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**Murat Gubaidullin**

Kh. Dosmukhamedov Atyrau State University  
Chair of "Jurisprudence" Senior Teacher

### SECTION 32. Jurisprudence.

## THE ROLE OF ZHETY ZHARGY IN FORMATION OF LEGAL CULTURE OF KAZAKHSTAN SOCIETY IN THE HISTORY OF KAZAKHSTAN STATE AND LAW

**Abstract:** In the scientific article the legal monument of the Kazakh law of the Tauke Khan's Code "Zhety Zhargy" is being investigated. It is characterized by its universality of that time, tested by time, determined and ensured the socioeconomic and material welfare of the Kazakhs. Zhety Zhargy reveals his legal institutions and the legal role of Tauke Khan. The role and evaluation of Russian and Kazakh scientists who studied this legal law, which consisted of three layers of lawmaking of the Kazakh Khanate, Zhety Zhargy is a phenomenon of the customary law of the Kazakhs of the nomadic society, its uniqueness consists in the fact that it originated in the framework of nomadic civilizations.

**Key words:** court of biys, tradition and culture of the Kazakh people, Kazakh customary law, Zhety Zhargy, Kazakhstan state and law.

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### Introduction

Studying the history of the state and the rights of Kazakhs has always been of great interest among scientists. At present, great importance is attached to the study of the Kazakh law, the normative legal system, the Khan-Biysk legal regulations and collections, the cultural traditions of the Great Steppe, has shown amazing vitality for many centuries under the direct and indirect dominance of foreign and neighboring states, often the powerful influence of their ideology.

The development of such a large cultural and spiritual wealth is especially important in the upbringing of the future generation, in the formation of a patriotic spirit and the desire to love our Motherland. So deep into our history, the past, their beginning and experience, we understand the current situation in this society. This is an example from the past, does not distort the reality of history.

Less studied are still separate issues, especially those that sanctify the history of the state and the rights of the Kazakh society. Therefore, such research works are considered very important and are relevant. The scientific article explores the historical and legal relationship and legal reality of the steppe

region, the formation of the legal culture of Kazakhstan society, taking into account the influence of traditional principles and modern state-legal realities, moral and legal, patriotic education of Kazakhstan society as the basis of sovereign Kazakhstan, as many facts from history, the state and law of the Kazakh society were distorted during tsarist Russia and found continuation in the Soviet socialist period.

### Materials and Methods

Since gaining its independence, the Republic of Kazakhstan has begun to re-establish the historical relationship and achieved historical reality. A lot of actions were taken in this direction. One of such works performed at the state level can be referred to the conference held in 2008 on May 22-23, together with the Supreme Court of the Republic of Kazakhstan and the company "Intellectual-Parasat" an international conference was held on the topic "Kazakh court of biys - a unique judicial system", where the participants of this conference supported the idea of a new scientific conceptual program in the field of humanitarian knowledge, grounded and



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formed by us in the course of preparation and development.

Therefore, the basis of the legal world of the Kazakh people has always been the power of the laws "Steppe Laws. "Their custodians, as well as developing from all sides were biys. Traditional power was so developed, even beginning with the khan's power, ending up to the lower level of the aul, the biys ruled.

Democratic institutions of the Kazakh society, based on the laws of the steppe civilization developed in a fair court environment and in the art of oratorical speech, were also used for public regulation. For example, the famous scientist L.A. Slovohtov in his work "The People's Court of the Kyrgyz Minor Ordo's Ordinary Law" wrote: "Biys and aksakals, as people well acquainted with the life of nomadic life, with habits, aspirations and lawsuits of the Kazakh people, are natural mediators of the disputing parties. Respecting the established customs and traditional rights of their people, they enjoy the mutual trust of the Kyrgyz plaintiff and defendant. Strongly aware of their authority and generic support, Biy and Aksakals confidently raised the judicial voice and, so to speak, under the loud tuning fork, it formed those legal provisions of the people's life, which in most cases the Kirghiz still live. "The debate will not be solved by the executor, the master will finish" [1, p. 82]. The legal system of nomads, although it was with "ancient" remnants, but it managed to maintain social stability. On the contrary, it helped to resist many difficulties, and also to preserve the internal unity.

The laws of the khans of Kasym, Yesim and Tauke in the history of the Kazakh Khanate codified this sequence, were adapted to their era. This situation was also supported by the people, because it reflected the world outlook, the interests of our people, customs and traditions, beliefs and signs, faith and conviction that had developed over many centuries.

One of the cultural values, nomadic civilization is the Kazakh law. Being formed in the framework of nomadic civilization, it evolved on the basis of legal views of nomadic and semi-nomadic associations that succeeded each other for many centuries, mainly the Turkic states and peoples inhabiting the territory of Kazakhstan.

As a result of the political processes that took place on the territory of Kazakhstan in the 15th century, a new state formation appeared-the Kazakh Khanate. This event played a very important role in the history of the Kazakh people, the history of the establishment and development of the state-legal system of our country. One of the first legal documents of the Kazakh Khanate is a set of rules or the Charter of Tauke Khan "Zhety Zhargy".

The Code of Tauke Khan - "Zhety Zhargy" - is the most significant legal monument of pre-

revolutionary Kazakhstan. It was compiled and introduced at one of the turning points in the history of the Kazakh people at the end of the 17th century, when the very fate of the Kazakh society was at stake.

"The Kazakh patriarchal-feudal nobility and the khan's government undertook a number of desperate and crucial measures to unite the military and economic efforts of the three Kazakh zhuzes, improve their management, weaken the polycentric and separatist tendencies in society. In this situation, it was decided to adopt Tauke Khan's "Zhety Zhargy" [2, p. 185].

"Zhety Zhargy" or the Code of Tauke Khan, as it is often called by the name of the khan, under Khan Tauk in the Kazakh law system, the changes caused by the further deepening of feudal relations in the Kazakh society were very well reflected, "Zhety Zhargy" remained the main act of legal regulation of socio-political relations in the Kazakh society during the XVIII-XIX centuries. It clearly reflected the political programs of the interests of the ruling class in Kazakh society and social contradictions.

In the historical and legal literature "Zhety Zhargy" has until now become the subject of a special study, even within the framework of a scientific article. One of the first should be considered the study of T.M. Kulteleyev, dedicated to the criminal-customary law of the Kazakhs. It contains pages on which the aspects of "Zhety Zhargy" are described in terms of issues of interest to the author. T.M. Kulteleyev first gave a scientific description to one of the earliest monuments of the Kazakh khans and the main source of customary law of the Kazakhs, Taube Khan's Code, known in the Kazakh historiography under the title "Zhety Zhargy" Tauke Khan.

"On the meaning of the monograph" Criminal customary law of the Kazakhs "can be judged from the fact that in Kazakhstan's legal science the general concept of customary law, formulated by T.M. Kulteleyev in the early 50-ies: "... Kazakh customary law, like customary law in other nations, is a set of legal customs expressing the will of the ruling class, sanctioned by state power and carried out forcibly to protect public relations and order, profitable and acceptable to the ruling class ..." [3, p.312].

The text "Zhety Zhargy" in full form has not reached us. Only a few of its fragments were preserved, recorded a hundred years after its adoption. The earliest are the records of the Kazakh foreman Kubek Shukraliev, G. Spassky, who visited the Kazakh steppe at the beginning of the XIX century, from the words of local biys, recorded a number of norms included in the Code of Tauke Khan [4, p. 286].

Certain information about the reform of Tauke Khan in the field of customary law is contained in the work of Y. Gaverdovskii. More details about the

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"Zhety Zhargy" can be found in the works of the great scientist-orientalist A. Levshin. However, in them the norms of this code are not distinguished from the general system of Kazakh customary law.

"As a result of prospecting works, according to the scientist-orientalist, Doctor of Law, Professor N. Userova, two new versions of "Zhety Zhargy" were found in the personal archives of the custodians of the old manuscripts. In addition, N. Userov and academician of the National Academy of Sciences RoK. S.Z. Zymanov made extensive records of old people's stories about the customary law of the Kazakhs and about "Zhety Zhargy" during his expedition trips in 1971-1975 in Guryev, Aktobe, Chimkent, Kyzyl - Orda and Alma-Ata regions. "These materials were later published by the authors themselves in their monographs, and for the first time they were publicly included in the Materials, research documents in 10 volumes. "Kazakhtyn atazadary"- The ancient world of the rights of Kazakhs [5, p. 12].

On the origin of "ZhetyZhargy" N.I. Grodekov wrote: "Khan Tauke collected seven biys in the tract Kul-Tobe, among which was the well-known biy Tule Alimbekov, and these biys combined the old customs of the khans Kasim and Ishim ... into new customs, called "DzhetyDzharga". Almost the same thing was asserted in their works by G. Gaverdovsky, A. Levshin, G. Spassky, J. Gurland and others" [6, p. 123].

Most authors who wrote about the circumstances of the emergence of Zhety Zhargy, according to the fact that these customs were not recorded anywhere, but are dressed in the form of short sayings and proverbs.

The main legal fact of the time that served as the emergence of the Code of the Khan Tauke was that during the period of Tauke Khan's reign, serious changes began in the socio-political life of the Kazakh society. The development of feudal relations became more and more intensive, and the dissolution of the patriarchal community was extensive, property and legal inequality developed within the Kazakh society. In the society itself, a fierce struggle for land and water broke out, as post-communal lands both within the same community and among different kinds of Kazakh society. The settlement of various forms of protest by local peasants of pastoralists against feudal lords provoking civil strife, cattle stealing, robbery, abduction of women, murders, etc., were the main reasons forcing Khan Tauke to systematize many norms of Kasym Khan and Yesim Khan and also Actual norms of customary law in the form of the Code.

The main task of the Tauke Khan's Code was to strengthen the status of the Biys and the authority of the feudal nobility, to protect their private property and to retain the working masses in obedience.

In "Zhety Zharry" Tauke khan introduced a system of power relations, established a balance between various political groups, Tauke Khan provided additional powers to the Biy councils in particular:

- Adoption of important state and political decisions;
- execution of court decisions;
- the implementation of diplomatic and peacekeeping missions.

Thus, the norms of customary law were constantly replenished and improved in the process of judicial activity of khans, sultans and especially biys. The customs were systematized into regulations, such as "Zhety Zhargy" and other legal monuments, were collected and interpreted by well-known connoisseurs of biyskih regulations and decisions, becoming the property of storytellers, keepers of legends and customs, and propagated by ideologists and aksakals. The practice of the biys court supplemented and clarified the norms of customary law and was an important formative source of law, but this practice of the biys court until the XIX century was not made in writing, which opened the door to any decisions in law enforcement practice. The biys referred to the authority of their well-known predecessors, especially on Tole-biy, Aytike-biy, Kazybek-biy, up to Mayky-biy.

Unfortunately, for the coverage of the Zhety Zhargy» itself, we have completely inadequate data. They are poorly preserved and come down to us in a fragmentary form and quite diverse. It contains norms of administrative, criminal and civil law, as well as provisions on taxes, religions, etc., covering different aspects of the life of the Kazakh society. We know only a few fragments were presented by a famous researcher in the books of A.I. Levshin, who recorded them from the mouth of the Kazakhs, but in Russian transcription, more than a hundred years after they were compiled. There are reasons to believe that the Tauke Khan's "Zhety Zhargy" was the main act of legal regulation of socio-political relations in the Kazakh society during the 18th-19th centuries. And nevertheless, the Code of Tauke Khan "Zhety Zhargy" was a set of laws of customary law, consisted of seven sections and resolved disputes in seven spheres of public life:

1. Norms regulating property rights to pastures and water bodies (land dispute);
2. Norms regulating the property and personal rights of widows and orphans, as well as the obligation to relate them to the community and relatives (widow dispute);
3. Norms of family and marriage law;
4. Norms governing criminal law. The controversy over the blood of the dead;
5. Norms governing the dispute over livestock and property;

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6. Norms of criminal law providing for the payment of a fine;

7. The rules of criminal law, providing for the payment of a fine - ransom.

Thus, the essence of "Zhety Zhargy" is balanced by the world view of the Kazakh people. Therefore, this legislation in its essence was successfully applied and acted. The sections "Zhety Zhargy" satisfied the demands of public life, strengthened the national unity of the country, played an important role in limiting hostility among the clans. So, Tauke helped solve the problems of the constitutional structure of the state in a democratic way. At the same time, the preservation of human rights and freedoms was taken into account. Major disagreements: "disputes over land," "dissension because of a mating," "dispute over livestock, property," etc. from a legal point of view, judicial civil cases were resolved fairly and humanely, preventing the disintegration of Kazakh society [7, p.127].

The original of the basis "Zhety Zhargy" did not reach us. The laws of "Zhety Zhargy" were described in the works of A.I. Levshin, L.F. Ballyuzek, I.A. Kozlov, G. Shangin, Ya.I. Gurlyand, Y. Gaverdovsky, K. Shukuraliev, P. Makovetsky, D.Ya. Samokvasov, L.A. Slovohotov, N.I. Grodekov. However, these materials for many years, were unavailable and collected under tsarist Russia during the colonization of the Kazakh society of the XVIII - XIX centuries [8, p. 40].

Speaking about the legislation of the Kazakh khanate, Zhety Zhargy brought a huge contribution to the correction of the socio-political situation of the Kazakh people and also played a huge role in strengthening its state. As A. Levshin said: "There was a time, say the most reasonable Kirgiz of the Lesser Horde, when our people also lived in peace, there was a time when we also had order, there were laws and justice. This golden age, which they remember with sighs, is the reign of the famous Khan of Tyavk (Tauke), who, according to the legends, was really a genius of his own, and in the chronicles of the Cossacks should stand alongside Solons and Ligurgs" [9, p.127].

Recognition of the biography of A.I. Levshin "Altyn gasyr" (golden age), a fair court rests on the following main principles:

- thorough knowledge of biys of traditional laws, norms and customs, logic of the Kazakh people;

- humanity and justice is a constituent of judicial decisions;

- publicity of the court, competition, open conduct of the case;

- a tool that provides the basis and evidence of solutions to eloquent biys;

- focus on peacekeeping and truce;

- honesty and justice of biys.

In this vast land, at each period of the existence of the Kazakhs and their ancestors, various empires and socio-political regimes were created, but despite this, it retained its peculiarity. Our ancestors engaged in nomadic pastoralism forming a worldview in a nomadic society, created a set of nomadic laws, providing spiritual and cultural values aimed at freedom, justice and unity, on humanity and humanity.

### Conclusion

In general, the customary law of the Kazakhs ensured the social welfare and functioning of the nomadic economy, expressing the will and interests not only of privileged groups but also of most of the ordinary members of the Kazakh society. This explains the conservatism, the stability of customary law, which existed until the end of the XIX - early XX centuries. Many of the norms of family and marriage law and obligations in one form or another have survived to this day, despite the total destruction of the traditional economic order [10, p. 459].

"Zhety Zhargy" reflected in itself the features of that stage of the nomadic society, its social and political development, it is necessary to compile it. This Code helped to strengthen the peace of the Kazakh society, a certain consolidation of the Kazakh people. Therefore, the study of the legal monument of the Tauke Khan Code has great importance for the formation of the legal culture of the society, Kazakhstan's patriotism, cultural and spiritual wealth in the upbringing of the future generation of modern Kazakhstan.

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