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HISTORICAL AND LEGAL ASPECTS OF THE FORMATION OF THE REPUBLIC OF KAZAKHSTAN AS A SECULAR STATE

This article analyzes the historical and legal aspects of the establishment of the Republic of Kazakhstan as a secular country. The subject of the article was chosen as the subject of the study of the Kazakh Khanate and Tsarist Russia and the periods of provisional government. The influence of religion on legal and social relations and the process of secularization were carried out in comparison in these three stages. After all, under the Tsarist Russia, Kazakh society was undergoing transformation in almost all spheres. In addition, this study, as a new wave of political and Social Thought, includes and clearly reflects the secular principles of the Alashorda movement. In particular, they discussed the great contribution of Kazakh nationalists and Islamic reform movements to the development of secular thought, as a result of which the subsequent council was able to create ideological prerequisites for the separation of religion and politics for the Independent Republic of Kazakhstan. All these areas covered by the study allow us to better understand the current secular positions of the Republic of Kazakhstan and determine the future secular orientation of the country. In the course of the study, it was found that cultures that contain elements of secularism, such as tolerance, religious harmony, and equality, as well as conflicting views and opinions, are reflected in the interweaving. In addition, since the study of the historical and legal aspects of the formation of Kazakhstan as a state is limited only to the periods of the Kazakh Khanate, Tsarist Russia and provisional government, the authors suggest to focus on the relationship between Religion and the State in the pre-Islamic period in the Kazakh steppe. It should be noted that in the deep history of the Kazakh people it is impossible to cover the relationship between the State and Religion in one short article.

Key words: Tsarist Russia, secularism, Kazakh Khanate, religious tolerance, provisional government.

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Қазақстан Республикасының зайырлы мемлекет ретінде қалыптасуының тарихи-құқықтық аспектілері

Аталмыш мақалада Қазақстан Республикасының зайырлы ел ретінде орнығуының тарихи-құқықтық аспектілеріне талдау жасалынды. Қазақ хандығы және патшалық ресей мен уақытша өкімет кезеңдері мақала тақырыбының зерттеу нысаны ретінде таңдалды. Діннің құқықтық және әлеуметтік қатынастарға әсері мен секуляризация процесі осы үш кезеңде салыстырыла отырып жүзеге асты. Себебі, Ресей патшалығы тұсында қазақ қоғамы барлық дерлік салада трансформацияға, яғни өзгеріске ұшырап отырған болатын еді. Сонымен қатар, бұл зерттеуде саяси және әлеуметтік ойдың жаңаша толқыны ретінде, Алашорда қозғалысының зайырлылық ұстанымдары да қамтылып, нақты көрсетілу арқылы жүзеге асты. Әсіресе қазақ ұлтшылдары мен исламдық реформаторлық қозғалыстар зайырлы ойдың дамуына зор үлес қосқандығы туралы, соның нәтижесінде кейінгі Кеңес тәуелсіз Қазақстан Республикасы үшін дін мен саясатты бөлудің идеологиялық алғышарттарын жасай алғандығы туралы талқыланды. Зерттеуде қамтылған бұл бағыттардың барлығы Қазақстан Республикасының қазіргі зайырлылық ұстанымдарын жіті түсінуге және елдің болашақтағы зайырлылық бағыт-бағдарын анықтауға жол ашады. Зерттеу барысында төзімділік, діни келісім және теңдік секілді зайырлылық элементтері қамтылған мәдениеттер мен қайшы ұстаным көзқарастар мен пікірлердің тоғысып көрініс тапқан кезінде ортаға шығатыны айқын болды. Сонымен қатар авторлар қазақстанданның мемлекет ретінде қалыптасуының тарихи-құқықтық аспектілерін зерттеуде тек қазақ хандығы және патшалық ресей мен уақытша өкімет кезеңдерімен шектелгендіктен, тақырыпты терең зерттеу үшін алдағы уақытта қазақ даласындағы исламға дейінгі кезеңдегі дін мен мемлекет қатынасына тоқтауды ұсынады. Өйткені, қазақ халқының терең тарихындағы мемлекет пен дін қатынасын бір шағын мақалада қамту мүмкін еметігін ерекше атап өтеді.

Түйін сөздер: Ресей патшалығы, зайырлылық, Қазақ хандығы, діни төзімділік, уақытша өкімет.

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Историко-правовые аспекты становления Республики Казахстан как светского государства

В данной статье проведен анализ историко-правовых аспектов становления Республики Казахстан как светской страны. Объектом исследования темы статьи были выбраны Казахское ханство и периоды царской России и временной власти. Влияние религии на правовые и социальные отношения и процесс секуляризации осуществлялись в сопоставлении на этих трех этапах. Потому что при Русском царстве казахское общество претерпело трансформацию, то есть трансформацию практически во всех сферах. Кроме того, в данном исследовании были освещены и четко отражены секуляризационные принципы движения Алашорда как новой волны политической и социальной мысли. Особенно обсуждалось, что казахские националисты и исламские реформаторские движения внесли огромный вклад в развитие светской мысли, в результате чего последующий совет смог создать идеологические предпосылки для разделения религии и политики для независимой Республики Казахстан. Все эти направления, содержащиеся в исследовании, позволяют более четко понять современные светские принципы Республики Казахстан и определить будущие светские ориентиры страны. В ходе исследования было ясно, что культуры и противоречивые позиции, содержащие такие элементы секуляризма, как толерантность, религиозное согласие и равенство, находятся в центре, когда взгляды и мнения пересекаются. Кроме того, авторы предлагают в дальнейшем остановиться на взаимоотношениях религии и государства в казахской степи в доисламский период для углубленного изучения темы, поскольку в изучении историко-правовых аспектов становления Казахстана как государства ограничиваются периодами Казахского ханства и царской России и временной власти. Следует отметить, что в глубокой истории казахского народа невозможно осветить взаимоотношения государства и религии в одной небольшой статье.

Ключевые слова: Русское царство, секуляризм, Казахское ханство, религиозная терпимость, временная власть.

Introduction

The current state of any country is directly related to its history. The establishment of the modern Republic of Kazakhstan as a secular country can be assessed as the result of changes and transformations of social and legal relations at each stage. The study of the peculiarities of the formation of secular principles in the course of historical events opens the way for the study of future religion-state relations of the Republic of Kazakhstan and helps to develop fruitful proposals for the development of religious freedom in the country.

Research on the relationship between religion and the state in Kazakhstan was conducted by Kazakh and western researchers. However, there are some issues that have not been addressed on this topic. One of them is that the historical stages and legal aspects of Kazakhstan's formation as a secular country have not been thoroughly studied. Therefore, each stage in the history of Kazakhstan is compared and analyzed.

In this regard, the authors will focus on the main trends of secularization and sacralization as historical and social aspects of changes in the legislation on

religion at various stages under the Kazakh Khanate, Tsarist Russia, and the Provisional Government, as well as the transformation of social relations. It also analyzes the views of the Alash movement, which has a special place in the history of Kazakhstan, on the relationship between religion and the state.

Justification of the choice of articles and goals and objectives

The main objectives of the article are as follows:

- 1) Assessment of the influence of religion in public and legal relations under the Kazakh Khanate;
- 2) Analysis of the peculiarities of relations between religion and the state under Tsarist Russia and the Provisional Government;
- 3) Identification of the reasons for the emergence of the need for secularism as a result of legal and social changes in these periods.

Thus, the research work consists of three parts: 1) religious aspects of religion in public and legal relations of the Kazakh Khanate, 2) the process of secularization in social and legal relations during Tsarist Russia and the Provisional Government 3) Conclusion.

Scientific research methodology

To achieve the goals of this article, the authors used comparative-historical methods. As, "Comparative – historical analysis is a field of research characterized by the use of systematic comparison and the analysis of processes over time to explain large-scale outcomes such as revolutions, political regimes and welfare states" (Comparative-historical analysis means revolution, a research area characterized by the use of systematic comparisons and time analysis to explain large-scale results such as political regimes, and welfare conditions) (Mahoney, 2004: 81).

Main part

Under the rule of the Khanate, Islam had a number of statutes in the system of Public Administration in the Kazakh Steppe. At this time, there was a connection and syncretization of traditional norms and norms of Islamic Sharia. In the "Zheti Zhargy" (the set of laws introduced in the Kazakh Khanate by Tauke Khan c.1680-1718) adopted during the reign of Tauke Khan, the system of public relations and power in the Kazakh Steppe, the status of the Biy court and social groups acquire a legal character. The legal aspect of Islam in Kazakh society is determined in the process of sentencing. It is divided into two areas: A) judgments concerning sacred objects; B) judgments concerning public relations. The first includes punishment for insulting and opposing religion, the Creator. For Example, In J. O. Artykbayev's work "Zheti Zhargy", "a person who has insulted God is sentenced to death if seven people prove and testify that he has offended. The death penalty is carried out by stoning in accordance with Sharia law. A person who has converted to another religion, including Christianity, is deprived of the right to own his property and his child. Because the tribe has a common property and soul. For this reason, it is noted that it is not a crime to separate the property of the baptistery and his children from his brothers and sisters", as well as sentences in thirty different religious cases in the "seven statutes" (Artykbayev, 2012: 72). That is, in the state law, opposition to religion, which is the core of holiness, was considered a crime and was severely punished. The regulation of public relations in accordance with Sharia law includes family sentences, false testimony, adultery, murder, and payment of value. The resolution of such controversial issues within the country is entrusted to those who have mastered Sharia

law, have the qualities of justice and honesty. Researcher T. Agdarbekov gives an overview of various types of crimes in the norms of customs of the Kazakh people and identifies five types of crimes. Its fifth type is crimes against religion "the crime was classified in Sharia law as kisas, diat, hadd. He writes that the content of the "Seven Rules" reflects serious, light, moderate types of crimes against religion and Sharia" (Agdarbekov, 2019: 22).

The Kazakhs of the Khanate era, court proceedings were conducted by biys. The biys were judged according to the Seven Rules and "adat" (customs and traditions) and provided a secular judicial system of the Khanate. However, although the biy was not considered a religious person, it is seen that Sharia had a great influence on arbitration. The laws of custom and the content of the "Seven Rules", which the biys relied on, were derived from the sources of the Islamic religion. In turn, this indicates the influence of Islamic Sharia in the judicial system of the Kazakh Steppe (Varenikova, 2016: 174).

In the worldview and social relations of the Kazakh people, a different form of sacrament is formed. It is evident from the fact that the Khojas were considered as the descendants of the Prophet or his Holy companions and accepted as a Holy dynasty. Representatives of this group were classified as representatives of "Aksuyek" (aristocrats), which occupies a special place in the social stratification of the Kazakh people and enjoys great respect. Kazakhs from the tribe belonging to the three Zhuzes (the three main territorial and tribal divisions in the Kypchak Plain area that covers much of the contemporary Kazakhstan, and represents the main tribal division within the ethnic group of the Kazakhs) were attributed to "Qarasuyek" (the main class, including representatives of the Turkic tribes and who are not descendants of Genghis Khan) (Malikov, 2017). In traditional Kazakh society, Khoja formed a Corps of believers who held religious services. He was given the opportunity by his paternal sanctity. Zylíkha Ibadullayeva and her colleagues wrote that "Khoja was an honorary religious priest in the Muslim culture. Also, this paper establishes, that Khoja was a direct descendant of Prophet Muhammad and the propagator of Islam» (Ibadullayeva, Botbaybekova, Abdurakhmanov, 2016: 46). A number of sacred places in the Kazakh Steppe are associated with the names of people of this genus "Khoja". When they were alive, they were considered Saints, and they were considered the favorite pendants of God, whose prayer was accepted by the Creator. After their death, their graves became one of the sacred

sites in the Kazakh Steppe. The history of the life and burial sites of such religious figures as Khoja Ahmed Yasawi and Arystan Bap are preserved to this day.

The secular power of the Kazakh Khanate was in the hands of Khans and Sultans from the "Tores" (descendants of Genghis Khan, who in Kazakh society were represented by Khans and Sultans) which belonged to the category of "Aksuyek" (aristocrats). According to E. Teleuova "Tore is the ruler of the Kazakh society, who led their ancestry from Genghis Khan, and were not the part of the tribal structure of the tribe of the Kazakh community" (Teleuova, 2018: 49). This trend continued until the Khan's power stopped. Khans and Sultans had the right to make laws and acted as observers for their implementation. Sultans ruled each tribe, and Khan was considered the leader of all Kazakhs. The activity of the Tore and the Khoja is observed here, at the junction of power and religion. The Khoja, ensuring the continuity of religious traditions in society and the unity and integrity of society on the basis of this tradition, concentrated spiritual and religious power in their hands.

The religious policy of Tsarist Russia in the Kazakh Steppe can be divided into two periods. In the early period of colonization of the Kazakh Steppes, the imperial authorities pursued a policy of supporting local peoples in their traditional religions, adhering to the principles of religious tolerance. The second stage was characterized by limiting the influence of religions other than orthodoxy, promoting orthodoxy among autochthonous peoples, and pursuing a proselytizing policy. The religious policy of the Russian Empire in the Kazakh Steppe was an integral part of its colonial strategy.

By the end of the 18th century, intensive work was carried out to subjugate the northern and western regions of Kazakhstan to the Tsarist Russia. For colonial purposes, religious policy played an important role. Before Catherine II came to power, the peoples of the Tsarist were forcibly converted to the Orthodox faith. For this purpose, a special "Novokreshchenskaya kontora" (Christian mission for non-Russian peoples of the Volga region) was created and operated. As a result, there was a relentless uprising of Muslim peoples. According to T.Y. Khristoforova the movement of Tatar service against Christianization, presumably in 1748 faced with such fierce resistance and the inclusion of strong-minded nomads in the Tsarist, a change in religious policy was required (Khristoforova, 2017: 127). After all, Kazakhs also professed Islam. Their

Christianization required a lot of cost and resistance. Colonization was more effective than religious opposition to the Tsarist. Therefore, on June 17, 1773, Catherine II issued the Decree on Tolerance of All Religions. The Decree states: "The Creator God is tolerant of all faiths, for example, languages and religions, and so is His Majesty (i.e. the Queen) ... he changed his attitude from orthodoxy to other religions, saying that only love and harmony always prevail among his people" (Full set of the laws of the Russian Empire, 775). This Decree was not aimed at dividing the state and religion, but rather at increasing and strengthening the authority of colonial power by bringing Muslim religious communities closer to the state. The relationship between the Tsarist autocracy and the Muslim community was brought closer by the creation of the Orenburg Muslim Religious Council (OMRC). Since the OMRC was an institution under the control of the Tsarist administration, the government intervened in its internal and external affairs.

Another huge change was that the "Order of the Mullahs" had the authority to carry out their activities in parallel and issue sentences. The Sharia Court was subordinated to the OMRC, and the OMRC was subordinate to the Royal administration. That is, the Muslim judicial system went under control. The jurisdiction of the Sharia court included inheritance, marriage, and Family Affairs. And criminal cases and real punitive cases were subject to the Royal Court. According to Paolo Sartori, "This view is problematic because it is based on the assumption that disputes over inheritance, guardianship, property, sexual relations, charity, and rituals (ibadat) had little bearing on the lives of Muslims and their parish constituencies, and that homicide and highway robbery matter most to the population" (Sartori, 2017: 3). That is, the Sharia Court itself did not function as a particularly influential structure.

Until the middle of the 19th century, the system of Khanate rule was abolished in all tribes of Kazakhs. The Khan was replaced by Sultans and elders (Zimanov, 2009: 215). Thus, the legal and public status of judges decreased. From now on, secular power belonged to the Tsarist Russian. The Sultans became the executors of the Tsarist. And in the judicial system, the competence of Biys (judge, court) continued. The public and legal significance of Biys has not been canceled.

Since the third quarter of the 19th century, the Tsarist's attitude to Islam and religious associations has changed. The policy of anti-Islamism and baptism began to be implemented (Tomohiko, 2007:

28). In the 1860s, with the annexation of the southern territory of the Kazakh Steppe to the territory of the Tsarist, new projects and reforms were developed. The reforms of 1867-1868 and 1891 introduced a new management system. A number of cases under the jurisdiction of the Biy and Sharia courts were transferred to the jurisdiction of the civil court. The process of gradually narrowing the competence of the Sharia Court and strengthening the role of the civil court and legislation continued until the last period of Tsarist. Researcher B. Mirzageldiyev has stated the following: "in its activities, the Spiritual Assembly was guided by a peculiar synthesis of the norms of the Sharia and Russian legislation. Under the suppression of Russian authority, it had to enforce the regulations, which restricted clergy to adopt rules of the Sharia law explicitly contradicting the laws of Russian government" (Mirzageldiyev, Shamshadin, Almukhametov, 2019: 153). In general, the judicial system was organized differently in each region. For example, the people's courts of the Syrdarya, Turgai, and Zhetisu regions had significant differences from each other. In comparison with the courts of Semipalatinsk, Turgay, and Akmola regions, the jurisdiction of the religious and traditional court in the Syrdarya region was broader. Since the proximity of the southern territory to Kokand, Khiva and other Central Asian religious centers indicates the predominance of the role of religious institutions in these regions. Therefore, the Tsarist administration did not immediately narrow the competence of traditional and religious institutions here. He believed that the proximity of the northern and western territories of Kazakhstan to Russia in comparison with the southern regions and the early entry into the Empire would allow the colonial authorities to act freely in the legal sphere. For this reason, the jurisdiction of the traditional Sharia Court in these regions has been narrowed, and the scope of the civil court case has been expanded.

On the territory of the steppe, religious affairs were supervised by regional administrations. Therefore, religious affairs, including the appointment of Muslim clerics and supervision of their activities, were transferred to the jurisdiction of the civil authorities. The essence of the charter here was aimed at limiting the role of Islamic institutions in the Kazakh Steppe, as well as reducing the influence of Tatar and Central Asian religious figures. In Article 99, the construction of a mosque was carried out in Akmola, Semipalatinsk, Semirechye regions with the permission of the Steppe governor-general, and in the Ural and Turgai regions with the permission

of the Ministry of Internal Affairs. It is planned that the financial support of the mosque and religious education will be provided by the majority of the population on a voluntary basis. Article 100 states that "*the activities of Waqf (an inalienable charitable endowment under Islamic law) funds have been terminated*" (The governance statement for Akmola, Semipalatinsk, Semirechensk, Ural, and Turgay Regions, 515). At the same time, the civil rights of the clergy were equated with those of ordinary society, and they were no longer provided with tax benefits.

The researcher Mustafa Tuna argued that the process of secularization was carried out through the reform of madrasas on the territory of the Empire. The researcher noted that "especially in a number of popular madrasas of Russia after the revolution of 1905, various reforms were characterized by non-religious and anti-religious, negative content of the Western model. Consequently, education and general student practice in such madrasas have become a process of secularization. Well, Islam as a religious system has lost its weight and has become unattractive for many students. They later assess the development of a reform movement that goes beyond the Islamic problem" (Tuna, 2011: 540).

A number of Kazakh intellectuals were educated in madrasas taught in the Jadid way. For example, 154 students studied at the Galiya Madrasah in Ufa from 1907 to 1917 (Oskembayev, Zhabagina, 2014). Among them were Kazakh educators such as Magzhan Zhumabayev and Beimbet Mailin (Arshabekov, 2016).

The Kazakh intelligentsia, which supported the idea of jadidism, united around the Alash movement. Most of the Alash-Orda members were Kazakh intellectuals who mastered European and Muslim education. Among those who proposed the modernization and reform of Kazakh society were those who tried to build the relationship between religion and the state in accordance with the principles of secularism, based on the views of Western educators, especially French thinkers, and those who recognized the historical, cultural and spiritual role of religion in society and supported the granting of a special status to Islam. Uyama T. stated that: «Another interesting thing about the first modern intellectuals is that some of them were worried about the influence of Islam and the Tatar language. They were very proud of the Kazakh language and traditions, and feared that Islamic doctrines and Tatar culture would "contaminate" the purity of Kazakh culture" (Uyama, 2000: 78). However, the common goal of both groups is to create a sovereign Kazakh country.

This new period of Kazakh history was marked by the fact that the Kazakh people as a political nation raised their goals, rights, and freedoms to the level of public consciousness. Their social, cultural, political, and legal views have caused an unprecedented great resonance in Kazakh society.

Alikhan Bokeikhanuly, the leader of the Alash movement, divides public figures into two groups on the issue of relations between religion and the state. The first is those who, as a model of development, are guided by Western political, social, constitutional, and legal values. They give priority to the ideas of Western secularism and laicism in social and legal practice and transformation. And the second group was formed by thinkers who sought to connect and harmonize social development with religion and national values. Thinkers in this group put forward the harmony and non-contradiction of religion and social development. Representatives of both groups criticized the colonial policy of Tsarist autocracy. The restriction of political rights and freedoms of the Muslim peoples in the Tsarist, social inequality and the fact that the state gave priority to Orthodoxy and alienated other religions from public life caused widespread discontent (Oskembayev, Zhabagina, 2014). In protest against the position of Tsarist Russia on the Christianization of autochthonous peoples, the intelligentsia sent proclamations from 1902 to 1905. In the Karkaraly petition of 1905, the Kazakh intelligentsia demanded that the inheritance be transferred to religious specialists and provide Kazakhs with Muslim clergy, equate their status with the clergy of the Kazan Tatars, create conditions for pilgrimage, allow a Waqf system that provides religious houses of worship and educational institutions, introduce subjects of Muslim content in schools, not forcibly engage in the Christian faith or forcibly teach literature in these areas (Arshabekov, 2016). These proposals of the Alash-Orda members were a systematic step towards ensuring the freedom of religion of the Kazakhs in the Tsarist Russia. That is, through religious equality and freedom, he called not to discriminate against anyone. As a result, the prerequisites for the main principles of secularism were developed.

An article on the benefits of religious tolerance and the harm of religious discrimination in society was published in 1913 in the *Qazaq gazeti* №1,2 and 3 under the title " Surat kofehanası" (Surat Cafe). According to the article, Bokeikhan tells the story of a fight between people of different religions in a small cafe in Surat, India, trying to prove the name of God and the truth of their religion. At the end

of his speech, Bokeikhan concludes with the conclusion of the Chinese Confucian religion that each religion has its own truth, but it is pointless to argue to prove this truth. "That's what the Confucian Chinese said," the article said. The people, who were shouting and arguing for the supremacy of religion, left the quarrel in silence. The word is taken from the words of the great Russian philosopher Tolstoy, who treated all mankind with brotherhood. He got it from Bernard's Desan Pierre. If others looked at it through the eyes of Tolstoy, there would be no place for bloodshed in the Balkans today. Bokeikhan generally offers such a term as "brotherly eye" (Sultan Khan, 2016: 111). This position means that it contributes to the prevention of various conflicts and the formation of tolerance. In this regard, the influence of the ideas of religious thinkers of Western thinkers, in particular, Jacques-Henri Bernardin de Saint-Pierre and Leo Tolstoy, on the views of Bokeikhan is obvious. Bokeikhan directly connected the division of religion and the state with the national interests of the Kazakh people. The above Bokeikhanov's writings and Uyama's research show that the secular ideas of the Kazakh intelligentsia of the early twentieth century were directly related to the national interest.

The nationalism and common interests of the Kazakh intelligentsia were the liberation from imperial oppression. In order to achieve this goal, it was important to achieve religious, political, and cultural equality of the Kazakhs who were discriminated against on a daily basis at that time. In this regard, there is a widespread belief that religion should also serve the national interest. Bokeikhan called on the Kazakhs to use the alms (charity) of the month of Ramadan for the benefit of the nation: Each of these obligatory alms is given not only for the benefit of one person but for the benefit of the whole nation. It is like a school, a madrasah for the benefit of the nation ... " (Sultan Khan, 2013: 306). At the same time, Kazakh nationalists advocated not to lag behind the achievements of globally developed countries. The most developed countries at that time were European countries in the west and Japan in the east. Therefore, the history of secularization and industrial achievements of these countries became a ready model for the Kazakh nationalists to achieve their goals. For example, Bokeikhan said, "Europe publishes the newspaper. In Europe, the paper is a mirror of life. Whatever life is, it is in the newspaper. After reading the newspaper, people see themselves. Excessive knowledge is a method, it is a life-long controversy. The newspaper writes

that Europe is alive, or every person, every political party will appear in the newspaper and act according to the actions of the other side. We took a European newspaper and did not write about it in Kazakh life, or we were stingy with Karymbaydai, language and news” (Qazaq gazeti, 1915).

In 1917, the position of the Alash movement in relation to religion and the state was published. The program, which includes these principles, defines the separation of religion from the state. In the content of the document: "the matter of religion should be separate from the matter of the state. All religions have equal rights Religion is free. To have own Muftiate (an administrative territorial entity under the supervision of a Mufti). Cases such as marriage, divorce, funeral, naming a child to be in the mullah, the widow's dispute to be considered in court" (Shaptayeva, Aldzhanova, 2017: 43). In December of the same year, the government of the Alash Horde was formed and Gumar Karash was elected Chief Kazi of the Kazakh people at the Orenburg Muftiate meeting. He was a Jadid theologian (Atash, Alzhan, 2014: 59).

The complete separation of the state and religion was established by law under the Provisional Government, which came to power after the February Revolution. In 1917, the Provisional Government adopted the document "on freedom of conscience. Its four chapters contained information about the separation of the state from religion. The first chapter states that "every Russian citizen is guaranteed freedom of conscience. The application of civil and political law does not apply to religious beliefs, and no one is persecuted for religious beliefs, and any restrictions on religious beliefs are not allowed" (Krikun, 2016: 107). The position regarding the change of religious faith and the belief or non-belief in the religion was confirmed by each citizen at the age of 14 by writing a written application to the Local Court. Sometimes it is also realized through oral statements. If a citizen is a member of a religious association, state institutions inform them about the change of religious beliefs or non-adherence of a citizen who has reached the age of 14, and report the same information to the local administration in case of non-adherence to any religious beliefs. V.G. Krikun wrote "Although religion was separated from the state under the Provisional Government, the Provisional Government retained the previous structures governing religious associations" (Krikun, 2016: 106). As proof of this, he cites the Russian Orthodox Church, and/which assesses that although the Synodal system of the church was abolished, it

was subordinated to the Ministry of religious faith and remained in the eyes of society as an assistant to the state apparatus. The ROC (Russian Orthodox Church) gradually began to separate from being the main partner of the state. After all, the Provisional Government did not pay much attention to Confessional features and declared the legal equality of all religions.

Before the adoption of the document "on freedom of Conscience" of July 14, 1917, Orthodox people were obliged to bring up their children in the spirit of orthodoxy, and the provisional government transferred such a will to the discretion of each grandfather. During the Russian autocracy, one of the parents was orthodox, and the other was obliged to adhere to the Orthodox faith for a child born from a marriage of faith. And the Provisional Government made it possible to determine the religious faith of a child based on the common consent and choice of parents with different religious beliefs. The ninth subparagraph of this document provides for issues related to religious educational institutions. On June 20, 1917, the competence of the Orthodox Church in schools was abolished, and this task was transferred to the Ministry of Public Education. The transfer of educational institutions to the jurisdiction of civil structures accelerated the process of secularization in the country. Researcher K. Yerofeyev: "It was under this provisional government that the principle of secularization policy began. Real estate, as well as typography and literature, were seized from the possession of the church. It should be noted that these initiatives of the Provisional Government were continued by the Soviet government" (Yerofeyev, 2015: 40).

Results and discussion

There are limited three stages in the history of the development of secularism in Kazakhstan. In the periods covered in Table 1, it is possible to compare the ways and characteristics of the formation of the pre-Soviet secular principles. The main sources in the study were the records and research of that time, as well as legislative documents.

Table 1 compares the importance of religion in society and the state through religious and secular legislation. As we can see, after the Kazakh Khanate, the importance of Sharia and traditions in society was constantly weakening. State law preferred Islam during the Kazakh Khanate and the Orthodox Church during the Tsarist Russia. Only under the Provisional Government were covered secular principles.

Table 1 – Comparison of the importance of religion in society and the state through religious and secular legislation

	The Kazakh Khanate	In the Kazakh Khanate under the Tsarist regime (before 1868)	The Tsarist regime (after 1868)	The Provisional Government
The Sharia function	Included articles protecting Sharia law. The death penalty was applied (Zheti Zhargy)	Included marriage and family relations. The death penalty was not applied (Sharia law weakened every year)	Included marriage and family relations. The death penalty was not applied (100 Rubles (currency name) and no more than 300 rubles for the cases related with nomads)	Included marriage and family relations (did not include any punishments)
Adat (customs and traditions)	Khanate attitude included in priority	Kazakhs public relations covered (not included serious criminal cases)	Kazakhs public relations covered (100 rubles and 300 rubles for Nomads)	Kazakhs public relations covered (cases related with punishments not included)
State Law	Law, in particular Secular was prioritized	General Imperial Law include “religious tolerance”, however Orthodox elements was included too	General Imperial Law include discrimination by Orthodox elements	Law based on secular principles

Table 2 provided an information to determine the importance and influence of religion through the religious people in society. In this case, the period of Tsarist law was divided into before years 1868 and after 1868. The reason is that in 1867 and 1868 the Tsarist government created the Provisional Government and introduced changes in the field of religion and the judiciary. This is clearly in Table 1.

During the reign of the Kazakh Khanate, clergy was appointed from the masters and masters had a special status. During the reign of the Tsar until 1868, the Tatars had a special status and were active in society. Their status was maintained after 1868, however the State decreased their activities.

In Kazakh society Mullahs (a person who has higher education in Islamic theology and sharia law) performed a religious and Sharia function. In order to strengthen the administrative power in the Kazakh Steppes, the Tsarist government assigned Mullahs religious and political, administrative functions. Religious duties only were approved under the Provisional Government.

Table 2 illustrates the relationship between religion and the State. The Kazakh Khanate gave priority to Islam, while the Tsarist government to the Orthodox Church. During the Provisional government, the State and religion were separated.

Table 2 – Illustration of the relationship between religion and the State

	The Kazakh Khanate	In the Kazakh Khanate under the Tsarist regime (before 1868)	The Tsarist regime (after 1868)	The Provisional Government
Mullahs appointed	Khoja (s)	Tatars (Mullah)	Believers from Kazakh families	Believers from Kazakh families (Jadidist)
Mullah’s function	Religious	Religious, administrative and political	Religious, administrative and political	Religious
Religion and the State	Islam was as the main religion	Orthodox was as the main religion	Orthodox was as the main religion	Religion and the State were separated

However, apart from this period, the relationship between the state and religion in the earlier history of Kazakhstan requires special study. Because the history of Kazakhstan covers only the period after the Kazakh Khanate, there is an opportunity to study today's topic in more depth, so it is important for future researchers to conduct research in this area. Also, the pre-Islamic psychology of the Kazakhs and their attitude to religion and the ruler are still among the topics of interest.

Conclusion

In the introductory part of the article, the authors set the following tasks:

- 1) Assessment of the influence of religion in public and legal relations under the Kazakh Khanate;
- 2) Analysis of the peculiarities of relations between religion and the state under Tsarist Russia and the Provisional Government;
- 3) Identification of the reasons for the emergence of the need for secularism as a result of legal and social changes in these periods.

According to the main section, religious power under the Kazakh Khanate belonged to the "Khoja", secular power belonged to the Khans and Sultans, and the judicial system belonged to the Biys. During the reign of Tsarist Russia, the Khan's power was abolished, and the Khoja was replaced by "Decree mullahs". In the judicial system, the Biy (judge, court) and parallel were used together with the general Imperial Court and the Sharia Court. However, among these three different courts, the jurisdiction of the general Imperial Courts was expanded, and the other two were narrowed. This process itself has influenced the reduction of religious elements of the legal framework in the management of the Kazakh Steppe.

The policy of baptism of Tsarist Russia and its actions against the religion of Islam stimulated the development of the Kazakh intelligentsia's idea of freedom of religion and the Prevention of discrimi-

nation. Meanwhile, the transformation of the Muslim peoples into colonies and the economic backwardness of Western countries brought to the center the positions of the Muslim intelligentsia regarding modernization. The reformatory view that Islam should have a positive impact on the modernization of not only religious teaching but also public consciousness has become widespread. In turn, this idea advocated allowing each industry to develop individually, suppressing the idea that religion should control everything. As a result, the opinion of Alashorda residents was born in favor of the separation of religion and the state.

In the history of Kazakhstan's relations between religion and the State, it became clear that the legal nature of the secularized state is fully reflected in the legislative documents of the "Provisional Government". Under the Provisional Government, freedom of religion was declared. At the same time, religious and public institutions were separated. The fact that these positions of the "Provisional Government" were supported by the Muslim and Russian intelligentsia showed that the policy of "religious discrimination" is outdated. Therefore, the beginning of the 20th century can be perceived as the time of consolidation of secular principles of Kazakh society.

Thus, the above research has shown the special place of the formation of modern Kazakhstan as a secular state during the reign of Tsarist Russia and the Provisional Government. Kazakh nationalists and Islamic reformist movements in particular made a significant contribution to the development of secular thought. As a result, the subsequent Soviet was able to create ideological preconditions for the separation of religion and politics for an independent Kazakhstan. However, due to the fact that the topic covers a long period, there is a need for a full-fledged study, focusing on each stage.

The article covers three stages and historical and legal aspects, but it is proposed to study the cultural values that influence religion and power on the pre-Kazakh Khanate and pre-Islamic secularism.

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