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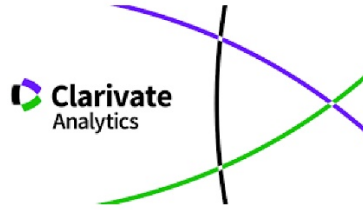
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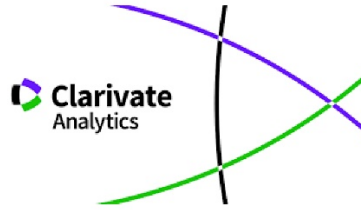
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## **LEGAL MODERNIZATION OF THE LIFE OF MUSLIMS OF THE NORTH CAUCASUS IN THE CONTEXT OF THE DEVELOPMENT OF THE RUSSIAN STATE IN THE FIRST HALF OF THE NINETEENTH CENTURY**

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### **ABSTRACT:**

*In the present article, we will consider the specifics of the legal policy in the sphere of national and religious relations during the period of domination of the Russian Empire in the Caucasus. In general, our study shows that, in fact, they were regulated by Russian secular law. The Russian state, of course, strove to gradually grant to all the peoples included in it the rights enjoyed by the Russian citizens of the empire, while the state itself tried to create a mechanism obliging it to respect these rights.*

**Keywords:** *The Right of Muslims, The North Caucasus, The Russian State.*

### **INTRODUCTION**

The legal norms can be divided into four conditional groups: the first group concerned the entire non-Russian population of the country, the second group focused on restricting the rights of non-Christians (predominantly against Jews and Muslims), the third group concerned the regulation and seizure of individual nationalities (mainly Jews), the fourth group concerned regulation of the rights and duties of Cossacks.

In this article, written on the basis of an analysis of the normative documents of the first half of the nineteenth century, let us consider the basic rights and duties of Muslims of Russia in general, and of North Caucasian Muslims in particular.

In general, in the first half of the nineteenth century, as A. Yunusov notes, "the situation of foreigners in the Russian Orthodox state was regulated at the domestic level by the inertia of

cultural ties and interfaith relations that had already formed in the preceding period, and on the official one - by various state legislative acts "(AB Yunusova, YN Sergeev, VV Latypova, 1998).

In this historical period, the North Caucasus was a particularly specific region, which was associated with the Caucasian War. Therefore, in general, it is hardly possible to consider the existence of a well-thought-out and purposeful policy of the Russian state in this region. There was a lot of chaos, spontaneous and concrete military necessity.

## METHODOLOGY

Methodological basis of a research is system approach to the analysis of an object of a research - to theoretical and practical questions of system of the right.

In addition, the number of General and specific methods were used formal legal, comparative legal, historical and logical methods of scientific knowledge.

Scientific works of the Russian authors such as Yunusova A., Sergeyev V., Blackamoors D., Bobrovnikov V., Babich I., Leonto-vich F., Chistyakov O. have formed a theoretical basis of writing of this article. In their works historical and legal features of life of Muslims in the North Caucasus in the first half of the 19th century within development of the Russian state are studied.

## Main part

In the first half of the nineteenth century, the normative acts regulating the position of Muslims in the Russian Empire were prepared mainly in four instances: these were either the decrees of the emperor, or the Senate decrees, or the provisions of the State Council, or the regulations of the Cabinet of Ministers. The main state institutions of Russia, which were obliged to regulate the religious and national life of the associated non-indigenous peoples, were formed in the first quarter of the nineteenth century under Alexander I. The State Council was established in which four departments were created: 1) laws, 2) military affairs, 3) civil and spiritual affairs, 4) state economy (OI Chistyakov, 1988), as well as the Council of Ministers (Chistyakov, 1988). In 1801, the Central Department of Spiritual Affairs was established. In 1804, it was transformed into the Ministry of Confession. At the head of this ministry, an official was put with a legal education of Portalis.

In the first half of the nineteenth century, the main government body for "state supervision" over Muslims was formed (D.Yu., 2004), namely: since 1810, the Islamic Affairs Department was in charge of the Main Department of Spiritual Affairs of different faiths. In 1817, the Ministry of Spiritual Affairs and Public Education was established. In 1826, the III Branch of His Imperial Majesty's Own Office was established. As a body of the "highest political police", the department together with the Gendarmerie Corps monitored "unfavorable" for the authorities "rumors", "moods" and "actions" for "Islam" (DY, 2004). The Main Department of Spiritual Affairs of Different (Foreign) Religions in 1832 was transformed into the Department of Religious Affairs of Foreign Religions (included in the Ministry of Internal Affairs), which existed until 1917.

In the first half of the nineteenth century, normative acts regulating the life of Russian Muslims can be defined as general and local. As our studies show, in the first half of the nineteenth century, there is a clear tendency to increase the number of general normative acts and reduce





local regulations, which indicates the creation of a single right regime for all Muslims, regardless of their place of residence.

The general normative acts concerned the position of Muslims in a number of spheres: obtaining a number of class rights, social benefits and privileges (the right to receive material compensation for serfs who, after receiving baptism, received freedom, prohibiting Muslims from using their serfs as collateral for state contracts, the increase in the number of Muslim clergy due to additions (the clergy did not pay taxes, the rights of Muslims to obtain Russian honorary citizenship), legal issues (rights to the guardianship section the right of Muslims to consider family conflicts, for example, with the disobedience of children to parents, according to the Sharia, the duty of Muslims to give religious oaths on the affairs of Christians, the prohibition of Muslims to decide cases of adultery under the Sharia, the rights of Muslims to consider disputes over property under the dissolution of marriage according to the Sharia, the non-application of corporal punishments under the Criminal Code with respect to the Muslim clergy), the position of military Muslims (the right of military Muslims - officers to have a batman Muslims, the right of Muslim recruits to swear allegiance to the sovereign in the mosque, the right to provide imams to perform duties in military Russian ports, the right to receive all the privileges of Muslims in military service, for example, the right to resign generally to lower ranks, and the right to service life on general grounds; the right of Muslims held in prisoner companies to be released from work on Fridays for prayers; the exemption from recruitment of those who hold spiritual posts), the regulation of Islamic life and Islamic rituals (prohibiting Muslims from burying on the terms of Islam, establishing a marriageable age for Muslims, as well as for all other subjects of the Russian Empire, the basic rules for the construction of new mosques and the organization of new ones Muslim communities, the establishment of the state of spiritual boards, the establishment of rules for the election of mullahs and other spiritual ranks of Mohammedan parishes).



Local normative acts concerned individual peoples - Bukharans, Bashkirs, Muslims of the Orenburg Muftiyat, Tatars of the Tauride rule, and Muslims of St. Petersburg.

In the first half of the nineteenth century, the normative acts of the position of Caucasian Muslims began to appear. The legal documents mention the Turkic-speaking peoples of Transcaucasia, the Muslims of the Caucasus, and Adygs (living in the North-West and Central Caucasus).

Local regulations regulated the following areas of Muslim life: the organization of Islamic life (organization of hajj for Muslims - Bukharans, the creation of "Rules for the Mohammedan Clergy of the Elisavetpol District" (Transcaucasia region), the right to a Muslim cemetery in St. Petersburg, the right to increase the salary to an assistant Tiflis akhunda, the right of the mullah of the military fortress of Anapa to state salaries,), the inclusion of Muslims in Russian life (granting the right of the Tartars of Crimea to hold posts in the state Russian the right to financial support for the study of Muslim children of the Orenburg Muftiate in Russian universities, the right of honorable Muslims of the Caucasus region to send their children to study in the Cadet Corps, the right of Muslims Crimea to receive noble dignity, the right to free the Muslim clergy of the Tauride government from taxes), legal issues (the right to vote by Muslims cad the right of Muslims of the Tauride administration to consider cases on the division of Shariah estates, the

right of Muslims of the Taurida government to consider cases of disobedience of children to parents according to the Sharia law, the right of Muslims of the Orenburg clergy to consider the case of dividing private property between heirs by the Sharia law) Muslims (the right of the Bashkir regiments to have regimental mullahs with salaries, the right to commit Muslim ranks to the military ranks of Muslims who lived in Ufa, the right the presence of the mullahs and the doctor to Dagestan the irregular cavalry regiment).

Many normative acts arose in the discussion of a specific situation, i.e. they arose on the basis of a precedent, i.e. the solution of a specific situation that allowed this provision to be extended either to a group of Muslims or to all Muslims in Russia. For example, in 1802, Emperor Alexander I received a request from a Tatar prince, in which he asked to give him material assistance for those serfs who, by baptism, automatically under Russian laws, were given freedom. The case was considered, and the Emperor's Decree was passed to extend this rule to all Muslims (Arapov, 2001). In 1832, the Senate passed a resolution on the punishment of the Mohammedans for adultery and on the strength of the personal decisions of the mufti, according to which the mufti had the right to decide on spiritual matters only, and civil, including adultery, only in the Russian court (Arapov, 2001). The decision was made to consider the conflict between the Mufti and the Novorossiysk governor. In 1833, on the note of the Minister of Internal Affairs, the Cabinet of Ministers adopted the Regulation "On the recruitment of those only Mohammedans of a state of taxation to the clergy, who correct spiritual posts" (Arapov, 2001). The fact is that in the Tauride Department, many people were added to the Muslim clergy, because they were exempt from a number of state taxes. The decree was adopted against all Muslims.

Normative acts of the first half of the nineteenth century, firstly, enshrined previously defined rights for Muslims, and secondly, granted Russian Muslims new rights in various areas. Let us dwell on this in detail.

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the right of Muslim recruits to swear allegiance to the sovereign in the mosque, the right to provide imams to perform duties in military Russian ports, the right to receive all the privileges of Muslims in military service, for example, the right to resign generally to lower ranks, and the right to service life on general grounds; the right of Muslims held in prisoner companies to be released from work on Fridays for prayers; the exemption from recruitment of those who hold spiritual posts), the regulation of Islamic life and Islamic rituals (prohibiting Muslims from burying on the terms of Islam, establishing a marriageable age for Muslims, as well as for all other subjects of the Russian Empire, the basic rules for the construction of new mosques and the organization of new ones Muslim communities, the establishment of the state of spiritual boards, the establishment of rules for the election of mullahs and other spiritual ranks of Mohammedan visits).

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The right to Muslim legal proceedings was significantly expanded in the sphere of application of certain Shariah norms.

The right to divide guardianship among Muslim children in Sharia. In 1826, on the report of the Senate, the State Council adopted a resolution "On the approval of the division of the estates left after the Mohammedans according to their law" (Arapov, 2001). The right of Muslims to consider family conflicts (in particular, the disobedience of children to parents) according to the Sharia. In 1830, the State Council adopted the provision "On granting consideration and resolution of cases between the Mohammedans on the disobedience of children to their parents, the Mohammedan spiritual authority, on the rites and laws of this clergy" (Arapov, 2001). The right of the Muslims of the Orenburg spirit to consider the case of the division of private property between heirs by the Sharia (1836) (Arapov, 2001).

The right of Muslims to consider disputes over property in the event of dissolution of marriage according to the Sharia. In 1846 the State Council adopted the provision "On the examination of disputes on property arising between Mohammedans in the dissolution of marriages" (Arapov, 2001). The act said: "The marriage affairs of Mohammedans in relation to the faith are subject to the court of their spiritual power," including marriage, only if both sides desire. If one of the parties is against, then the case should have been tried in a civilian Russian court.

Normative acts of the first half of the nineteenth century, regulated the issues related to the receipt of various social privileges and benefits by Russian Muslims.

The right to receive the privileges of Muslims who were on the Russian military service: In 1846 the State Council adopted the Regulation "On the rights granted to employees of the Guards Corps to the clergy of the Mohammedan law, as well as to their children" (Arapov, 2001). Employees were entitled to resign on a common ground for lower ranks. The service life was determined on general grounds.

The right of Muslims to some privileges: In 1850, the State Council adopted a decision "On the granting of certain rights to the Mohammedan clergy" (Arapov, 2001): 1) the exclusion from recruitment of those who hold spiritual office, 2) the non-application of corporal punishments in the Criminal Code in relation to the Muslim the clergy.



The right to provide state financial support for the study of Muslim children in Russian universities. In 1834, the Cabinet of Ministers adopted a Regulation on the financial support for sending the Mohammedan children of Orenburg Province to the First Kazan Gymnasium and University (Arapov, 2001).

The right to free the representatives of the Muslim clergy from payment of state taxes. In 1848, according to a note by the Minister of the Interior, the State Council decided to preserve the right of liberation of clerics of the Taurida Gubernia from taxes (Arapov, 2001).

Normative acts of the first half of the nineteenth century, regulate the issues associated with the establishment of rules and norms of the Islamic life of Russian Muslims and certain specific conditions for the performance of Islamic rites.

The establishment of marriageable age for Muslims, as for all other subjects of the Russian Empire (the bridegroom 17, and the bride 16). In 1835, the Senate decree was adopted.

Establishment of rules for the election of mullahs and other clerics of the Mohammedan parishes (1837), according to which they were elected by parishioners, subject to further approval of local civil authorities (Arapov, 2001).

Normative acts of the first half of the nineteenth century, regulate issues related to the status of Russian Muslims who were on the Russian military service.

The right of military Muslim officers to have Orderlies-Muslims: In 1829, the emperor issued a decree "On appointing Mohammedan law-holders from Mohammedans to officers" (Arapov, 2001). Earlier since the Cathedral ordinance in 1649, Muslims had no right to have Orthodox services.



The right of the North Caucasian highlanders to the mullah for training in Russian military schools. In 1829, the Rules for the training of mountaineers prepared for service in the Nobility Regiment (Arapov, 2001) were introduced, according to which mullahs were given to Muslim students to perform rites.

The right of Muslim recruits to swear allegiance to the sovereign in the mosque.

In 1834, the Senate passed a decree permitting Muslim rivers to swear allegiance in the mosque (Arapov, 2001).

The right of the Bashkir regiments to have regimental mullahs with a salary: In 1833, the emperor issued a decree "On the production of regimental mullahs Bashkir regiments salary" (Arapov, 2001), according to which Russian Muslims who were in military service, relying mullah, received state salaries from the Russian treasury.

The right to commit Muslim ranks to military ranks - Muslims, who were temporarily on official business in Ufa. This decree was adopted by the emperor in 1844 (Arapov, 2001). Based on this decree, military Muslims who were temporarily in Ufa got the right to a mullah paid for from the Russian treasury to perform Islamic rites and rituals. The same was true of the temporary residence of military Muslims in Russian ports. According to the imperial decree of 1845,



Russian Muslims were given the right to provide imams to perform duties in the military Russian ports (Arapov, 2001).

The right of military Muslims to receive a mullah and a doctor for the Dagestan horse-irregular regiment. In 1850, the decree of the emperor was issued (Arapov, 2001), according to which the Russian military authorities provided the Military-Muslims who served in the Dagestan horse regiment with the right to receive a mullah and a Muslim doctor. According to this decree, these people were determined at the discretion of the commander-in-chief of the people of the Avar tribe "known by zeal and devotion to the government."

The right of Muslims, held in prisoner companies, to release from work on Fridays for the performance of prayers. In 1849, according to a report of the military minister, the Senate issued a decree (Arapov, 2001), according to which Russian Muslims were entitled to release from the convict work on the holy day of Muslims - on Fridays.

Along with the legitimization of the general and local rights of Russian Muslims, in general, in the normative acts of the first half of the nineteenth century, the main duties of Russian Muslims were formulated. As in the case of rights, some duties are simply confirmed and prolonged, but new responsibilities have also been introduced. Duties were often listed as bans.

First of all, the normative acts of the first half of the nineteenth century. introduced a number of prohibitions in the area of obtaining social benefits and privileges.

The ban on Muslims to use their serfs as collateral for public contracts. In 1827, the Senate passed a decree on "Non-admission of the Mohammedan confession settled in the Great Russian gubernias as a pledge for state contracts of serfs" (Arapov, 2001), according to which Russian Muslims had no right to make deals on state contracts using their serfs.

The ban on increasing the number of Muslim clergy due to falsifications: In 1833, on the note of the Minister of Internal Affairs, the Cabinet of Ministers adopted the Regulation "On the recruitment to the clergy of those only Mohammedans of a state of taxation, which correct spiritual posts" (Arapov, 2001). The fact is that in the Tauride administration of the first quarter of the nineteenth century, there was a significant increase in the number of people belonging to the Muslim clergy. This was done with the aim of freeing those from payment of a number of state taxes. Only representatives of Muslims who held any posts in the so-called "Muslim clergy" had the right to use this social privilege. Such assignments were revealed both in the Tavrichesky region and in other Russian Muslim regions, so this decree was adopted in relation to all Russian Muslims.

Normative acts of the first half of the nineteenth century, formulated the basic duties of Muslims in the field of norms of Islamic life and the performance of Islamic rituals and demands.

The prohibition of Muslims burying on the terms of Islam: In 1830, the Senate issued a decree "On Non-Stepping from the General Rules for the Burial of Mohammedans" (Arapov, 2001). According to this legal document, Russian Muslims had the right to perform a funeral Islamic rite over deceased Muslims, according to which the deceased should be buried on the day of death or the next day, except in cases where the death of a Muslim was not natural or there were fundamental doubts about its naturalness. In these cases, the relatives of the deceased were first



obliged to report death to the local police, who had to conduct an investigation within three days, including an autopsy, and only then to return the corpse to relatives for burial.

Normative acts of the first half of the nineteenth century formulated the main duties of Muslims in the application of the norms of Muslim law and the Muslim system of justice.

The prohibition of Muslims to decide cases of adultery under the Sharia.

In 1832, the Senate passed a resolution "On the punishment of Mohammedans for adultery and on the strength of the personal decisions of the mufti", according to which the mufti had the right to decide on spiritual matters only on Shariah, and civil cases, including adultery, were to be considered only in the Russian court (Arapov, 2001). In 1837, the State Council adopted a new legal document on this issue - "On the procedure for resolving the cases of Mohammedans, convicted of adultery" (Arapov, 2001), according to which such cases should have been examined by a civil court.

Legal documents of the first half of the nineteenth century, set a number of new responsibilities, and primarily in the management and control of the lives of Russian Muslims.

The duty to create monitoring bodies for the Muslims of Transcaucasia and the observance by Muslims of the Russian state legal order. In 1805, the Edict of the Emperor "On the Rules for the Mohammedan Clergy of the Elisavetpol District" was issued (Za-Caucasus region). The Muslims of Transcaucasia are a Turkic-speaking population, professing Islam in two forms: Sunni and Shiite. One of the major Russian leaders in the Caucasus - Tsitsianov wrote in his report to the emperor that "according to the accepted rules of tolerance, it is in Russia ... it is desirable to make staff and rules for this clergy together with the content". The Muslim leader - Ahund - was given the right to appoint local mullahs, provided that these candidates were approved by the district chief. The Muslims of the Transcaucasus were given the right to have a Sharia court, whose competence included the consideration of divorce cases and divorce cases. These rights were presented to the Muslims of Transcaucasia only under the condition of the adoption of the Russian statehood, Russian power and order. In the imperial decree, the following is said: "... the akhund and the mullahs in the sermons should repeat to the inhabitants of the land about loyalty to the Emperor and the Board, whether the akhund or mullah will be convicted of treason, or intercourse with those who are unintentional or intend anything to the detriment of the Board, such mercy or forgiveness cannot expect ... Such a punishment will be exiled to Siberia. This estate will be described, sold and the money is turned to general-purpose establishments or the correction of roads and bridges" (Arapov, 2001).



Historian D.Yu. Arapov points out that "the most important source that characterizes the Islamic "life of the Northern Caucasus mountaineers in the first half of the nineteenth century is the" Prayer for the Tsar "for the Muslims of the Caucasus compiled by the Russian military general Ermolov" (Arapov, 2001). This prayer was to be read during the Muslim Friday services.

The prohibition of dervishes to accept Russian citizenship. In 1836, the Cabinet of Ministers was published, according to which dervishes were forbidden to accept Russian citizenship so that they would not "incite fanaticism and settle any outrageous rules" among Russian Muslims (Arapov, 2001).

The duty of Muslims to give unofficial oaths on the affairs of Christians. In 1831, the Senate issued a decree "On the oath of Muslims" (Arapov, 2001), according to which Russian Muslims were obliged to appear in the judiciary, if the cases of Orthodox subjects were considered, and give a true testimony.

The duty to use a certain form of oath in court for Muslims: In 1850, on the note of the Minister of the Interior, the Cabinet of Ministers adopted the Regulation "On a new form of oath in judicial cases for Mohammedans" (Arapov, 2001).

Considering all the normative acts of the first half as a whole, we see that the share of "North Caucasian Muslims" in them is extremely small. As is known, the final accession of the Caucasus to Russia, which began in 1783, was completed by the end of the 1970s, XIX century. Thus, the first half of the nineteenth century, is the time when the legal basis for Muslim life and the legal status of Islam and the Muslim in the Caucasus - the North and the South - were to be formed.

Nevertheless, as we see, this did not happen. What are the causes of this phenomenon? This is due to a whole range of reasons: firstly, the need to conduct military operations in the Caucasus (the war with Iran and Turkey, the Caucasian war), and secondly, the specific correlation of the military and civil authorities in the North Caucasus. The military authorities sought to dominate in this region and apply not so much legal documents to regulate the life of the Highlanders, as much as military methods, including power, as well as numerous temporary instructions. In the first half of the nineteenth century in the Caucasus, as well as at the end of the eighteenth century, the military authorities continued to localize the position of Muslims. Thus, the Decree of the Emperor of 1805 "On the Rules for the Mohammedan Clergy of the Elisavetpol District" (Arapov, 2001) was prepared on the basis of the report presented by the Chief of the Government of Georgia and the Astrakhan military governor, Prince Tsitsianov.

In the 1820's. a draft was prepared by General AP Ermolov on the transformation of the Muslim clergy in the Caucasus, which included 7 points. We list them:

- 1) Providing the government with the means of supervision and control over the actions of "persons whose religious beliefs are often placed in hostile relations";
- 2) Counteraction to the strengthening of the corporate spirit among the estate;
- 3) Preventing the penetration of clergy from Persia and Turkey;
- 4) Limiting "as far as possible the circle of influence of the clergy among the Muslim population, without infringing on its religious beliefs";
- 5) The establishment of an influential part of the clergy in direct dependence on the government, the surest way to which is the connection of its material interests with serving the government;
- 6) Creation, as far as possible, of supervision over theological schools;
- 7) Clarification of spiritual property, which is used to support the foreign clergy (Russian State Historical Archive, F. 821. op 78. D. 610. L. 4-5.).

At the same time, the Proclamations given to the Kabardian people by the former commander-in-chief, General Ermolov of June 26, 1822, read: "I maintain the free exercise of faith and former customs, take the owners and princes who have moved out of the mountains in their former dignity and rank ... I will establish a court of law themselves owners and uzdenei on the



rights of the Russian and I will appoint in which cases it will be necessary to call on the power of spiritual people (Leontovich, 1882) ... I cannot reject the Christian law willing to accept it, but I will not allow you to invite scheniyami (Leontovich, 1882).

Formal freedom was preserved later. Thus, A.A. Velyaminov, the commander of the troops on the Caucasian line, the chief of the Caucasus region (1831-1837), left the document - Rules for the administration of the humble mountaineers of the Caucasus. The document reads: "The obedient mountaineers are given complete freedom to follow the Mohammedan or any other faith. No one should force them to change faith or make any kind of harassment for the faith "with full control from the Russian military authorities (AA, 2003).

Prior to the appearance of Russian authorities in the North Caucasus, the so-called Muslim clergy had a certain legal status, which was formulated in the norms of customary law - the mountain adat. These norms in the 1840s were collected by Russian civilians and military persons and were applied in various spheres to a limited extent. Consider it, relying on the mountain adats, and analyze what legal status of the Islamic clergy provided the Russian authorities in the North Caucasus.

So, let's take a look at the materials of the collection of the mountain adats, which was compiled by the fighting officer Sergeant Kucherov (information for 1845), the materials of the complete collection of Kabardian ancient adats (1844), adats of the Malkar, Urusprians and Karachais (FI, 1882), for the collection of which Kucherov appealed to the most educated mountaineers of the region Shore Bekmurzin, Davlet-Giray, and others (FI, 1882) (FI, Correspondence of the Caucasian Mountain Department for collecting information about the Adats of the Caucasian mountaineers in the 40s of the present century, 1882), and also turn to the correspondence of the Caucasian Mountain Administrations eniya in the collection of mountain adat (FI, Adat Circassians former Black Sea cordon line, 1882).



In the collection of mountain adats there is a section "On the different kinds of estates, differences and advantages of the rights they have been given, duties and mutual relations of estates". It wrote: "All these tribes profess the religion of the Mohammedan and, in fact, do not recognize any power over themselves, but, living in societies, follow more rules of aristocratic and democratic rule, why no one class has, so to speak, in them the essence of their firm fundamental rights, advantages and duties, but such are in some way assimilated to each of them by folk legends taken from the ancient world into leadership in their hostel - therefore all persons belonging to one of these estates enjoy the right, Nome assigned, with the following restrictions ... "(FI, Adat Circassians former Black Sea cordon line, 1882).

In the section "On the Nobility" there were the following points: No. 10 - "No one among mountain peoples from a spiritual rank, a simple free people and peasants can achieve noble dignity, it is not appropriated either for personal courage, or for experience and prudence in councils - in a word, no services "(FI, Adaty Circassians of the former Black Sea cordon line, 1882); p. 14 - "The princes have no power over the nobles, the clergy and the simple free people ... "(FI, Adaty Circassians of the former Black Sea cordon line, 1882).

In the third section "On the clergy", paragraphs 26-37 are important, in which the internal status of Muslim leaders was determined: paragraph 29 - "Efendi and mullahs, in spite of their

origin, enjoy the special respect and confidence not only of a simple free people and peasants, but and the nobles and princes themselves, they even have the right, together with the prince, to sit and eat what kind of rights the nobles do not have, when this will not be allowed them especially from the prince "(FI, Adaty Circassians of the former Black Sea cordon line, 1882). In the sixth section, the rules of the court were examined according to the customs of the mountaineers, in the seventh - on the inheritance and spiritual bequests.

According to the Code of the Adats of the Mountaineers of the North Caucasus (1847), the rights and obligations of the clergy were defined (paragraphs 72-85) (Leontovich, Collection of Adats of the Mountaineers of the North Caucasus, 1847, 1882). Consider these points: the clergy of the mountain tribes consisted of efendi or kadi, mullah, muezzin, safuta (sexton) and ijako (sexton) (paragraph 72); in the spiritual estate any free man could enter (paragraph 73); for this, the knowledge of the Arabic language and Alkoran was necessary (paragraph 74), the mullahs were affirmed by the efendi or kadi, and the muezzins, safto and ijako-mullah-mi (n. 75), all persons of the spiritual estate enjoyed complete freedom (item 76), clerics could have serfs (p. 78) and could have only one wife (item 79), which they had to purchase (80 ), the spiritual rank was not hereditary, and therefore the sons of each clergyman can take their place arbitrarily in their place if the knowledge of the Arabic language and Alkoran allows it (clause 81), clerics for the crimes committed by them were judged according to the norms of the Sharia (paragraph 82), for the theft or adultery Muslim clerics were deprived of their dignity and paid to the community a fine (clause 83), clerics received a fee for committing treasures from their parishioners (for circumcision, wedding, burial), and also had the right to receive taxes from the village community.

The decision to collect adat and translate Sharia into Russian was made in 1841. In the correspondence between civilian and military officials, the following arguments for the need for this action are given: "Your Excellency knows that all cases of the mountains, apart from criminal cases, are dealt with and solved by adat, t.e. a customary court, and the Shari'a, as he calls it, by court on Alkoran. There is no doubt that the rules of both adat and sharia can in many cases be inadequate, one-sided and even contradictory, but without clear and positive information about them, one cannot say in the affirmative that adat or sharia could be allowed to be managed between the mountaineers. The first can be given priority, because only now there are some information about him from questions, as far as the Sharia law, we can say that until now he remains for us a complete secret, and not entirely willingly allowed only because, introduced between the mountaineers with the Mohammedan religion, he remained and now remains in the hands of the mullahs and generally their clergy, who, interpreting at will arbitrarily prescribed by the Sharia, and understanding very well that with the weakening of the Sharia and the introduction of another statute, kai, we can say, their power to the people, trying every way to hold it in their hands "(Chistyakov, 1988). "There is no doubt that if it were possible to introduce Russian legalization between the mountaineers in a short time, there would be no need to find all the ways to acquaint ourselves with any of the above-mentioned regulations, between the mountaineers accepted, but since the government, considering this measure at the same time fair, allows the analysis of cases between them according to the rules of the adat and the Sharia ...". (FI, Correspondence of the Caucasian Mountain Department for collecting information about the Adats of the Caucasian mountaineers in the 40s of the present century, 1882).





In the Memorandum, Bibikov in 1842 stressed that "it is premature and even dangerous to change the existing procedure of the mountaineers at the present time, and even dangerous, for this change would undoubtedly arm one of the estates - princes and nobles or clergy ... against us" (FI, Correspondence of the Caucasian Mountain Administration for collecting information about the adats of the Caucasian mountaineers in the 40s of the present century, 1882).

## FINDINGS

With the study of the Caucasian ADAT linked to a series of erroneous cliches. It is often provided by a separate independent legal system. Meanwhile, for example, the Muslims of the region he has always been closely associated with Islamic law (ar. Sharia.) Much in the ADAT, the same respect for the elderly, nothing contrary to the Islamic way of life. In addition, for over thousands of years, he has incorporated many of the principles and rules of Sharia. Even the concept denoting the norm of the Caucasian ADAT, largely borrowed from the Arabic language. (However, the value of the same legal practices in ADAT and the Shari'ah varies, for example, in the regulation of krommenie that Sharia limits and tries to replace the payment of Vira.) ADAT is strongly influenced by Sharia practices in the region. In particular, this explains the lack of applications Hudud criminal regulations providing for violations of public morality mutilation (chopping off hands and feet of thieves-recidivists, etc.).

Muslim jurists and rulers for a long time and not always successfully fought contrary to the Sharia norms of ADAT. No wonder the era of imams of Dagestan and Chechnya of the XIX century, preserved in the memory of the Caucasian mountaineers as "Sharia" unlike its predecessor "the time of the ADAT". But we should not absolutize these ideas and mix up history with historical memory. Imam Shamil (right. 1834-1859) forbade contradicting the Sharia ADAT, introduced the Sharia rules of inheritance, social conduct, clothes and life, but nevertheless was forced to follow adatum regulations, e.g., procedural norms of justice and criminal law. His successor authorities of the Russian Empire recognized the ADAT the force of law within the limits established for mountaineers of the North Caucasus military system-people management (1860-1917).

At the same time against some of the norms of ADAT, such as the blood feud, Imperial and Soviet Russia had long struggled.

In 1928, to eradicate them have been taken even additions to the Criminal code of the RSFSR, constituted his separate X head of "Crimes that constitute survivals of the tribal household". Similar provisions existed in the legislation of Soviet Georgia and Azerbaijan. Some legal and non-legal customs, such as the authority of the elders, the Russian state, on the contrary, easy to get along and even tried to rely on them in the second half of the twentieth century. In the late Soviet and post-Soviet time, the region worked by the government, with the help of ethnographers Councils of elders.

The complex relationship of ADAT with Sharia law and other state systems of law helps to understand the approach of legal pluralism. Legal pluralism occurs when in the same social field coexist and are competing norms and practices of two or more legal systems. And it is not always possible to determine the local norms of ADAT as a separate right. In fact, it can be together with



Sharia law and elements of the Russian state law and the mosaic hybrid system of community law. It seems that both should determine the value of the ADAT in the Caucasus.

## DISCUSSION & CONCLUSION

Our study shows that the legal status of Muslims in the North Caucasus was related to the judicial reforms that the Russian Empire was carrying out in this region. In addition, the status of Muslims was largely predetermined by the political and military goals set by the military and civil authorities of the Russian Empire in the North Caucasus. One of the consequences of these goals was a strong contradiction between formal hypocritical statements, instructions, proclamations about freedom of religion and secret regulations on the limitation of Islam in the region under investigation. At the same time, legal documents regulating the life of North Caucasian Muslims were extremely inadequate.

After studying the history of the formation of a system of legal regulation of national-religious relations between the Russian authorities and non-indigenous peoples, the so-called non-Russians, that is, by the peoples annexed to the state during the seventeenth and nineteenth centuries, we see that the Russian Empire, while striving to be a rule of law in whose activities the principles of law should prevail, was a country in which political expediency prevailed.

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