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CIVIL LEGAL REGULATION FEATURES IN THE STATES WHO INHABITED THE ANCIENT TERRITORY OF KAZAKHSTAN

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ABSTRACT: This article discusses the features of the regulation of civil legal in the states, who inhabited the ancient territory of Kazakhstan. The authors also noted the development of a legal framework for regulation of civil relations in these countries. The nomads who inhabited the territory of present-day Kazakhstan, anciently engage in economic, cultural and political relations with other nations, and in accordance with the provisions of the laws protecting the rights of individuals, and sometimes even the whole country, when there was a threat to its interests, thereby protecting the political system, the legal system of nomadic state. Ancient legal system, to regulate relations in the tribal society, giving rise to the modern civil law.

The ancient law for thousands years regulated society, inhabited the territory of Kazakhstan. V.V. Grigoiev, in his work “About the Scythian people Sakas” proves the existence of civil legal Saks with other nations: “The nomads of Central Asia, who were closer to the South, being in contact and intercourse with the people closer towards the industry, of course borrowed from the latter that they could borrow: weapons, clothing, utensils. These borrowings from southern nomads moving gradually to the northern neighbors, and thus establish plain similarity of weapons, clothing, jewelry, among all the nomads”¹ i.e. neighboring

¹ V. Grigoriev, *On the Scythian people*, Almaty 1998, p. 57.

nations engage in trade, exchange relations, thereby developing the laws governing this area.

Economic and political relations between the neighboring tribes had an influence on their social life. This influence was so great that even when the peoples who inhabited a certain territory, moved, left the political arena or even disappeared from history in the lives of their neighbors had a lot to do with their lives. According to V. Grigoriev, so “when southern nomads go anywhere with those lands, which occupied, and these lands went to their northern neighbors, the latter were, and by armament, and the suit and shoes, and other items quite similar to their predecessors. The similarity of the customs between southern and northern ones were established, as has been said, the same conditions of steppe nature, the same needs and nomadic lifestyle. That is why between nomads belonging by birth to an entirely different tribes may be granted in their daily life, customs, and the device is much more common than among tribesmen... ”² which confirms the existence of civil matters among nomadic peoples such as trade and exchange even in the distant past.

Forming ordinary laws nomads passed gradually in the long process of social development, passed down from generation to generation, being improved in line with the realities of the time. As a nomadic society, inhabited the endless steppe, lived separately, there was a need to protect the rights and interests of clans and tribes and their members in relations with other societies that gave rise to the current rules to regulate all aspects of the relationship. These standards were supplemented and as a result have become common laws regulating social relations. The vital need for the development of society and deepen the content of customary laws, increased its role, changing, complement and perfecting. Steppe laws with their nature, characteristics, originality contributed to the general regulation of public relations in the states of the Huns, Usuns, and then the Turks who lived Before Christ on the territory of Asia. Penalties for making default of commercial, contractual obligations, various tax payments indicated the development and improvement, amendment of ordinary laws, and testified that they were actual governing power.

² Ibidem.

According to legal requirements, formed on the basis of the ordinary laws of the nomads, Hun rulers had been entitled to have ownership. The Huns had emphasized ownership, assessing it as an interest, wealth, honor and power. Fields and pastures, cultivated land, water sources territories is fully handed down to the next generation, from father to son, hence the Huns was developed by the institution of property. One way of increasing the property was considered a war whose winner returned as the owner of the new possessions, property, cattle. In addition, the emergence of slavery, to use cheap labor of the captured men also contributed to the augmentation of their wealth. There were two categories of slaves, if one were yesterday's war prisoners, i.e. deprived of their land, property, livestock and freedom, the second category consisted of people trapped in slavery because of debt bondage. There were also slaves who came in the bride's dowry, which consisted of orphans and widows. Slaves tended cattle, for sowing season, for working in the migrations.

In the regulation of civil legal relations it was allowed to transfer slaves as a loan, payment, and pledge, to participate in the war. Usuns also considered ownership to be of perpetual interest. The property was considered a reflection, the basis of nomadic life.

At usuny a pasture belonged to all tribes, but the cattle was considered as property of individuals. The need for increasing cattle, change in society had impact on views of people on property, led to expansion of property concept.

Now you had to draw the line between the property of the ruler, tribe and a certain family, to give a stable character to wars. Usuns' ruler Kunbi purposefully expanded its power on the main production tools of the state – pastures and water sources. This undoubtedly created a risk of dissatisfaction on the part of the heads at various levels and the entire nation that posed a threat to the country's stability, the stability of the state power. Therefore, it was necessary to secure the interests and property of the ruler Kunbi and his dynasty, the heads of tribes at the legislative level, based on the ordinary laws of the Usun, so Usuns owned land as property. For regulation and legalization of the phenomenon ruler Usun took unprecedented measures related to the competence of the state, as the researchers write, "Get a life new legal rule standing above the level of ordinary

laws, the performance of which was provided by state ruler. The head of state Usun Kunbi – Venerable Kunbi ordained a new law: “In the field there should not appear even a thimble to the herd should not join any animal.” Its peculiarity lied in the fact that among the common law it was the law of the state, is notable for its originality, strength, normatively”³.

By means of this law there was legalized any spring, summer, autumn pastures, over wintering, water, tillable land, once considered the possessions of the nomadic people, that is, now no one could somehow manage to own these goods. Pasture land and livestock were considered pillar of the state and under the protection of the state.

Thus, the Huns and Usuns property of rulers and heads consisted of land, property, livestock and slaves. The right to property is protected by state laws that were created on the basis of the common law. Over time, the nomadic states improved the laws regulating civil matters based on the ordinary laws. In the state Kangüy who lived in Central Asia, V–VI century BC, the punishment for stealing other people’s property, livestock was in the form of compensation for the harm. This indicates a change in life, the growth of consciousness, the level of culture, adapting to the new realities of the laws.

If the nomads’ ownership designated boundaries, their cattle had a label. In the V century Kangüy put labels (in the form of a slit in the ears), their cattle, and this tradition had been preserved among the Turks. Turks in each race had its own label, plus livestock each family celebrated their tamgas. Tags help to distinguish their own livestock on someone else’s, and most importantly, follow a sign of ownership. Thus, the cattle in the old days belonged to the property, which can be sent by debt, used as payment, as a percentage, i.e. it was a chattel.

In a nomadic society existed the institution of property, which includes land, cattle, slaves, and they had produced goods that had been firmly entrenched phenomenon, supported by a law enacted by the state. It can be assumed that Kangüy was developed written trade agreements, marital unions. So Kangüy’s marriages concluded in special conciliatory institu-

³ G.S. Sapargaliyev, G. *Sources Fabbasuly law*, “Log. State and law” 2001, No. 1, p. 21.

tions, thus precisely defined responsibility of spouses to each other, divorce conditions, responsibility of everyone before the law. In ancient tribes like the Huns, Usuns, Kangüy which has been widely circulated and preserved for centuries common law – amengerstvo. Amengerstvo considered a derivative of the nomadic life and was seen in several aspects. The widow was considered the “property” of a particular dynasty, which paid for the bride-price, so allow distraction from her husband, but the care of the kind was impossible. In addition, amenger (the man who marries a widow) came from the same family, that her former husband, he was endowed with rights amengerstva because it was considered a guarantor of welfare of children of the deceased. Amengerstvo considered a form of care, protection of widows and orphans, and the failure is a shame for the whole family. In the event that the case of the widow’s “amengerstvo” did not find the solution, the dispute “zhesir dauy” flared up between the clans, which often led to intrapartum or intergeneric conflicts. This has led to the need to form a basis of laws amengerstvo in a nomadic society. The most common type of amengerstvo was the form in which when a man dies, the younger brother should take his widow as his wife. That is, he is not just getting a husband to the widow of his elder brother and father to his children, the heir to his property, but he was assigned the mission to preserve elder brother’s family, to protect the orphans. This was a feature of the ordinary laws inherent in nomadic society, and was a model of providing kinship, humanity, kindness, saving seed and continuity of the dynasty. This law was very popular and operated until the early 20th century. In the Kazakh society disputes relating to the right of inheritance, property, amengerstvo, land disputes, the dispute is about a widow that occurred within a single family, were considered in the interests of this kind, and regulate the activities of ordinary laws. With the spread of Islam in the Kazakh steppe in the regulation of legal relations in civil society, particularly on the issue of inheritance have been significant changes. Provisions on the right of inheritance have been reflected in the verses of the Quran, the Hadith and sayings of the Prophet Muhammad⁴.

⁴ A.S. Smagulova, *Nasledstvo and inheritance in the national common law, and its role in society*. Thesis for the degree of Ph.D., Almaty 2004, pp. 84–85.

The old customs and traditions have found a Muslim character. As a result of the spread of Islam is observed enrichment of the political, religious and civil law, respected as individuals and society as a whole. Possession of the property, the disposal of property received as an inheritance from his father, governed by Islamic canons, maintaining a fair, honest and humane division of the inheritance. This was in 123 hadith of the Prophet Muhammad stated: “1) the division of property does not allow bad faith. 2) Be humble. 3) In war do not let cowardice. 4) Do not commit evil in relation to the spoils of war and other people’s property. 5) Protect the poor from the villain. 6) Never lie to the orphan”⁵. In the regulation of civil legal old customary laws have been expanded and enriched by the principles calling for fairness in trade balance, fairness in trade, justice in cases of refusal of bribes, promises of fidelity to high humane qualities, but their basic content in general has remained unchanged.

After the Mongol invasion in the Kazakh steppe established laws Yasi issued by Genghis Khan absorbed the customs, beliefs and traditions of the ancient Turks, and they cover all areas of public life. The laws have provisions for the military discipline of defining conditions of the ruler of the contract, sending ambassadors to another country to prohibit espionage and treason.⁶

The laws governing the internal relations within the state, to ensure the strength of the marriage, indicated: “whatever is going to get married adulterer or not, he was sentenced to death.” That is, the rape of a woman, a decline of cohabitation of married women, the entry of married women in a loving relationship with another man, any adultery, regardless of who committed it, man or woman, severely punished. Noteworthy article of the law, pointing to the need for a responsible attitude and enterprising in trade: “Who takes goods and fails, and then again takes goods and again he failed, that after the third time should be sentenced to death”⁷.

Regarding the theft of the law state: “The one who will have found a stolen horse should return it to its owner, and to give the same bargain

⁵ Z. Meirmanov, *Hadith*, Arkalyk 1991, p.19.

⁶ H. Koknaldi, *Iasi Genghis Khan*, Shymkent 2003.

⁷ A. Levshin, *Description Kirghiz Cossacks, or Kirghiz hordes Kaisak and steppes*, Almaty: Sanat 1996, p. 36.

nine horses, if he is unable to pay the fine, instead of horses need to pick up his children, and if there are no children, should slay him like a sheep⁸.

Similar in its cruelty to the laws of the ancient East, these laws contradicted the Kazakh customary laws. For this reason, they did not find support in the Kazakh society. As you know, the Kazakhs, if the offender is unable to pay a fine, be required to pay all his race. Division of property is based on the following assumptions: "Senior gets more younger, youngest son inherits (gets over) his father's farm"⁹.

When deciding on *amengerstvo* to a young wife (a current – the youngest wife) went off to another man, the son of the deceased head of the family, born of the senior wife (*baybishe*) married the youngest wife of his father, or his decision to give her a blood relative of his wife father. Genghis Khan legitimized this order with its laws *Yasi*. However, the Kazakh customary law *amengerstvo* dared question differently. Younger wife's father was considered the mother of his children, regardless of age, and they were obliged to provide it with the same honors as his own mother. It is clear that at the heart of the Kazakh ordinary laws are the principles of humanity and spirituality. The laws of the *Yasa* of Genghis Khan did not find distribution in the Kazakh steppe, had no impact on the consciousness of the people, not being able to change it. However, "in this sense it can be seen that the nomadic Turkic-Mongol peoples united under the banner of the Nine-Khanate, created by Genghis Khan, used the same legal practices in the field of state power" – indicate studies¹⁰.

In Khan's period of adjustment in all spheres of civil relations was carried out by a set of laws Kasim Khan, which were well established: "1) Property Act (the rules for resolving disputes over cattle, property, land). 2) Criminal law (punishment for murder, assault on the village, cattle rustling, theft). 3) Military Law (formation of troops, military service, coon for the murder of a man, a racehorse). 4) Ambassadorial tradition (awareness, public speaking skills, civility, ethics in international relations). 5) Public Law (free distribution of food and things, the rules at

⁸ S.S. Sartaeva (Ed.), *History of State and Law of the Kazakh SSR. Part 1*, Alma-Ata 1982, p. 39.

⁹ Z.Zh. Kenzhaliev, *The customary law of the Kazakhs*, Almaty 1997, p. 41.

¹⁰ A. Sadri Maksudi, *Turkic history and law*, Kazan: "Feng" 2002, p. 96.

the time of commemoration, toy, holiday, duty of zhasaulov, bekeulov, tutkaulov (performer assignments at the Defense Ministry)”¹¹.

Including property laws fully covered civil matters, determining the order of possession, use and disposal of property. Mechanisms for resolving land disputes, the widow of disputes and questions of inheritance, earmarking a percentage of married older son, amengerstvo, issuing married daughter with a dowry clearly indicate the position which he held the head of the family in a traditional Kazakh society. Code of Laws of Khan Esim brought innovation to the system of law, securing the next “so be Khan and laws worthy of Khan; let it be mandatory election sage, let it be Bii, and let it be a home for beating”, through the provision was indicated the need for a just law that would regulate the internal and external order Khanate, secured authority sages who guard the spiritual wealth of the people, and biys arbiters of justice. As regards civil matters, they are governed by property laws issued under Kasim Khan. Kasim Khan’s code of laws, based on the old traditional laws applicable to regulate civil matters in Khan’s period (taking into account changes in society, political and social status) was added in five chapters. Each article, all the provisions of the laws and regulatory functions correspond to the realities of the time. Law promoted unity and national cohesion of the people. Code of Laws “Jeti zhargy” basically solved the most pressing issues of civil matters such as land disputes, the widow of disputes, cases on payment of Kuna, questions about parenting and marriage and family relations and issues of criminal responsibility, intergeneric relations, national security¹². Laws “Jeti zhargy” were fixed generic tamga (arms), which strengthened the relations of property. This is a well-known lawyer S. Uzbekuly writes: “One of the issues of national importance by emphasizing tamga of every sort. Tamga approved Qurultay was recognized symbol of nature. And in the course of ownership, use and disposition of property, each family had its own label, which is affixed to the ears of cattle belonging to her. If tamga used in tribal, tribal scale, label served as personal sign of the family”¹³.

¹¹ N. Myhzhhan, *Laws Kazakh hanstva*, Almaty 1995, p. 19.

¹² N. Useruly, *Jeti – zhargy*, Almaty 1995, p. 34.

¹³ C. Uzbekuly, *The right of nomadic civilization Kazakhs*, Almaty 2002, p. 50.

That is, in the regulation of property relations tamga and labels were used to denote not only collectively but also private property, strictly protecting the ownership and control of it. The rules of law, to decide important for society widows disputes arising due to incorrect address the issue amengerstvo that regulated marriage and family relationships, parenting issues, issues of ownership and use pastures to ensure internal harmony, unity of the people, for centuries served to all the people, and their last appearance was destroyed by decrees and laws adopted in the Soviet time.

Summing up our thoughts, it should be noted that the traditional right as old as the history of the peoples of the world, holds a special place in the history of each of these people and is broad scope of issues and solutions. Ordinary laws cope with the heavy task of regulation of government to meet the rights of all members of society. The current legislation of all countries of the world originates in the traditional law.

Historical documents, research scientists to confirm that the Kazakh government has been long among the countries that had their own laws. According to the research, in the Kazakh lands before our era had a system of common law, which like the laws of Babylon, Rome, Egypt, Greece regulate social, civil relations, namely, ownership, inheritance, marriage and family relationships, etc. In accordance with the characteristics of government¹⁴. Legal norms in force in the territory of present-day Kazakhstan, based on common law, have had their differences to the laws of Babylon, Rome, Greece, China, and even some of the benefits. If the laws of the eastern man who committed the theft, ill – punished by cutting off arms, legs, etc., in the Kazakh traditional law punishment in the form of self-harm is absent, instead, applied public reprimand, whipping fine, that carried with it a great educational function. In addition, it places a responsibility on the guilty parents, members of his family. The people highly esteemed honesty, fidelity to the word, commitment, responsibility, respect of which largely depended on the authority of all kinds. Rules governing civil relationships in the state, were in the process of continuous improvement to meet the realities of time and remain relevant. The nomads who inhabited the territory of present-day Kazakhstan, anciently engage in

¹⁴ K. Omarhanov, *Hanskie Labels*, Almaty 1999.

economic, cultural and political relations with other nations, and in accordance with the provisions of the laws protecting the rights of individuals, and sometimes even the whole country, when there was a threat to its interests, thereby protecting the political system, the legal system of nomadic state.

Ancient legal system, to regulate relations in the tribal society, giving rise to the modern civil law. Similarly, the system of Kazakh customary law, designed to ensure the rights and interests of all members of society in civil matters, in all areas, whether it's property rights, inheritance, marriage and family relations, trade or barter, originally conceived as regulatory standards, was a centuries-old experience of the and become a source of civic standards of future generations.

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