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## FREEDOM OF SPEECH IN NOMADIC KAZAKH SOCIETY AS A LEGAL INSTRUMENT FOR DISPUTE RESOLUTION

### Abstract

This article examines the legal function of freedom of speech in nomadic Kazakh society, where oral discourse played a central role in dispute resolution and social regulation. In the absence of written legislation, customary law and oral traditions formed the foundation of the legal system. The spoken word functioned not only as a means of communication but also as a legally recognised regulatory tool.

The institution of biys (traditional judges), known for their eloquence and moral authority, resolved conflicts through persuasion and justice rather than coercion. Public assemblies reflected democratic principles, with freedom of speech ensuring openness, equality of voices, and collective decision-making.

The study also highlights the legal significance of the principle of *sozge toqtau* (yielding to the word), a customary mechanism for achieving reconciliation and mutual understanding. The biys were the primary enforcers of this practice, which promoted peace and social cohesion.

By analysing historical sources and oral practices, the article concludes that freedom of speech in Kazakh society served both cultural and legal functions, contributing to the development of national legal consciousness and the preservation of intangible cultural heritage. The purpose of the article is to reveal the legal and regulatory functions of freedom of speech in traditional Kazakh society, to analyze the institute of biys as a mechanism for pre-trial dispute resolution through the art of eloquence, and to substantiate the legal significance of the "sozge toqtau" (conceding to a just word) principle within the system of Kazakh customary law.

**Keywords:** Freedom of speech, Nomadic Kazakh society, Dispute resolution, Customary law, Biis, Legal culture, Democratic values.

### Introduction

The purpose of this research is to analyse the legal function of freedom of speech within traditional nomadic Kazakh society, emphasising its role as a fundamental element of customary law and social regulation. The study seeks to reveal how oral discourse and the institution of biys (traditional judges) contributed to the development of legal culture and principles of justice in the absence of codified legislation. The main objectives of the scientific research are to examine the historical and legal foundations of freedom of speech in nomadic Kazakh society, to interpret the principle of *sozge toqtau* as a manifestation of reconciliation and legal consciousness, and to evaluate the dual legal and cultural significance of freedom of speech in shaping the national legal tradition and legal awareness.

Freedom of speech is one of the fundamental legal and democratic values recognised universally. However, in the context of traditional nomadic Kazakh society, this concept takes on a unique meaning. Here, the spoken word fulfilled not only a communicative function but also a deeply legal one: it served as the primary tool for resolving conflicts, ensuring social justice, and maintaining communal harmony.

In the absence of written laws and institutionalised court systems, a central role in legal practice was held by the Bii—custodians of oral legal tradition, whose decisions were based on customary knowledge, practical experience, and rhetorical skill. Through institutionalised public deliberation, popular participation in dispute resolution, and the high value placed on speech as a medium of will expression, freedom of speech became an integral element of the nomadic legal culture.

This study aims to analyse freedom of speech as a legal mechanism in traditional Kazakh society, to reveal its normative nature, and to assess its significance in dispute resolution. This work is based on historical and legal analysis of customs, adat norms, and oral legal practices. It seeks to

highlight the relevance of these traditions in the context of modern legal culture and the preservation of intangible cultural heritage.

The study of freedom of speech as a legal phenomenon in traditional societies has attracted increasing scholarly attention, particularly in legal anthropology, comparative law, and cultural studies. While modern legal scholarship often associates freedom of speech with constitutional systems and liberal democracies, a growing body of research demonstrates that this principle has deep historical roots in non-Western, oral-based legal cultures. In this context, Kazakh customary law (adat) provides a unique case for examining the relationship between oral expression and legal authority.

Prominent Kazakhstani legal scholars, including S. Zimanov [1], Z. Kenzhaliev [2], and S. Sartayev [3], have emphasised the central role of the Biis in the administration of justice and the normative function of oral speech in dispute resolution. Their research demonstrates that legal discourse in nomadic society was grounded not in codified laws but in ethical reasoning, oral consensus, and collective memory. S. Zimanov, in particular, highlighted the institutional significance of the Bii as a bearer of legal legitimacy and a guarantor of public confidence.

International scholars such as V.V. Radlov and Harold Belger have also recognised the cultural and legal power of speech in Kazakh society. Radlov noted the logical clarity and eloquence of Kazakh speakers [4], while Belger described the Kazakh attitude toward the word as reverent, poetic, and functionally normative [5]. These perspectives support the thesis that freedom of speech in Kazakh society was not only a cultural tradition but a legal mechanism that shaped dispute resolution and reinforced communal values.

Despite these contributions, the legal nature of freedom of speech in Kazakh customary law remains underexplored in contemporary legal studies. This article seeks to fill this gap by analyzing how freedom of speech functioned within the nomadic legal order, not as a derivative of written law, but as a primary normative tool grounded in oral deliberation, justice, and social participation.

The legal life of the Kazakh people must be understood as a distinct domain of social existence—one that reflects the unique characteristics, values, and developmental stages of a historically situated phenomenon. This legal sphere is not merely a system of norms but a deeply rooted cultural manifestation, shaped by the Kazakh people's nomadic lifestyle and collective memory.

In the context of nomadic Kazakh society, the foundational source of legal culture was the system of customary law (adat), which served as guiding principles for behaviour and regulated the legal order. These norms were not written codes, but rather oral legal traditions transmitted across generations through institutionalized practices such as biis' adjudications and community consensus. Legal culture, in this regard, encompasses both society's legal consciousness and the extent to which legal institutions and norms protect the rights of every member of the community.

This perspective has been explored in the scholarly work of prominent Kazakh legal scholars, such as S. Sartayev and A. Ibraeva, who emphasise that legal culture should be understood as a dynamic construct that reflects the relationship among legal awareness, traditional legal institutions, and the nation's sociocultural identity [6].

#### **Materials and methods of research**

This study employs a multidisciplinary approach that combines elements of legal history, cultural anthropology, and comparative legal analysis. The research draws primarily from historical sources, including documented oral traditions, collections of customary legal norms (adat), records of Biis' judicial decisions, and Kazakh folklore that reflect legal reasoning and dispute resolution mechanisms. These materials provide insight into how freedom of speech was understood, practised, and institutionalised within the legal culture of nomadic Kazakh society.

The study also draws on secondary sources, including academic monographs, peer-reviewed journal articles, and theoretical works by Kazakhstani and international legal scholars. Works by S.Z. Zimanov and Z. Kenzhaliev were particularly instrumental in framing the legal significance of oral traditions and the role of Biis.

The methodological framework of this study relies primarily on the historical-legal and comparative-legal approaches, which together provide a comprehensive analytical basis for examining

freedom of speech within traditional Kazakh legal culture. These methods enable an integrated exploration of the cultural, normative, and institutional dimensions of oral law within a pre-codified legal system.

The historical-legal method is employed to reconstruct the evolution and transformation of legal ideas, principles, and institutions related to freedom of speech in nomadic Kazakh society. This approach enables the identification of the genesis, adaptation, and continuity of the legal norms governing verbal expression, dispute resolution, and mechanisms of social regulation. Through the examination of archival materials, oral traditions, and historical narratives, the study traces how the institution of the *biys* (traditional judges) and the principle of *sozge toqtau* emerged as instruments of justice, persuasion, and moral authority. The historical-legal analysis also contributes to understanding how these pre-modern oral legal practices influenced the development of Kazakhstan's modern legal consciousness and the formation of national jurisprudence.

The comparative-legal method is applied to examine freedom of speech as both a legal and an ethical construct by comparing Kazakh customary law (*adat*) with analogous legal traditions, particularly those found in Mongolian, Turkic, and Islamic customary law systems. This comparative perspective enables the identification of universal patterns of oral legal regulation alongside culturally specific characteristics of Kazakh legal consciousness. The analysis reveals how the oral tradition of *adat* served as a functional equivalent of codified law, ensuring justice, reconciliation, and social harmony. Furthermore, the comparative-legal method establishes conceptual parallels between Kazakh *adat* and broader international doctrines of customary law and restorative justice, positioning the Kazakh legal heritage within a wider civilizational and jurisprudential context.

In synthesis, these two methods — historical-legal and comparative-legal — provide a multidimensional perspective on freedom of speech as both a cultural phenomenon and a legal institution. They highlight the continuity of legal thought, the normative power of the spoken word, and the enduring relevance of traditional oral practices in shaping Kazakhstan's national legal identity and system of values.

### **Results and their discussion**

The uniqueness of the Kazakh law lay in the fact that, having been raised within the framework of the nomadic civilisation, it embodied many valuable features, human dreams, and the humanity of that epoch. In this plane, it can and must occupy, by right, a worthy place in the world of historically significant legal systems.

Kazakh law also excels in being guided in its foundations by common legal standards and institutions, having been formed and developed as though in a «free» zone and, by virtue of this, having absorbed more peaceful, naturally steady principles of the nomadic civilisation. In this plane, we can say, that it had defined in many respects the epoch on a substantial part, in the womb of which its frameworks were formed and had outgrown.

One of the most invaluable cultural and historical legacies passed down to future generations from the depths of centuries marked by momentous and often traumatic events in the life of the Kazakh people and society is the power of the word — *Soz kúdireti* -the authority of speech. This phenomenon, deeply rooted in the national consciousness, emerged as a vital component of the Kazakh people's lived historical experience and legal-cultural identity.

The Kazakh people, who valued the word as deeply as their own dignity, expressed their national greatness, sense of statehood, generosity, moral upbringing, wisdom, talent, and philosophical depth through the beauty and structure of their speech. For the Kazakh, no other force held greater meaning than the spoken word—it conveyed emotion, intellect, sorrow, and subtle inner truths. The power, authority, and final word in any matter were often vested in speech itself.

Even in ancient times, the Kazakh tradition upheld profound respect and submission to eloquent, meaningful speech. A striking illustration of this is the societal norm wherein the value of a statement was judged not by the speaker's age or status, but by the content of what was said: «In Kazakh culture, even in ancient times, reasoned and meaningful speech commanded reverence. Whether it was spoken

by a six-year-old child or a sixty-year-old elder, the message not the messenger was what mattered most» [7, - p. 14].

In Kazakh society, the essence and power of the spoken word found its highest expression in the art of oratory. Among all aspects of the nation's spiritual culture, verbal art—particularly the tradition of eloquence occupied a special place, representing the most developed and refined domain of intellectual expression.

According to researchers and theoretical scholars of Kazakh oral literature, traditional Kazakh oratory is generally classified into three major categories: sheşendik tolgau (philosophical-ethical reflections), sheşendik dau (forensic or judicial speech), and sheşendik arnau (dedicatory or ceremonial addresses).

These forms of oratorical speech played a significant role not only in cultural and aesthetic life but also in the legal system of traditional Kazakh society. They functioned as practical legal tools, influencing dispute resolution, social regulation, and the articulation of customary legal norms.

Leading Kazakhstani legal scholars have emphasised the intrinsic connection between legal culture and the art of speech in Kazakh society. Z. Kenzhaliev, in his comprehensive research on the legal traditions of the Kazakh steppe, argued that legal culture and oral expression were not merely coexisting phenomena, but formed a deeply integrated and mutually reinforcing system. He notes that: «In the Kazakh steppe, legal culture was inextricably linked with the art of speech. These two layers of social life—law and oratory—existed in a state of mutual interdependence, inseparable from one another. They developed in close internal harmony, much like two halves of a whole, growing and evolving side by side» [2, - p. 48].

This perspective supports the idea that customary law in Kazakh society did not function solely through rigid norms or institutional enforcement, but through a dynamic process of oral negotiation, ethical reasoning, and public persuasion. The authority of legal decisions rested not only on the norms themselves, but on the persuasive power, moral clarity, and cultural resonance of the words used to express them. Thus, the legal function of speech was not incidental but foundational to the operation and legitimacy of law in the nomadic Kazakh context.

Thus, the development of legal speech culture and the articulation of speech as a legal instrument in Kazakh society can be traced back to the tradition of oratory, particularly to the genre of sheşendik dau—judicial or forensic oratory. Scholars of Kazakh national literature emphasize that sheşendik dau reflects the customary law practices of the Kazakh community, functioning as a means of regulating both material and moral disputes.

Accordingly, it is reasonable to consider that Kazakh customary law comprises not only unwritten norms but also a body of proverbial and authoritative expressions intended to govern interpersonal relations within society. When such norms were violated, the community expected restitution or judgment through oral legal procedures, often facilitated by the Biis.

One of the defining features of legal culture in nomadic Kazakh society was the preservation, transmission, and application of legal principles and categories through poetic and rhetorical forms. The dissemination and enforcement of these legal norms occurred orally, serving as both a communicative and regulatory mechanism among the people.

In Kazakh society, the transformation of freedom of speech from a cultural tradition into a legal category and its institutionalization as a core legal mechanism was significantly shaped by the influence of the Biis, traditional judges and orators. The Biis played a pivotal role not only in resolving disputes but also in setting legal precedents through the persuasive and ethical power of the spoken word. Their decisions, often delivered in the form of eloquent and reasoned speech, were rooted in customary law (adat) and reflected the community's moral values and legal expectations.

By legitimizing public speech as a means of justice, the Biis contributed to the legal recognition of freedom of expression as a normatively binding force. Their rulings demonstrated that the authority of law was not derived from coercion or formal codification but from the reasoned articulation of fairness, consent, and social equilibrium. Thus, the legal culture of nomadic Kazakh society elevated freedom of speech to the status of a practical, enforceable legal instrument embedded in everyday governance and community life.

A bey-judge was free in the manifestation of his acts and convictions. At the same time, above him there was «an invisible public eye» - public opinion, representing a real force, more capable and influential, than higher powerful authorities.

The other main specific of the Kazakh judge-biy is his spirituality; it means that he admits the primacy of the spiritual essence in considering a case before his material essence. Moreover, he leads by moral principles of «conscience». They mostly decided disputes and disagreements, maintaining reconciliation among the sides and between them, fostering unity within and in the spheres of community, and regarding the necessity of eradicating not only private but also social defects.

In Kazakh society, the fundamental authority of judicial decisions rendered by the biys stemmed from their grounding in prevailing religious beliefs, national customs, and the socio-normative foundations of customary law. The persuasive power of the biy's word derived from this normative-cultural context, and its legitimacy was recognised precisely because it reflected the community's moral and legal consciousness.

According to the norms of Kazakh adat law, if an individual refused to yield to reasoned and dignified speech, and instead persisted in prolonging a dispute through meaningless or provocative rhetoric, specific sanctions were applied. These included the imposition of fines and other corrective measures intended to restore rational discourse and encourage resolution through wisdom and social harmony.

In his scholarly research, S.Özbekuly addresses the critical role of oratorical culture in the development of legal consciousness during the early stages of state-legal formation in Kazakh society. According to his analysis, the culture of persuasive, morally grounded speech, central to the biys' adjudication practices, laid the foundation for the emergence of indigenous legal ideas. These speech-based precedents, rooted in ethical reasoning, societal consensus, and adat norms, functioned not only as dispute-resolution mechanisms but also as proto-legal formulations that shaped public perceptions of justice, legitimacy, and governance. S.Özbekuly contends that these precedents should be viewed not merely as rhetorical performances but as structurally significant legal acts that influenced the formation of national legal traditions. This perspective allows for a deeper understanding of how oral traditions and performative justice contributed to the construction of legal norms in nomadic societies lacking codified law systems [8].

Another innovative contribution of the *Bii*s to the development and refinement of the customary legal system was the incorporation of the principle of «submission to wise speech» (*sozge toqtau*) as a foundational element of the Bii court's philosophy and judicial process.

In the Arabic-Persian dictionary published in Kazakh, the meaning of the word «principle» (қағида/қағедә) is given as a position, rule, general discipline, law, regulation, custom, or tradition. In this sense, a principle functions as a source of legal regulation of social relations. Principles constituted the most important and foundational norm within the system of Kazakh customary law [9].

In Kazakh society, where oral tradition and ethical reasoning played a central role in legal culture, both the speaker and the audience were held to high standards of intellectual and moral discernment. The saying “Only the shameless will not yield to wise words” reflects the expectation that meaningful speech must command respect, while listeners must also approach it with discernment and reverence. As another proverb states: “A well-chosen word may halt a person, just as a rough road may slow a rider”, implying that truth, when eloquently expressed, is indisputable and compelling. In a legal environment lacking formal codification, investigative institutions, or modern jurisprudential structures—as was the case in the nomadic Kazakh steppe—justice relied on the authority of truth and the integrity of the Bii. Even so, there were undoubtedly moments when a Bii, guided by ancestral law and steppe justice, hesitated or felt moral ambiguity in delivering a verdict, reflecting the human complexity of oral justice.

A discerning Bii (judge), who understood the value and weight of words, would not hesitate to concede to a well-reasoned and just argument. In traditional Kazakh legal discourse, this was referred to as “pausing” or “yielding” (*kidiru*)—not as a sign of defeat, but as an appeal to justice and fairness.

Such an act elevated the Bii's moral standing, increased their authority among peers, and earned the respect of the community.

Yielding to truth was seen as a mark of integrity, not weakness. In contrast, a Bii who ignored valid reasoning and continued to speak aimlessly—believing that eloquence alone justified their position—was viewed not as a wise jurist, but as a verbose and ineffectual speaker, lacking both judgment and ethical grounding. Thus, in Kazakh customary law, rhetorical restraint and the ability to acknowledge sound arguments were considered essential virtues of just leadership.

In Kazakh society, yielding to a just and appropriately expressed statement—regardless of the speaker's social status, title, or influence—was considered a moral virtue, often equated with courage and integrity. Recognising the truth and publicly accepting it, even when it challenged authority or personal position, was viewed as an expression of deep respect for justice and wisdom.

This tradition was not unique to Kazakh society. In ancient Rome, eloquent and reasoned speech was also held in high regard. The public and political life of the Roman Republic actively fostered the development of oratory as a central element of civic engagement. Roman rhetorical culture, in turn, was profoundly influenced by Hellenistic Greek traditions, which shaped its aesthetic, philosophical, and argumentative foundations [10].

In Kazakh society, the emergence and preservation of legal principles and norms among the people were closely linked to the unique culture of verbal expression. In the public consciousness, the development of such standards and principles was perceived as the emergence of “ancestral words” or “exemplary speech.” The denial or rejection of these legal principles was regarded as equivalent to a breach of the law.

The Kazakh customary legal system, which emerged within a nomadic society, is distinguished by the special status of the spoken word as both a cultural and legal instrument. The concept of “the power of the word” reflects not only the communicative function of language but also its deep-rooted regulatory role in dispute resolution, social cohesion, and the affirmation of moral authority. This tradition found its most refined expression in the institution of the bii—a judge-orator who resolved disputes based on wisdom, precedent (salttama), and the community's consensus.

Similar reverence for oral expression is observed in the Islamic legal system, particularly in its classical and pre-codified periods. In Islamic jurisprudence (fiqh), oral testimony (shahada), oaths (qasam), and verbal contracts (aqd) carry legal significance and serve as decisive elements in adjudication. The Qur'an itself emphasizes the moral responsibility of truthful speech and the role of consultation (shura) in community decision-making.

While both systems value orality, Kazakh law elevates the performative and reconciliatory aspect of speech. The bii was expected not only to adjudicate but to reconcile parties through eloquence, parables, and ethical persuasion—anchored in traditions such as bi's word is law (“бидің сөзі – заң”). In contrast, Islamic law emphasises textual authority (Qur'an, Hadith, ijthihad) and formal procedures, even though oral pronouncements often have binding effect (e.g., talaq in family law).

The Kazakh emphasis on speech as law demonstrates a unique model of jurisprudence in which legitimacy derives from communal respect, rhetorical competence, and moral standing, rather than from written codes or divine revelation alone. This comparative analysis reveals how Kazakh customary law, while sharing Islamic moral foundations, developed a localised legal identity in which the spoken word held sacred and sovereign legal weight.

In traditional Kazakh society, the concept of “sozge toqtau” (yielding to the word) was a well-established legal and ethical principle. As a mechanism for resolving complex and contentious disputes, it functioned as a foundational norm within customary law. The essence of this principle lay in the voluntary and conscious recognition of justice, free from coercion or external force. The act of yielding to a just and wise word was not perceived as weakness, but as a demonstration of moral integrity and rational judgment. Conversely, refusal to submit to well-grounded speech—particularly when it conveyed truth and fairness—was interpreted in Kazakh society as a sign of diminished personal ethics and a lack of respect for communal values. Thus, sozge toqtau served not only as a

conflict-resolution tool but also as an indicator of one's adherence to the moral and legal codes of nomadic steppe culture.

The legal significance of the principle of “sozge toqtau” (yielding to the word) in Kazakh society originates from the unique and enduring cultural status of the art of speech within the nomadic worldview. In traditional Kazakh society, oratory and verbal expression were not merely forms of communication but were regarded as central indicators, indeed the quintessence of the society's historical and cultural development. As the spiritual core and moral compass of the community, speech functioned as a powerful social force, shaping public consciousness and guiding legal, political, and interpersonal relations.

Within this framework, the “sozge toqtau” principle gained prominence in the legal system as an embodiment of moral justice and ethical reasoning. Its foundational value lies in the voluntary recognition of truth and fairness—free of coercion or compulsion. It served as a mechanism for achieving justice through mutual understanding, public acknowledgement, and respect for the power of reasoned speech [2, - p. 67].

In traditional Kazakh legal culture, the principle of sozge toktau—literally "stopping at the word" or yielding to persuasive speech—held deep normative and moral significance. This principle was not merely a cultural courtesy, but a legal mechanism that structured dispute resolution, consensus-building, and the preservation of public order. In international or intertribal negotiations, sozge toktau was also employed as a powerful legal-institutional tool for peaceful diplomacy. A prominent historical example is the case of the legendary Kazakh bi (judge and orator) Kazybek Bi, who, through the force of his eloquent and morally authoritative speech, managed to halt military confrontation and secure a peaceful agreement with the Dzungar khan. His persuasive address, grounded in ethical reasoning, legal principles, and cultural wisdom, exemplified the use of oral argumentation as a legitimate legal technique in international relations.

This practice reflects a distinctively nomadic legal philosophy in which speech itself was considered binding, truth-bearing, and norm-creating. As such, sozge toktau functioned as an early form of soft law—non-coercive yet normatively potent—and played a similar role in maintaining order and diplomatic balance to that of formal treaty law in modern international legal systems.

Thus, the Kazakh customary legal approach demonstrates that oral agreements, when embedded in shared cultural and ethical codes, may have the force of law even in the absence of formal codification. The example of Kazybek Bi remains a compelling testament to the role of legal rhetoric and moral authority in securing interethnic peace and legal recognition through verbal consent.

«We are the Kazakh people — a nomadic nation who herds livestock, yet we have lived peacefully, without provoking others. In order to preserve the prosperity of our land and prevent enemies from invading our borders, we adorn our spears with feathers as a symbol of vigilance.

We are a people who any foe has never subdued, and we do not allow anyone to speak above us. We are loyal to our friends and honor the salt and bread we share. When rulers have become arrogant, we have known how to humble their courts.

A son is not born to become a slave, nor a daughter to become a concubine. We are a people who will not stand by and watch our children be taken captive.

If you are a Kalmyk, then we are Kazakh — we have come to confront you. If you are iron, we are coal — we have come to melt you.

We, the children of the Kazakh and Kalmyk nations, have come to engage, not as strangers but to establish recognition. If you reject mutual understanding, we are prepared to fight.

If you are a leopard, I am a lion — I have come to challenge you. Like a freshly trained steed, I am ready to race. Like thick yellow resin, I have come to cling. So either declare your peaceful terms properly, or name the battlefield where we shall contend. Thus, the leader of the Dzungar state found himself compelled to yield to the compelling and persuasive speech of Kazybek Bi, thereby acknowledging the authority and weight of verbal discourse as a diplomatic and legal instrument in the context of traditional Kazakh jurisprudence»

This passage demonstrates the sophisticated use of oral legal rhetoric as a diplomatic tool in the traditional Kazakh legal system. It reflects values of: Sovereignty and honor as legal and ethical categories; Verbal negotiation as a substitute for war; Cultural diplomacy grounded in metaphor, symbolism, and ancestral pride. Such rhetorical practice served not only as political discourse but also as a customary legal norm, legitimising peaceful coexistence and lawful resistance [11].

The principle of “sozge toqtau” (yielding to reasoned speech) primarily functions as a gesture toward reconciliation. At its core, it reflects the mutual interest of disputing parties in reaching consensus, as there can be no eternal enmity. Even major historical conflicts—such as the Hundred Years' War between the English and the French—eventually ended in peace. Likewise, the Kazakh *bi* (traditional judge) served as a mediator rather than an instigator of division. His role was to foster harmony, not discord.

This conciliatory function of the *bi* is also reflected in Russian imperial sources, which described the unique authority of Kazakh judges as follows: “The *bi* combines the rights of a *qadi* (Islamic judge), a *mullah*, and in some ways the power of a sultan, in that neither the type of claim nor the severity of the offense prevents him from rendering judgment. His primary duty is to restore and maintain peace in the auls (villages) by promptly addressing complaints, thereby preventing the escalation of conflicts and resolving disputes at their inception, before they grow into enmity or prolonged quarrels” [12].

In traditional Kazakh society, resolving disputes through eloquence and oratory, rather than by sword or spear, was regarded as the highest manifestation of human dignity and morality. The Kazakh people valued resolving conflicts through reconciliation to prevent senseless bloodshed and large-scale violence. Speech, particularly wise and persuasive speech, was seen not merely as a means of communication, but as a powerful legal and ethical instrument.

When a party accepted the reasoning and justice of the spoken word—toqtau sozge—they would yield not out of weakness, but out of conscious acknowledgment that the truth had been spoken. Such acceptance was often followed by a ritual handshake, symbolising mutual agreement and the resolution of the dispute in accordance with steppe traditions. In this way, the *biis* (traditional judges) reinforced peace and order through customary legal mechanisms rooted in dialogue, mutual respect, and the supremacy of the spoken word.

Another significant aspect of the *sozge toqtau* (yielding to reasoned speech) principle in nomadic Kazakh society was its dual function: not only did it ensure equality of speech, but it also acted as a legal boundary to prevent the abuse of such freedom. Members of society widely supported the principle because it preserved the core ethical values—honesty, dignity, and moral purity—central to communal life.

While speech equality (*soz ten'digi*) was recognized as a fundamental right, the *sozge toqtau* norm served as a protective legal mechanism to prevent this right from degenerating into baseless conflict or verbal anarchy. Thus, it both safeguarded and restrained the exercise of speech within culturally and morally acceptable limits. This made *sozge toqtau* one of the most legal instrument for preventing unnecessary disputes under the guise of free speech.

«According to the public consciousness of nomadic society, the civil honor, dignity, and personal integrity of the disputing parties had to remain securely protected at all times. One of the key societal and legal mechanisms developed to uphold these human values was the voluntary recognition of one’s defeat at any stage of the dispute — a principle known as *sozge toqtau* (yielding to a reasoned word). Through this mechanism, any member of society involved in a legal dispute could preserve their civic reputation, moral honor, and dignity from being tarnished or diminished. In this way, individuals were able to maintain their moral standing and remain at the highest peak of ethical and honorable behavior within their community» [2, - p. 69].

Even the defeat of a true *bii* (judge) was dignified. In valuing the power and significance of the spoken word, *biis* who recognized the merit in another’s argument and accepted it (*sozge toqtau*) not only enhanced their own personal moral stature but also elevated their social authority and public reputation. In nomadic Kazakh society, where personal honour was highly regarded, even those who displayed arrogance or pride could be restrained and corrected by the wise and weighty words of a

respected *bi*. This demonstrated the role of ethical speech as both a tool for justice and a measure of individual virtue.

### Conclusion

In nomadic Kazakh society, moral integrity and ethical values were held in the highest regard. These principles were considered not merely social ideals but essential and inseparable components of life itself. When individuals strayed from ethical norms or committed errors, the principle of *sozge toqtau* (yielding to a just word) played a pivotal role in guiding them back to moral conduct. For those capable of understanding the deeper meaning of words, a wise and timely utterance would immediately evoke a sense of personal responsibility, prompting them to refrain from inappropriate behaviour. This reflects the vital role of speech as both a moral compass and a tool of restorative justice in the nomadic worldview [13].

The principle of *sozge toqtau* was deeply rooted in mutual trust. The Kazakh people, who valued sincerity and honesty in social relations, placed great confidence in the integrity and fairness of the *biis* (traditional judges). Entrusted with public confidence, the *biis* strived to uphold justice through words rather than coercion or force. Resolving disputes and determining human fate through the power of speech reflected not only the spiritual purity and moral consciousness of the people, but also the sacred reverence they held for the spoken word. In this context, yielding to a just word symbolised a high level of public trust and demonstrated the legal and cultural significance of speech in traditional Kazakh society. In exploring the legal significance of the power of the word in Kazakh society, legal scholar Z. Kenzhaliev emphasizes: “The power of speech in Kazakh society was so immense that it eventually acquired the status of a legal principle. Hence, legal norms and principles were often executed and internalized in the form of expressions such as ‘keeping one’s word,’ ‘fulfilling promises,’ ‘standing by one’s word,’ and ‘not breaking one’s vow.’ The Kazakh saying, ‘A spoken word is like an arrow released,’ not only reflects the high regard for speech in the nomadic culture, but also warns against treating words lightly. It further highlights the influential force of the spoken word—its capacity to shape human behavior, guide actions, and affect patterns of conduct”. This observation underlines how deeply entrenched verbal commitments were in the moral and legal consciousness of Kazakh society, serving as mechanisms of social regulation and legal responsibility in the absence of written codification.

In the traditional legal system of the Kazakh nomadic society, the spoken word possessed a unique legal and cultural authority. Speech was not merely a means of communication but a fundamental legal instrument for regulating social relations, resolving disputes, and ensuring justice. The principle of “*Toqtau sözge*” (submission to the word) symbolized the supremacy of reason over force and reflected the depth of legal consciousness and moral responsibility in the steppe society.

This study reveals the unique legal and cultural function of speech as a normative instrument in the traditional nomadic Kazakh legal system. The research demonstrates that the principle of *sozge toqtau* operated not merely as an ethical value but as a binding legal mechanism of social regulation and restorative justice. By analyzing the moral authority of the *biis* and the role of verbal commitments in dispute resolution, the study identifies the spoken word as a foundational source of customary law (*adat*). The research introduces a new interpretation of the Kazakh oral legal tradition as an early form of democratic and dialogical governance, where justice was achieved through wisdom, consensus, and the power of speech rather than coercion.

The institution of the *Biis* (customary judges) and the tradition of oratory played a decisive role in sustaining justice and public trust, shaping a legal culture grounded in wisdom, consensus, and eloquence. In the absence of codified written laws, oral legal norms – embodied in powerful, meaningful speech – served as binding rules governing conduct and upholding social order.

Thus, the power of speech and its application as a legal mechanism represents a distinctive feature of the Kazakh legal heritage, highlighting a democratic and culturally rich model of legal governance. This legacy remains relevant in understanding the evolution of legal traditions and their role in modern legal consciousness.

The findings of this study confirm that the spoken word in nomadic Kazakh society possessed a dual legal and cultural significance, functioning both as a mechanism of moral regulation and as a binding norm within customary law. The principle of *sozge toqtau* exemplified the fusion of ethical and legal consciousness, reflecting a model of justice based on dialogue, wisdom, and consensus rather than coercion. This interpretation aligns with the UNESCO framework for safeguarding intangible cultural heritage, which recognises oral traditions as vital components of cultural identity and social order (UNESCO, 2023) [14]. It also resonates with the *State of the World's Indigenous Peoples, Vol. V* report by the United Nations Department of Economic and Social Affairs (UN DESA, 2021) [15], emphasizing the ongoing relevance of customary and traditional justice systems within global legal pluralism. Within this context, Kazakh oral law can be viewed as part of the broader international discourse on intangible legal heritage and indigenous jurisprudence, underscoring its significance for contemporary legal culture and sustainable development.

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## КӨШПЕЛІ ҚАЗАҚ ҚОҒАМЫНДАҒЫ СӨЗ БОСТАНДЫҒЫ ДАУЛАРДЫ ШЕШУДІҢ ҚҰҚЫҚТЫҚ ҚҰРАЛЫ РЕТІНДЕ

### Аңдатпа

Мақалада көшпелі қазақ қоғамындағы ауызша сөйлеу өнерінің компоненті ретіндегі сөз бостандығының дауларды шешу мен қоғамдық тәртіпті сақтау ісінде шешуші рөл атқарған құқықтық қызметі қарастырылады. Жазбаша заңнаманың болмау жағдайында ауызша дәстүр мен әдет-ғұрып нормалары құқықтық жүйенің негізін құрады. Бұл ретте сөз тек коммуникация құралы ғана емес, сонымен қатар заңдық тұрғыда танылған реттеуші функцияны да атқарған.

Шешендігімен әрі моральдық беделімен танылған билер институты (дәстүрлі судьялар) даулардың күшпен емес, сендіру, әділеттік және тараптардың келісімі арқылы шешілгенін көрсетеді. Сөз бостандығы қоғамдық жиындарда ашық талқылауларға, пікір теңдігіне және халықтың шешім қабылдауға қатысуына мүмкіндік берді.

Сөз бостандығын қолдануда сөзге тоқтау қағидасының құқықтық маңызы дауды шешуде қаншалықты маңызды екендігі қарастырылған. Осы механизмнің қоғамдық өмірде жүзеге асуына ықпал етуші негізгі тұлғалар билер болған. Билердің дауды шешуде басшылыққа алған негізгі татуластыру, біріктіру мақсаттарына қол жеткізуде осы сөзге тоқтау қағидасының көмегі зор болды. Көшпелі қазақ қоғамындағы сөз құдыретінің сипатын

сөз бостандығы арқылы осындай құқықтық қағидалардың көмегімен қамтамасыз етіліп отырғандығынан байқауға болады.

Зерттеуде тарихи деректер, құқықтық дәстүрлер мен ауызша тәжірибелер талдана отырып, сөз бостандығы қазақ қоғамында әрі мәдени, әрі құқықтық мәнге ие болғаны дәлелденеді. Сонымен қатар, бұл дәстүрлердің Қазақстанның қазіргі құқықтық болмысын қалыптастырудағы және рухани мұрасын сақтаудағы маңызы атап өтіледі. Мақаланың мақсаты - көшпелі қазақ қоғамындағы сөз бостандығының құқықтық және реттеушілік функцияларын ашу, билер институтын шешендік өнер арқылы дауларды сотқа дейін шешу механизмі ретінде талдау және қазақтың әдет-ғұрып құқығы жүйесіндегі «сөзге тоқтау» принципінің заңдық маңызын негіздеу болып табылады.

**Негізгі сөздер:** сөз бостандығы, көшпелі қазақ қоғамы, дауларды шешу, әдет құқығы, билер, құқықтық мәдениет, демократиялық құндылықтар.

## СВОБОДА СЛОВА В КОЧЕВОМ КАЗАХСКОМ ОБЩЕСТВЕ КАК ПРАВОВОЙ ИНСТРУМЕНТ РАЗРЕШЕНИЯ СПОРОВ

### Аннотация

В статье рассматривается правовая функция свободы слова как компонента устного речевого искусства в кочевом казахском обществе, где она играла ключевую роль в разрешении споров и поддержании общественного порядка. В условиях отсутствия письменного законодательства устные традиции и нормы обычного права составляли основу правовой системы. В этом контексте слово выполняло не только коммуникативную, но и юридически признанную регулятивную функцию.

Институт биев (традиционных судей), известных своей красноречивостью и моральным авторитетом, демонстрирует, что споры решались не посредством принуждения, а через убеждение, справедливость и согласие сторон. Свобода слова обеспечивала открытость общественных обсуждений, равенство мнений и участие народа в принятии решений.

В статье также рассматривается юридическое значение принципа «сөзге тоқтау» (уступка справедливому слову) как важного механизма разрешения конфликтов. Основными носителями и реализаторами данного механизма выступали бии, стремившиеся к примирению и укреплению общественного согласия. Анализ исторических источников, правовых традиций и устной практики показывает, что свобода слова в казахском обществе имела как культурное, так и правовое значение. Подчеркивается её роль в формировании современной правовой идентичности и сохранении нематериального наследия Казахстана. Цель статьи — раскрыть правовую и регулятивную функции свободы слова в традиционном казахском обществе, проанализировать институт биев как механизм досудебного разрешения споров через искусство красноречия и обосновать юридическую значимость принципа «сөзге тоқтау» в системе обычного права казахов.

**Ключевые слова:** свобода слова, кочевое казахское общество, разрешение споров, обычное право, бии, правовая культура, демократические ценности.

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