in the Middle Zhuz.

Eight external districts were established on the greater part of the territory of the Middle Zhuz and were divided into *volosts*, with the latter being divided into administrative villages. The formation of the districts was meant to delineate the area of nomadic pastures into a strictly defined territory, restrict the freedom of nomads and thus contribute to the development of a semi-nomadic way of life. The transfer from one district to another of individual nomadic groups was permitted only with the consent of the colonial authorities.

According to the reform of M.M. Speranski, starting with the *volost* level of government, members of the national elite joined in management, and, according to N.M. Yemelyanova, after the abolition of the institution of the khans' power in the steppe this “somewhat smoothed the fact of the final submission to the Russian Empire”.⁶ District orders, which were subordinate to the Omsk regional authorities and consisted of “senior sultans”, were elected by the local population and a compulsory unit of 200 – 300 armed Cossacks ran the districts.

Volosts were headed by *volost* sultans and *auls* were led by *aul* elders. “The issue of power in large nomadic groups called *volosts* was one of the central issues raised by the reform.”⁷ Power in a *volost* was entrusted to the sultan in perpetuity “with the approval” of society. A mechanism of the inheritance of the post was defined by a direct descending line of primogeniture. The *volost* ruler was appointed by the district authorities and was actually given all the power in his *volost*. His duty was to perform the requirements of the district order, execute court verdicts and implement police services. The introduction of the

³ ZIMANOV, S.Z. Politicheskij stroj Kazahstana pervoj poloviny XIX veka i Bukeyevskoe Hanstvo, p. 156.

⁴ SPASSKY, G.I. Kirgiz-Kajsaki Bolshoj, Srednej i Maloj ordy, pp. 134 – 135.

⁵ SHANGIN, I.P. Izvlechenie iz opisanija ekspeditsii, byvshej v Kirgizskuju step v 1816, p. 87.

⁶ YEMELJANOVA, N.M., op.cit. (supra, n. 26), p. 51.

⁷ GALIEV, V.Z., MAZHITOV, S.F. (Eds.) Istorija kolonizatsii Kazahstana v 20 – 60-h godah XIX veka, p. 27.

1822 charter weakened the power of the local nobility, but only to the extent that it could successfully carry out colonial policy while under the control of and by directly reporting to the Russian administration in the newly formed government.

According to P.P. Rumyantsev, the enactment of the Charter on Siberian Kirghiz of 1822 marked “a major turning point in the history of the Kirghiz people”.⁸ He thought the adoption of this regulation heralded a period marked by the gradual destruction of the traces of class and clan structures in the Kazakh system of control and the rebalancing of the entire mass of the Kazakh people, regardless of whether they were “black” (commoners) or “blue blood” (aristocracy), in their rights and obligations with the entire population of the Russian Empire.⁹

A qualitative study of the 1822 charter and the competent enactment of its provisions in Kazakhstan allowed for the making of changes without any destruction of the ruling system which existed in the steppes. None of the governors-general were particularly eager to set new administrative boundaries. The implementation of the Charter on Siberian Kirghiz was gradual and in the initial stages was even undertaken with extreme delicacy to the local population.

The procedure of the election of the senior sultan is a good example of the tactics of the Russian authorities, who, in the words of S.Z. Zimanov (1921 – 2011), “in order to attach external solemnity to the whole comedy of the ‘election’ of the sultan and other senior officials”,¹⁰ and, according to N.M. Yemelyanova, “better subdue [them], were ready to submit themselves to Kazakh customs and thus win the trust of the local population with fewer losses”.¹¹ In order to strengthen their domination, the Russian authorities included some local political institutions in the apparatus of the colonial administration, but devoid of their democratic basis these institutions were turned into a mere appendage of the apparatus of colonial oppression.

The legal system of nomads was subject to transformation in the process of the reorganization of the Middle Zhuz. The force of the customary law of Kazakhs was limited, the jurisdiction of the *biy* court was restricted, the functions of administrative and judicial authorities were specified in the administration of justice and the resolution of certain types of cases was to be carried out on the basis of the legislation of the Russian Empire. Offences were divided into criminal offences (state treason, murder, robbery, clearly

⁸ RUMJANTSEV, P.P., op.cit. (supra, n. 21), p. 30.

⁹ Ibid.

¹⁰ ZIMANOV, S.Z., op.cit. (supra, n. 54), p. 175.

¹¹ YEMELYANOVA, N.M., op.cit. (supra, n. 26), p. 53.

disobeying the authorities, the forgery of loan securities and coins, arson, etc.), claims and complaints about management. According to the American historian V. Martin, the 1822 charter at the same time “imposed the Russian concept of crime and punishment, which was different to the legal principles common among the Kazakhs of the Middle Horde”.¹²

If the preliminary investigation and administration of justice in criminal cases were supposed to be implemented by the District Order, which was equivalent to county courts according to the laws of the Russian Empire, claim cases were traditionally considered by *biy* courts based on the customary law of the Kazakhs. The regional court was established as a supervisory jurisdiction in criminal matters. The decisions of the *biy* court could be appealed to the regional authorities for civil cases and were liable to final approval in the District Order for disputes of up to two thousand rubles, in the Border Administration for disputes of up to five thousand rubles, and in the Governmental Senate for disputes of more than five thousand rubles.

Apart from popular magistrates all around Russia, where meetings were open and public, and where there was a jury, examinations of cases by imperial courts were not applied in the steppe. In the process of legal reform there appeared a tendency to displace the customary law of Kazakh society with imperial laws and there was a gradual strengthening of the role of the general courts over the *biy* courts.

Thanks to the reforms made in the first half of the 19th century, the administrative and legal system that was in effect in the jurisdiction of the Region of Siberian Kirghiz, being a transit model for the integration of nomads into Russian political reality, represented a symbiosis of seamlessly integrated traditional social institutions and regulations of the customary laws of Kazakhs into the Russian model of administration and empire-wide laws.

Having encased the imperial legislation into the legal reality of the nomads, the Russian administration did not seek to immediately replace the customary law of the Kazakhs, which, in general, was impossible. The Kazakhs considered it necessary to open and gradually introduce the regulations of customary law from everyday life. In nomadic Kazakh society there was no legislator powerful enough to identify his will with the law of the steppe area. The legal tradition of nomads, unlike the Russian Empire, was not limited to legislation. Even the lawmaking activities of Tauke Khan (full name Tavakkul-Mukhammad-Batyr-Khan), who ruled in the Kazakh steppe from about the mid-17th century to 1718, generally only revised and specified the existing provisions of the steppe and by no means did he change the legal system. Therefore, the regulations of imperial law were relatively well “sewn” into the legal matter of nomads; they

¹² MARTIN, V., op.cit. (supra, n. 22), p. 47.

penetrated and modified it and gradually created a completely different legal “canvas”. “The [1822 charter] by its purpose and content was associated with the policy aimed at the accession of Kazakhstan into the Russian Empire and its transformation into a colony. But the methods and techniques selected for this purpose differ to a large extent from the old traditional methods of colonization of populated areas.”¹³ In general, the Charter on Siberian Kirghiz of 1822 was successfully implemented in practice. However, the law in this case did not act at all as a regulator of public relations.

Firstly, we should agree with the observation of P. Bourdieu (1930 – 2002) that “the structure of the legal field is a principle of the structuring of reality (this is true in terms of any field). To join the game, to agree to play it, to trust the law to settle the conflict – all this means an implicit acceptance of this method of expression and debate, which involves the refusal of any physical violence and of the simplest forms of symbolic violence, such as an insult.”¹⁴

The introduction of the standards of the 1822 charter meant the recodification of the legal field of the Kazakhs, and therefore the modification of existing social relations and the removal of political conflict and its settlement in legal course. The interests of the inhabitants of the steppe due to the introduction of the Russian law were transformed into legal procedures, and thus converted into competence, which provided control over society.

Secondly, “law is not just a means of resolving social conflicts, but originally and primarily a means of their production: the basis of excessive claims, demands and deviations, including places of possible resistance.”¹⁵

With the help of the introduced legal codes by the colonial authorities, new points of social tension were found and stimulated. Whereas earlier exorbitant social tension had been sublimated from outside, now conflicts were terminated in Kazakh society.

These factors incidentally also justified the anxiety shown by Russian officials during the development of the codified act of customary law, which was never adopted. “Dignitaries were afraid that if the imperial government gave the local law an official status, it would be successfully applied by the opponents of the tsarist regime.”¹⁶

Eight years after the adoption of the 1822 charter, S.B. Bronevsky wrote the following in his notes about the Kazakhs of the Middle Zhuz:

¹³ ZIMANOV, S.Z., *op.cit.* (supra, n. 54), p. 163.

¹⁴ BOURDIEU, P., *op.cit.* (supra, n. 2), p. 96.

¹⁵ LUHMANN, N. *Sotsialnye sistemy. Ocherk obshchej teorii*, p. 436.

¹⁶ MARTIN, V., *op.cit.* (supra, n. 22), p. 59.

“Differences of opinion and the self-interest of the *volosts*, the attitude to one another, and differences in circumstances made it impossible and do not allow Kazakhs to have a political body which would be managed by some laws leading to the fulfilment of intentions and suggestions based on the principles of a common goal. This wandering tribe that lives in the quest for a new pasture along boundless plains which are meant for them, does not have a common cause and has no indication of individual nations; it moves in crowds with no structure or unanimity which is inherent to the whole nation and easily joins to one state or another, and likewise easily separates according to their needs. They have no form of resolutions for the national administration, and there is no person the society or family in particular would be willing to obey.”¹⁷

By the 1820s the khans' power in the Junior Zhuz was totally devalued. The khan of the Junior Zhuz, Shirgazy Aychuvakov (1767 – 1845), liaised with nomadic groups that did not submit to the colonial authorities and was warned about his inaction and notified of the possibility of the appointment of another khan who would be more loyal to the empire.

In the end, Khan Shirgazy was invited to Orenburg, deprived of his khan power and appointed “chairman” of the Orenburg Border Commission.

Having eliminated the khans' power in the Junior Zhuz and established a new procedure for the management of the Orenburg Kazakh lands in 1824, the tsarist government divided the whole territory of the Junior Zhuz into three administrative parts which were divided into “distances” (areas between two fortresses). They in turn were divided into administrative *auls*.

Orenburg officials appointed sultan rulers with their staff (assistants, clerks and messengers) to lead the local administrations, distance chiefs led the “distances” and *aul* chiefs led the administrative *auls*. The key element in the administrative territorial system was the “distances” that had appeared since 1831 in border areas but which subsequently spread deeper into the steppe. Through the distance system the territory of the Junior Zhuz was divided into small sections, allowing it to track the movement of the local population, collect a variety of information on the situation in the steppe, respond quickly to anti-government protests by Kazakhs and extend to pasture limits. This system lasted until 1868 and fully allowed for the realization of the goals of the transit period.

Nominally there was no elaborated public management structure in the Orenburg region as there was in Siberia, but the system of control over the

¹⁷ BRONEVSKY, S.B. O Kirgiz-Kajsakah Srednej ordy, pp. 256 – 257.

dependent population in the Orenburg steppe was actually just as well thought out and perhaps even more efficient and effective than in the Middle Zhuz.¹⁸

In general, the reform of the management in the Junior Zhuz, differing in their organization from changes that occurred in the Middle Zhuz, “was similar to it in essence”.¹⁹ The administrative division of the population in both the Junior Zhuz and Senior Zhuz was based on the old tribal nomenclature with certain limitations. Senior sultans led small areas and districts (in the Junior Zhuz they were called sultan-rulers).

However, the reform of 1824 had a number of features that distinguished it from the Charter on Siberian Kirghiz of 1822. The difference was not only in the fact that districts (“parts”) were fewer in number, and the power of sultan-rulers was not restricted by the Council (Order), as it was in the Middle Zhuz, but also in the fact that it did not cover *aul* and clan-controlled units with legal regulations. In addition to comments on the submission of division chiefs (sub-units) and tribe chiefs to sultan-rulers, almost nothing was said about them.²⁰

Such gaps in the law, which were due to the limited knowledge of Russian officials about the nomadic way of life, and failures in the use of legal structures, were randomly filled in the process of the application of law. At the same time, the main point of the law-supplying activity of law enforcement agencies was to maximize the role of the border authorities and military courts in strengthening empire-wide legislation and in restricting the court rights of the *biys*. These activities by the authorities were inherently consistent with the general principles and spirit of the imperial laws against the Kazakhs, which was wholly confirmed in the Regulations on the Control of the Orenburg Kirgiz, dated 14 June 1844. The 1844 regulations both in form and content were constructed at a low level, which naturally affected their implementation.

The abolition of the khans’ power meant that the only force that remained in the steppe was the judiciary, which was a monopoly belonging to the *biys*. The independence of the jurisdiction from the colonial powers, that is, the free exercise of legitimate symbolic violence, demanded a change to this situation from the Russian administration and the carrying out of judicial reform as soon as possible. In view of the special position occupied by the judiciary in the administration of nomadic society, the developers of the Regulations on Control over the Orenburg Kirgiz of 1844 paid a lot of attention to the articles governing the activities of the court.

The judicial system in the Junior Zhuz assumed a ternary structure: (a) departments for criminal matters under the Border Commission and military

¹⁸ MASANOV, N.E. Nalogovaja politika tsarizma v Kazahstane v 20 – 60 godah XIX v. (sotsialno-economiceskij analiz), p. 56.

¹⁹ ZIMANOV, S.Z., op.cit. (supra, n. 54), p. 216.

²⁰ Ibid.

courts that applied imperial legislation, (b) a “verbal world court” under the Border Commission for cases of the customary law of the Kazakhs, and (c) *biy* courts that were under the control of the local authorities and that used the regulations of customary law while trying a case.

Almost all criminal cases were in the jurisdiction of the appropriate department under the Border Commission and military court. Civil cases between Kazakhs for sums of more than 50 rubles were tried by a special judicial branch of the Border Commission. All other “unimportant crimes” and civil case for sums of less than 50 rubles were tried by *biy* courts on the basis of the customary law of the Kazakhs.

Thus, the competence of the *biys* and local authorities included insignificant categories of cases. Moreover, it was permitted to submit a “verbal complaint” about the decision of a *biy* court to the Border Commission.

If necessary, Kazakhs could also apply to the verbal world court, which consisted of a Kazakh assessor from the Border Commission and two judge-mediators appointed by the parties. The decisions of this court were final.

As A.I. Dobrosmyslov wrote, the adopted 1844 regulations reduced to a minimum the number of cases in the jurisdiction of the Kazakh people’s court, and the right to appeal against the decisions of the people’s court to the Border Commission would completely diminish its value. This did in fact happen: on the one hand, Kazakhs “estranged themselves from the Russian court that dissented with their customs, and on the other hand the court in the steppe now belonged to the native administration”.²¹

The superficial understanding of the lifestyle of ordinary nomads by the Russian bureaucracy, the inability to adequately appreciate the key aspects of emerging public relations, errors in the use of legal technology and the inadequate equipment of the legal system with the necessary set of legal tools was compensated by the active role of punitive expeditions and by the exercise of direct violence by the colonial authorities, which naturally led to a negative reaction from the local population. However, according to B.B. Alimbayeva, whereas in the 18th century the citizenship of the Orenburg Kazakhs had been nominal, after the reforms of 1820 – 1840 and 1868 “they moved into the category of subjects who paid all legalized taxes in full and served compulsory service”.²²

The German researcher F.A. Hellwald (1842 – 1892) wrote in the mid-1870s the following:

²¹ DOBROSMYSLOV, A.I. Sud u Kirgiz Turgajskoj oblasti v XVIII i XIX vekah, p. 29.

²² ALIMBAYEVA, B.B. Politika Rossijskogo pravitelstva v otnoshenii orenburgskih kazahov v XVIII – XIX vekah, p. 26.

“The Junior [western] Horde [...] is subordinate to the Governor of Orenburg, and until recently Russian officials have shown little interest in it; members of the Horde could elect their own leaders and besides this the Horde was not oppressed by rents. Therefore Kirghiz-*Kaysaks* were calm and obedient, but since 1869, they have been displeased with the bureaucratic duties imposed on them; some tribes have begun to defend themselves [and] armed violence was used against them in order to get them to obey.”²³

Somewhat later than the Middle and Junior Zhuzes, the Bukei Horde fell into the sphere of influence and the direct control of the central government.

In the early 19th century, a lot of the Kazakh population of the Junior Zhuz under Sultan Bukei (? –1815) moved into the internal borders of the Russian Empire and with the permission of Paul I they formed the Bukei or Internal Horde.

On 17 June 1808 it was decided that the Bukei Horde would be submitted to the Astrakhan military governor and to the administration of the Junior Zhuz by the Kazakhs under the Orenburg Border Commission. On 7 July 1812 Sultan Bukei was officially proclaimed the khan of the Internal Horde in the presence of high officials from the Orenburg colonial administration headed by the governor, Prince G.S. Volkonsky (1742 – 1824) and numerous members of the steppe aristocracy.

After the death of Bukei Khan in 1815, the management of the Horde was entrusted to Sultan Shigai, and on 24 June 1824 in Uralsk Jangir (1801 – 1845) Shigai was officially proclaimed the khan of the Bukei Horde. In the first quarter of the 19th century, the Bukei Khanate was no different from traditional forms of khan power in Kazakh zhuzes in its structure and mechanism of maintenance of supreme power; it remained a monarchy with its inherent major institutions, sultan-*biy* management control and the isolation of large nomadic groups. However, in the second quarter of the century it turned into a monarchy with a strong centralized power. Clan chiefs and the elders of large tribal units were appointed by the khan; they became khan governors and free clerics were replaced by an institute of decree *mullahs* appointed by the khan. The former independence of clans was destroyed and the executive and judicial power moved from the competence of the community to the khan.²⁴

In the 1830s Jangir Khan managed to win the sympathy of the royal court and establish a trust relationship with the governor of Orenburg and the Orenburg

²³ HELLWALD, F. Landshafty i narody v Kashgare, Turkestanе, Kashmire i Tibete. S osobym aktsentom na ustremenijah Rossii i na ee kulturnoj politike, pp. 155 – 156.

²⁴ ZIMANOV, S.Z., op.cit. (supra, n. 54), p. 386.

Border Commission, which in fact led to the non-interference of the Russian administration in the internal affairs of the Bukei Khanate and the activities of the khan himself. With the support of the imperial government, Jangir Khan concentrated all the power in the Bukei Horde in his own hands. Administrative and judicial power was transferred from the competence of clan chiefs to the authorized representatives of the khan. As a higher body, the khan reviewed the decisions of the *biys* and the tribal chiefs on the basis of empire-wide legislation.

Despite the fact that all the khans of the Internal Horde, from Bukei Khan, his brother Shigai to Bukei's son Jangir, were diligent and reliable bearers of royal policy, the khans' power in the Bukei Horde existed until 1845. After the death of Jangir Khan, an opinion on the inexpediency of appointing a new khan prevailed.

Between 1845 and 1859 the system of ruling the nomads of the former Bukei Khanate underwent significant reforms. Instead of 16 "administrative clans", two counties and five administrative units were formed on the territory of the Horde under the supervision of the administration of Astrakhan and led by the locals of the aristocratic elite. Subsequently, the Internal Horde joined the Astrakhan province. The unsatisfactory treasury system was one of the reasons for the administrative and territorial changes in the Bukei Khanate.

With the establishment of the colonial bureaucratic domination in the steppe, some management structures were distinguished from the kinship system and the transfer of the production and distribution of social wealth was allowed from tribal forms of organization into private ownership, which in turn became a threat to the integration of Kazakh nomadic society.

In 1854 the entire territory of the Siberian department was divided into the Siberian Kirghiz Region comprising the counties of Karkaraly, Kokchetav, Akmola, Bayan-Aul and Kushmurun and Semipalatinsk Region with the districts of Kokbektin, Ayaguz (from 1860 – Sergiopol, from 1875 – Lepsinsk) and Semipalatinsk. In each district there were about 15 – 20 *volosts*, each of which consisted of 10 – 12 administrative *auls*, which in turn numbered some 50 – 70 nomadic tents. At the head of the districts there were District Orders headed by senior sultans; *volosts* were led by *volost* sultans and administrative *auls* were run by *aul* elders.

By the end of the first half of the 19th century, the protectorate of the Russian Empire included the Kazakhs of the Senior Zhuz and in 1847 a special control system headed by the Police Officer in the Large Horde was established for them. After the accession of Zaliysk lands and the establishment of the Vernyi military fortification in 1856 on the territory of the nomadic camps of the Senior Zhuz, Alatau District was created and became a part of the Semipalatinsk region.

On 25 December 1862 a regulation on the control of the Alatau district was approved, which introduced a new judicial administrative system in which the Kazakhs of the Senior Zhuz were included in the jurisdiction of empire-wide courts.

After the capture by Russian troops of the southern region of Kazakhstan and the final approval by the colonial apparatus of its power in the Kazakh region, the central government started developing administrative reforms. On 11 July 1867 the Provisional Regulation on the Control of the Semirechinsk and Syr-Darya Regions was issued, and the next year the Provisional Regulation on Control in the Ural, Turgay, Akmola and Semipalatinsk Regions was approved.

According to G.S. Sapargaliyev (1929 – 2010):

“[The reforms of 1867 – 1868] were motivated by the desire of tsarism to ensure for the Russian capital the most favourable conditions for the exploitation of the people and natural resources of the vast region, maximize revenue for the treasury, and strengthen the position of the Russian officials, landowners, capitalists and kulaks as well as support for tsarism in Kazakhstan by feudal lords and *bais* through the military and colonial plundering of the people. The reforms of 1867 – 1868 represented the legalization of the final stage of the accession of Kazakhstan to Russia and its final transformation into a tsarist colony.”²⁵

According to the reform of 1867 – 1868, the entire territory of Kazakhstan was divided into six regions that were part of three general-governorships: Turkestan (the Semirechinsk and Syr-Darya regions), Orenburg (the Ural and Turgay regions) and West Siberia (the Akmola and Semipalatinsk regions). The regions were divided into *uyezds* and each *uyezd*, in turn, was divided into *volosts*, which themselves were divided into administrative *auls* with 100 – 200 nomadic tents.

Since the main criterion for division into territorial units in the steppe was the qualitative component, the reforms of 1867 – 1868 contributed to the destruction of the tribal structure of Kazakh society. This even affected the fact that the numbers were introduced instead of the tribal names of *auls*. The regions were headed by military governors in whose hands all the military and civil authorities were concentrated. A Russian administrator of the time said, “It goes without saying that the outskirts, and generally areas with a low public culture, remote from the centre of control by thousands of miles and occupying large areas populated by semi-savage tribes, need a strong and independent

²⁵ SARTAIEV, S.S. (Ed.) *Istorija gosudarstva i prava Kazahskoj SSR*. Chast 1, p. 121.

power, which, as we see it, is usually assigned to the governor-general.”²⁶ Such a wide range of powers for the governors for the convenient collection of taxes and police control was first consolidated by an act on the provinces of 7 November 1775. According to this normative act that was approved by Catherine II (1729 – 1796), the governors obtained a wide range of powers and a subordinate office.

The power of the local administration was so great that even assistance in any matter of the central authorities did not ensure the desired result. The order of the central office could be completely ignored or performed only formally if there were any difficulties in implementing it in practice.

Provincial administrations were put under the control of the governors; they consisted of three divisions: administrative, economic and judicial.

The regional board was in charge of a wide range of issues. In particular, the department was engaged in the administrative division of the region, the promulgation of statutes and the orders of the government that related to the region, administrative penalties and the trial of officials for crimes and office misdemeanours, decisions on elections to the posts of public self-government, controlling the appearance of “suspicious-looking people” in the region and the administrative expulsion of persons that had violated administrative rules. The economic division was in charge of the distribution of lands among inhabitants and the collection of taxes and fees from Kazakhs. The judicial division engaged in preparations for the hearing of civil and criminal cases, which were tried by the regional board as the judicial court.

The key figure in the new administrative system, who was responsible for almost all police functions and local managerial authority, was the *uyezd* chief, who was appointed by the governor-general. In contrast to the position of *uyezd* chief, a *volost* chief and *aul* elder were elected every three years, although the authorities of the regions and *yezds* had the full right to accept or cancel the election results.

Before the 1860s *volosts* had been headed by sultans that inherited this position. The reform opened the way to this position of power for simple but wealthy and influential people. “In these circumstances, an especially bitter struggle broke out for the positions of *volost* chiefs. A *volost* was both an administrative and economic unit. So a *volost* chief had in his hands the powers of distribution and the re-allotment of lands among the *auls*, the resolution of land disputes and the allocation of taxes and duties.”²⁷ The elections of *aul* elders were much calmer.

²⁶ IVANOVSKY, V.V. *Administrativnoe ustrojstvo nashih okrain*, p. 15.

²⁷ YEMELJANOVA, N.M., *op.cit.* (supra, n. 26), p. 65.

In general, the consolidation of the electoral system in the steppe at the local level solved the dilemma of political legitimacy for the Russian autocracy. It was quite a challenge to implement the remuneration of Kazakhs favouring colonization and at the same time ensure the loyalty of the vast majority of nomads, who were the source of legitimacy in the steppe. Elections became a good way of reconciliation. These democratic procedures masked relationships of domination.

According to N. Malyshev, prior to 1868 Kazakhs in the Junior Horde were completely independent from the influence of the Russian law in their internal life.²⁸ However, the Interim Provisions of 1867 – 1868 made significant changes in the judicial system. According to A. Dobrosmyslov:

“The regulation of 1868, bringing the control of Kirghiz nearer to the general government in Russia, could not leave the Kirghiz court in the form it had before. The transformation of the Kirghiz court was also affected by the desire to bring it nearer to the Russian one, not entirely ignoring, however, popular Kirghiz customs.”²⁹

The following structure of justice was approved: (a) military courts carried out proceedings on the basis of the Code of Military Regulations, (b) courts of general jurisdiction which were guided by the provisions of the law of the Russian Empire, and (c) *biy* courts, called “people’s courts”, which dealt with disputes by means of the customary law of the Kazakhs.

It should also be noted that judicial authorities in the Syr-Darya region were left with the court of *kaziys*, who fulfilled their duties on the basis of Islamic law.

Judicial functions were left with military and administrative authorities. Such a bureaucratization of justice contributed to a close degree of control over the local population.

Before 1867 – 1868 the structure and procedure of *biy* jurisdiction underwent radical changes. By the 1860s, despite the fact that a significant category of cases was withdrawn from its jurisdiction in favour of empire-wide courts, the *biy* court was in fact embedded into the colonial administrative apparatus; due to significant changes in the balance of social forces in the Kazakh region, such a tribunal no longer satisfied the interests of the new Kazakh elite and did not correspond to the further development of the system of colonial control. The independence of people’s judges was finally destroyed by the conducted judicial reform. Judges were elected at the same time as *volost* chiefs at

²⁸ MALYSHEV, N. *Obychnoe semejnoe pravo kazahov*, p. 7.

²⁹ DOBROSMYSLOV, A.I., *op.cit.* (supra, n. 72), p. 78.

meetings of electors for a term of three years with further approval given by the governor.

Biy courts were entrusted not only with hearing cases, but also with notary public activities, which was an unusual court function. By certifying the performance of legal actions and the possibility of preventing their violations, the *biy* court was a kind of an auxiliary control and supervisory authority in the steppe. Entrusting lower courts with notarial functions demonstrated the interest of the authorities in the existing private ownership of Kazakhs of the time. Thus the colonial authorities not only brought this into legal circulation and legalized deals with property but also took control of its relocation.

Entrusting the *biy* court with notarial functions brought an effective instrument of colonial policy – a mechanism of natural control, i.e. control from the bottom, which society conducted internally. A set of notarial functions with judicial powers was a means to regulate the daily social life of the nomads, a means for Kazakhs favouring colonization to implement their own policing and establishment of order.

Due to the fact that legal proceedings were more and more often conducted by *biys* in writing, various written documents were now admitted as evidence. The oral tradition of resolving a dispute had blocked the possibility of interpreting the customary law of the Kazakhs by colonial authorities, but the introduction of written communication between the production of justice and legal reality introduced a kind of commentator – the imperial administration official. This started the vigorous activity of officials in encouraging the recording of legal cases.

According to A.K. Geins, the *biy* court “is swift and is produced in words; it is quite fair and always disinterested, and that is why it is respected not only by the Kirghiz, but by commoners and Cossacks, many of whom voluntarily go to the *biy* court, especially in cases of claims against the Kirghiz”.³⁰

A special feature of the customary law of the Kazakhs had been the fact that it was expressed in verbal form and judgment was always given orally. “All appropriate procedures were verbal and symbolic, which means that judicial procedures represented certain symbolic actions supported orally.”³¹ Thus an alien element was introduced into the traditional oral legal proceedings of the *biys*. The introduction of writing into jurisdiction contradicted the tradition of the steppe which had been established for centuries.

The imposed mechanisms of dispute resolution were contrary to the fundamental principles of the jurisdiction of the customary law of the Kazakhs. Jurisdiction was considered extremely inappropriate for the nomadic lifestyle

³⁰ GEINS, A.K. *Sobranie trudov*, p. 110.

³¹ ALIMZHAN, K.A. *Voprosy teorii obychnogo prava*, p. 132.

since it was wasteful in terms of time, finances, morals and other things. The principle of procedural economy took account of the consumed time, the quickness of restoring violated rights and the simplicity of a trial.

Such a “linguistic revolution” would lead to more negative consequences for the Kazakhs. According to G.S. Zhumasheva, “Record keeping, even on the level of the *aul*, was conducted in Russian; non-Russians could not hold positions higher than the *volost* level.”³²

Innovations significantly raised the question of the language of proceedings and led to the “linguistic suffering” of those who could not find protection in their own language. An ordinary nomad inevitably felt injustice when the antagonism of interest entered the legal sphere. Simple Kazakhs were intrinsically denied access to justice. In fact, it was the expulsion of the Kazakh language from legal and political discourse that put an end to the process of the adaptation of Kazakhs to the administrative and political system of the Russian Empire.

Proceedings (the last and relatively independent sphere of power relations Kazakhs were involved in) eventually entered the circulation of colonial rule. As a way of establishing the truth, the court was subordinated to the system of administrative management and also imposed the order established by colonial authorities. The Russian scientist L.A. Slovokhotov wrote, “Under these circumstances, judicial power was discredited, so to speak, in the Kirghiz’s notions, as it was in the hands of all administrative authorities – from copyists, interpreters and *vakhmistrs* to the Orenburg chief commandant and governor-general. Here, of course, there was no court, but there was the selling of it.”³³ The *biys* almost always solved cases in favour of the party that was supported by the chiefs.³⁴

It should be noted that the tendency of the bureaucratization of courts was widespread in Russia, but the most negatively affected were its outskirts. The famous lawyer N.M. Korkunov (1853 – 1904) noted that:

“Judicial decisions are the most reliable source of knowledge of customary law, as they are usually the result of a thorough verification of the existence of customary law on the part of the lawyer – a person who is, therefore, quite ready for that case. The same should be said about the courts where judges are not lawyers but representatives of folk wisdom. Of course, such a people’s court is less competent for an accurate and common formulation of customary law than a court composed of lawyers, but, on the other hand, a people’s court

³² ZHUMASHEVA, G.S. *Istorija administrativnyh reform v Kazahstane v kontse XVIII – XIX vv.*, p. 48.

³³ SLOVOKHOTOV, L.A. *Narodnyj sud obychnogo prava Kirgiz Maloj Ordy*, p. 69.

³⁴ DOBROSMYSLOV, A.I., *op.cit.* (supra, n. 72), p. 88.

composed of people has immediate knowledge of customs. The decisions of such courts have the lowest reliability as they are composed of people for whom both national justice and legal education are equally alien. Such are, for example, our semi-literate *volost* clerks who have a significant impact on the practice of *volost* courts.”³⁵

The judicial system and the system of criminal penalties were coded by the colonial authorities so as to introduce contradictions inside the Kazakh nation, to put one Kazakh against another – the supporters of the colonial regime against its opponents.

The system of criminal punishment was not concerned with bringing order to the steppe and resolving disputes between various families and clans, but struggled against rebels and fighters against the regime imposed by the empire. Earlier the suppression of people had been entrusted primarily to the military administration, but later the rebellion was prevented by the binary system consisting of justice and the police as a specific mode of control. The intended transition from a military administration to a police one was manifested in structural changes that were made at the top echelon of the administrative system of the region. For example, the military governors of the Akmola and Semipalatinsk regions lost their military status in 1880 and their responsibilities were assigned to the Western Siberian Military District. At the same time, being under the command of the Ministry of Internal Affairs, governors were given broad policing powers. The *biy* court was finally transformed into a judicial bureaucracy by the reform of 1867 – 1868 and consisted of three bodies: (a) a sole *biy* that heard civil cases for claims of up to 300 rubles with the right to a final decision on amounts not exceeding 100 rubles, (b) a *volost* congress of *biys* that acted as a court of first instance and heard claims for unlimited sums with the right to a final decision for sums of up to 500 rubles and as a court of second instance in cases that had been tried by the sole *biy*, and (c) an extraordinary congress of *biys* that heard disputes between *auls* of various *volosts* and was a court of second instance in cases heard by the *volost* court of *biys*. In addition, an “extraordinary” court could be convened with the permission of the governor in order to hear disputes between representatives of various *uyezds*, where *biys* could coordinate and interpret the rules of customary law they used in each case. The interpretation of customary law in the new circumstances represented an inevitable process. The discretionary powers of *biys* were the only means for removing the increasing number of lacunas in the legal substance of nomads.

³⁵ KORKUNOV, N.M. *Leksii po obshchej teorii prava*, p. 405.

The enforcement interpretation of the *biys* acquired a special political importance. Since the “discretion” of judges served as the only answer to the silence of the law, there appeared an alternative which was fatal for any legal decision: decisions were either arbitrary, which was illegal, or they were legal only with the support of claims on the legislation. The customary law of the Kazakhs increasingly acquired qualities alien to it but inherent in the system of colonial law. Generally speaking, the system of administration, introduced by the regulations of 1867 – 1868 with subsequent modifications of a formal character, continued to operate until the collapse of the Russian Empire.

By the mid-1870s virtually all of Central Asia was subdued. The Petersburg Treaty of 1881 defined the domains of the Russian Empire bordering on China. In the 1880s administrative and territorial changes were conducted. In particular, on 11 July 1881 and 18 May 1882 the Orenburg general-governorship and West Siberian general-governorship were respectively abolished. As a result, the Turgay and Ural regions became controlled on a special basis by military governors with special regional administrations. On 28 May 1882 the Akmola, Semipalatinsk and Semirechinsk regions formed a separate administrative and territorial unit – the Steppe General Governorship with its centre in Omsk.

On 2 June 1886 the Provision on the Management of the Turkeستاني Region was adopted and on 25 March 1891 so was the Provision on the Management of the Akmolinsk, Semipalatinsk, Semirechinsk, Ural and Turgay Areas. These provisions did not bring any essential changes into the area of the management of the Kazakh population. The 1886 provision defined the powers, rights and duties of the Turkeستاني governor-general and distributed the functions of governing bodies. Police departments were now established in the *uyezds* and the judicial system now included the position of Justice of the Peace. According to V.V. Ivanovsky (1854 – 1926), “With regard to the division of general-governorships into directly lower administrative units, the government aims to set the same orders that exist in the native Russian lands, i.e. divide them into provinces, *uyezds*, *volosts* and rural communities.”³⁶

With the reforms of 1867 – 1868, 1886 and 1891 the entire diverse system of administrative control over the Kazakh lands formed by the colonial authorities in the first half of the 19th century was unified and in general brought to a common denominator.

³⁶ IVANOVSKY, V.V., op.cit. (supra, n. 77), p. 9.

Conclusion

Kazakh society underwent significant changes during the process of incorporation into the Russian Empire. Fundamental changes also took place with the customary law of the Kazakhs. The legal norms of nomads were replaced by the laws of the Russian Empire. Imperial laws boundlessly destroyed uniformity, annihilating traditional rules and abolishing the existing conventions and agreements that had operated prior to their acceptance, and were maintained by voluntary agreement. This in turn led to the fact that nomads ceased relying on the existing regulations of customary law and observing any concerted agreements, which led to the introduction of tough criminal penalties and other punitive measures by the colonial authorities.

The final consolidation of tsarism in the steppe helped form a network of local power relations at the local level with the help of military and administrative institutions, which through powerful state structures allowed the Russian capital to redistribute income into the empire. In its turn, the expanded capillary network of stable power relations at the local level enabled the administrative apparatus to extend imperial legislation onto the territory of Kazakhstan.

In addition, significant changes were made to traditional nomadic routes. Through the administrative and territorial reforms the colonial authorities not only destroyed the usual places of nomadic pastures but contributed to intertribal fights over the pastures. For the resolution of conflicts the nomads had to turn to the Russian administration, which was the arbiter of disputes and relied on the introduced norms of imperial law in Kazakh society. Thus, in the hands of the colonial authorities, the law not only performed the function of the resolution of social conflicts but was also a means of its production. In the end, administrative and territorial changes and legal reforms led to the forced sedentarization of the Kazakh population and the final loss of sovereignty of the Kazakh zhuzes.

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