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Regulating Religion in Post-Soviet Central Asia: Some Remarks on Religious Association Law and 'Official' Islamic Institutions in Tajikistan

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Introduction

After independence in 1991 the five former Soviet Republics of Central Asia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, adopted constitutions which theoretically established a democratic system with respect to human rights and the principle that legitimation should be achieved by popular vote. However, the difficult transformation from a one-party regime to a formally pluralistic system, the reshaping of fragile national identities, the lack of regional cooperation as well as the catastrophic social and economic decline during the 1990s obstructed the development of democratic governance and especially the rule of law.

Today Central Asia is ruled by authoritarian presidential systems and the political elites' perception of the state-citizen relationship is still rooted in Soviet imaginations of a strong state regulating and controlling social relationships and behavior — regardless of the limited resources at their disposal.[1] The public expression of religious faith, especially Islam, initially emerged largely without government interference and as a vital part in the formation of local identities. The political elites — caught in blurred Soviet concepts of atheism and secularism — had little imagination about how to deal with Muslim associations entering the public sphere and challenging their nationalist conceptions of how to reshape Central Asia. Although all Central Asian presidents embraced selected Muslim rites de passages (such as the hajj) publicly, they resorted soon after independence to similar methods the Soviet Union had applied to control and contain the 'Islamic Revival' in Central Asia.[2]

First, the Central Asia republics inherited 'official' Islamic institutions already established during Soviet times in order to recruit and control a loyal body of religious personnel. Second, religious association laws[3] were drafted in order to regulate (and restrict) the activities of religious associations. The five Central Asian republics all embarked on this strategy, however with variations. Turkmenistan and Uzbekistan applied by far the most repressive regime on religious associations. Kazakhstan and Kyrgyzstan experienced only a modest religious revival in the 1990s but both are reconsidering their position in recent years due to increasing activities of Christian missionary groups and Muslim associations. Compared to its neighboring countries, Tajikistan was less prepared for independence in 1991. Within a year of the declaration of independence, the struggle for power and resources between an inept neo-communist government, a heterogeneous opposition and strong centrifugal regional forces resulted in complete state failure and a devastating civil war. While groups on both sides used Islamic slogans to mobilize support, the Islamic Renaissance Party of Tajikistan (IRPT) emerged as one of the major forces within the opposition and prompted some observers to consider the conflict erroneously as a secular-religious one. In 1997 the government and the United Tajik Opposition finally agreed on an uneasy peace accord settling the conflict and creating a unique political situation in post- Soviet Central Asia by including the IRPT in the government. However, in recent years the government of Emomali Rahmon(ov) has consolidated its power and has become more assertive towards religious associations and the IRPT. Clear indications for this assertiveness are changes in the administration of 'official' religious institutions and the draft law 'On Freedom of Conscience and Religious Organizations/Associations' which is supposed to replace the 1994 'Law on Religion'. The following paper does not intend to provide a detailed

1 D. Lewis, *The Temptations of Tyranny in Central Asia*, New York, 2008.

2 A. Khalid, Islam after Communism. *Religion and Politics in Central Asia*, Berkeley, 2007.

3 The term "religious association laws" is used in this context as a body of law dealing with the broader establishment/registration of religious associations as legal entities. Cf.. W. C. Durham, Facilitating Freedom of Religion or Belief through Religious Association Laws, in: T. Lindholm, W. C. Durham and B. Tahzib-Lie (eds), *Facilitating Freedom of Religion and Belief: A Deskbook*, Leiden, 2004, pp. 312-406.

comment on the legal body of religious association law — this has been done with great expertise already —[4] or on Tajikistan's compliance with its international commitments,[5] but it rather looks at the political context in which 'official' Islamic institutions are utilized and the law is implemented.[6]

Control of and Interference in Religious Affairs: The Soviet Legacy

The Soviet Union with her specific Weltanschauung was at least until the late 1930s a state that forcibly insisted on freedom from religion rather than freedom of religion. In the 1940s the USSR gradually shifted to a highly restricted accommodation with religion(s) by establishing official religious institutions for the major beliefs in the USSR. Islamic affairs in Central Asia were resolved by Central Asian Muslim Spiritual Directorate (Sredneaziatskoe dukhovnoe upravlenie musul'man, SADUM) in Tashkent. Under the authority of the directorate, a small number of loyal 'ulama (Islamic scholars) were trained and permissible religious teachings disseminated (the Koran was considered as subversive literature until 1991). The intrusive character of the SADUM in internal religious affairs and its close relationship with the KGB made it a highly unpopular institution among Muslims in Central Asia. The Soviet leadership oscillated between open hostility and accommodation towards religious associations and therefore never developed a consistent strategy for her religious institutions. The SADUM trained a small body of loyal Islamic personnel and operated a limited number of mosques throughout the region, but its resources were insufficient to contain and control informal Islamic networks which emerged already in the 1940s but gained latitude during the Soviet invasion of Afghanistan.[7] These informal and heterogeneous networks of local Islamic authorities challenged the official structures and enjoyed significant popularity among believers in Central Asia, although the anticipation of two separated spheres ('official' and 'popular' Islam) does not necessarily reflect the complex realities of Islam in Central Asia.

Already before the dissolution of the Soviet Union 1991 the SADUM was transferred on the republican level either as a muftiyyat (in Kyrgyzstan) or a qaziyyat like in Tajikistan.[8] Although the new constitution explicitly stipulated that Tajikistan is a strictly secular country and guarantees the freedom of belief, her government continued and continues to interfere in internal religious affairs by retaining structures similar to SADUM and by imposing a highly restrictive and arbitrary religious association law.

4 R. C. Blitt and W. C. Durham, Analysis of the Republic of Tajikistan's Draft Law 'About Freedom of Conscience and Religious Unions' (The University of Tennessee College of Law Legal Studies Research Paper Series, #26), 2008 (http://ssrn.com/abstract=1112193) and OSCE/ODIHR, Comments on the Draft Law of the Republic of Tajikistan 'On Freedom of Conscience and on Religious Associations'; Warsaw (Opinion-Nr.: REL-TAJ/063/2006), 28 April 2006.

5 Tajikistan is a participating state of the Organization for Security and Cooperation in Europe (OSCE) and has acceded 1999 to the United Nations International Covenant on Civil and Political Rights (ICCPR).

6 The religious association law deals not only with Islamic but also with Christian – predominately missionary – associations. However, a discussion of Christian associations in Tajikistan is beyond the limited scope of this paper.

7 J. Anderson, 'The Council for Religious Affairs and the Shaping of Soviet Religious Policy', in Soviet Studies, 1991, 43:4, pp. 689-710 and Y. Ro'i, *Islam in the Soviet Union*, New York, 2000, pp. 162ff.

8 *Qazi* and *mufti* describe Islamic religious authorities who supervise the implementation of Islamic law. With the emergence of centralized political entities in the Middle East (for instance the Ottoman Empire) and especially the modern nation states the *qaziyyat* or *muftiyyat* became hierarchical institutions administering "Islam".

From the Qaziyyat to the High Council of 'Ulama'

On the eve of independence Tajikistan's qaziyyat maintained a degree of independence and supported the legal registration of the oppositional IRPT and called on the government to introduce Muslim festivities as public holidays as well as opening the public space for religious expressions. However, with the Popular Front (which later became Rahmon's government) gaining the upper hand in the conflict the qaziyyat was successively dismantled and replaced by the High Council of religious Scholars ('Ulama') of Tajikistan. Although the High Council maintained an educational institution and was theoretically responsible for the appointment of leading religious personal (such as the imam khatib of the main Friday mosques)[9] it remained a tame and almost invisible institution for almost a decade. Rahmon's regime rather relied on the security agencies and the State Committee for religious Affairs (SCRA) within the Presidential Administration to deal with Islamic associations. The SCRA exercised a high degree of control over the High Council and all major appointments had to be approved by the SCRA in advance. An independent institution only on paper the High Council enjoys almost no influence or respect among the Muslim population and contributed to an even deeper division among the religious authorities in Tajikistan.[10] Since 2006 the government has been reconsidering its control mechanisms. The SCRA was restructured as the Department for Religious Affairs (DRA) within the Ministry of Culture and the High Council's authority was increased by a new attestation procedure for Islamic personnel in mosques and religious schools. Obviously the government intended to give the DRA a more civilian and the High Council a more independent character.[11]However, the DRA maintains a high degree of control over the High Council. In August 2007 the DRA and the High Council decided on formal guidelines and minimum educational qualifications for the attestation of religious personal followed by a controversial attestation procedure which resulted in the expulsion of several nonconformist imams.[12]The government repeatedly interfered directly into internal religious affairs to the point of explicit theological judgments.

The Religious Association Law in Tajikistan

Tajikistan's 1994 'Law on Religion'[13] was drafted during the civil war and 'designed with control in mind […] to use them to create obstacles for religious activities instead of trying to facilitate them.'[14] Although the law stipulates that the state guarantees religious freedom (§5), it allows the state to review the administrative structure as well as the specific beliefs of a religious association. A vague language facilitates an arbitrary interpretation and application of the law, especially regarding the registration process (§14) while several parts contradict each other. Already in 2002 the government started to discuss a new draft of the Law on

9 While the daily prayers are conducted in a five-times-payer mosques (Tajik: *masjidi panj namoz* or *masjidi panjvaqta*), believers gather on Fridays at the local Friday mosque ('*masjidi jome*') where the *imam khatib* (prayer leader) reads the weekly sermon (*khutba*).

10 Interviews conducted in Dushanbe in 2003 and 2004 with representatives of the SCRA. The High Council issued several controversial regulations, for instance it banned women from visiting mosques in August 2004, a decision criticized by several popular religious authorities in Tajikistan.

11 As in the other Central Asian states, the essential body politics in Tajikistan is centered on the presidential administration and not the ministries. The restructuring of the SCRA to the DRA could therefore be interpreted as a move to reduce the SCRA/DRA's profile and increase the authority of the High Council as an ostensible independent institution.

12 F. Najibullah, 'Tajikistan: Authorities Impose Religious Tests on Imams', RFE/RL, 9 August 2007.

13 Qanuni Jumhurii Tojikiston, *Dar borai din va tashkilothoi dinÐ*, Dushanbe: 1994. The law was amended in 1997 on the eve of the peace accord with the United Tajik Opposition and in 1999 in order to allow the Islamic Revival Party to reregister as a political party.

14 Durham, *Religious Association Laws*, p. 332.

Religion less with the intention to improve the law and to make it ompliant with Tajikistan's international obligations, but to further tighten the legal framework for religious associations. In the spring of 2006 the Presidential Administration circulated a draft 'Law on Freedom of Conscience, on Religious Associations and other [religious] Organization'[15] which is supposed to replace the 1994 law in 2008. The coincidence between the circulation of the draft law and the restructuring of the SCRA/DRA is an indication that Tajikistan's government has coordinated its efforts to tighten control over religious associations. However, a review of the draft law supports the previous assumption, that the government is neither interested in genuine improvement that would facilitate the establishment and activities of religious associations. Blitt and Durham in their review point out that 'the Draft Law suffers from a number of overarching flaws […]. Many provisions […] are inconsistent with key human rights provisions of Tajikistan's constitution, and similarly run contrary to Tajikistan's international human rights obligations'.[16]

The draft law is far more restrictive than the 1994 Law on Religion: The registration process has become more complicated, several provisions allow a direct interference into internal religious affairs (including judgment regarding the merits of a religious association), while the language is still vague facilitating an arbitrary interpretation. Until November 2008 the draft law has not been submitted to parliament, instead a second draft has circulated since May 2008.[17] The second draft differs significantly from the previous one. While the 2006 version contains extensive regulations especially for Islamic associations, the recent draft is obviously more concerned about Christian missionary activity in Tajikistan. Nonetheless, the second draft is largely inconsistent and does not consider Tajikistan's international commitments. At present (November 2008) there is no reliable information which draft will be submitted to Tajikistan's parliament and when. The OSCE and ODIHR have tried to aid in the process of drafting the religious association law particularly by providing extensive comments and recommendations.[18] However, the Tajik government and parliament have not engaged in a meaningful dialogue thus far and the entire legislative procedure is conducted in a non-transparent manner limiting the prospects for a broader discussion of the proposed law.

Conclusion

In discussions related to religious association law or 'official' religious institutions in Tajikistan, government representatives frequently refer to the 'War against Terror' and the potential danger of Islamic extremism. The critique of this 'discourse' is not a denial of the legitimate security concerns about the threat posed by militant groups. However, a religious association law might not be an adequate tool to prevent the emergence of extremist groups. Genuinely militant groups would certainly not indicate their unlawful intentions in registration documents or even engage in a registration process. The notorious Hizb ut-Tahrir — considered by all Central Asian governments as one of the most dangerous radical Islamic groups — explicitly rejects any aspirations of working within the legal political and social framework and therefore never applied for formal registration. The present religious association law in Tajikistan with its inconsistencies and violations of international human rights standards result in a disproportionate treatment of law abiding religious groups

15 Cf. the Tajik copy *Dar baroi ozodii vijdon ittihodiaho va digar tashkilothoi dini*, Dushanbe, October 2007.

16 Blitt/Durham, *Analysis*, p. 1.

17 Cf. the Russian copy *O proekte Zakona Respubliki Tadzhikistan 'O svobode sovesti i religioznikh ob'edineniyakh*, without date and place (copy with the author)

18 Blitt/Durham, *Analysis*, passim. In 2003 the OSCE Field Office in Khujand (northern Tajikistan) implemented 23 seminars on law and religion facilitating the dialogue between the representatives of the local government and Muslim associations.

and 'can lead to greater destabilization than the social problems a regime is trying to control in the first place.'[19] Additionally, Tajikistan's government maintains with the High Council of 'Ulama' a religious institution that is highly intrusive into internal Islamic affairs and that has clearly contributed to a deeper division among Muslim communities in Tajikistan. An authoritarian rule by a secular Tajik government, nepotism, endemic corruption, as well as economic, social and political exclusion have created a highly volatile situation, in which a disillusioned generation of Tajik youth might consider Islamic ideas about social equality and justice as a viable alternative to governmental propaganda. Since Tajikistan's government has continuously limited the public space for religious associations and undermined the credibility of 'official' Islamic institutions, this development might generate additional conflicts.

Finally, the developments in Tajikistan are symptomatic for Central Asia. The parliaments of Kyrgyzstan and Kazakhstan passed similar drafts of religious association laws in November and December 2008 respectively. As in Tajikistan, the respective laws passed through parliament quickly and without any substantial discussion among the stakeholders, especially civil society and religious associations. Comments and recommendations by ODIHR were largely ignored in the legislative procedures. At the same time all Central Asian states display an increasing preference for state approved religious structures directly interfering into internal religious affairs. Considering the diversity of Islamic beliefs and practices in Central Asia, this approach could generate further frictions among religious communities.

19 Durham, *Religious Association Laws*, p. 327.

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