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Kazakhstan, Almaty, e-mail: zanzaman@mail.ru**ZHAKHANSHA DOSMUKHAMEDOV
WAS THE FOUNDER OF CIVIL LAW
IN THE KAZAKH REGION**

The emergence and development of civil law as an independent branch of law was associated with the development of commodity-money relations and first developed in ancient Rome. Roman law was formed on the basis of customary law as well as the judicial practice of masters who resolved property disputes. Therefore, it was in Roman law that the main provisions of modern civil law were first formed. A powerful impetus to the development of civilistic thought was the rapid development of commodity-money relations in the Russian Empire. The high level of development of civil law science in pre-revolutionary Russia influenced the formation of civil law in the Kazakh region. A prominent social and political figure, professional lawyer, one of the leaders of «Alash», the head of the Western branch of «Alash-Orda», Zhakhansha Dosmukhamedov was at the forefront of the development of civil law thought in the territory of modern Kazakhstan. His political and legal views were formed under the influence of progressive ideas of representatives of the Kazakh intelligentsia, Russian socio-political thought of the 19th – early 20th centuries, Western thinkers and lawyers. In this article, the author first examined the role of Zhakhanshi Dosmukhamedov as a civilist in the formation and development of civil law in the Kazakh region. Also the author identified main stages of his political and legal views.

Key words: state, legislation, civil law, civil law relations, contract law, politics, law, autonomy, republic, rule of law.

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Қазақстан, Алматы қ., e-mail: zanzaman@mail.ru**Жаханша Досмұхамедов – қазақ өлкесіндегі
өркениеттің негізін қалаушы**

Азаматтық құқықтың дербес құқық саласы ретінде пайда болуы мен дамуы тауар-ақша қатынастарының дамуымен байланысты болды және алғаш рет ежелгі Римде дамыды. Рим құқығы әдет-ғұрып құқығы негізінде, сондай-ақ мүліктік дауларды шешетін магистрлердің сот практикасы негізінде қалыптасты. Демек, қазіргі заманғы азаматтық құқықтың негізгі ережелері алғаш рет Рим құқығында қалыптасты. Ресей империясындағы тауар-ақша қатынастарының қарқынды дамуы азаматтық ойдың дамуына күшті серпін берді. Революцияға дейінгі Ресейдегі азаматтық-құқық ғылымының жоғары деңгейі Қазақ өлкесінде азаматтық құқықтың қалыптасуына әсер етті. Көрнекті қоғамдық-саяси қайраткер, кәсіби заңгер, Алаш көсемдерінің бірі, Алаш-Орданың Батыс бөлімшесінің жетекшісі Жаханша Досмұхамедов қазіргі Қазақстан территориясындағы азаматтық ойдың дамуының басында болды. Оның саяси-құқықтық көзқарастары қазақ зиялыларының прогрессивті идеяларының, XIX-XX ғасырлардағы орыс қоғамдық-саяси ойларының, батыс ойшылдары мен заңгерлерінің әсерімен қалыптасты. Аталмыш мақалада автор Жаханша Досмұхамедовтің Қазақ өлкесіндегі азаматтық құқықты қалыптастыру мен дамытудағы цивилист ретіндегі рөлін тұңғыш рет қарастырады. Сонымен қатар автор оның саяси және құқықтық көзқарастарының негізгі кезеңдерін анықтап береді.

Түйін сөздер: мемлекет, заңнама, азаматтық құқық, азаматтық-құқықтық қатынастар, келісім-шарт құқығы, саясат, құқық, автономия, республика, заңдылық.

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**Жаханша Досмухамедов – основоположник цивилистики
в Казахском крае**

Появление и развитие гражданского права как самостоятельной отрасли права были связаны с развитием товарно-денежных отношений и впервые получили свое развитие еще в Древнем Риме. Римское право сформировалось на основе обычного права, а также судебной практики магистров, разрешавших имущественные споры. Поэтому именно в Римском праве были впервые сформированы основные положения современного гражданского права. Мощным толчком к развитию цивилистической мысли послужило бурное развитие товарно-денежных отношений в Российской империи. Высокий уровень развития гражданско-правовой науки в дореволюционной России оказало влияние на становление гражданского права в Казахском крае. Видный общественно-политический деятель, профессиональный юрист, один из лидеров «Алаш», руководитель Западного отделения «Алаш-Орда» Жаханша Досмухамедов стоял у истоков развития цивилистической мысли на территории современного Казахстана. Его политико-правовые взгляды были сформированы под влиянием прогрессивных идей представителей казахской интеллигенции, российской общественно-политической мысли XIX – начала XX вв., западных мыслителей и юристов. В данной статье автором впервые рассмотрена роль Жаханши Досмухамедова как цивилиста в становлении и развитии гражданского права в Казахском крае. Также автором определены основные этапы его политических и правовых взглядов.

Ключевые слова: государство, законодательство, гражданское право, гражданско-правовые отношения, контрактное право, политика, право, автономия, республика, правовое государство.

Introduction

In modern conditions of development of the global economy, civil law is central to the system of both international and national law. This is one of those branches of law of the Republic of Kazakhstan, which is inextricably linked with the daily life and activities of citizens, legal entities, the state and its administrative-territorial units. Civil law is not limited to the study of civil law only one country, the subject of the science of civil law are also civil doctrines, forms of civil law and the practice of their application in other States. Therefore, an important part of civil law is the history of formation and development of private (civil) law in General and in different legal systems (local, national), in particular.

The Civil law as an independent branch of law was developed in Ancient Rome. The stages of the formation of civil law are connected with the main stages of world history – they are Ancient Rome, the Middle Ages, the Renaissance and bourgeois revolutions and etc. In the Russia the Civil right was formed on the basis of customary law and a judicial practice. For the first time, the formation of civil legal norms in the Russian Empire took place in the first half of the 19th century. This document was prepared by M. M. Speransky and was called the “Code of Laws of the Russian Empire”. The rapid development of trade, the growth of enterprises and the economy as a whole, as well as the socio-

political situation in Russia in the pre-revolutionary period, led to the development of commodity-money relations and civilistic thought. In the late XIX – early XX centuries were attempts made to change the code of laws in accordance with the characteristics of the development of society of that period. An interest in the development of civil law in the Kazakh region arose among the kazakh intelligentsia of the late XIX – early XX centuries. A prominent socio-political figure, professional lawyer, one of the leaders of “Alash” the head of the Western branch of “Alash-Orda” Zhakhansha Dosmukhamedov made a significant contribution to the implementation of progressive ideas in the Kazakh region, including the development of civil law.

However, the issue of the formation and development of civil law in the territory of modern Kazakhstan remains virtually unstudied. Therefore, the appeal to the question of the formation of civil law in the Kazakh region, as well as to the personality of Zhakhanshi Dosmukhamedov, who made a significant contribution to the development of civil law as an independent industry, is relevant and has important historical and legal significance for our state. Thereby, the relevance of the topic of this article is that the author for the first time considers the history of the development of civilistic thought in the territory of present-day Kazakhstan and determines the leading role of the lawyer

Zhakhansha Dosmukhamedov in the formation of civil law.

The study of historical experience and creative heritage, as well as the legal views of thinkers of the past, who proposed original solutions to the problems of state institutions, is important and necessary for modern science. Also, for modern lawyers, one of the main tasks should be recognized as filling in the gaps in the study of domestic thought about the state and law. This is all the more relevant today, when a search is underway for the most acceptable ways for the further development of Kazakhstan.

In this article, the author analyzed new archival materials that are valuable for the development of civilistic thought in the Kazakh region. A comparative legal analysis of the features of the development of legal thought in Russia and Kazakhstan in the late XIX – early XX centuries. Through the prism of considering the views of Zh. Dosmukhamedov on the origin of Kazakh statehood and the Kazakh nationality, the essence of the state, the rule of law and its principles, the main stages of the evolution of the socio-political and legal worldview of a lawyer are determined.

The scientific novelty of this article is determined by the relevance, nature and practical significance of the work, as well as the lack of of this topic. The author cited a wealth of archival material, disclosed the main ideas and teachings of Zh. Dosmukhamedov on law, building a rule of law by developing civil law as an independent branch of law.

The study of the history of the formation and development of civil law makes it possible to borrow the positive experience of the past and to some extent avoid repeating mistakes. The study of the history and nature of the formation of civil law on the territory of Kazakhstan allows to clarify the overall picture of the development of modern domestic civil law. Therefore, in this article I would like to address the question of the formation of civil thought in the Kazakh region, which is associated with the name of the outstanding personality of the late XIX-XX centuries. The life path of a professional lawyer, Prosecutor, a bright political figure Zhakhanshi Dosmukhamedova who lived at the turn of the past and present centuries and influenced the historical course of development of our country is complex, but rich in events and the implementation of his progressive ideas.

Main part

A graduate of the Ural military technical school Zhakhansha Dosmukhamedov expresses a desire

to continue his studies in one of the prestigious Universities of Russia. The choice of the future profession of the lawyer was influenced by his desire to improve the life of his people, to preserve the centuries-old traditions and customs of the great Kazakh steppe. It should be noted that progressive Kazakh youth studied in such cities as Moscow, St. Petersburg, Tomsk, Omsk, Orenburg. Among the archival materials discovered by me and previously introduced into scientific circulation, there are several letters of Zh. Dosmukhamedov, in which his desire to get a legal education is manifested. In his letters, he appeals to the Military Governor of the Ural region with a request to assist in entering the Imperial Moscow University, as well as to the rector of this prestigious educational institution of Russia with a request to enroll him in the number of students of the faculty of law. The Military Governor of the Ural region, supporting the request of the young man, appeals to the rector of the Imperial Moscow University with a request to enroll Zh. Dosmukhamedov among the students of the faculty of law. In respect (written appeal-the author) from 12 August 1906 year for number 8186 Military Governor Ural area on name of rector of the Moscow University said: “This year, only one kyrgyz, Dzhansha Dosmukhamedov, graduated from the Ural Real School, who applied to me with a request for assistance for admission to Moscow University. Taking into account the complete absence of educated lawyers among the Ural kirghiz, forced in view of this to turn to illiterate private attorneys, bringing their advice more often harm than good. I would find it very desirable to gradually spread higher legal education among the kirghiz, and therefore I ask your Excellency if you will find an opportunity to accept Dosmukhamedov among the students of the law faculty of the Moscow University” (Letter to the rector of Moscow University // Central historical archive of Moscow. – F. 418. – Op. 320, storage unit 529. – Sheet 5). From the above excerpt of the letter it is clear that the Kazakh region needed professional personnel, including lawyers. Therefore, the government began to think about their preparation. In order to manage the region were needed lawyers, doctors, engineers and other specialists from the kazakh people. In addition, they had to express the interests of the Russian Empire. Another letter indicates that Zh. Dosmukhamedov turned to the rector of the Imperial Moscow University with a request to enroll him in the law faculty. He wrote about it: “Wanting to continue my education and having a strong attraction to legal science, I humbly beg Your

Excellency to enroll me in the number of students entrusted to Your Excellency of the University's law faculty" (Letter to the rector of Moscow University //Central historical archive of Moscow. – F. 418. – Op. 320, storage unit 529. – Sheet 1.). To this petition he attached the following documents: the Certificate of education for 7 classes of the Ural real military school, the Certificate for 6 classes, the metric certificate, the certificate of reliability and the certificate-dismissal from society and the photo. This letter Zh. Dosmukhamedov written August 21, 1906, while in Moscow and signs as Dzhansha Dosmukhamedov. The letter arrived at the office of the rector of Moscow Imperial University the next day, that is, August 22, 1906.

In order to enter the University, it was necessary to provide a "certificate of trustworthiness". The fact is that it was 1905-1907 years marked by socio-political activity not only the center of Russia, but also its outskirts. In other words, the kazakh intelligentsia enters the political arena and takes an active part in the life of the country, that is, organizes petitions on the land issue, takes part in the work of the State Duma, creates the national press, etc. Therefore, it was very important for tsarist Russia to prepare for the Kazakh region not just good personnel, but also those people who would share the policy of the current government. The certificate of trustworthiness was prepared and issued by the Military Governor (signed by the Lieutenant Governor). In the document says: "This certificate is issued from the Military Governor of the Ural region, who graduated from the Ural Military Real school Dzhanshe Dosmukhamedov that he lived in the mountains. Uralsk in anything indicating its political unreliability was not noticed. That is signed with the official seal application is verified. Stamp duty received. May 24, 1906 "(Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. – Sheet 6). Other letters was prepared, signed by village elders No.1 Zhambitisk region: "Society No. 1 of the village Zhambitisk parish of the Ural district of the Ural region, which the Dosmukhamedov belongs, has nothing against the further continuation him education " (Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. – Sheet 7).

The Russian government carefully checked kazakhs entering higher educational institutions of the country. In addition, for admission to the faculty of law of the Imperial Moscow University Zh. Dosmukhamedov had to pass an exam in Latin. However, the Certificate of his graduation from the Ural military real school shows that he studied

German and French. Again, with the support of the Military Governor of the Ural region and the appeal of the rector of the Imperial Moscow University on August 31, 1906 with a letter for No. 5901 to the Manager of the Moscow educational district of the Ministry Of public Education with a request to give permission to enroll in the faculty of law Zh. Dosmukhamedov, without passing the exam in Latin: "...In his petition, the Governor of the region indicates the desirability of spreading legal education among foreigners who, in the absence of educated lawyers from their environment, are forced to seek advice from ignorant filed, bringing their advice more often harm than good. In view of the above, I have the honor to humbly ask your Excellency to enter with a petition to the Minister Of national Enlightenment for permission to admit Dzhansha Dosmukhamedov to the number of students, without requiring his certificate of passing the exam in the Latin language" (Letter to the Manager of the Moscow Uch. – district // Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. – Sheet 9). In addition, prior to the decision on the admission of Zh.Dosmukhamedov to the University without passing the exam in Latin, the rector of the Moscow Imperial University gives him permission to attend lectures. This is evidenced by another letter dated September 5, 1906, No. 5384 (Letter to the Military Governor of the Ural region // Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. – Sheet 10). Eighteen days later, more precisely on September 23, 1906, the rector of the Imperial Moscow University received a reply letter for No. 20928 from the Manager of the Moscow educational district of the Ministry of Public education isaenkov, in which he notes that the Minister of Public Education granted the request of the rector. (Letter to the Rector of the Imperial Moscow University //Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. – Sheet 11). Zh. Dosmukhamedov's dream of getting a law degree at a prestigious russian university has come true.

In the period of study, Zh. Dosmukhamedov was interested in the development of legal knowledge in the Western States. If legal knowledge in Rome was introduced in the I-th century ad, in russia lectures on jurisprudence in educational institutions began to read only from the second half of the XVII century. The future lawyer was well aware that the main weapon in his chosen profession is competent speech, so he was engaged in oratory. In addition, he studied with special interest the works of famous

lawyers of the West and Russia, did not miss the publication on legal topics in the magazines “Vestnik Prava”, “Prison Bulletin” and the newspaper “Law”. He listened to lectures of famous lawyers-professors S.E. Desnitsky and I. A. Tretyakov, and also watched unforgettable public performances of lawyers-practitioners F. N. Plevako who worked as the lawyer and was the unsurpassed speaker, the expert of laws. Of course, it was difficult for a simple kazakh young man to live and study in Moscow: most of the money went to pay for living in an apartment and lectures, buying textbooks and necessary legal literature. Therefore, he was awarded a scholarship from the Ural Regional Board in the period «from January 1, 1907 to June 1, 1910 in the amount of 1036 rubles 70 kopecks. The amount is painted for the entire period of his training» (Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. – Sheet 27). So, for good performance, the Ural regional Board exempts Zh.Dosmukhamedov from the obligation to serve in the Ural region (Letter to the Ural Regional Board // Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. -Sheet 15).

Given the excellent study Zh. Dosmukhamedova January 26 a rector of the University handed him a Certificate № 5335 for to live in Moscow until September 1910 (Letter to the Ural Regional Board // Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. -Sheet 15). In the same Fund of archive the certificate on delivery Dosmukhamedov of examinations for eight half-years at law faculty of the Imperial Moscow University issued in March, 1910 remained. The document notes that Zh. Dosmukhamedov was admitted to the number of students of the Imperial Moscow University in August 1906. During his stay at the named higher education institution, he mastered the subjects of the General group: “encyclopedia of law (1907), History of Roman law (1908), International law (General course) (1909), Financial law (General course) (1909), History of Russian law (1908), History of philosophy of law (1908), Theory of political economy (1907).

He also studied subjects in Civil law: Roman law System (1909), Local civil law (1909), Civil procedure (1910), commercial law (1908), Commercial and competitive processes (1908), Private international law (1908), Criminal law (special part) (1909), criminal procedure (1909), Church law (1909). In addition, he received credits in Roman law, Criminal law and Civil procedure. The certificate of completion was issued to Zh.Dosmukhamedov on March 4, 1910 for No. 175.

The receipt of this document by him is evidenced by Zhakhanshi’s own handwritten record – “Dzhansha Dosmukhamedov received the Graduation certificate No. 175” . Students were required to complete the curriculum and “undergo semi-course tests” (Central historical archive of Moscow. – F. 418. – Inventory of 320, a storage unit 529. – Sheet 18).

It should be noted that in many archival documents the name of Zhakhansha appears as Zhansha, Dzhansha, Zhakhanshah or Zhahansha Dosmukhamedov (or Dos-mukhamedov).

Despite the wide range of topics of the thesis, the mind and heart of the future lawyer was occupied by issues of Civil law. He chooses the theme of the thesis (for the diploma of the 1st degree): “The Main decisions of the Kyrgyz-Kazakh customary law and the people’s court as the body of their application” (Central historical archive of Moscow. – F. 418. – Inventory of 468, the storage unit 137. – Sheet 4).

Examination sheet No. 118 indicates that Zh.Dosmukhamedov graduated with honors from the faculty of law of the Imperial Moscow University and he was awarded a diploma of the I-th degree. Not every kazakh who studied at a prestigious University could graduate with honors and receive a diploma of the I-th degree. It should be taken into account the fact that economic and legal sciences were studied only at the faculty of law, which corresponded to his desire to be a specialist in the field of civil law.

Zh. Dosmukhamedov works for some time in the Ural regional administration and on the basis of practical experience writes a series of articles under the General title “a few words about kyrgyz customary law and the people’s court” in the newspaper “Ural leaf”. Then work the candidate for judicial office in the Ural district court, acting assistant Secretary, criminal Department and a magistrate, and in the summer of 1912 is a senior candidate for a position in the Omsk judicial chamber personnel for the performance of duties of the magistrate of the 10th land district of Barnaul. In 1913, he transferred to a position in the 1-st district Zmeinogorsky district, and in the autumn of 1913, he was invited to work in the Prosecutor’s office in Barnaul. This is evidenced by the archival document “Distribution of plots of comrades Prosecutor of the Tomsk district court” signed by the Prosecutor N.G.Krasilnikov (Distribution of sites of Companions of the Prosecutor of the Tomsk District Court // the State archive of the Omsk region. – F. 190. – Inventory 1. – D. 76. – Sheet 2). In this important historical document it is specified that Zh. Dosmukhamedova was appointed the Comrade of the Prosecutor of the Tomsk district court on Kainsky district in

March, 1914. The prosecutorial precinct consisted of magistrates 3,6,7 and 8 precincts of Kain County and Kain prison. Working as a comrade Prosecutor, he controlled political exile and had essentially the rank of General of justice.

The state archive of the Tomsk region preserved the “Desktop register of the comrade Prosecutor of the Kamensky district”, in which the cases considered with the participation of the Prosecutor were registered (Sh. Zabih State-legal views of Zhakhanshi Dosmukhamedov. Abstract of the dissertation for the degree of doctor of law 14.05.2010). In addition, in the sector of rare books of the historical and local history Department named after A.S. Pushkin preserved “Commemorative book of Tomsk province in 1915. At the direction of the Governor of Tomsk, the names of prominent figures of the province were included in this book. In the section “Prosecutorial supervision” the surname of D. Dosmukhamedov is included (Commemorative book of Tomsk province. – Moscow: Printing office of the provincial administration, 1915. – P. 109). This indicates that Zh. Dosmukhamedov had a high authority in the Tomsk province and was respected as a Prosecutor who defended the rights and freedoms, as well as the interests of citizens.

Zh. Dosmukhamedov mainly worked in the field of civil law, but at the same time he thought a lot about society and nature, about power and law, protection of human rights. In his opinion, the person is born for freedom and on formation of its outlook and even the whole people the nature of that edge in which this person was born and lived or this or that people lives postpones the imprint. Speaking about the character of the kazakh people, he notes that “ the kyrgyz (kazakhs-author)” they are naturally very intelligent, impressionable and responsive. He written: “ It was the great steppe that made kazakh soft, kind and sympathetic. The steppe itself was an element that made all living on it to be considered more or less members of the same family. The nature of the Kazakh region fascinated not only steppe dwellers, but also russian researchers with its beauty” (Dosmukhamedov Zh. a Few words about kyrgyz customary law and people’s court / / Ural leaf. – 1911. – No. 20. – January 26). As an example, he cites the statement of the researcher Levshin, who, comprehensively studying the life, traditions and customs of the kazakhs, was fascinated by the nature of the steppe region. For example, a russian researcher who lived for several months in the Kazakh region, and noting to some extent the severity of the ancient adat, spoke about the freedom-loving nature of the Kazakhs and compares them to birds.

The scientist-researcher Levshin emphasized that kazakhs live in harmony with nature, without any falsehood, and it is so natural.

Zh. Dosmukhamedov claimed that in the Kazakh region there were no cruel and severe punishments, and all issues were tried to be solved within the framework of civil relations. In addition, reflecting on the origin of the kazakhs and the kazakh statehood, the formation of the legal system, the emergence of legal concepts and terms, he noted the formation of civil relations. Zh. Dosmukhamedov believed that the kazakh society before joining Russia had its own state organization, system of law, which were formed and developed over the centuries. According to the lawyer, during this time the huge factual material characterizing statehood, its structure, activity of its bodies, and also process of formation and functioning of legal system has accumulated. The ancient oral traditions describe the events in the Kazakh land, customs, laws by which the kazakh society lived, the traditions of the people. In addition, there are materials of research of Russian scientists who began to actively study the Kazakh steppe from the end of the XVIII century. But the role and importance of law in the regulation of public relations arising in the civil turnover of the Kazakh region were not defined. According to the lawyer, the research was conducted by people who did not know the history of the kazakh people, its psychology. In addition, the research was carried out at a crucial time in the life of the Kazakh people, when as a result of accession to Russia, its state organization and legal system were destroyed. Zh. Dosmukhamedov regretfully stated the fact that the “legal life of the kazakhs” remains virtually unexplored by lawyers. He, like the outstanding kazakh scientist-researcher Chokan Valikhanov, believes that such phenomena as the legal system can be formed for a long time on the basis of the life of society. After all, many information about the Kazakh customary law is contained in the poems of Yu. Balasaguni and in the Code of Kumanikus, later in the works of Russian researchers.

Zh. Dosmukhamedov, as well as A. Bukeikhanov, participated in research works on the study of the “legal life “ of the Kazakhs. He pays special attention to the issues of the collection “Zheti Zhargy” and Kazakh customary law in the Kazakh region. In these years, the young lawyer is engaged in the collection of factual materials to compare how the reality of the Kazakh region corresponds to the norms of “Zheti Zhargy”. He also planned to publish a collection of customary law on the basis of the

collected materials, outlining the following main range of issues:

1. The meaning of customary law in General and foreign law in particular.
2. Various aspects of influence on the legal outlook of the kirghiz (kazakhs).
3. National criminalistics and some decisions of the kyrgyz (kazakh) customary law in the field of civil relations.
4. People's court of former times.
5. The organization of the people's court according to the "Steppe state".

Based on the research, he states that the life of the kazakh people takes place within the laws of antiquity and customs, that a number of outstanding lawyers-ethnologists-Kovelin, Yakushkin, Efimenko, Pakhman, Mukhin and others devoted their works to the collection and systematization of the traditional legal system and legal views of the Russian people. However, in his opinion, the same cannot be said "in relation to foreign customary law, in particular kyrgyz". Zh. Dosmukhamedov comes to the conclusion that "it is impossible to understand the issues of foreign legal education in addition to the people and without their knowledge." The thinker says that the kazakh society for many centuries lives by the established norms, customs, which are of scientific value. However, these covenants, the rules of customary law should be written while under the influence of new conditions of life they are not yet forgotten.

As a result of his research, as well as a comparative analysis of the collected materials with the norms of "Zheti Zhargy" Zh. Dosmukhamedov comes to the conclusion that the kazakhs, although they didn't know written wills, but orally made orders before dying before the assembled relatives. Then such an order of the deceased was executed exactly. The lawyer Zh. Dosmukhamedov wanted to transfer the developed centuries-old traditions to the legal plane which would correspond to that time, and in writing to inform to descendants. And it's not surprising that his ideas about the need for registration of written wills, as well as to adhere to the legislative order of inheritance of human property are reflected in the modern Civil code of the Republic of Kazakhstan, in section 6 "Inheritance law" (Civil code of the Republic of Kazakhstan (Special part) No. 409-I of July 1, 1999 (with amendments and additions as of 28.10.2019). According to chapter 58 of the Civil code of the Republic of Kazakhstan "the will of a citizen on the disposal of property belonging to him in case of death is recognized as a will". The main purpose of the will is to determine the procedure for

the transfer of all or part of the inherited property to certain individuals or legal entities or to the state. Making a will, a person specifically prescribes what and to whom he is going to leave after his death — this is the main difference between a will and inheritance by law. Appointment of heirs and the order of distribution of property between them depend solely on the will of the testator (article 1046 of the Civil code of RK).

According to the lawyer Zh. Dosmukhamedova, "adat or customary law of kirgiz (kazakh – author) it was so simple, kindly and natural, as simple patriarchal-tribal life, as monotonous nomadic life." The thinker points out that the legal system of customary law has undergone changes, it was influenced by other peoples, that "each people, connecting himself, and joined his legal outlook." However, many customs of the kazakhs relating to ancient times, including legal, "are still alive in the people's memory." Under the influence of new conditions of life, they (customs) have not forgotten. Zh. Dosmukhamedov was firmly convinced of the need to preserve and research the kazakh customary law, which met the requirements of nomadic life. Although in the ancient adat and there was the principle of equivalence of punishment and blood vengeance, i.e., for murder, to kill, for damage of the member body to expose the same corruption, etc., but in reality virtually all cases, including murder, ended civil satisfaction, i.e. the payment of kuna and gaia (penalty).

Reflecting on "power", on the state structure of the country, Zh. Dosmukhamedov, first of all, relies on deep knowledge in political theories, both ancient and modern European and russian thinkers. The fact that Zh. Dosmukhamedov was familiar with many works of scientists-historians, lawyers, is evidenced by the list of sources given by him: "... I consider it not superfluous to make a short list of sources, which I will use in the future, and which I recommend for those who would like to read more about the issue of interest to us; they are Levshin ("Description of kirghiz kisatsky hordes and steppes"), of Grodekov ("Kyrgyz and karakilise the Syr-Darya region"), Arminius of Vambery ("Journey through Central Asia"), Radlov ("Samples of folk literature of Turkic tribes"), of Kraft (the "Court part of Turkestan"), Dobromyslov ("The courts of the kirghiz Turgay region in the XVIII and XIX centuries"), Slovokhotov ("National customary court of the kirghiz of the Small Horde"), Gurlyand ("Steppe law from ancient times to the XVII century"), Professor D. Samokvasov ("Collection of customary law of Siberian foreigners"). From journal articles, mostly

devoted to the people's court, we can point to the article: Maximova N. (St. Petersburg, legal, book 7-th 1897), Dingelstedt (1892, January), A. Zuev (1907), Haruzin was interested in the question of the origin of the kirghiz and wrote an article in "Ethnographer. Overlooked." 1895, book 26, there is also a small brochure about the people's court, written by the Prosecutor of the Ural District Court B. N. Delvig" (Dosmukhamedov Zh. a Few words about Kyrgyz customary law and people's court. //Ural leaf. -1911. – No. 14. – January 19). However, the above list of sources, in his opinion, is not exhaustive. All these reflections and deep knowledge of law have formed not only as a politician, but also as a strong lawyer.

Zh. Dosmukhamedov was well acquainted with the political and legal teachings of not only Russian thinkers, but also the political and legal views and ideas of prominent representatives of European and American schools. He was especially close to the political and legal teachings of the representatives of the United States of America, so he represented the ideal of the socio-political system of the United States. Before the formation of an independent nation-state, the ideal was the socio-political system of the United States and he was for "a Federal democratic Republic with mandatory provision of broad territorial and national autonomy to the kazakh" (Case No. 6516 on the charge of Dosmukhamedov Zhaganshi under article 58, paragraphs 10 and 11 of the criminal code. State archive of the Russian Federation.- F. 10035). Preservation of national identity of the people and education of national feelings were the beginning of political ideas of Zh. Dosmukhamedov. Having adopted many theoretical provisions of classical Western liberalism, the idea of individual freedom, the right of everyone to life, freedom, equality of all before the law, he raised the question of the formation of a national state and imagined that an independent state would be formed on the Kazakh territory in the future. The basic conditions for the formation of any state are the ethnic factor, language, territorial and geographical environment, historical, cultural and spiritual wealth of the people.

Zh. Dosmukhamedov addressed the issue of the formation of civil society and its role in the development of the country. By civil society he means a society where people obey the laws of the state, but the state takes into account the interests of the individual. His concept of civil society is inextricably linked to the idea of individual freedom, the indisputable value of each individual. However, the formation of civil society involves the establishment of dominance in all major spheres of

society "contract" type of interaction, the presence of the Constitution, which sets the framework of the state, which clearly stipulates: the rights and duties of the individual and the state; the existence of a mechanism of participation of citizens in the activities of the state, through which The existence of mechanisms of control and restraint on the part of civil society institutions (independent trade unions, the press, political parties, local governments, etc.) contribute to the formation of a legal (contract) state. Thus, in his theoretical views Zh. Dosmukhamedov came close to the theory of "contract state".

Realizing the multiethnic nature of the peoples of Central Asia and Kazakhstan, he saw real prospects for the consolidation of these peoples. At the II-th all-Kazakh Congress, held in Orenburg (5-13 December 1917), he and his associates defended the idea-to focus on the uzbeks, turkmens, bashkirs and turkestan in General, as related to the composition of the population of the region. In his opinion, Islamic culture in its various manifestations is characterized by distinctive and historically determined features, having a universal character. However, Islam, "faced" with the centuries-old Kazakh customary law, did not become the leading principle of state life and politics, but established itself on the territory of the Kazakh state as a component of culture in religious and cult practice. Zhahansha points to its positive aspects: muslims paid special attention to helping needy relatives, for example, the right to receive assistance from zakat, the distribution of sadaka (alms) is the norm enshrined in the Koran.

Conclusion

For Zh. Dosmukhamedov it was very important to preserve spiritual values for posterity, so he sought to consolidate the turkic peoples. As Deputy Chairman of the all-Russian Muslim Council (VSM), he put the problems of the Kazakh region at the forefront, tried to solve them through Muslim congresses, the Muslim faction of the State Duma and the muslim press. As part of the State Duma, a Muslim parliamentary faction is formed, the Committee "Shurai-Islam" is engaged in solving many problems, including the most important – the land issue.

In general, the evolution of the socio-political and legal worldview of the civilist Zh. Dosmukhamedov consists of four stages:

The I-th stage (1906–1910). In his student years he studies socio-political and legal literature, scientific works of Russian and foreign scientists, progressive ideas of American, European and Russian thinkers,

as well as acquires skills of oratory. He pays special attention to the study of Kazakh customary law and the views of Kazakh thinkers who put forward the idea of preserving national identity, ethnic integrity of the people, justice.

II-th stage (1910 – 1917). Zh. Dosmukhamedov works as a statistician in the Resettlement Department for the study of the Kazakh land in Akmola, Turgay and Ural regions, observes the “legal life of the kyrgyz” and aims to prepare a collection of ordinary Kazakh law. Working in the Prosecutor’s office, he protects the rights of ordinary people, defends the ideas of the rule of law and the rule of law.

III-th stage (1917-1920). In the Kazakh region, regional and all-Kazakh congresses are held, the national newspaper “Kazak” was opened, under the bosom of which the entire Kazakh intelligentsia rallied, the political party “Alash” was formed. Zhakhansha Dosmukhamedov and Khalel Dosmukhamedov was in Moscow negotiating with the government on the issue of education of national autonomy. Zh. Dosmukhamedov, as a professional lawyer, has a leading role in the formation of the legal concept of “Alash”. His role in the unification of Muslims in Russia is great. **He was elected Deputy Chairman of the all-Russian Muslim Council**, a member of the pre-Parliament of the Provisional Council formed under the Provisional government, and a member of the special meeting on the development of the law on the Constituent Assembly, he took an active part in the organization and conduct of Muslim congresses. In the West of Kazakhstan under his leadership was formed the government «Kazakh olyayat», after reorganized into the Western branch of «Alash-Orda». He initiated the formation of the Kazakh army, the people’s militia, opening two cadet schools for training officers from the Kazakhs, introduced the foundations of contract law.

IV-th stage (1920 – 1938). Despite the pressure of the Soviet power established on the territory of Kazakhstan in 1920 years. Zh. Dosmukhamedov remained faithful to his principles and the idea of creating a Kazakh state. The new government imprisons him in prison, and then sends him to Voronezh as one of the active figures of the “Alash-Orda”. After serving a 5-year exile (1930-1935), he was repressed on August 3, 1938.

Based on the consideration of the stages of development of state and legal views of Zh. Dosmukhamedov, his leading role in the development of Civil law in the territory of modern Kazakhstan was first determined. At the same time, the author noted that the formation of the legal views of Zh. Dosmukhamedov was influenced by the political and le-

gal thought of Russia, the West and the USA, as well as the socio-economic and political situation of that period. Also, the author of the article assessed the approaches of Zh. Dosmukhamedov to the issues of legal regulation of public relations, in particular his views on the common law of the Kazakhs. His political and legal activity as the head of the Western branch of «Alash-Orda» and the government of «Uilsky olyat» is analyzed. The implementation of the ideas of Zh. Dosmukhamedov on the creation of a management apparatus, the people’s police, the Kazakh army, the prosecutor’s office in order to ensure the security of national autonomy is shown. He contributed to the formation of the legal framework for the development of the bank, trade and trade and monetary relations, and, accordingly, to the development of civil law in the Kazakh region. Also, for the first time, Zhakhansha Dosmukhamedov applied contractual relations when creating two cadet schools on the territory of Kazakhstan. The agreement has become one of the key elements of the rule of law in the economy, an instrument of democratization of the economy and society. The formation of civil law in the Kazakh region at the beginning of the 20th century and the role of Zh. Dosmukhamedov, as the founder of civil law, is of great historical importance for the development of domestic legal science.

About Zh. Dosmukhamedov we can say that he was the founder of civil law in the Kazakh region. As the head of the Western branch of “Alash-Orda” he realized many ideas. The military-political situation in the territory of the Kazakh territory, the vast territory that does not allow to manage from one center, the weak development of communication routes contributed to the formation of the government “Uilsky olyat “. Under his leadership, was actually carried out by Autonomous regional governance: created a management apparatus, prosecutors, courts, national police, army, operated a Bank, jail, and security, introduced a system of taxes, that is been laid all the conditions for the formation of an independent statehood. He believed that the formation of a qualitative, professional army equipped with modern equipment is possible only through the contract army, by attracting Russian officers under the contract for the preparation of the future Kazakh officers and the transfer of military experience. For the first time in the Kazakh region on a contractual basis began to invite Russian officers, so we can talk about the development of contract law in the Kazakh region. The contract acts as one of the basic concepts of civil law. It represents the entry of individuals and legal entities in legal relations through the conclu-

sion of an agreement (contract), based on the principle of equality and autonomy of the will of the parties. In general, the contract is an element of the rule of law, an instrument of democratization of the economy and society. The contract as an institution of civil law is play an important role in the development of entrepreneurial relations. This was an innovation for the Kazakh region. In addition, with the development of banking, trade, the introduction of the tax system and the emergence of other civil relations should talk about the development of contract law. A contract is an agreement between the parties that implies equality. Equal relations are civil relations that arise in contracts of sale, lease, pledge and etc. The Contract has become one of the key elements of the rule of law in the economy. It is an instrument of democratization of the economy and, through it, of society. The author first discloses Zh.Dosmukhamedov as a civilist and defines his leading role in the development of civil law in the Kazakh region at the beginning of the 20th century.

Zhakhansha Dosmukhamedov was a brilliant politician, possessing high organizational and oratorical abilities, a professional lawyer. The famous

writer Saken Seifullin noted that among the figures of “Alash” only two could lead the people by force of words: one of them is Mirzhakyp Dulatov, and the other Is Zh. Dosmukhamedov. Mirzhakyp was a master of pen, then Zhakhansha was a master of oratory (S. Seifullin narrow the road, slippery the party. Collected works in five volumes. – Almaty: Zhazushy, 1988. – 448 p.).

The ideas of Zh. Dosmukhamedov on a democratic legal regime, parliamentarism, the rule of law, building a legal state, the development of civil society, the organization of the people’s militia and armed forces, the introduction of the zemstvo, a fair court, enlightenment of the people, the development of national culture and language and others are of interest to date (Mambetov B., Zabikh Sp. Zhahansha Dosmukhamedov. -Almaty: Zhauhar (2012)).

His progressive idea is the development of an important area of jurisprudence as a contract law, and, accordingly, civil law, as if having passed through time, are reflected in the current Constitution of the Republic of Kazakhstan, the Civil Code of the Republic of Kazakhstan and other laws of the country.

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