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Historical Aspects of the Development of the Institution of Legal Personality of Citizens of the Republic Of Uzbekistan

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Annotation: *This article deals with the issues related to historical aspects of the development of the institution of legal personality of citizens of the Republic of Uzbekistan under Muslim and Roman law in pre-revolutionary, Soviet, as well as present periods of development.*

Keywords: Legal personality, legal capacity, legal capacity, citizens, Muslim law, Roman-German law, restriction of legal capacity and legal capacity of citizens, principles of civil law.

The volume of rights belonging to each subject in the civil law system characterizes the legal status of each subject and reveals the content of the reform carried out by the state in this area.

In particular, due to the civil status of the subject, the state's attitude to the institution of property rights, entrepreneurial activity, principles of contractual obligations, etc. is most clearly revealed. Moreover, of all subjects of civil law, the civil legal status of citizens (individuals) is a multifaceted and developing phenomenon that is influenced by a number of factors, primarily the socio-economic policy of the state. This in turn requires the necessary development and research of the development of the fundamental components of the civil status of citizens.

The legal personality of citizens in Muslim law as a legal category throughout history has been considered in the prism of religious postulates. The vast majority of research in this area has as its subject the relationship between the individual and Allah, as the initial instance of the religion of Islam. Such a statement of the question initially implied the attitude of the individual towards faith and Allah.

Sharia as a whole and its doctrinal and normative part (fiqh) incorporated not only legal provisions, but also religious dogma and morality. Such fusion and syncretism of Sharia found their specific expression in the fact that its

prescriptions, on the one hand, regulated social (human) relations, and on the other, determined the relations of Muslims with Allah (ibadat).

Subsequently, when the Shariah begins to go beyond the strict framework of a patriarchal-communal perception of the world and is faced with the realities of commercial turnover, thanks to the active work of Muslim theologians and legal scholars, it is increasingly moving away from the postulates of divine legal understanding and gravitating toward a rational one[1].

Muslim legal scholars at this stage have developed new legal doctrines and norms, which have a purely legal nature and at the same time do not go against the fundamental and traditional principles of Sharia.

So, in Islamic jurisprudence from the perspective of the holder of the right, the law is divided into two main types:

- "Khaqqulokh" or "Khuqqullokh", which incorporates all public rights;

- "Khaqqul-abd" (the right of a slave), which consists of private or personal law, incorporates all the actions between people.

The foregoing types proceed from the staging first of the highest position of Allah Almighty and the adoration of every believer before him[2].

When disclosing a person's legal capacity according to the Sharia norm, the concept of "legal capacity" was used as a separate concept[3]. But the rights of individuals under Muslim law as a legal system of the time were not the same, they varied depending on various circumstances, partly natural, partly historical. These circumstances were as follows: the birth of an individual, legal or illegal, gender, age, health, relationship of relationship and the properties of an individual to other persons, education, religion, estate, title, title, etc.

This approach of establishing the civil status of citizens by their class can be traced in the Timur Code, in which he divides them into twelve classes[4].

Civil law until 1924 in the medieval states (under the rule of the Karakhanids, Khorezmshahs, Amir Timur, etc.), the Central Asian khanates and Turkestan was by its

[1] See more: Rahman F. Economic Principles of Islam // Islamic Studies. – 1969. – №1. – P. 60.

[2] AbdulhakimShariyJuzjani. Islamic Jurisprudence, Hanafi and Central Asian Studies / Responsible Editors: A.Kh. Saidov, A. Mansur-Tashkent: Tashkent Islamic University, 2002. 43-44 p.

[3] Zokirov I.B. Formation and development of Soviet civil law in the BNSR and KNSR. / Tashkent State University. Toshkent: Fan, 1988, p. 49-50 (181 p.).

[4] Code of Timur. Historical notes. –T .: Chulpon, 1992. -P.16-19.

nature a feudal law. It proceeded from the principles of the sacredness and inviolability of private property, the division of citizens into estates, their actual and legal inequality on the basis of belonging to one estate or another, gender, one or another nationality and faith, as well as inequality by property status. Civil law relations of the local population was regulated by a separate branch of Muslim law, called "ilm-i-fiqh" (civil law)[5].

The subject of civil legal relations was mainly individuals (citizens) who were not equally legal and competent. The woman was limited in civil rights. She could not enter into legal obligations on her own, without the knowledge of her father, brother, husband or son. Without her husband's consent, she could not conclude an agreement on a loan, property or personal employment, gift, etc. Over her was established permanent custody of the number of close males. She did not have the right to property acquired during her life together with her husband, neither by the right of common joint property and nor by the right of common shared property. Her rights were also limited when inheriting property, both from her spouse and from her parents and other relatives. A married woman could be considered as the subject of a lawsuit, and therefore the husband had the right to demand in court the forced return of his wife who left him.

Certain categories of citizens, the so-called then "fukora" ("lower" class), were also limited in some civil rights. Therefore, the "Fukora" could not marry women from the Khoja estate (one of the privileged classes), etc[6].

Representatives of the propertied possessed full legal capacity and legal capacity - rulers, employees of the mosque, Seyids, Khoja and other representatives of the then "upper" class. The social position of a person was also determined, first of all, by his property status.

Civil law of these periods did not distinguish, but identified the concept of legal capacity and legal capacity. The content of legal capacity amounted to a number of property and personal rights of those in possession: unlimited right to own movable and immovable property, unlimited right to conclude all kinds of contracts, unlimited right to conduct trade

[5] For the Russian part of the population of Turkestan, civil law relations were regulated by the norms set forth in Volume X of Part 1 of the Code of Laws of the Russian Empire. Turkestan civil law did not correspond to the system that was adopted in tsarist Russia. It also did not correspond to either institutional or pandemic systems of law adopted in European states.

[6] Hidoya. T. 1. - Tashkent: Adolat, 2000. -P. 680–681.

operations and engage in all kinds of trades.

The bulk of the population - "Fukora" were deprived of some property and personal rights. The right to real estate for this part of the population consisted mainly of the right to a certain part of the land and to the erected adobe construction on it. The right to movable property consisted of the rights to household utensils and clothing.

Incapable were minor children under the age of fifteen, as well as mentally ill and demented. Actions to acquire rights and fulfill duties for these persons were carried out by their parents and other male relatives or, in the absence of the latter, by guardians appointed by the kazia from among male persons (mothers of children could be appointed guardians, provided they knew the basis of hereditary Sharia law).

The legal capacity of a married woman was carried out by the husband, and in case of his death by adult sons or other relatives from among males.

Legal capacity came from the moment of birth and ended in death or recognition of the missing person as dead. At the same time, a missing person could be declared a custodial deceased after 90 years from the date of birth, and after 120 years he should have been declared dead[7].

On the whole, the analysis of the institute of the legal personality of citizens during the period of regulation of civil relations by Muslim law suggests that the legal personality of citizens was determined through their estate and property status.

The legal personality of citizens in the Soviet period. Changes to civil law after the October Revolution reflected a fundamentally new approach of the legislator, firstly, on the total socialization of property and nationalization, which led to a sharp narrowing of private entrepreneurship and the legal capacity of citizens, and secondly, on the class differentiation of the population, which is especially clearly traced in the early years of Soviet power. Instead of private property law, the institution of personal property of citizens was formulated, which, in the sense of the legislator, had a purely consumer purpose, which excluded the possibility of ownership of the means of production by individuals. It was forbidden for a citizen to derive benefits ("speculation" and "unearned income") from the use of his property, and in respect of the most valuable and important material values,

[7] Hidoya. T. 2. -Tashkent: Adolat, -P.93.

numerous restrictions and prohibitions were maintained that remained throughout the Soviet period.

Despite the fact that the Civil Code of the UzSSR of 1929[8] provided equal legal capacity for all citizens who were not restricted in their rights, and its content was formally expanded in comparison with pre-revolutionary legislation, the consistent implementation of the class approach led to the establishment of a number of prohibitions and restrictions on the implementation of the fixed in the law of subjective rights for representatives of "unearned elements", and not only property, business, but also personal non-property rights of citizens were subject to restrictions en (the right to freedom of movement, the right to enter and leave the territory of the state, the right to personal integrity, the right to freedom of creativity, etc.)[99].

The predominance of state ownership crowded out the rights and interests of the individual in second place. The legal status of foreigners and stateless persons practically did not have their improvement and implementation in practice since the Iron Curtain and public property did not allow the development of economically beneficial relations, and therefore, the legal personality of foreign citizens. The legal capacity of minors, persons limited and deprived of legal capacity has not changed to date. This is primarily because this category of citizens with their established rights could not affect public and state affairs. In this connection, their rights and obligations were more advanced. However, despite this, the norm introduced by Part 1 of Art. 28 Civil Code of the Republic of Uzbekistan nevertheless brought positive changes and additions to the legal capacity of minors over 16 years of age, providing emancipation to them if, with the consent of their parents, adoptive parents or guardian, they are engaged in entrepreneurial activity.

[8] The Civil Code adopted on December 31, 1922 by the All-Russian Central Executive Committee of the RSFSR and introduced from January 1, 1923 was also valid in the territory of the first Turkestan Autonomous Soviet Socialist Republic until December 1924, and since December 1924 in the territory of the Uzbek Soviet Socialist Republic which was transformed and became part of the USSR. And from April 13, 1929, on the basis of decisions of the CEC and the Council of the People's Commissariat, the Civil Code in force on the territory of the Uzbek SSR was renamed the "Civil Code of the Uzbek Soviet Socialist Republic." See: Zokirov I.B. Civil Law of the Uzbek SSR. Part 1 / A.A. Agzamkhodjaev and F.H. Edited by Sayfullaevs. 2nd Edition. -Tashkent: Teacher. 1988. 18 p.

[9] Zokirov I.B. Civil Law: Textbook. Part 1 Responsible Editor: H. Rahmonkulov: 4th edition. Processed and stuffed. - Tashkent: TSIU Publishing House, 2006. 29-31p.

Also, under previous legislation, the right to deprive or limit the legal capacity of minors aged 14 to 18 belonged to guardianship and trusteeship bodies, which, at their own initiative or at the request of a public organization and other interested parties, limited or deprived these persons of the right to independently manage their earnings or scholarships . From the moment they made a resolution of this nature, all transactions regarding the management of income were made with the consent of parents, adoptive parents or trustees (with the exception of small household transactions). This norm has been amended by Part 4 of Art. 27 of the Civil Code of the Republic of Uzbekistan, which states "If there are sufficient grounds, the court, at the request of parents, adoptive parents or a guardian or guardianship authority, may restrict or deprive a minor of fourteen to eighteen years of age of the right to independently manage his earnings, scholarship, or other income, except when such a minor acquired full legal capacity in accordance with subsection 22 (2) or 28 of this Code. " Thus, the restriction and deprivation of property rights of minors aged 14 to 18 years, the Civil Code of the Republic of Uzbekistan is carried out only by the civil court of the Republic of Uzbekistan.

An analysis of the development of the institution of the legal personality of citizens in the Soviet period allows us to state the fact that the legal personality of citizens was of a class nature.

The legal personality of citizens after independence. Today, with the independence of the Republic of Uzbekistan, the concept of legal personality in domestic civil law has its rightful place as an object of further scientific research. Although civil law does not use the concept of legal personality, while applying only its legal elements as legal capacity and legal capacity, it has its own significance in the science of domestic civil law, as well as foreign legal systems. First of all, it is guided by the principles of civil law, without prejudice to the rights and interests of citizens of the Republic of Uzbekistan.

The analysis of the formation of the institution of civil legal personality of citizens at various periods in the development of history allows us to say that during the formation and development of the domestic concept of civil legal personality there was no single approach to legal regulation of public relations arising in this sphere, which was accompanied by a multiplicity of sources of the legal system (Muslim law , Roman-German law), which did

not give a qualitative definition of the civil status of the individual. Despite the fact that during the Soviet period equal legal capacity was proclaimed for all citizens who were not restricted in their rights, and its content was formally expanded in comparison with pre-revolutionary legislation, the consistent implementation of the class approach led to the establishment of a number of prohibitions and restrictions on the implementation of the laws subjective rights for representatives of "unearned elements", and not only property, business, but also personal non-property rights of citizens were subject to restrictions (right to freedom of movement, the right to enter the territory and leaving the territory of the State, the right to personal integrity, the right to freedom of creativity, etc..).

In connection with the adoption on December 8, 1992 of the Constitution of the Republic of Uzbekistan and September 22, 1994 of the Civil Code of the Republic of Uzbekistan, a specific feature of the concept of civil legal personality of citizens in domestic civil law is the *socio-economic aspect*, aimed at the full and equal satisfaction of property and personal non-property rights of citizens (physical persons), which finds its basis in the basic principles of civil law, namely in:

- recognition of the equality of citizens (individuals);
- inviolability of their property interests;
-freedom of will;
-inadmissibility of arbitrary interference by other persons in the private affairs of citizens;
- ensuring the restoration of violated rights by the state;
- judicial protection of violated rights of citizens.

In conclusion, the development of the legal personality of citizens of Uzbekistan can be divided into the following periods:

- the period of development of the legal personality of citizens under Muslim law was determined through their estate and property status, which took place before the 2nd half of the 19th century;
- dualistic period. This period incorporates the end of the 19th century and the beginning of the 20th century. During this period, the legal personality of citizens, also determined through their estate and property status along with the norms of Muslim law, was regulated in some areas by the norms of the then Russian Empire;
- the Soviet period of the development of the legal personality of a citizen of a class nature, which took place from 1917 to September 1991;

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- a new period of development of the legal personality of citizens with a socio-economic nature, which began on the day of independence of the Republic of Uzbekistan i.e. since September 1991.