

HISTORY OF LAW OF KAZAKHSTAN: PROBLEMS IN EXECUTIVE LAW

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ABSTRACT

The foundations of the Seljuk State were laid in the geography of Turkistan in the Xth century. Today, a significant part of this geography is owned by the Turkish Republic of Kazakhstan. Seljuk Bey, the Seljuks' ruler, served for a while in the Oguz Yabgu State, which ruled today in the territories within the borders of Kazakhstan, and then migrated to the Islamic country to the south, accepting Islam. Those of his descendants have found the Seljuk State, one of the greatest states in Turkish history.

Kazakhstan, today is one of the most important heirs of the political, social, cultural, legal and economic accumulation of the Göktürks, Seljuks and Kazakh Khans in Turkestan geography. The legal system established by these political entities has maintained its existence in that geography for a long time. It is possible to see the traces of the Seljuk legal system in the legal history of Kazakhstan, which has adopted the modern legal system nowadays. The widespread international trade and the emergence of new legal situations also necessitate changes in the rules of law. Kazakhstan's Execution Law is experiencing this process of change, along with a number of problems arise, in parallel with this, and it is becoming compulsory to make some changes in legal legislation for resolving these problems. The Execution Law adopted in 2010 with the aim of solving these problems that arise in the legal system in Kazakhstan brought with it a number of new problems in practice.

In this study, daily problems from the Seljuks on the Execution Law in the Kazakhstan's Legal System were identified and the solution of the issue was discussed.

Keywords: History of Kazakhstan Law, Execution Law

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1. INTRODUCTION

The Kazakh geography, where the Seljuks' ancestral lands are located, is governed by the Kazakh State, which currently holds the title as the largest independent republic of the Turkish world with a width of 2 million 725 thousand square kilometers.

In the history there are many Turkish communities that make Kazakhstan as home land. One of them was the Oghuzes and this crowded Turkish boy was tortured to the Islamic world by migrating from north to south on the present Kazak territory and eventually adopted Islam. One of the first Muslim Turkish states, Seljuk Bey and his grandchildren Tuğrul and Çağrı the Great Seljuks, whose siblings put their bases in the borders of Kazakhstan, within a short time has taken its place among the world's greatest empires. In this framework, the Seljuks continued to exist as a decisive force in the Turkish world, in the Islamic world and in the Western Christian world for the past two and a half centuries between the XI and XIII centuries. Khwarazmshah, Iraq Seljuks, the Syrian Seljuks, Turkey Seljuks, Ayyubids, Mamluks, atabeylics, Anatolian principalities as both the east and also confronted us in the West have been in many political organizations Seljuks historical and cultural heirs position.

In the XII century, when the Seljuks experienced the most brilliant periods, the southern parts of present-day Kazakhstan were under Seljuk rule or under the indirect control of this state. In Mongolian occupation with the withdrawal of the Seljuks from the historical scene, today's Kazakh lands were exposed to new invasions and various names bearing various names were settled in this geographical area. The Golden Horde State, which was accepted as the continuation of the Mongol Empire, tried to unify this body under a single roof. Since the XV century, Kazakh has been under the administration of the Timurid State for a while, and this state has been taken over by the dismemberment of the state and the so-called Kazakhs. Since the XV century, the Kazakh province, under the rule of the Timurid State, took over the power of the so-called Kazakh, which was a part of this state. By the time of progress it became dominant in the geography of West and Northern Turkestan.

From the XVIII century, the Kazakh society lived hard and

tough years under Russian pressure. Their lands were taken by the Russian Tsarist regime. Nonetheless, the Kazakhs, struggling under the leadership of Kazakh heroes, showed great resistance to occupations. Hundreds of thousands of Kazak Turks fell martyrs for the protection of their homeland. Kenasari is at the head of these heroes. Continuing its existence as an autonomous republic in the XXth century, Kazakhstan took its place among the Turkic republics at the end of this century with a fully independent structure led by presidents Nursultan Nazarbayev. (Hizmetli, 2011: 23)¹

The history of Kazakhstan, which has been among the fastest-growing and modern-looking countries of Asia, has also played an important role in the wars, victories and culture and organization as much as it has been defeated. Throughout their history, the Kazakhs have formed their own understanding of the state as part of the Turkish state system. Therefore, military organizations, war tactics, weapons, clothes, eating habits, epics, literatures, musics, architectural-arts and aesthetic understandings, religious practices and popular beliefs in the history of the Kazakhs can not be handled outside of Turkish history and culture. Yet concept of the Kazakh legal system, justice and justice is a continuation of the old Turkish Law and Justice system.

2. A Short Overview of the Legal System and Justice Understanding in Old Turks

The old Turkish legal system consisted of the so-called “customs”, which were not originally written in writing and were passed on to the writings in later periods. Custom; Kağan’s practices have been formed by the decisions that the congress has taken and the customs and customs that the people have lived and adopted have transformed into systemic rules for centuries. The Turkish state officials performed law enforcement activities based on tradition or tradition. In the aftermath of the Xth century, however, when they were firmly attached to the Islamic government, when the state authority was concerned, they prepared and applied laws appropriate to their customs.

¹ For now look about Kazakh history: Sabri Hizmetli: “Kazak Ulusu ve Kazak Tarihi Üzerine: Dünü ve Bugünü”, *İSTEM*, Yıl: 9, Sayı: 17, (2011), s.23-43.; En *Eski Devirden Günümüze Kadar Kazakistan ve Kazaklar*, Haz. A. Kara, Selenge Yayınları, İstanbul, 2007.; Mehmet Saray: *Kazak Türklerinin Tarihi*, İstanbul, 1993.

The old Turks had courthouse organizations called “Köni”. This organization consisted of the high state court “judiciary” under the presidency of the monarch and the “criminals” who were in charge of applying the law on behalf of Kagan and their employees. Throughout history, Turks aimed at creating a strong organizational structure, in other words, bringing to the body the sound legal institutions, in order to ensure that the great empires that they establish are long-lived. In this context, the provisions of the “custom”, ie the old Turkish Law System, were simple enough, but simple enough to solve various problems. Among the duties of Kagan in the Old Turks, firstly good laws must be followed, and then immediately these laws should be applied with justice and protecting their people in this way. When the period of the sources are examined, it will be seen that the former Turkish state administrators and even the people believe that “a state can only survive by law”. (Köprülü, 1943: 232) ²

The Chinese sources provide examples of us about the Huns, the criminal laws of the ancient Turks. In this context, there are timelines related to the implementation of death penalty, imprisonment system, punishment of burglary, escape from war, theft, education of debts, rebellion, rape, marriage, divorce and other issues. Accordingly, while the punishment of the fugitive is executed, the penalty of the crimes of forging and busting it was the compensation that was only paid with animals. But the accused had to pay ten times of the value of the goods he stole. He was obliged to give the man who made him blind his daughter or his wife’s property to that person. At this point it is noteworthy that the punishment is not personalized. This and such transplants indicate that the Turkish criminal law has reached maturity from the earliest times. There are also foreign sources of information about the international legal principles that Turks have developed over time. (Yakut, 2002: 401) ³

Treaties in Gokturk and Uighur were usually made by giving word. The commitment to the oral “oath” is strictly adhered to commitment and this commitment was expressed by the words, “Whoever breaks this oath and may he is punished for God’s punishment”. However, even before the Turks were involved in Islam, they eventually had their own written laws. As a matter of fact, we are aware of the existence of written

² Fuad Köprülü, “Ortazaman Türk Hukuki Müesseseleri. İslam Amme Hukukundan Ayrı Bir Türk Amme Hukuku Yok Mudur?”, II. Türk Tarih Kongresi, İstanbul, 1943, s.393.; Esra Yakut: “Eski Türklerde Hukuk”, Anadolu Üniversitesi Edebiyat Fakültesi Dergisi, Cilt 1, Sayı 3, Eskişehir, 2002, s.401-426.

legal texts belonging to Uighurs. In any treaty passed in writing to the Uighurs, history, names of those who made the treaty, the purpose of the contract was to write what would be done if one of the parties did not comply with the contract. Uighurs practiced various types of loans, debt, sales, rent and service contracts and other contracts. In the case of borrowing documents, in the event that a person who had not been paid on time or who had borrowed from the borrower (or died) in order the lender not to remain in a difficult situation, it had been notified that how and by whom the purchased goods would have been paid. According to customary law, for timely unpaid debts a different interest payment obligation had been imposed from the normal interest. In Uighur law real estate and, in some circumstances, people have been subject to pledge. For example, a child who was held hostage was obliged to serve the creditor until the debt was paid. In return, the creditor agreed to cover all costs of the child. Turks whether in the form of an oral oath, or based on written texts, the fulfillment of a given promise was the first order of the provisions of the “custom”. If a debtor was not paid for this reason, the state would apply the laws and allocate the right of the victim through enforcement. This legal sensitivity continued in the Oguz communities as the continuation of the Göktürks, the Seljuks, the Turkestan Khanates, and therefore in the Kazakh community.

3. A Brief Evaluation of Kazakh Law System

It is necessary to look for the foundations of the Kazakhstani legal system in the justice mechanism of the ancient Kazakh Khanate period. The findings of A. Kara who studies on this subject are important in this context. According to Kara, “The Kazakhs, as the last representatives of the immovable Bozkır Turk Cultural Society, have carried out many ancient Turkish traditions, one of them being the Court of Beyler, which is based on the tribe, and in the ancient Turkic society, the nomads are not only the wise but also the representative of the political will. He brought the state to boy and boduns. Bodun is the union of the longitudes. (Caferoğlu, 1934: 48) Every boy had a “bey (governor)” Here is the subject of the Beylers Court, this is the boy’s bey. The trial of the Kazak beylers or the function of the beylers’ court is somewhat different from today’s modern courts. First of all, the provisions that the lawyers give are the convincing qualities of both the plaintiff and the defendant. In addition, the beylers or the lords never gave death or imprisonment punishments. In general, criminal offenses are punishable by the payment of compensation called kun. The Beyler court is not subject to artificial rule, but contains rules that are appropriate for the nature of man. Essentially, the basis of the Beyler

Court is to help the defendants settle their problems by mutual agreement. Here, the judge plays the role of the judge among the defendants. (Saim, 1995: 87) That is why the bey must have a very reliable, knowledgeable person, a wise person and a judge of justice in his provisions. There is a saying that as “Tuvra biyde tuvgan jok, tavgandı biyde iyman jok” that is there is no relative in the righteous bey, there is no conscience in the family bey. In the past all the cases of the Kazakhs, their disputes were raised from among themselves; life, traditions, and the knowledge of the people, and they would not make any mistakes in their terms. The beylers were aware of the holy commandment that was charged to them. Here are the tribes with such fair beys, they had a very strong social arrangement. Thus, even if the state in which the boy belonged is destroyed, the boy or the tribal structure could survive. A boy is already a small state in itself. Itself had judgment, execution and legislation. In the former Turkish political organization, a separate organization, which is a separate organization, was also brought together a new boys to bring the province to the state. The Turks, who believed that justice was property-based.

Therefore, the Turkish legal system is a system that is compatible with human nature, dignity and lifestyle. This is a product of the many years of experience of the Turks.”

Esim Khan (1598-1628), one of the great leaders of the Kazakhs in history, provided the Kazakhs to live in peace; By updating the previous Kazakh laws called “ Kasım Hannın Kaska Joli” Kasim Han’s Dignity Road / Kasim Khan’s Laws), he arranged a new constitution of the Kazakhs called “The Old Road of Esim Han”. At the time of Tavke Khan (1680-1718), “Khan Assembly”, “Beyler Delegation” was established; in this period the constitutions of the Kazakhs were renewed again and the last classical constitution of the Kazakhs, called “Seven Judgments” or “Seven Truths” (Tavke Han Kanunu), emerged by using Islamic, shar’i provisions. The Seven Judiciary, which had an important place in the political and social history of the Kazakh society, regulated the general political relations of the Kazakh society from the legal point of view for centuries XVIII-XIX. (Doğan, 2002: 43) Here is the secure legal accumulation of all this ancient Kazakh society, has also been an important basis for the establishment of modern Kazakhstan. However, this is not visible. Only those who read the spirit of the Kazakh legal system can see it. Just as if we were looking for the political, social and judicial foundations of the ancient Kazakh Khanates in the accumulations of Göktürks, Seljuks, Golden Ordas and Timurids, we

should not trace for the old Kazakh traditions while investigating the legal subdivision of today's Kazakhstan. This must be taken into account when studying executive law within the Kazakh legal system.

4. Actual Problems in the Execution of Court Decisions in Kazakhstan

In recent years in Kazakhstan, great importance has been given to the issue of court decisions. Regulations on the enforcement of executive laws and on the technical and technological development of enforcement staff have facilitated the execution of court decisions. (Turgarayev, 1995: 98) Despite all these arrangements, however, it can not be said that the execution process in the ideal sense is fully functioning. Failure to enforce the court's decisions undermines confidence in the legal order. Problems arising in the execution of court decisions can be listed as follows:

1- During the execution of court decisions, the borrowers make threatening statements against officials, excusing or hijacking the goods that can be seized to prevent the executive officers from performing their duties, and use physical force against the officials.

2- In executing the court decisions to provide the skills of the staff in the required level and there are problems in promoting the bureaucracy occupation. The fact that the personnel have not attained the required competence and the continuous change of the personnel in charge, affects the functioning of the execution system negatively. Since the staff in charge of the executive process must have a law degree in accordance with the Kazakhstan Execution Law, the staff in charge of the process are better able to change jobs immediately if they find a job. If a certain period of staff finds a better job or finds a more comfortable court pen it immediately takes on another job. (Kuru, 1994: 88)

3- According to the provisions of the newly enacted «Execution Law», without any deductions from the debts collected from the debtor these funds are transferred directly to the treasury budget. However, before enactment of this law, the enforcement officer who was charged with the collection had the right to receive a reward of 5% of the collected money, which was seen to have been more willing to work in the immediate and complete fulfillment of the court decision.

4. The incompatibility between the “Execution Law” and the other legislation other than those mentioned above also means that some

articles of the law can not be fulfilled in practice has a negative effect on the execution process. Even if there is a possibility to apply to the law enforcement and judicial authorities against the debtors who are trying to prevent the enforcement officers from proceeding, there is no result even if they are applied in practice. There are also discrepancies in banking legislation. It is necessary to obtain permission from the prosecution office in order to be able to levy a deposit or measure in the bank account of the borrower. Responses given in writing to the bank sometimes reach executive directors for over a year.

5. Perhaps the most important element that can ensure the implementation of the Execution Law and the most important factor that can lead to an effective result is to extend the execution period of database and automation incompleteness which will enable the exchange of information between the banks and the banks in the land registry offices which will determine the assets of the debtor and prevent the collection of debts. If the borrower owns a property in other cities, this situation is far from being detectable.

6. The fact that the court costs are collected in advance at the beginning of the execution period before the receivables are collected also leads to the unwillingness of the persons to apply to the public authorities. Most of the official authorities (forensic examination centers, real estate centers) charge tax and other charges if they have not received any formal charges yet.

What can be done to solve the current problems in the Executive Law of the Republic of Kazakhstan listed above?

1. Unlike the enforcement of court decisions from Turkey in Kazakhstan not only by enforcement offices also have successfully completed the examinations made by the Republic of Kazakhstan authorities and carried out by private executive officers who graduated from the faculty of law. In most of the other states in the world, the executions of court decisions are made by executive offices, which are formed by allocating space in the courthouse buildings and under the hierarchy of judicial authorities and are the pen organization. In this sense, private executive offices permitted by the Republic of Kazakhstan to allow special enforcement agencies have opened a new way in enforcement law. However, there are debates about whether the activity that the executive offices did was an administrative

activity or an accidental activity. It is necessary to change the status of a kind of special executive officers involved in this enforcement process, to give them some powers of the law executive officers, and to provide their motivation by eliminating the indifference to their business, which is the public service of the service they have done.

2. With the amendment to the legislation, the person who refrains from executing the court decisions must open the way for the implementation of strict sanctions.

3. The amendments to be made in the Execution Law and the provisions contrary to other legislation must be abolished from the enforcement.

5. Conclusion and Evaluation

Among the oldest representatives Turkish nation that has newly acquired independence in Central Asia, the Republic of Kazakhstan every field in the country is making progress in the direction of modernization to close the distance between developed states in the world. The functioning of the rules of law and the application of the court decisions given by the independent judiciary are among the most important criteria of modernization. Failure to comply with court decisions will lead to negative effects on courts and state authorities. The Republic of Kazakhstan has made some changes to its enforcement laws in order to speed up the implementation of court decisions. However, in order for legitimate legislation to be regarded as a good faith initiative, it is necessary to make changes in other legal regulations that are contrary to the new regulations and to be able to apply the changes.

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