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MARITAL AND FAMILY RELATIONS OF NON-RUSSIAN
INHABITANTS OF THE RUSSIAN EMPIRE

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Abstract

Despite the long-standing interest of Russian historiography in the integration of ethnic border districts into the general Imperial legal space, certain aspects of this problem are out of scientific attention, which determined the relevance of the study. The subject of this article is a letter sent in May 1830 by the Emperor's office to the Combatant Commander on the Caucasian line and the head of the Caucasian region G.A. Emmanuel. This letter was devoted to the original jurisdiction of the legal relationships between parents and their children in a non-Russian environment. The reason for this letter was a special case, but since the proceedings took place at the highest level, this problem was of national importance. In the course of the study, the authors focus on the analysis of the imperial legislative framework devoted to the legal status of non-Russians. In conclusion, the authors resume that aspects of family legal relations in the non-Russian environment in the first half of the XIX century were controversial, transferred from the department of general imperial institutions under the jurisdiction of the spiritual authorities. The highest state bodies of the empire took part in consideration of a particular case, specifying the problem area of the legal framework along the way of integrating non-Russians into the general Imperial legal space. We believe it was due to the need of unifying the government system to improve the effectiveness of management decisions, both in the geopolitical and in the economical spheres.

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1. Introduction

A non-Russian environment is a conglomerate of peoples in the Russian Empire in the XIX – early XX centuries, who were at different stages of social development, professed different religious views, but united within the legal framework of imperial Russia. In July 1822, Emperor Alexander I most highly approved the Charter on the Management of non-Russians (His Imperial Majesty's Own Chancery, 1830d), which became the first legislative act regulating the process of foreign tribes life activity. Subsequently, as a result of the legislative activity of the imperial authorities, special laws were made concerning individual peoples: "Rules for the Kalmyk people management", "Institution for the Caucasus region management", including "Charter for management of the Nogais and other Mohammedans, nomadizing in the Caucasus region", "Regulation for the Kalmyk people management" (His Imperial Majesty's Own Chancery, 1836, His Imperial Majesty's Own Chancery, 1848) and others. All these sources of positive law did not contain legal norms, regulating the relationship between parents and their children. By assigning the competence of the imperial justice to legal relations in the areas of criminal and civil law, the authorities allow clergy and local government to solve the problem in the field of family law relying on the people's traditions and customs.

2. Problem Statement

Despite the creation of a broad legal framework dedicated to the legal status of non-Russians, the issue of the relationship between parents and their children remained outside the legal competence, being resolved based on norms of customary law. The lack of necessary knowledge about this category of subjects, as well as the policy of their systematic integration into the all-Russian space, caused the preservation of traditions and customs' action in the non-Russian environment. Meanwhile, this aspect was important, which is confirmed by a documentary source about hearing of this issue at the Senate.

3. Research Questions

Some aspects of marriage and family relations in the foreign environment are considered by scientists from different areas of humanities (Bimbaeva, 2013; Batyrov & Komandzhaev, 2014; Gimbatova 2011; Sajdumov et al., 2015).

In the article by Trocenko (2014), the differences in regulating marriage and family relations among the non-Russians, living in Western and Eastern Siberia. Zhalsanova and Kuras (2016) consider the divorce process in non-Russian legal proceedings. Mostly the researchers focus on the relations between spouses, the partition of property, adoption.

Unfortunately, the problem of the relationship between parents and children within the legal framework has not properly developed, which has led to the relevance of the study.

4. Purpose of the Study

The purpose of the study is to analyze and introduce a document from the State Archive funds in Stavropol Territory (hereinafter SAST) covering the history of the legal sphere development of the non-Russian tribes in the Caucasus region in the first half of the XIX century and based on the obtained material define the individual aspects of their integrative process into the general Imperial legal space. The law is considered in this case as a mechanism assisting in the formation of the imperial experience in border districts management.

5. Research Methods

This article presents the results of applying the synthesis of various methods for the study of documentary source within the researching social and political development of nomadic peoples in the South of Russia (Kidimiyazov, 2016; Lidzhiyeva, 2018). Thus, by applying the statistical method, the analysis of the imperial legislation regulating both the process of non-Russian life activity in general and the jurisdiction of family legal relations was carried out. Applying the chronological method allows us to reconstruct individual facts and events in determining the jurisdiction of legal relationship in the family law sphere in the non-Russian environment as one of the aspects of complex imperial policy in the border districts.

6. Findings

In the second quarter of the XIX century, the imperial proceeding dealt with the problem of the legal relationship between parents and their children in a non-Russian environment, which consisted of the choice of transferring competence to secular judicial organs or the clergy.

According to the provincial reform in 1775, Empress Catherine II approved "Institutions for the province management in the All-Russian Empire" (His Imperial Majesty's Own Chancery, 1830a). According to this legislative act, the Court of conscience was established in every viceroyalty or province. It served to protect civil rights of individual categories of population (juvenile defendants, insane, witch, etc.) based on the principle of "natural justice". It also superintended the legality of pretrial detention and accommodated the interests of plaintiffs and defendants (His Imperial Majesty's Own Chancery, 1830b). This judicial body had jurisdiction over family conflicts that did not affect property relations, including among non-Russians. Thus, the letter sent by the Emperor's office to the Combatant Commander on the Caucasian line and the head of the Caucasian region Emmanuel of May 20, 1830, reported on the most highly approved opinion of the State Council "to grant Mohammedan spiritual authority to consider and solve cases about the disobedience of children to their parents according to the rites and laws of this Clergy" (GA RF). The reason for the consideration of the case at a high level was a special case related to a truhmen woman Dzhuman Niyazova, who filed a complaint with the Astrakhan Court of Conscience about the disobedience of her children. The difficult situation in which the members of the court found themselves forced the Astrakhan civil governor to provide a formal submission to the Senate that "a truhmen woman Niyazova and her two daughters married without the permission of their mother did not

know the Russian language, and, therefore, if we accept their explanations through an interpreter, it will be very difficult to achieve the goal in considering the case in the Court of Conscience" (GA RF).

The submission of the Astrakhan civil governor was considered at the Senate session, and then this issue formulated as "whether to consider cases of the Tartars in the Court of Conscience about the disobedience of their children or to grant the Mohammedan spiritual authorities to consider the cases according to the rites?" (GA RF) was proposed for consideration to the State Council. Meanwhile, earlier, on December 1, 1826, Emperor Alexander I approved the opinion of the State Council on submission of consideration and resolution of cases between Mohammedans about the disobedience of children to their parents, the Mohammedan Spiritual Authority according to the rites and laws of the Clergy. This legislative decision was based on the opinion of the Minister of Spiritual Affairs and Public Education, Prince Golitsyn about the fact that "matters of this kind should be granted to the Mohammedan Spiritual Authority" (His Imperial Majesty's Own Chancery, 1830c).

The Trukhmens as the Mohammedans nomadizing in the Caucasus region were subjected to the aforementioned "Institution for the Caucasus region management", approved on February 6, 1827. Article 74 of the "Charter "Charter for management of the Nogais and other Mohammedans, nomadizing in the Caucasus region" states: "Matters concerning faith and conscience, cases of disagreement between husband and wife, and between parents and children belong to the proceedings of the Clergy according to their laws". It should be noted that a similar disposition takes place in the "Rules for the Kalmyk people management", approved on March 10, 1825, where Section 38 contains the following legal norm: "Matters concerning the faith, matters of disagreement between husband and wife, and between parents and children belong to proceedings of the clergy". Besides, the members of the Kalmyk judicial organ from the local clergy "do not take part in the proceedings civil cases unless due to a lack of evidence or clues they are required or the cases will connect with the spiritual". Among nomadic Mohammedans, it is pointed out that: "No one from the Mohammedan Clergy interferes in the proceedings of civil cases unless he is elected as a mediator". The comparative analysis shows that the legislator leaves for the consideration of the clergy cases associated with relations regulated relying on the traditions and customs based on the worldview of the people. Thus, within two years, the legislative acts regulating the relationship between parents and children were approved by the highest opinion. But in the proceeding of Dzhuman's complaint, these documents could not serve as sources of law due to the action of the Court of Conscience which had a provincial significance. Meanwhile, the imperial authorities desire to subject the non-Russian population to the action of the general imperial legislation led to the aggravation of the situation on the ground, both on the part of the provincial authorities and the population who did not speak Russian, moreover did not know jurisprudence. Despite the existence of a serious legal framework, capable to regulate such situations, the imperial administration continued to create new statutory acts. It is confirmed by the statement of Miller that "the policy of the empire in relation to various national groups was diversified, contradictory and inconsistent" (Miller, 2010, p. 267). In this case, not being proponents of the colonial approach, we should agree with the statement that "the colonial regimen each time had to produce new constructions of knowledge and experience, that allow it to govern the people and the territory" (Sartori & Shablej, 2019).

During the meeting, held on May 20, 1830, the Minister of Justice, State Secretary, Privy Councilor Dashkov gave his view on the inconvenience of proceeding with such cases in the Court of Conscience. He proposed to consider and solve the cases of disobedience of Mohammedan children to their parents by the Mohammedan Spiritual Authority" (SAST).

The unity of opinions of all branches of government and provincial institutions on the issue allowed them to resolve: "the mentioned case of the trukhmen woman Niyazova as well as other similar cases submitted to the consideration and solution of the Mohammedan Clergy according to their rites and laws. But if those cases are not terminated by the spiritual authorities, then they will be sent to the judicial organs" (SAST).

The preservation of Sharia norm encouraged Russian departments to study them to take them into account in practice (Lyubichankovskij, 2019), that was fixed at the legislative level. Due to the disposition of the legal norms, the Chief Bailiff was charged with "... recording the information about laws of these steppe peoples..."

7. Conclusion

Thus, applying the synthesis of various scientific methods, we have analysed a documentary source detected in the funds of the State Archive of Stavropol Territory. It illustrates one of the links in the chain of imperial measures aimed at the integration of non-Russian tribes into the general Imperial legal space. The aspect of family legal relations in the non-Russian environment in the first half of the XIX century continued to be controversial, transferred from the department of general imperial institutions under the jurisdiction of the spiritual authorities. The highest state bodies of the empire took part in consideration of a particular case, specifying the problem area of the legal framework along the way of integrating non-Russians into the general Imperial legal space. We believe it was due to the need of unifying the government system to improve the effectiveness of management decisions, both in the geopolitical and in the economical spheres.

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