ҒТАХР/ МРНТИ / IRSTI: 03.09.03
ӘӨЖ/УДК/ UDC: 94:342.56(575.1)
«XIX/XX» https://www.doi.org/10.51889/2959-6017.2025.84.1.007

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FROM THE HISTORY OF THE APPOINTMENT SENTENCING AND INVESTIGATION OF QAZI (JUDGES) IN TURKESTAN

Abstract

The purpose of this document is to analyze the influence of the legislation of the Turkestan region of the colonial legal taxonomy of the Russian Empire on the notarial activities of local Sharia courts on transactions with legal force related to land property, marriage, trade, and legal agreements. The hypothesis is that changes made by the Tsarist Empire legislators in Muslim property rights “adat” and Indigenous tradition caused a major gap in the application of colonial legal taxonomy. On the one hand, Tsarist Russia sought to hold possession for itself by providing control that officially limited Muslim ownership of property and other (Rent, Sale, purchase) rights about the property; on the other hand, the colonial system never established directions guaranteeing the implementation of these laws by Sharia courts and coordinated them in the application of Islamic law. In this way, this article highlights how the colonial definition of the current rights of Muslims was generally ignored in agreement with legally notarized documents of Muslims. This leads to the conclusion that the viability of the colonial system, limited by its inclusion in Turkestan local management, developed to amend Islamic procedural legislation, which involves its codification.

Keywords: legal changes; procedural law; sharia; qazi; property relations.

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ТҮРКІСТАНДАҒЫ ҚАЗЫЛАРДЫҢ (СУДЬЯЛАРДЫҢ) ҮКІМІН ТАҒАЙЫНДАУ ЖӘНЕ ТЕРГЕУ ТАРИХЫНАН

Аңдатпа

Бұл құжаттың мақсаты – Ресей империясының отарлық құқықтық таксономиясының Түркіс-тан өңірі заңнамасының жер меншігі, неке, сауда және заңды келісімдерге қатысты жергілікті Шариғат соттарының нотариаттық қызметіне әсерін талдау. Гипотеза бойынша,

патшалық Ресей-дің заң шығарушыларының мұсылман меншігіндегі «адат» және жергілікті дәстүрлерге енгізген өзгерістері отарлық құқықтық таксономияны қолдануда айтарлықтай олқылықтарға себеп болды. Бір жағынан, патшалық Ресей өз меншігін сақтап қалуға тырысып, мұсылмандардың меншік құқығын және басқа да құқықтарын (жалға беру, сату, сатып алу) ресми түрде шектеп, бақылауды өз қолында ұстауға тырысты; екінші жағынан, отарлық жүйе осы заңдардың Шариғат соттарымен орындалуын қамтамасыз ететін нақты бағыттар орнатпаған және оларды исламдық құқықты қолдану тұрғысынан үйлестірмеген. Осылайша, мақала отарлық жүйенің мұсылмандардың қазіргі құқықтарын анықтау барысында мұсылмандардың заңды түрде нотариалдық куәландырылған құжаттарында бұл құқықтардың жалпы ескерілмегенін көрсетеді. Бұл отарлық жүйенің өміршең-дігі, оның Түркістандағы жергілікті басқаруға енгізілуі шектеулі болғандықтан, исламдық процестік заңнаманы өзгерту үшін оның кодификациясына жол ашылғанын қорытындылайды.

Кілт сөздер: заңдық өзгерістер; процестік құқық; шариғат; қазы; мүлік қатынастары.

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ИЗ ИСТОРИИ НАЗНАЧЕНИЯ, ВЫНЕСЕНИЯ ПРИГОВОРОВ И РАССЛЕДОВАНИЯ КАЗИ (СУДЕЙ) В ТУРКЕСТАНЕ

Аннотация

Цель данного документа – проанализировать влияние законодательства Туркестанского региона в рамках колониальной юридической таксономии Российской Империи на нотариальную деятельность местных шариатских судов, касающуюся сделок, имеющих юридическую силу, связанных с земельной собственностью, браком, торговлей и юридическими соглашениями. Гипотеза заключается в том, что изменения, внесенные законодателями царской России в права мусульман по вопросам собственности, традиции «адат» и коренных обычаев, вызвали значитель-ный разрыв в применении колониальной юридической таксономии. С одной стороны, царская Россия стремилась удерживать за собой собственность, предоставив контроль, который официально ограничивал право мусульман на владение недвижимостью и другие права (аренда, продажа, покупка) в отношении собственности; с другой стороны, колониальная система так и не установила направлений, гарантирующих реализацию этих законов шариатскими судами и их согласование с применением исламского права. В этой связи статья подчеркивает, как колониаль-ное определение текущих прав мусульман в целом игнорировалось в соглашениях, нотариально удостоверенных мусульманами. Это приводит к выводу, что жизнеспособность колониальной системы, ограниченная ее включением в местное управление Туркестана, развивалась в сторону изменения исламского процессуального законодательства, что подразумевало его кодификацию.

Ключевые слова: юридические изменения; процессуальное право; шариат; кади; имущественные отношения.

Introduction. Documents such as certificates, judgments, letters, silk hats, confession letters, Grace, Act(Act), claims and documents such as register books of Kazakh affairs should be considered the main source in the study of the history of Turkestan, its administrative office management method, the method of Management in the territory after the formation of the Turkestan general governorate and the history of the judicial office.

Regarding the content of the conceptual and methodological approaches in the existing literature on subject historiography, scientific works were created in the authors ' studies dedicated to covering the history of the formation of the judicial system. However, since in Soviet times the chosen topic was studied from the point of view of communist ideology, the source and archival data involved in them were also interpreted unilaterally.

The goal of this paper is to analyze the impact of Russian legislation on the notary activity of sharīca courts in transactions involving landed property. The hypothesis is that incorrect assumptions made by Russian lawmakers as to the tradition of Muslims land rights caused a substantial loophole in the application of colonial substantive laws. On the one hand, the Russian state attempted to retain land ownership for itself by introducing regulations that formally restricted Muslims' land rights to possession and usufruct; on the other hand, the colonial administration never established regulations that ensured that these laws would be enforced by sharīca courts and failed to integrate them into the application of Islamic law. Therefore, this paper aims to highlight how the colonial definition of Muslims' land rights was largely disregarded when the Muslim judiciary notarized transactions on land by sharīca. This leads to the conclusion that the limited effectiveness of colonial legislation on land in Turkestan stemmed from the failure to reform Islamic procedural law, a process that would have entailed codifying it[1].

This article considers the ethno-cultural aspects of rivalry between the British and Russian empires in the process of the «Great Game» in Turkestan in the XIX century. It was established that direct contact with Eastern cultures, interaction, and dialogue (and communication was observed on both sides) occurred through British and Russian travellers. The eastern territories served as colonies of European countries and Russia. Based on an analysis of a broad source base and numerous studies, it was revealed that the scope of the tasks of travellers included not only the exploration of economic potential but also the study of the ethnopolitical, cultural, and geographical features of the region. At the same time, the travellers described in detail the terrain and nature but relatively modestly characterized the local population, which indicates the prevalence of the military significance of missions. The range of travel varies from political, diplomatic, and trade-economic, research to «entertainment», such as: hunting and tourism. It is thanks to the letters, notes, reports, and books of Russian and British researchers that the image of local people and their culture develops. Descriptions of travel or stories about life in eastern countries captured important details of everyday life, both residents and travellers themselves. It is shown that during the period under review, the progressive change in the notion of Europeans among the peoples of Central Asia was manifested, which was facilitated by the diverse composition of travellers and representatives of different European cultures. In this sense, the image of the Western traveller had a positive impact on the transformation of traditional society into a developing industrial society and the introduction of technological and cultural achievements of a more developed culture into it [2].

Drawing on a range of previously unpublished archival sources, this article examines the practice of settling marriage cases in people's courts of Turkestan, the changes in the latter introduced after the reforms initiated by the Russian authorities and the general changes in legal awareness in the second half of the 19th and the early 20th centuries. Special attention is paid to cases dealing with bridewealth, divorces, levirates, and the custom of leaving children with their father or father's relatives upon the termination of marriage. The author argues that in the second half of the 19th century, there was a gradual departure from certain Adat norms that implied neglect of the woman's opinion on issues related to marriage and divorce. Judges in people's courts began to ground their decisions more frequently in Sharia norms, as well as to follow its «purer», classic, version. Notions of individual rights, and women's rights in particular, widened general legal awareness, even though there was still no convergence of customary law systems with official Russian legislation [3].

This article examines Turkestan's position in the Tsarist Empire to argue that it was a distinct colonial territory, directly comparable to the overseas colonies of other contemporary empires and less like other older parts of the Russian empire. This article locates Turkestan's coloniality not in formal structures, but in its immense distance - moral, political, and legal - from the metropolis and the

imperial authorities' use of Islam as a marker of immutable difference[4] (*Scopus - сведения о документе - Turkestan's Place in the Russian Empire | Выполнен вход в систему*, no date).

Material

In most of these studies, attention was paid to sources on the history of the Kokand Khanate, public administration, the emergence of Islamic Fiqh (law), the history of religious movements, and the activities of famous Fiqh experts.

At the end of the XIX – beginning of the XX century, scientific research was conducted on the history of the Kazakh courts, regulatory legal documents and notarial acts in force in Turkestan, and some articles were also published. The authors of these studies are specialists with much richer experience in the field of Oriental studies, local history and their works provide valuable information reflecting local experience and traditions, as well as problems that existed in this area.

However, these studies did not analyze the activities of people's judges (kazis) in Turkestan, the issues of legal legalization and their specific features, they were not compared with other sources.

Methodology

Methods such as the principle of historicism, comparative analysis, systematization, classification, problem-chronological and interdisciplinary approaches were used in the research process.

The article explains the application of modern approaches and methods recognized in historical science, the use of many types of archival documents, source and historical literature, periodic press materials, the cited materials are based on primary sources, conclusions, proposals and recommendations are put into practice, the results obtained are confirmed by competent structures.

Discussion and results. The presence of various temporary statutes in the colonization of Central Asia and the absence of a single normative act created several difficulties in administrative management. Measures to eliminate this condition are carried out by the metropolis through various studies, particularly, revisions. F. 1882, who carried out inspection work in the country.K.Girs States in his report that "military-popular rule, because it lived its time and could not meet the current needs of the country, should be introduced General – based governance based on local conditions".

Modern Russian judges are assigned nibs and investigators. In uyezds, where Modern was a viceroy of judges, audits, and investigations were carried out by the judges themselves in question.

One modern judge was appointed in each uyezd and the city of Tashkent. Each province had a county court. Muslim citizens in the Turkestan region were sentenced to be interrogated by Russian law at the time of committing sinful acts written in the "law:

- if the first, opposites the Nasari (Christian) religion;
- the second, if the Russian Empire opposes its affairs;
- third, if the government opposes the order;
- the fourth, who is in the service of the crown, betrays in these affairs, standing in practice elected by the people;
- the fifth, when the crown resists in terms of fees, taxes;
- sixth, royal property, if the Treasury is betrayed;
- seventh, if the government violates the regulations and procedures issued by the leaders to combat the epidemic at the time of the appearance of infectious diseases on citizens and animals;
- the eighth, when the noble opposes the order of the peace of the people, act illegally for a mercenary purpose, helps thieves, falsely commits over someone, testifies that he hires about cases related to the interests of Tsarist Russia, hides an escaped person or violates the order,
- ninth, when a person shows himself in the name of someone else's offspring, from a lie;
- the tenth, if he intentionally kills someone, causes bodily injury, dies of a beaten and wounded cause, molests a wife and a girl, holds or locks someone against the law;
- the Eleventh is criminally liable if one forcibly dispose (in the sense of forfeiture) of one's land and property, damages or incapacitates a valid insignia as Chicora, intentionally appropriates one's property, robberies, plunder, and steals royal property[5].

If the Muslim people of the Turkestan territory commit the cases that cause the prosecution, which is not specified in Article 141 of the regulation on the management of the territory described above, on

the territory of the Russian Empire, these cases are investigated and sentenced by the laws of the colonial government without asking the veterans and boys.

The claim of the Turkestan province among other grassroots and nomadic peoples from the Muslim people is given to modern judges and Regional Court Courts for questioning the quarrels and claims made by Russian government officials following the laws of the Russian administration. If there is a contradiction between the judges, the bears, the investigators, the modern courts, and their substitute about whom to open a lawsuit, and to whom to investigate, then this conflict will be resolved by the Regional Court of Justice.

The determination of a fine of no more than fifty rubles for material or moral damages in respect of all kinds of punishment given orally, and in the case of detention for no more than seven days, was carried out by the judgment of the modern judges. But the events mentioned in Article 157, which complements this statute, can be rezoned to revise the judgment of the judges issued under the order of sentencing. Modern had the opportunity to petition the regional court in appellate order because the prosecutor was not satisfied with the judgments made by the judges, the damage done materially or spiritually over the unfinished judgments of the judges. In the case of cases relating to the judgments of the courts, Modern sent petitions and various correspondence by mail. If the letters of this charter were submitted before the end of the fan of the mail, it is considered that it will expire even if the deadline has expired when it arrives at the desired institution.

The Regional Court of Justice issues a response by assigning the time of the proceedings to be heard and reviewing the letters of material and moral damage. The investigation will not be stopped if the person who committed the sin Act and guilt, which will be the basis for material and moral damage or arrest under the law, does not appear in court. The prosecutor stops the interrogation of witnesses, the place of the crime of an event, or the person who committed it, which is material and moral damage. The regional Judicial Court has the right to summon witnesses needed in interrogative cases to the uyezd court close to the witness.

The provincial modern judges were allowed to apply themselves to revise the final summary judgments that the provincial magistrate and modern had received out of the jurisdiction granted by the judge. The petitioner's appeal is given by modern over the judge to a court called the Senate. To revise this claim under the decision of the appeal against these judgments, modern is allowed to re-investigate the judge and the Regional "Court Court, indicating the decision to reconsider[5].

The "validity" of the claim was tied to the evidence cited and was a condition for the court's decision to provide certified copies of the reflector certificate. There was also the practice of release from detention on bail. But in many cases, the person in his was not given freedom after the pledge Patta was handed over by the citizens. Although complaints were filed, no response to this problem was received.

At the time of the appeal of the District, City, and District Court and their judgments of officials, according to the law of July 12, 1889, it was considered in civil and criminal order. In the process, applications, announcements, complaints, and other documents are filed. Requests were made to sue, respond to the claims presented, determine the liability of third parties, establish disputes about behavior, and, according to similar disputes, refuse, criminalize, report, and provide oral and written explanations, and listen.

It was possible to bring private, appeal and Cassation complaints and reviews, petition for cancellation of legally valid decisions, take photographs, various certificates, copies, Awards, real documents, and executive leaflets, indicate the most methods for them, apply for inventory, registration, and sale of debtors ' property, stop disputes about property money, submit and sign their applications [5].

Among the Peoples other than the natives of the Turkestan region, or with the people of the people of the same province, or in the case of claims between the peoples of the sort and the nomadic lands:

- Claims of not more than two thousand rubles on a promissory note, A certificate or a contract, and on property and liability(rent);
- claims of no more than two thousand rupees(damages) and damages;
- claims on defense cases, the amount of which is not completely known at the time of request;
- defamation claims ;

- claims of persons who expressed a desire to regain possession of the property of the Empire, deprived of their rights, less than a month later;

- claims made in partnership before a year has passed on some part of someone's property;

- letters issued by Russian government officials from the middle of the sedentary or nomadic population modern judges questioned the claims made by the application.

When a petitioner appears before the people‘s judge, the judge listens to the petitioner‘s case and decides if it is within their jurisdiction. The petitioner‘s case should then be written down in the register, starting with the phrase “Content of Petitions.” The judge must write the date (month and day) when the petition is submitted, the names of the parties involved, their personal details, the subject matter of the dispute, and a clear description of the petitioner‘s request. If the person making the claim signs the petition, or affixes a seal or stamp, the judge must validate the petition by affixing their own seal.

After the petition is written and completed, the people‘s judge must record the date when the petition will be reviewed and indicate which individuals are being summoned for questioning. This information must be recorded in the register, and the parties should be informed. Additionally, if witnesses need to be summoned, an order must be issued for this purpose.

If all the necessary people for determining the facts of the case and issuing a ruling do not appear, the judge should record the date and time when the next session is scheduled.

Once all the necessary parties for the case have appeared, the judge should then proceed to write the ruling on the second page of the register. The judge must include the case number, the year, month, and date, and clearly state who filed the petition and against whom it was filed. The ruling should also mention the presence of the parties or their representatives and other relevant details.

At the end of the judgment, the judge must state the amount to be collected as part of the ruling and from whom the payment is required. The judge should then affix their seal to the document.

Once the ruling is completed, the people‘s judge must immediately inform both parties of the ruling and have them sign the document to acknowledge receipt.

If both parties request a copy of the ruling, a copy should be written on the second half of the page, cut along a dashed line, and given to the requesting party. The other party must then sign to acknowledge receipt of their copy.

After the ruling, the judge should make a note on the first page of the register that includes the “Ruling Reference.” It should indicate whether anyone has been sentenced to imprisonment and, if so, the length of the sentence. If a fine is being collected for the benefit of the treasury, the judge should record the amount and the person from whom it is being collected.

The people‘s judge is not permitted to collect fines before making a ruling. Typically, the judge will record the fine in the register and inform both parties. If the party responsible for the fine fails to pay, the judge will request the payment from the village administrator or the local elder (aksakal), who will then collect the money on the judge‘s behalf.

The people‘s judge does not assist the claimant in enforcing the judgment. After the judgment, the claimant must take the ruling to the village administrator or elder, who will ensure that the judgment is carried out.

If a person resists the orders of the people‘s judge, or fails to fulfill the judgment, or insults the judge during proceedings, the judge has no authority to punish them directly. In such cases, the judge should report the insult or resistance to the district governor or the district bailiff.

When recording judgments in the register, the judge must follow the prescribed rules, and after completing the entry, they should also record any relevant notes according to the established procedure.

If a petition is submitted without the agreement of one of the parties, the people‘s judge should record this petition and mention the specific judgment number, date, and details regarding the dispute.

If a petition is filed disagreeing with the judgment, the judge should note this disagreement in the register, including the details of the judgment in question, such as the judge‘s name, the date, and the case number.

If a petition is submitted directly to the people‘s judges without following the procedure outlined in the regulation on the administration of Turkistan Province, the judges should carefully review the petition. The dispute should be referred to the appropriate authority to determine whether it is suitable for adjudication.

If a people‘s judge receives a petition disagreeing with the judgment, the judge should not intervene in the case. If they are present at the session, they should refrain from interfering.

If two sides are involved in the case and the ruling is made by a joint decision, the presiding judge will have the final say. The judge‘s decision will be considered the ruling.

Conclusion. No special scientific research has been carried out on the history of the activities of the people's judges of the Turkestan region during this period and the Kazakh court. Analysis of thematic literature shows the relevance of the question of the political, economic, and cultural development of the Turkestan region in the form of a holistic study in historical science.

The Kokand Khanate was annexed to the state of the Russian Empire much earlier than other regions of Central Asia. In the political life of the Fergana Valley during the colonial rule, the Allegory of Subordination to the Russian Empire became the main place. The former local dynasty continued to govern the territory. The establishment of the Turkestan governorate–general and Russian power in the place of the Kokand Khanate here also did not initially lead to serious political changes. The colonial administration was transformed from the control of the territory at the disposal of the Kokand Khanate to the governor-general of Turkestan, which was the Office of the administrators of the Russian colonization.

Islamic culture and legal values, formed in the historical process in Turkestan, have penetrated the way of life of people in order by traditions, and local conditions in various aspects of the life of society: jurisprudence, language, public education, religion, morality, and several other spheres of social life. These processes are visible in the activities of people's judges–veterans directly.

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Credit authorship contribution statement

Kahramon Karimov: Formal analysis, Writing – original draft, Writing – review & editing. Ravshanbek Jumaboyev: Formal analysis, Writing – review & editing.

Acknowledgements

The authors express their gratitude to the doctor of historical sciences, professor Rasulov Bakhtiar and candidate of historical sciences, dosent Nargizakhan Khidirova for their support in the conduct of this study with scientific advice.

References:

1. Sartori, P. (2010) ‘Colonial legislation meets sharīca: Muslims’ land rights in Russian Turkestan’, Central Asian Survey, 29(1), pp. 43–60. Available at: https://doi.org/10.1080/02634931003765514.

2. Mamutova, K.E. et al. (2018) ‘Ethno-cultural aspects of the Russian-british rivalry in turkestan in the XIX century’, Bylye Gody, 50(4), pp. 1499–1506. Available at: https://doi.org/10.13187/bg.2018.4.1499.

3. Brusina, O.I. (2012) ‘Marriage and divorce in people’s courts of Turkestan: The interaction of adat and Sharia under the Russian governance’, Etnograficeskoe Obozrenie, (1), pp. 218–242.

4. Scopus - сведения о документе - Turkestan’s Place in the Russian Empire | Выполнен вход в систему (no date). Available at: https://www.scopus.com/record/display.uri?eid=2-s2.0-85148217322&origin=resultslist&sort=plf-f&src=s&sid=f19016ae02d2c281efe694336bd155e5&sot=b&sdt=b&s=%28TITLE-ABS-KEY%28turkestan%29+AND+TITLE-ABS-KEY%28colony%29%29&sl=73&sessionSearchId=f19016ae02d2c281efe694336bd155e5&relpos=4 (Accessed: 20 March 2024).

5. Karimov, K. (86-8-1) ‘“Qonun” kitobi’, Nashr qilinmagan [Preprint]. Available at: https://doi.org/10.51889/4464.2022.85.37.005.

Список использованной литературы:

1. *Сартори, П. (2010) «Колониальное законодательство встречается с шариатом: земельные права мусульман в Российском Туркестане», Central Asian Survey, 29(1), стр. 43–60. Доступно по ссылке: https://doi.org/10.1080/02634931003765514.*

2. *Мамутова, К.Е. и др. (2018) «Этнокультурные аспекты русско-британского соперничества в Туркестане в XIX веке», Былые годы, 50(4), стр. 1499–1506. Доступно по ссылке: https://doi.org/10.13187/bg.2018.4.1499.*

3. *Брусина, О.И. (2012) «Брак и развод в народных судах Туркестана: взаимодействие адата и шариата при российском управлении», Этнографическое обозрение, (1), стр. 218–242.*

4. *Scopus – сведения о документе – Место Туркестана в Российской империи (дата не указана). Доступно по ссылке: https://www.scopus.com/record/display.uri?eid=2-s2.0-85148217322&origin=resultslist&sort=plf-f&src=s&sid=f19016ae02d2c281efe694336bd155e5&sot=b&sdt=b&s=%28TITLE-ABS-KEY%28turkestan%29+AND+TITLE-ABS-KEY%28colony%29%29&sl=73&sessionSearchId=f19016ae02d2c281efe694336bd155e5&relpos=4 (дата обращения: 20 марта 2024 г.).*

5. *Каримов, К. (86-8-1) «Қонун» китоби, неопубликованная рукопись [Preprint]. Доступно по ссылке: https://doi.org/10.51889/4464.2022.85.37.005.*