

Common Law as the Element of the Kabardians' Standard Culture in the XIXth Century¹

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Abstract. The common law is investigated as an element of the standard culture of the Kabardians in the XIXth century. Along with the common law, the separate elements of the traditional standard culture of the Kabardians; such as the traditional institutes of social self-regulation, the system of class relations, the family and household culture, a complex of moral ethical standards and behavior rules are distinguished. Specific features of integration of the common law and of certain institutes of the Kabardians into the legal system of the Russian Empire are demonstrated in these examples. It is claimed that after Kabarda's unification with the Russian Empire the common law of the Kabardians underwent essential transformations. It didn't, however, completely lose its regulatory functions.

Keywords: Kabardians; Northern Caucasus; common law; standard culture; adat; shariat; court; judicial system; integration; legal pluralism.

Introduction. The standard culture represents the system of institutes, principles, standards of behavior, and adaptive technologies in the field of law and morals. In the broad sense «the institutes of standard culture represent an historically developed and updated complex of formal and informal rules of behavior, principles, norms, ideals, and mechanisms of social encouragement and control, which should carry out the regulatory function of the preservation and the observance of roles, statuses, ranks and all other possible practices in various fields of activity» [1]. The definition of standard culture as a separate sphere of the public regulatory subsystem of culture belongs to E.S. Markaryan [2]. He assumed that «the public standard culture is directly focused on the organization of the collective life of people» [3]. It enables us to study the public standard culture as an independent system alongside the culture of life support, the culture of primary production, and the humanitarian culture of the Kabardian society in the XIX century. The purpose of the present paper is to define the role and place of the common law in the system of the public standard culture of the Kabardians in the investigated period.

The studying of features of the integration of the institutes of the standard culture of the Kabardians into the legal system of Russia in the XIX century is for a number of reasons urgently needed research into the problem of modern legal anthropology. First, such research allows analyzing the processes and mechanisms of the inclusion of the traditional societies in the structure of the Empire in detail. Secondly, it gives the chance to reveal some regularities of the development of the common law in such societies under the influence of the external political factors. Thirdly, it defines the forms and the models of the functioning of the traditional public institutes included in the structure of the Empire of the Peoples in the conditions of legal pluralism. In this aspect the institutes of the common law of the Kabardians present great interest both in scientific-theoretical and practical relations. It explains the fact that the norms of the common law of the Kabardians were one of the main social regulators and were practically applied in the form which didn't contradict the laws of the Russian Empire in the XIX century.

Materials and methods. In the XIX century besides the development of patterns of the moral behavior and regulations of everyday life of the Kabardian rural societies, norms and institutes of the common law were implemented in the law-enforcement practice of the official and the intermediary (mediators) courts [4; 5; 6]. Therefore, in this article we used the materials on the common law of the Kabardians, generally stored in the files of the Central State Archive of Kabardino-Balkarian Republic (Nalchik) [7; 8; 9]. No less important are the materials of the field

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researches, which are stored in the scientific archive of the Institute of Humanitarian Researches of the Kabardino-Balkarian Scientific Center of the Russian Academy of Sciences. These are field materials, which were collected in the 70–80s of the XX century during the ethnographic expeditions by H.M. Dumanov, V.H. Kajarov, G.H. Mambetov, S.H. Mafedzev [10], etc. As a rule, the informants acquired this knowledge in the 20–30s of the XX century in oral form from elderly people. The data on the common law of the Kabardians, which passed from generation to generation, is in many respects representative for the XIX century.

In the present paper the common law of the Kabardians is investigated as the element of the standard culture in the XIX century. For this reason, the principles and methods of historical researches constitute the methodological basis of this work. The methodology of this work is based on the principles of scientific character, objectivity, historicism and systemacity. During the research we applied problem-chronological, retrospective and other methods of historical research.

Discussion. In the structure of the traditional public standard culture of the Kabardians the following separate elements are distinguished: the common law, the traditional institutes of social self-regulation, the system of class relations, the family and household culture, the system of moral and ethical standards and behavior rules. In the historiography of this problem there are a number of works in which some elements of standard culture of the Kabardians were somehow mentioned [11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28 etc.]. However, the present problem didn't become the subject of the complex research. In the history of the law of the peoples of the Caucasus considerable attention was traditionally paid to the problems of the studying of the common law of the Kabardians. Thus the term "common law" was used by the scientists not only for the designation of the set of customs and traditions integrated into the legal system of the Russian Empire, but also for the characteristics of the whole system of standard regulation of public relations in the traditional Kabardian society.

Results. During the research of this problem, it is necessary to take into consideration some circumstances. First, in the XIX century the transformation of the system of the standard regulation of public relations of the Kabardians occurred in the conditions of Kabarda's inclusion in the administrative-territorial and cultural space of the Russian Empire. Secondly, the ethnic territory and the number of the Kabardians changed considerably. Under the influence of external political factors the Kabardians were divided into several local groups, densely living within the North and Northwest Caucasus. The Kabardians occupied the former territory during the studied period. The other local group was represented by the "Mozdoksky" Kabardians who left the owners and accepted Russian citizenship and Christianity after the construction of the military fortress Mozdok (1763). The third "run-away" group of Kabardians («hadzherets») migrated to the river Kuban and constituted part of ethnos which didn't reconcile to the new political regime, established in Kabarda at the end of XVIII – the first quarter of the XIX century. Thirdly, the mixed standard system, in terms of which the common law, the Muslim law and the Russian legislation functioned, was formed during this period. The customs of the Kabardians, authorized by the Russian laws and traditions began to differ from the original norms, which functioned in the Kabardian society in the XVI–XVIII centuries. The scientists still have to find out how these processes influenced the main aspect of the activity of the Kabardians, to define mechanisms of the formation of the new traditions and norms of the common law under the new conditions, to reveal the functions and the nature of continuity of the ethnic traditions in the transitional period, etc. In this case it is not necessary to prove that all this had a great impact on the change of the basic elements of the standard culture of the Kabardians in the XIX century, including common law.

In the system of the standard culture of the Kabardians, the common law plays an important role. However, it is a very complex challenge to define precisely the place of the common law as a part of the standard culture of the Kabardians. On the one hand, the common law as the system of the unwritten rules and standards of behavior, obligatory actions and legal views of the people, is in itself an element of the standard culture. On the other – it is the form, which unites other elements of the standard culture. In the XIX century norms of the common law regulated the major part of the class, family and household relations. The common law of the Kabardians was in an interrelational communication with norms of the morals.

The common law as an element of the standard culture of the Kabardians was a complex dynamic phenomenon in the XIX century. At that time, under the influence of a number of factors, a ratio of norms of the common law changed in the system of the regulation of public relations. Among these factors it is possible to allocate the legal policy of the Russian Empire in this region, the mass migrations of the Kabardians to the territories of the Caucasus, the transformation of

class structure, the reduction of their total number, the change of the ethnic map and the formation of the multinational population on the plane part of the Central Caucasus, etc.

The dynamics of the common law of the Kabardians in the XIX century is determined by the fact that the Russian legislation and the Muslim right had a considerable impact on their traditional standard culture at that time. The policy of the Russian administration was aimed at the adaptation of the adats of the Kabardians to the Russian laws [29]. There was a problem of demarcation of spheres of the various legal systems at the legislative level which functioned within one legal space. The administration adopted the resolutions which differentiated areas of jurisdiction of the courts functioning in Kabarda and the nature of norms applied by them. The administration allowed the Kabardians to use only those customs and traditions which didn't contradict the laws of the Russian Empire in the social and everyday practice. On this background many traditional public institutes (blood feuds, system of compositions, baranta, exile from society, transfer of the criminal to the lowest category on the class ladder, sale in slavery, etc.) underwent essential transformations and ceased to exist in the original form [30]. All this led to the formation of the legal pluralism in this region.

These processes can be investigated in detail in the example of the «witnesses on the oath» in the judicial system of the Nalchik district in the last third of the XIX century. The institute of the oath and jury witnesses characterizes the common law of the Kabardians before the inclusion in the structure of the Russian Empire, as it was noted in the scientific works of the different authors [31; 32; 33; 34]. The analysis of the sources and corresponding literature shows that in the last third of the XIX century these witnesses often took part in judicial proceedings under the oath, and their evidence played an important role in decision-making by judges on this or that dispute. The evidence of the respondent was supported by the oath of people who were known for their honesty and were respected by other villagers. To participate in a trial as the jury witness only the people who were carrying out all religious practices were invited [35]. On the contrary, people with bad reputations [36] and born from illegal marriages [37] couldn't become the witness.

In the legal practice of that time the cleaning oath of the accused and the oath of the witness were differentiated [38]. The institute of jury witnesses efficiently functioned alongside an intermediary, as well as in the official courts (The Kabardian District National Court (1858–1871); The Nalchik Mountain verbal court (1871–1917), the rural courts) [39]. Their services were used when the accused didn't agree with the evidence of the victim. Their main function consisted in the adoption of the oath about the innocence of the defendant. Before the oath they were obliged to examine the facts of the case. As a rule, for this purpose the relatives of the defendant swore about his innocence in the presence of the jury witness [40]. If he was convinced of the innocence of the suspect, he agreed to take the oath. After that judges or intermediaries proclaimed the verdict of guilty or not guilty concerning the suspect. On the contrary, refusal of the oath or the lack of opportunity to involve in trial the jury witness indirectly proved the guilt of the defendant [41]. All this in detail characterizes the features of integration of separate institutes of the traditional standard culture of the Kabardians into the legal system of the Russian Empire in the XIX century. The analysis of the archival documents on the legal proceedings in Kabarda shows that there were many more similar examples during this period.

The social transformations in Kabarda in the XIX century play an important role for the research of the common law in the system of the standard culture of the Kabardians. These transformations are of interest for our research as they show how the norms of the common law of the Kabardians changed and the way they regulated the interclass relations. Transformation of the role of the common law in the system of regulation of the class relations of the Kabardians is traced most vividly in examples of the leveling of the status of the Kabardian princes in the XIX century. In particular, the princes lost the right to execute criminals, to divide their families for sale, to appropriate their property etc. [42]

Many transformations occurred in the system of the regulation of the interfamily relations in the XIX century. The processes were accelerated by the following circumstances: first, the number of Kabardian family members underwent considerable reduction; secondly, the size of the bride wealth was reduced; thirdly, the transformation of the class structure of the Kabardians affected the character of the family and marriage relations. It is possible to bring in many similar circumstances. But it appears enough to note that all this qualitatively reflected in the character and the content of norms of the common law of the Kabardians, regulating family and marriage relations.

It is necessary to note that in the first half of the XIX century the transformations took place not only in the social structure, traditional public institutes, and in the common law, but also in the ethnic psychology of the Kabardians. The establishment of control from the military authorities over the main spheres of activity of the Kabardians has fixed those features of their ethnic psychology which were necessary for the successful adaptation into the social and cultural system of the Russian Empire. There was a considerable reorientation of values. However this problem has practically not been investigated in modern historiography.

Conclusion. Thus, in the conditions of the social and political transformations occurring in Kabarda in the XIX century, the common law of the Kabardians didn't lose the regulatory functions. The sphere of action of the norms of common law was determined by laws. Despite it, the Kabardians **allocated** a significant role for the common law in their everyday life.

References:

1. Guboglo M.N. The newsletter «From the language of international communication to the all-civil language of solidarity. Ethnological sketches»// Electronic resource. Access mode: http://www.mdn.ru/cntnt/blocksleft/menu_left/nacionalny/publikacii2/mn_guboglo.html. (Viewing date: 27.07.2012).
2. Markaryan E.S. Theory of culture and modern science. M.: «Misl», 1983. P. 70.
3. Markaryan E.S. Theory of culture and modern science. M.: «Misl», 1983. P. 70.
4. Central state archive of Kabardino-Balkar Republic (further. – CSA KBR), f. I-22, op. 1, act 2175, p. 54.
5. CSA KBR, f. I-22, op. 1, act 2509, p. 3.
6. CSA KBR, f. I-22, op. 1, act. 3704, p. 9;
7. CSA KBR, f. I-23 «Kabardian temporary court (1822–1858)».
8. CSA KBR, f. I-24 «Kabardian district national court (1858–1871)».
9. CSA KBR, f. I-22 «Nalchik mountain verbal court (1871–1918)».
10. The scientific archive of the Federal state budgetary organization of science of the Institute of humanitarian researches of the Kabardino-Balkarian scientific center of the Russian Academy of Sciences (further. –Archive KBIHR), f. 10, op. 1 «The materials on ethnography of the Kabardians and Balkars».
11. Bronevsky S.M. The contemporary history about the Caucasus, collected and expanded by Simeon Bronevsky. In 2 volumes / Preparation of the text for the edition, preface, notes by I.K. Pavlova. SPb.: "The Petersburg Oriental studies", 2004. P. 168;
12. Novitsky G.V. A geographical and statistical review of the land populated by the Adekhe people // Tiflis papers, 1829. No. 25;
13. Nogmov Sh.B. History of the adykheysky people / Introductory article and preparation of the text by T.H. Kumykov. Nalchik: «Elbrus», 1994;
14. Leontovich F.I. Adats of the Caucasian mountaineers. Materials on the common law of East and North Caucasus. T. 1. Odessa: «P.A. Zelenii's printing house», 1882;
15. Grabovsky N.F. Accession of Kabarda to Russia and its fight for independence // The collection of data on the Caucasian mountaineers. T. 9. Tiflis: «Printing house of the Head Department of the Deputy Caucasian», 1876;
16. Grabovsky N.F. A sketch of court and criminal offenses in the Kabardian district // The collection of data on the Caucasian mountaineers. T. 4. Tiflis: «Printing house of the Head Department of the Deputy Caucasian», 1870. Page 1–72;
17. Kovalevski M.M. The law and custom in the Caucasus. Moscow: «Printing house by A.I. Mamontov», 1890;
18. Kudashev V.N. Historical data on the Kabardian people. Kiev:Tipo-Litografiya by S.V. Kulzhenko, 1913. P. 46–48;
19. Ladyzhensky A.M. Dissertation theses: «Adats of the Kabardians and the people being from them in vassal dependence» (manuscript), 1947 // Archive KBIGI, f. 10, op. 5, act 4;
20. Ladyzhensky A.M. Studying of adats of the Kabardians and the people being from them in vassal dependence // Archive KBIGI, f. 10, op. 5, act 3;
21. Ladyzhensky, A.M. (1955) Methods of ethnological studying of the right *Ethnographic review*, No. 4. Page 160–161;
22. Gardanov V.K. System of compositions in the common law of the Adyghes (Circassians) at the end of the XVIII – the first half of the XIX century. M., 1964;
23. Gardanov V.K. A social order of the adyghes people in XVIII – the first half of the XIX century. M.: «The science», 1967;
24. Bgazhnokov B.H. Adyghes etiquette. Nalchik: «Elbrus», 1978;
25. Bgazhnokov B.H. A way of life of the feudal nobility // From feudal Kabarda and Balkariya's history. Nalchik, 1981. P. 78–104;
26. Kazharov V.H. Traditional public institutes of the Kabardians and their crisis at the end of the XVIII – the first half of the XIX centuries. Nalchik: «Elbrus», 1994;

27. Dumanov H.M. From history: studying of the common law of the Kabardians. Nalchik: «Elbrus», 1988;
28. Dumanov H.M., Ketov U.M. Adyghe habze and court in Kabarda in the second half the XVIII–XIX centuries. Nalchik: Publishing house of the Kabardino-Balkarian scientific center of the Russian Academy of Sciences, 2000.
29. Cited from: The description to the people in the Kabardian line under management of the Chief of the Center of the Caucasian Line consisting // The collection of documents by the class right of the people of the North Caucasus (1793–1894). Nalchik: «El-Fa», 2003. P. 117.
30. Kazharov V.H. Traditional public institutes of the Kabardians and their crisis at the end of the XVIII – the first half of the XIX centuries. Nalchik: «Elbrus», 1994.
31. Babich I.L. The evolution of the legal culture of Adyghe (the 1860–1990th years). M.: Institute of ethnology and anthropology of the Russian Academy of Sciences, 1999. P. 78;
32. Bgazhnokov B.H. Adyghe oaths // Public life of Adyghe and Balkars. Nalchik, 1986. P. 97;
33. Dumanov H.M., Kushkhov H.S. To the question of the judicial system and legal proceedings in Kabarda in the second half of the XIX – the beginning of the XX century // Culture and a life of Adyghe. Maikop, 1986. V. 4 . Page 41–51;
34. Dumanov H.M. Dictionary of ethnographic terms of the Kabardino-Cherkessy language. Nalshik: «El-Fa», 2006.
35. Archive KBIHR, f. 10, op. 1, act 5, passport 1.
36. Bgazhnokov B.H. Adyghe oaths // The public life of the Adyghe and Balkars. Nalchik, 1986. Page 97;
37. Archive KBIHR, f. 10, op. 1, act 27, passport 7.
38. CSA KBR, f. I-24, op. 1, act 33, p. 3.
39. CSA KBR, f. I-24, op. 1, act 31, p. 3.
40. Archive KBIHR, f. 10, op. 1, act 2, passport 12.
41. Archive KBIHR, f. 10, op. 1, act 1, passport 1.
42. Cited from: Abazov A.H. The transformations of the system of compositions of the Kabardians at the end of the XVIII – the first half of the XIX century: the thesis abstract of the paper for the scientific degree of the candidate of historical sciences. Moscow, 2008. P. 18.

Общее право как элемент стандартной культуры кабардинцев в XIX веке

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Аннотация. Общее право исследуется как элемент стандартной культуры кабардинцев в XIX веке. Наряду с общим правом, изучаются отдельные элементы традиционной стандартной культуры кабардинцев, такие как традиционные институты социальной саморегуляции, система классовых отношений, культура семьи и домашнего хозяйства, комплекс моральных этнических стандартов и правил поведения. Характерные черты интеграции отдельных институтов общего права кабардинцев в правовую систему Российской империи рассматриваются на данных примерах. В статье утверждается, что после объединения Кабарды с Российской империей, общее право кабардинцев претерпело существенные изменения, но, тем не менее, оно не полностью утратило свои нормативные функции.

Ключевые слова: кабардинцы; Северный Кавказ; общее право; стандартная культура; шариат; суд; юридическая система; интеграция; правовой плюрализм.