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N.L. Seitakhmetova¹, D.U. Kussainov², Z.K. Ayupova³

¹National Academy of Sciences of the Republic of Kazakhstan, Almaty, Kazakhstan;

²Kazakh national pedagogical university named after Abai, Almaty, Kazakhstan;

³Kazakh national agrarian university, Almaty, Kazakhstan;

E-mail: nseytakhmetova@bk.ru, daur958@mail.ru, zaure567@yandex.ru

SOME FEATURES OF MUSLIM LAW: NEW TRENDS IN ITS DEVELOPMENT

Abstract. The essence of the integration process in Muslim law has expressed in the enlargement and consolidation of the social relations through the definite points, objects of the concentration of the tension and gradual incorporation of the human being into the community with the system of the relations, with the global order, based on the balance of the regulating influence of the legal systems of the different states and synchronic of the regulating behavior in the different societies. The movable force of the process of the integration is inside the system of the society and social relations in the world scale. Muslim law is an Islamic doctrine about the rules of behavior of the Muslims. The main content of Muslim law is the rules of behavior of believers, that follow from the Sharia and sanctions for non-compliance with these regulations. It was formed in the VII-X centuries in the connection with the formation of the Muslim state - Caliphate. The formation of Muslim law was caused, on the one hand, by the need to bring the actual law in line with the religious norms of Islam, on the other hand, by the need to regulate public relations on the principles, based on the religious and ethical teachings of Islam.

Key words: Muslim law, Koran, Sharia, legal system, integration, self-regulation, legal families, institutional characteristics, global challenges, harmonization of law.

The relevance of the topic. The participation of the legal systems of the family of religious and community law in the legal integration, the form of this participation and the evolutionary development of law are quite interesting. For example, most authors are united in understanding the mutual integration between the families of common and Romano-German law, but there is no such more or less unified understanding and approach in the relation to religious and community law, in the face of Muslim law.

Islam is the unique religion in light of the legal nature of its institutions and stands out among all other the world religions in terms of its influence in the modern world. This suggests that the legal integration of the Muslim legal family will be the most difficult and lengthy process of primary legal integration. The integration of the Romano-Germanic and common law families is much faster and easier than the integration of the Muslim family of law, according to the unified model of the legal system. This explains the lack of sufficient scientific research on the participation of Muslim law in the legal integration and development of law.

The doctrine sees the future of Muslim law in different ways. There are opinions, that Muslim law will be completely absorbed by other legal families, equal legal integration between the legal traditions of the families, and there are even opinions that Muslim law has already ceased to be “legal” and replaced in Muslim countries by the legal traditions of other legal families.

Materials and methods of research. The research uses such methods as historical, system-structural, comparative-legal, logical, concrete-sociological, complex research of scientific sources, induction and deduction, and analysis of statistical data.

Well-known researcher of Muslim law, L.R. Syukiyainen, speaks about the possibilities of mutual and equivalent integration of Muslim law and legal traditions of other systems and families of law. It is necessary to briefly describe this approach, which in our view, however, is not applicable to the study of the legal integration of Muslim law in the long term [1, P.117]. In particular, he States: “... many Muslim

countries have their own national legal culture, which organically combines the achievements of the Islamic and European legal civilizations in their unity and interpenetration". In Western scientific doctrine, one can also find opinions about the reverse influence of Muslim law on the traditions of other legal families. For example, R. David and C.J. Spinosi note the opinion of L. Millio: "the last word in the discussion about the reception of Western institutions will probably be... their Islamization" [2, P.64]. Although they also reasonably add that this process will not lead to Muslim law as the result of this entering fully into the family of Roman legal systems, at least in the short term.

L.R. Syukiyainen sees a real possibility of introducing the norms and traditions of Muslim law into secular legal States through the observance of two interrelated conditions: consistent legal approach to the selection and use of Islamic heritage [1, P.120]. This is expressed in the fact that the secular legal system can only accept those elements of the Islamic way of life that fit into it, and therefore are not directly related to the religion.

L.R. Syukiyainen considers the following branches and institutions as traditions of Muslim law that reflect the interest to the secular state: the branch of Muslim law on the personal status (marriage, family relations, mutual obligations of relatives, guardianship and some other related issues), the Institute of Waqf (property withdrawn from circulation and intended for use for charitable purposes), issues of inheritance and charity, and some other traditions

Research results. Research results are determined by the provisions, concerning guarantees, benefits, advantages, as well as prohibitions, restrictions and exceptions that constitute the necessity to note some truncation of this approach and the stated provision. We see that the process is not mutually integrated, but is still a process of deformation of Muslim law and its absorption by the foreign legal traditions of the secular nature. The entire process of "mutual influence" takes place on the unilateral basis: the legal systems of Muslim countries significantly change the content and form of Muslim law, while other legal systems and families can possibly and potentially, in the future, only accept certain traditions of Muslim law, if they do not contradict their principles and the rule of law. Moreover, this borrowing of the traditions of Muslim law, according to L.R. Syukiyainen, will only apply to the part of the society that professes Islam.

And although the doctrine also provides examples of the Western systems, borrowing some of the principles of the Islamic system, for example, the principles of banking, this side of the issue is not purely legal and justice. In the issue of borrowing the legal components of the families of Muslim law and Western families of law, we see the same one-sided process of absorption and deprivation of Muslim law of its "legal" and "justice" origin and essence.

Thus, the current trend of the substantial changes in the legal systems that make up this family of law, represented by the legal systems of Muslim countries, is clearly visible. Some scholars identify three significant trends in the development of Muslim law in the modern times, XIX and XX centuries, namely: westernization, codification and secularization of justice.

In this article was showed, that the legal systems of the Muslim family of law cannot be outside the process of law development and legal integration. They are included in the General process, obey the General laws of the development and increasingly change their orientation from the religious dogmas in favor of the social purpose of the entire legal system. This means refocusing the system on the new principles, values and goals that underpin legal integration, as well as on the basis of the new model of the universal legal system will function. We can say that even today the legal systems of this family of law are gradually losing their independent significance at the level of the legal system as a whole. In the future, this trend will continue and lead to the full integration of the legal systems of the family of Muslim law into the common integrated system. As the result, these legal systems will come to the model of the universal legal system, formed as the result of the mutual integration of all three main legal families of our time: the family of common law, Romano-Germanic law and religious-community law. It should be noted, that the influence of Muslim law in this process will be the least and rather it is the question of the deformation of Muslim law and its subsequent absorption by other families of law [3, P.58].

The analysis of the entire array of applicable material and information suggests that Muslim law will participate in the process of the legal integration in the direction of its own deformation and absorption by foreign legal traditions. In this process of the deformation and absorption Muslim law will undergo the following aspects of development. Depriving Muslim law of the possibility of direct regulation of public

relations, mediating the regulatory influence of Muslim law by the system of normative legal acts of the state and legislation. Distortion of the content, casual character of the norms of Muslim law, deformation of the form of technical and legal features of Muslim law, introduction of the foreign legal traditions and structures - westernization of law. The gap between dogmatism (theology) and the legal principle in Muslim law, the complete predominance of non-legal religious principle in Muslim law shows, that Muslim law becomes the part of the culture and legal consciousness.

In accordance with the doctrine, even today, the legal systems of Muslim countries do not correspond to the traditional Muslim law in their form, content and relationship with the positive legislation. Indeed, today, even in the most Islamized countries, where Islam is the state religion, Muslim law is very rarely used in the traditional form of doctrine, and then only in relation to the few branches of law. In most cases, the influence of Muslim law is manifested through the consolidation of its norms in the legislation of the relevant country. As the result, the traditional doctrine (fiqh) as the main source of Islamic law has given way to legislation and no Muslim state is guided exclusively by Muslim law in the legal practice.

The essence and content of the process of deformation of Muslim law by itself consists from changing the casual essence of its norms due to the fact that the role of the source of Muslim law has been assigned to the normative legal act issued by the competent state body. This applies not just to the form of the presentation of the norm, but changes the content of the norm of Muslim law in the traditional senses, which have the casual character and individual solutions to the specific disputes, which in the new conditions is increasingly becoming "familiar to the modern legislation in the form of uniform General rules of conduct". Indeed, this is the radical change in the classical content of the rule of Muslim law, when it becomes universalized instead of individually defined in the relation to the particular case and issue, thus in its essence it acquires the character of the norm peculiar to the foreign legal traditions.

The most important example of the influence of European legal culture on the Muslim law is the codification of fiqh and the inclusion of Muslim law in the models of the legislation, based on the European legal models. This direction of the deformation of Muslim law concerns the changes in the form of expression of its legal norms. Modern Islamic law by itself has developed and evolved mainly under the decisive influence of European legal models. The proposed by L.R. Syukiyainen very interesting classification of the forms of interaction between two cultures (European and Islamic): parallel regulation of similar issues in the relation to Muslims and non-Muslims (the right of personal status); inclusion of Islamic legal norms, principles and institutions in legislation, based on European models, and the introduction of the legislation that cannot be clearly attributed to the Islamic or European legal system, i.e., represent their synthesis; adoption of the legislation, based on Sharia in its content and basic constitutional approaches, and reproduces European legal models in its form and technical, legal features. As A.Kh. Saidov notes: "The influence of European-type sources of law has turned out, in General, an irreversible process that has affected all Islamic countries, where previously Muslim law prevailed in all its originality of the sources" [4, P.10]. However, he also writes, that the intensity of this trend should not be exaggerated, since modern practice shows the process of activation of Islam in the political life of many states.

In this regard, of course, the question of the parts, branches of the modern legal system of Muslim countries is most susceptible not only to codification processes, but to the influence of the traditions of Islam and Muslim law. R. David and C.J. Spinozi wrote, that even today some areas of the public relations continue to be regulated by the norms of classical law, the sphere of the personal and family law, so-called "personal status", more of the Koran's prescriptions are devoted to this. Also in other areas, the degree of application of the rules, borrowed from the Romano-Germanic family or the common law family has increased. According to these scholars, these areas in many Muslim countries are westernized as the result and the process of intensive "secularization" (for example, criminal law, constitutional law, labor law, administrative law, fiscal law, and others contain the small number of the norms from the original Muslim law [2, P.16].

This process is very complex and cannot be tied only to the development of law. Law does not develop outside of the society, objective social relations and the subjective world of people. Westernization of Muslim law is directly related to the process of changing the thinking, legal awareness and legal culture of the societies and people towards the adoption of new alien principles, approaches and

standards. As A.Kh. Saidov notes, “globalization transforms the culture, morals and traditions. The reference points are mainly Western values, which often meet with disapproval and resistance from the traditional societies, but the General trend of Westernization is the pragmatism of Muslim law. Pragmatism expresses the desire of the society for the development and prosperity” [4]. A.Kh. Saidov also wrote: “globalization encourages people around the world to reconsider their cultural values and personal relationships in the discussion about preserving traditional society against achieving prosperity and modernization [4].

When examining the question of influence of the legal integration of Muslim law, it is necessary to talk only about the possibilities and prospects of full absorption and replacement, or about the mutual integration of Muslim law with the foreign legal traditions. There is no need to consider the possibility and prospect of preserving the integrity of Muslim law in its previous or current form. All doctrinal opinions of the scholars agree, that the system of Muslim law has a relatively high level of conservatism and closeness, but, nevertheless, it is undergoing certain changes in form, content and the process of the development.

The perspective of the future of Muslim law is interesting, if we use an approach that considers Muslim law as non-legal phenomenon to analyze the development of the legal integration. This approach is used by the author R.H. Gilazutdinova. She claims the original non-legal nature of Muslim law. This position and point of view is seen as erroneous [5, P.41].

If we consider Islamic law as corporate, religious law, this logic concludes that the complete disappearance of the direct influence of Muslim law on the legal system of the states concerned. Islamic law remains part of the internal world of the individual, and the legal system of the state will be built on the different legal traditions, based on the predominance of the principles of rationality that is more characteristic of secular law rather than religious law [6, P.19].

The use of this approach really leads to the conclusion about the absolute unilateral absorption of Muslim law by foreign legal traditions, since Muslim law is considered as the part of the public consciousness, as the internal representations of a person and his place on the level of the ideas about the morality, customs and other similar social regulators. Muslim law does not recognize the nature of “universal regulator of public relations”. Muslim law does not meet the need of the society for the legal regulator of the relations (legal law), especially at the moment, when such need is higher than the development and complexity of public relations in all spheres of life. This need of the society can be met only within the framework of the functioning of the secular legal system [7, P.32].

If we consider Muslim law in the future as corporate law and part of the legal consciousness of the certain societies, we can conclude that Muslim law will retain its indirect regulatory role, since the legal consciousness largely determines the current legislation [8, P.15]. However, changes in the legal systems of the religious and communal legal family will affect not only the legal traditions and technical issues of the form and content of law, but also changes will be expressed in issues of the legal culture, legal awareness of people and societies. This is caused by the processes of General globalization in the sphere of culture, knowledge, information, etc. Globalization of life changes not only the external content of social relations, but, first of all, the thinking and representations of a person [9, P.68]. The culture, morals, values and beliefs of all the people of the world are in the process of the development and globalization; this is an important and integral part of the overall globalization. If we consider Muslim law as an internal attitude of the society and people, it cannot fail to significant changes in the future, when humanity is moving towards the contradictory community of the individuals. This change in the social consciousness, attitudes, values, and perceptions can be expressed in a variety of unifying forms.

Indeed, the significant change in the historical situation cannot affect the legal consciousness and legal culture of Muslim societies, which changes the law in chain reaction, since it is indisputable that all legal reality is the process, reflecting the needs of the subjects of legal consciousness and law-making to respond to significant social problems and contradictions [10, P.78].

Thus, this provision on the complete transition of Muslim law from the legal sphere to the religious sphere is fully justified, since the change in the society and new requirements of the time determine this process, and this is required by both the situation and society. Changing the nature of Muslim law, its transformation into purely religious law, the natural requirement of the time, and this process began in the

XIX century. Today, society needs a law with predominant weight of the rational principles to regulate the most acute and complex issues, and this predominantly secular law is a manifestation of “social necessity and social regularity”.

Conclusion. In the conclusion, we would like to stress, that the development and change of Muslim law is in the process of participation in legal integration, since legal integration became the requirement of the time, manifestation of self-regulation of the society as the system, social necessity and social regularity of the process of the development of the society.

Н.Л. Сейтахметова¹, Д.Ө. Құсайынов², З.К. Аюпова³

¹ Қазақстан Республикасының Ұлттық ғылым академиясы, Алматы, Қазақстан;

² Абай атындағы Қазақ ұлттық педагогикалық университеті, Алматы, Қазақстан;

³ Қазақ ұлттық аграрлық университеті, Алматы, Қазақстан;

МҰСЫЛМАН ҚҰҚЫҒЫНЫҢ КЕЙБІР ЕРЕКШЕЛІКТЕРІ: ҚАЛЫПТАСУЫНДАҒЫ ЖАҢА ТЕНДЕНЦИЯЛАР

Аннотация. Мұсылман құқығындағы интеграциялық процестің мәні белгілі бір нүктелер, шиеленістің шоғырлану объектілері арқылы қоғамдық қатынастардың кеңеюі мен шоғырлануынан және адамның қарым-қатынас жүйесімен, әртүрлі мемлекеттердің құқықтық жүйелерінің реттеуші әсерінің тепе-теңдігіне және әртүрлі қоғамдардағы реттеуші мінез-құлықтың синхрондылығына негізделген әлемдік тәртіппен біртіндеп қосылуынан көрінді. Интеграция процесінің қозғаушы күші қоғам мен әлеуметтік қатынастар жүйесінде әлемдік масштабта болады. Мұсылман құқығы-мұсылмандардың мінез-құлық ережелері туралы исламдық ілім. Мұсылман құқығының негізгі мазмұны-шариғаттан туындайтын діндарлардың мінез-құлық ережелері және осы ережелерді сақтамағаны үшін санкциялар. Ол VII-X ғасырларда мұсылман халифат мемлекетінің құрылуына байланысты қалыптасты. Мұсылман құқығының қалыптасуы, бір жағынан, нақты құқықты исламның діни нормаларына сәйкес келтіру қажеттілігімен, екінші жағынан, қоғамдық қатынастарды исламның діни-этикалық ілімдеріне негізделген қағидаттарға реттеу қажеттілігімен туындады.

Түйін сөздер: мұсылман құқығы, Құран, шариғат, құқықтық жүйе, интеграция, өзін-өзі реттеу, құқықтық отбасылар, институционалдық сипаттама, жаһандық сын-кәтер, құқықты үйлестіру.

Н.Л. Сейтахметова¹, Д.У. Қусаинов², З.К. Аюпова³

¹ Национальная академия наук Республика Казахстан, Алматы, Казахстан;

² Казахский национальный педагогический университет им. Абая, Алматы, Казахстан;

³ Казахский национальный аграрный университет, Алматы, Казахстан;

НЕКОТОРЫЕ ОСОБЕННОСТИ МУСУЛЬМАНСКОГО ПРАВА: НОВЫЕ ТЕНДЕНЦИИ ЕГО СТАНОВЛЕНИЯ

Аннотация. Сущность интеграционного процесса в мусульманском праве выразилась в расширении и закреплении общественных отношений через определенные точки, объекты концентрации напряжения и постепенного включения человека в общность с системой отношений, с мировым порядком, основанным на балансе регулирующего влияния правовых систем различных государств и синхронности регулирующего поведения в различных обществах. Движущая сила процесса интеграции находится внутри системы общества и общественных отношений в мировом масштабе. Мусульманское право - это исламское учение о правилах поведения мусульман. Основным содержанием мусульманского права являются правила поведения верующих, вытекающие из шариата, и санкции за несоблюдение этих правил. Она сформировалась в VII-X веках в связи с образованием мусульманского государства - халифата. Формирование мусульманского права было вызвано, с одной стороны, необходимостью приведения фактического права в соответствие с религиозными нормами ислама, с другой стороны, необходимостью регулирования общественных отношений на принципах, основанных на религиозно-этических учениях ислама.

Ключевые слова: Мусульманское право, Коран, шариат, правовая система, интеграция, саморегуляция, правовые семьи, институциональная характеристика, глобальные вызовы, гармонизация права.

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Information about authors:

Seitakhmetova N.L., corresponding member of the National Academy of Sciences of the Republic of Kazakhstan, Chief Researcher of the Institute of Philosophy, Politology and Religion of the National Academy of Sciences of the Republic of Kazakhstan, Doctor of Science in Philosophy, Almaty, Republic of Kazakhstan; nseytakhmetova@bk.ru, <https://orcid.org/0000-0001-7583-5406>;

Kussainov D.U., Doctor of Science in Philosophy, Professor, Kazakh national pedagogical University named after Abai, Almaty, Republic of Kazakhstan; daur958@mail.ru, <https://orcid.org/0000-0003-4274-5986>;

Ayupova Z.K., Doctor of Science in Law, Professor of Law, Kazakh National Agrarian University, Almaty, Republic of Kazakhstan; zaure567@yandex.ru, <https://orcid.org/0000-0002-5925-1619>

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