

## **History of courts and prosecutors' activity and political-legal regulations in Amudarya region (at the end of the XIX and at the beginning of the XX centuries)**

**By**

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### **Abstract**

The article deals with the political-legal regulations and initial stage of formation of Russian judicial system in Amudarya region at the end of the XIX and at the beginning of the XX centuries. Mainly, the process of organization of ruling the region, the history of People's Court-kaziy and biy (judges), and the Russian judicial system in the region are studied in the article.

**Key words:** Central Asia, Khiva, Amudarya, Petro-Aleksandrovsk, Prosecutors' activity, Turkistan general-governorship, Sirdarya region, regulations, Russian Court, area, People's Courts.

### **Introduction**

After Uzbekistan got its independence, the interest of learning the history of Uzbekistan had been increased. At present the use of archives' documents referring to the second half of XIX century and to the first quarter of XX century raised interest to investigate political, social-public and judicial-legal system existed at that period.

The right bank of the Amudarya was under the dominion of Khiva Khanate for many centuries till 1873. Regulations and law orders of Russian Empire began to be implemented only after the region had been included under the power of Russia. And thus it became the reason of changes not only in social-political and spiritual relations, but in judicial-legal system.

From the middle of the 19th century, Russia began to conquer the Central Asian khanates - Khiva, Bukhara, and Kokan. In particular, after conquering the Khiva Khanate, the lands on the right side of the Amudarya were called the Amudarya section and were directly subordinated to Russia. After that, radical changes began to take place in the management of the political-administrative, judicial-legal system in the region. The land was divided into sections and bailiffs were appointed to manage these lands. The Russian judicial system began to be established.

### **Literatura Review**

The socio-political changes and updates in the legal system in the Amudarya region at the end of the 19th century and the beginning of the 20th century were analyzed and depicted in the original reports written by the military of the General Governorate of Turkestan at that time, in the points of the Minister of Justice in the form of a report, in the reports of expeditions organized by the Russian Empire for a comprehensive study of the country and the state of Islam in Turkestan, in the works of legal scholars on the judicial system, in the journals of the Ministry of Justice, and in the articles on the issue in the "Journal of civil and criminal law".

The representatives of Turkestan general governorship, according to a special task of the emperor of Russian senators, published their reports on the results of conducted researches and data collections, where they gave data, showed their opinions and wishes on political, administrative and legal governing of the population, ways of improving the judicial and legal system. In his report of 1882 F.K.Girsa [1] devoted a special place to the Amudarya region, it draws attention with the provided data on the region's economic, social positions and geographical arrangements, population number, taxes, management rules according to the Russian legislation.

Count K.K.Palen [2], who studied judicial system of Turkestan, in his report widely commented the shortcomings and problems in this branch. He also presented data on the staff and activity of prisons, built in the eighties in the Amudarya region – Petro-Aleksandrovsk.

A.A.Kaufman [3] also paid attention to the management of Turkestan region, and S. Dukhovskoy [4] investigated their attitude to Islam. In order to decrease the influence of kazi (principal) and biy (regional judges), S. Dukhovskoy recommended to transfer the rights of solution of problems of family and wedding to the Russian administration. He raised the questions connected with revision of charters, re commenting the laws, devoted to civil and criminal activity, regulating the calls of witnesses into court at criminal cases.

The minister of justice of the Russian empire N. Muravyov [5] in his reports "About activity of the ministry of Justice in 1894-1904" emphasized the need of paying attention to the condition and reforming of judicial and legal system of the region. For comprehensive study of Amudarya region the colonel Zalessky [6] formed expeditions in 1889, 1890, 1891 years.

In the researches of the main adviser I.I.Kraft [7] gave valuable data on the position of prosecutor's office and the judicial system of Turkestan. I.I.Kraft investigated the questions of including the prosecutor of Tashkent judge as a member of Turkestan governing system, transition of the rights and duties of the judge and the prosecutor of the region in relation to national judges and subordinated judges and prosecutors of the district. I.Ya.Foynitsky [8] studied the content of charge of judicial system.

Girshfeld and Galkina [9] left important data in their book about dividing the Amudarya department into two secular judicial parts: Shurakhan and Chimbay, about the activity of national courts and about executions of congress of national judges, the tasks of appeals and cassations. Along with it, they published data on occurring events and incidents in the region. The official newspaper "Turkestanskiye Vedomosti" [10], the journals of the ministry of justice "Journal of the Ministry of Justice", "The journal of civil and criminal law" were considered as the propaganders of the policy of the empire. Articles, announcements and orders about administrative managements of the region, studies of the activity of court and prosecutor's office and corresponding changes were published in these means of the press.

If N.S.Tagantsev [11] conducted discussions about abolition of the death penalty, the minister of justice, the member of the State Duma A.Kerensky [12] discussed about releases of all political prisoners, death of the first secular judge of the first department of Amudarya region Alekhin [13], letters demanding prosecutors to work within the law [14] and other interesting materials concerning judicial and legal system were published.

In our opinion B. Filatov [15] in his articles about lawsuits, thought more widely than other authors. He wrote about set of problems aroused on judicial administrative laws

accepted in 1889 years on July 12, existence of difficulties at the process of civil and criminal cases by courts of districts (bolis) and congress of districts. B. Filatov wrote the shortcomings of courts of districts (bolis) and temporary court's activities, surveyed Obninsk's opinions about need of cardinal change for the judicial device, published in the article of 1892. He also shared his opinions on prosecutor's office activity.

A.Golmsten [16] in his articles made comments on Tins's opinions on prosecutor's office. Tins's book consisted of two parts, in the first part there was stated about the organizations and prosecutor's office's activity. In his works Tins expressed opinions that he was against jurisdiction of prosecutor's office to the Ministry of Justice. Because such situation might limit prosecutor's office's functions. He offered to submit the accusatory department to the Supreme Court or Court. From contents of the article it is visible that A.Golmsten supported these opinions.

In an article by an old lawyer (name is not mentioned - A.A.) [17] there presented the table "Invention", reflecting actions of civil judges of the district in a systematic order and suggested to give crimes on classifications. But the article 65 of the fundamental law of judicial construction adopted this case earlier. Reports on carried-out works of judges of the first degree in the district were made by the chairman of the judge of the district and the prosecutor of the district, the report on trial chamber of the district was made by the senior chairman of the chamber of district court together with the prosecutor.

The report on department of cassations of the Senate was prepared in coordination with an assistant prosecutor in the general meeting of the department. Reports of judges were published in the press. For improvement of the 65th article of the fundamental law of a judicial story, the court charter published by Alexander II in 1883 was left without changes. The court order published in 1864 was edited in articles 174-183. According to the 174th article of the fundamental law of judicial construction annual and a third table from the ministry of justices were prepared in the special form in accordance with the established procedure.

The third table was prepared every four months. In the third table the figures were settled down in the horizontal and vertical directions, in two lines. Horizontal situation supplied the information on unconsidered affairs from the beginning to the end of the year. Vertical situation showed types and nature of the considered case.

During the comparing of opinions and the facts in A.Nevsky's[18] article concerning judicial and legal system at the period of Turkestan general governorship with documents being stored in archival funds we came to the conclusion that actually these tables were used in the course of practice of activity of court and prosecutor's office.

Also, one of the most important sources, most of the important historical documents on the activity of the court and prosecution system stored in the state archives of Uzbekistan and Karakalpakstan, were studied and put into scientific circulation for the first time. From these archives, the laws, regulations and instructions of the Russian Empire on the organization of the Russian court and prosecution system in the territory were taken and analyzed. For example: according to Article 17 of the "Temporary Regulation on the Administration of the Amudarya District" adopted by the Russian Empire in 1873 and as specified in the "Regulation on the Administration of the Turkestan Territory", the people's courts were completely preserved. According to Article 18, it was noted that in the event of disputes and litigation between the Russians and the local population, the head of the district,

if he deems it necessary, will appoint one of his assistants to act as a judge. The Amudarya section was considered part of the Russian Empire. The fact that this area is considered the base of the empire in Turkestan, where the military units that keep the territories of the Aral Sea, Khiva Khanate under full control, and other documents related to the legal system were taken from the following documents: «The Central State Archives of the Republic of Uzbekistan. (CSARUz). Fund. Index-1, Inventory-11, file-293, literature-11; Fund. Index-1, Inventory-11, file-293, literature-11-Back side; Regulations about ruling Turkestan region. Volume-II, part-2. St.Peterburg.1886-Pages-16, 19, 20, 23, 24; CSARUz. Fund. Index-1, Inventory-31, file-539, literature-10».

## **Methodology**

The article was written based on the principles of historicity, objectivity, and methods such as systematic comparative analysis, problematic and interdisciplinary approach. At the same time, during the study of this topic, the issue was studied on the basis of primary archival documents, from the period of dependence on Russia to the period when Soviet power began. Some information was introduced into scientific circulation for the first time. Each opinion and idea presented in the article was expressed based on the analysis of the materials and facts in the archival documents of this period. At the same time, the materials from newspapers and magazines published during that period were of great help for us.

The social and political changes that occurred in the region during the colonial period, the formation and organization of the new judicial system and its activities, the policy conducted in the country were revealed chronologically. Forms and methods of this management process were shown.

The reports written during that period, the information in the expedition materials and the materials in the archive documents were compared with each other, systematically analyzed, compared, after that some unclear facts were clarified based on archival documents. Not only historians, but also the published materials of state laws, orders, and lawyers were studied. These methods helped to reveal the topic clearly and correctly.

## **Findings**

The Amudarya district, which was established in 1873, was directly subordinated to the Russian Empire, turned into a militarized platform in order to keep the lands near the Aral Sea and Khiva Khanate under the control of the colonists, and the issues of the establishment of administrative management and judicial system were revealed. Attention was also paid to the activities of local judges and courts. It was revealed that the judicial system in the Amudarya region was not separated from the authorities until the establishment of the Russian court in the department. The analysis of archival documents shows that the establishment of the Russian judicial system began in 1881, that is, the first information about the judge's work refer to that time. Also, starting from 1887, new information about the establishment of prosecutor's control in the area was introduced.

After getting the independence Uzbekistan paid great attention to studying the history of the motherland, including the background of judicial and legal system.

After the Russian Empire had conquered Central Asian Khanate (Kokand, Bukhara, Khiva) there was set a Turkestan general governorship in the territory. The Russian Empire

accepted a number of regulations for administrative, political and economic management of the country. And, in judicial and legal system of Turkestan, including Amudarya region there were carried out a number of changes. Our attention was drawn to a set of literature, mass media materials, written by the representatives of the empire of that period, which might give us some clear ideas of that time.

How did the political-legal regulations worked at that time in fact? We try to answer to this question below.

After the Russian Empire had conquered the Khiva khanate at the last quarter of the XIX century there was organized Amudarya region and its political-legal position was entirely changed. In 1873 there suggested a project “Temporary regulations on ruling the Amudarya region” and in 1874 it was accepted by the Russian Emperor after which the imperial laws and regulations were fixed up. In the 18th article of the regulation it was noted that in “in case of disputes and quarrels of the Russians with the natives, the chief of the region had a power to entrust responsibility of judge to one of his assistants [19]. On the basis of “Regulations on ruling over Turkestan region” the military men controlled all districts and they had both military and civil power. The chief of Amudarya region had a power of military governor in regard to people. The assistants of the chief of the region had the rights of regional chiefs [20].

The Russification of the region had increased. The Czarist residency paid special attention to the judicial system. The chief of Amudarya region interfered in and entirely controlled all issues concerning the judicial -legal system. After the “Regulations on ruling over Turkestan region” had been adopted in 1886 there was formed a russian judicial system and it was developed systematically. Court officials of Amudarya region had specific status and controlled political, judicial-lawful positions and ideology of the population.

According to Regulations there operated one supreme judge in Chimbay and Shurahan regions. Local people had kazyi(principal) and biy (regional judges). Each principal had one judge in People’s court. These Regulations were republished several times in different years and different changes were put into the articles the concerning judicial system. At the same time some great changes had taken place in political-legal life of the region.

In the article 117 of the “Regulation” published in 1886, it was noted that judicial power belonged to Supreme court, Regional court and the governing senate in Turkestan territory. The Judicial power applied to people with different status and also to local people mentioned in the articles 141-143, 173, 176. Article 91, i.e. from 117 to 207 of the 2 part of volume 2 of “the Regulation” was devoted to judicial system. According to articles 117,140, 141, 142, 143, 173,176 people from local population were amenable [21].

There were operated judges in People’s court - kazyi and biy judges[22]. There also organized Supreme courts in the region. They could consider civil cases which were within the jurisdiction of People’s courts in case when agreement of plaintiff and respondent would follow. Agreement must have been included into records of supreme judge.

The Supreme judges also conducted notarial issues where necessary [23]. Regional judges and prosecutors could choose translators, chancery division, and they could also admit people for job or dismiss. The activity of judges was controlled by the Minister of Justice and governor. Year by year ruling over the region had been developed and different forms and



methods of ruling were accepted. These forms and methods were developed in the Regulations adopted in 1892, 1901, 1903, 1911, 1914, 1916.

In "the Regulations" adopted in 1901 Russian judicial cases were divided into two parts, i.e. civil and criminal. 25 articles, i.e. from article 25 to 49 were devoted to civil cases and 36 articles, i.e. from article 53 to 89 were devoted to criminal cases [24]. Below we'll give an example from trial of the supreme judge of Amudarya region. The given case was considered before by the assistant of supreme judge E. Levitskiy. Due to the fact that the case hadn't been considered in an efficient level, i.e. Reasoned facts of accused were and argumentative not included [25].

After that in 1897 July 30, the chief of Amudarya region the colonel (his full name was not mentioned and there was the signature of the chief in the archival documents. But at that period the chief of Amudarya region was A.S. Galkin-A.A.) invited all witnesses to Petro-Alexandrovsk and again questioned each mentioned witness. It turned out that all these witnesses were absent in place of crime as controversy because of land and they didn't take part in the process of Kazi court [26]. Acting as judicial officer the Shurahan divisional police officer levied 1259 roubles for benefits of Grishin, showing "different evidences" of S. Niyazbay Uchbaev and Urazbay Yusupov [27]. The kazi and biy judges abused their positions. They also controlled social-political, economical conditions of the population, particularly land-water resources and the system of tax collection.

Sometimes they bereaved local people of land and gave to Russians. This situation brought to dissatisfaction of population. Thus, the local people often applied to the chief of Amudarya region. And he responded to some applications, and he considered unnecessary to respond some others. This showed from one side that ideology of the local people increased, and from the other side the Russian administration ignored many complaints and applications or considered perfunctorily [28]. The authorized representatives of the Emperor-counts and senators studied, analysed economic, political and spiritual-educational parts systematically and they identified "strong" and "weak" features of local people, and defined "nicety" moments on ruling over the region. The aim of the tsar's administration was to try to obtain respect for Russian laws from the side of local people and to rule over them, and also not to give opportunity for activation of the population and to keep them dependent.

The analysis of historical events and informations on books about the region, reports and opinions, news, articles published in newspapers and magazines gave us some idea about the political-legislative situation of Turkestan general governorship. Certainly the enterprises carried out by the officials of the Russian empire in the region, played an important role at the establishment and strengthening the system of court and prosecutor's office and this process was improved in the region.

## **Discussion/Conclusion**

In writing the article, there analyzed the works of Senator, Gofmeister, Count K. K. Palen, General Governor Dukhovskiy S., Minister of Justice Muravyov N. Lieutenant Colonel Zalesskiy, Senior advisor I.I. Kraft, researchers A. Kaufman, I. Ya. Foyntskiy, N.S. Tagantsev, B. Filatov, A.N. Gol'msten, A. Nevskiy and others.

The study of this topic is of great importance in the history of the Amudarya region. Because it was during this period in the Amudarya department, the issues of the formation,

organization and operation of the court and prosecution system in the current Karakalpakstan were revealed for the first time. The new historical facts in this article will draw the correct conclusions from the mistakes and shortcomings of the policy made at that time, and will be a unique program for not making mistakes in the future.

In further works the colonial and Soviet era system, the organization of the political-legal, social management and judicial system, and the repressive policy against the local population can be studied more deeply. At the same time, it is possible to continue the opinions about the supremacy of the law, the attitude to the large-scale positive reforms aimed at human dignity in the judicial system carried out after the independence of Uzbekistan.

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