

# FOLK LAW IN THE SYSTEM OF POWER OF CENTRAL ASIAN STATES AND THE LEGAL STATUS OF THE RUSSIAN-SPEAKING POPULATION

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Democratic practice in civil societies envisages that there will be an opportunity for the implementation of the norms of the customary laws of ethnic minorities in their everyday life to enable them to achieve their full development. In the new-born Central Asian states there exists an opposite situation. There, at the level of the governmental system as a whole, there is taking place a regeneration of those norms of folk law which are typical of Oriental Muslim societies. At the same time the Russian-language population, being a minority, and having the mentality and behavioural norms approaching those of modern Europe, cannot realize their right to live by their preferred norms according to the principles of civil society.

The social institutions that existed in Central Asia for centuries appeared to be extremely stable because of their combination of flexibility and inner conservatism. In spite of the fact that over time, first under the Russian empire and then under the USSR, Central Asian society changed a lot, these institutions continued to function on a limited scale. After the dissolution of the USSR there appeared a tendency towards their regeneration. This happened in spite of the fact that in the 20th century Central Asia was gradually changing into a poli-ethnic region, mainly at the expense of the immigrant streams originating from Russia and the Ukraine.

During different periods the central (Russian) authorities took varying positions regarding the place and role of the folk law of Oriental society in the system of governmental administration. Under the Tsar's rule the organisation of the administration in the region of Turkestan allowed the different ethnic groups to live separately from one from another. Thus the Slavonic settlers existed separately from the native population. On the local levels there existed in parallel two differently shaped structures of local administration for the native and the Slavonic populations.

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There was self-rule at the level of uni-ethnic communities (in the case of settlements) and clan groups (with the nomads). The regional heads also were elected by the inhabitants from among themselves. Local regions were shaped in such a way that as a rule they consisted of territories inhabited by homogeneous populations.

Under Soviet rule a paradoxical situation appeared in Central Asia. In spite of the official propaganda extolling the ideas of internationalism, and the creation of a unified, planned economy, ethnic communities in fact preserved their interior autonomy. In every group unique formal and informal rules operated to regulate social relations. At the upper levels of power there appeared a peculiar symbiosis of totalitarianism and tradition. The higher governmental posts were unofficially allocated to the representatives of certain ethno-regional or clan elites. On the other hand Soviet power, in carrying out the plans for the industrialisation and urbanisation of the republics of Central Asia, artificially supported in these areas the cultural identity of migrants from Russia, since these plans were implemented by their hands. In the new cities, which were primarily erected and inhabited by the European population, a system of social relations appropriate for industrialising societies was reproduced.

The majority of the native inhabitants of Central Asia have remained rural population, reproducing a traditional and patriarchal mode of life which is archaic in many respects. The urban native inhabitants are mostly newcomers from the rural areas, who preserve strong relations with their previous homes. For a long period migrants from the native rural areas were unable to adapt to the urban mode of life.

The destruction of the totalitarian system of the Soviet Union led to the rupture of the unified ideological and economic space and brought to an end the period when different ethnic communities were able to exist separately. However, the dissolution of the USSR took place at time of a wave of ethno-nationalist sentiment and desire for the erection of national states. In spite of the fact that the principles of a democratic civil society are declared in the Constitutions of the new states of Central Asia, in reality social life in these states is mainly built upon the norms of the customary laws and traditional social relations or their modernized forms.

The leaders of the new independent states of Central Asia made the goal of the 'rebirth of national traditions' the cornerstone of their state ideologies. Beside the development of the cultures of the 'titular nations', these ideologies required that the political context of the 'national philology', based upon the collectivist social traditions, should be taken into consideration in political development, as well as some norms of the Muslim law. It is noteworthy that, in parallel with these ideas, programmes for the democratic development of these states are being worked out,

and there have been were formulated principles of the human rights and the equality of all regardless of ethnic origins. These leaders were realistically hoping that the common people, that is, the majority of the populations, would support the measures of their governments aimed at the official recognition and legalization of widespread, habitual, actually existing social institutions and rules of behaviour.

The turn to neo-traditionalism was also taking place spontaneously, from the bottom, in economically and politically weakened regions such as Tajikistan. Here, as Dr. S. Olimova wrote, the archaisation of society is taking place in the shadow of civil war. The extreme circumstances led the population to turn to strategies of physical survival. At the same time as this naturalisation of the economy, it is possible to observe the revival of traditional community-clan institutions, which were obliged by the weakening of the ruling power to fulfil governmental functions including defence functions.

Certain official functions have been transferred to folk-law institutions. Thus, in Uzbekistan the *makhal* committee is now considered the body of local self-government. In many ways its functions coincide with the duties of the elders (*Akakals*) of the traditional neighbourhood community (*makhjal*). The state has assigned a number of new functions to it, in particular the review of complaints and disputes, and the distribution of grants from the budget. *Makhal* committees even operate in industrially developed multi-ethnic regions, including the city of Tashkent, where formally a *makhal* includes all the inhabitants of the district (a street or a block), regardless of ethnic origin. The official functions of local self-government have been given also to the traditional rural community institutions of Kirgiziya. In that state and in Kazakhstan the old courts have been restored on the basis of steppe law.

The ideas of the 'national traditions' of the new social existence have become the basis of the ruling structures in practice at all levels of power. In the states of the region there has emerged an autocratic type of authority. The leaders at different levels are not elected, but are appointed by higher authorities. At higher levels of power traditional social relations govern in a semi-official way. Persons are appointed to certain positions not on the grounds of their individual professional qualities, but rather on the grounds of their clan affiliation.

It is evident that this policy reflects the interests only of a very narrow part of the ethnic elite, and not of the whole of the 'titular' population. But the majority of the population are rank-and-file people, whose life is built upon custom. They feel themselves a part of the community of tribesmen or neighbours, and do not fully recognize their legal position as individuals, considering the existing traditional social hierarchy as the standard structure. They associate their own security and

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rights with the security and rights of their clan or community. That is why they support by all available means the social promotion of their group. Moreover, these Oriental societies are characterised by overall subordination to the majority or to the elders. When the interests of the group are in issue, it is expected that views and assessments will be worked out which will be accepted by all. Further, there is a strong tradition of charismatisation of the leader. Even among many of the westernised intellectuals from native peoples there is observable a double-facetted mentality, with a notion of civil rights coexisting with a belief in the necessity of respecting patriarchal traditions. Many of the sociologists from the countries of this region are convinced that it is possible to build a normal democratic society within the framework of traditional communal or clan relations.

But in reality there is a double standard working in the countries of Central Asia. Democratic principles, as declared by the governments of the new states, are reflected in their Constitutions and legislation. But in practice, and with the support of the majority of the population, social life is constructed according to other rules, partly on the basis of traditional patterns, partly upon modernization (in the interests of the political leaders) of national traditions. Life proceeded in this way as early as the Soviet period. Official declarations have long existed in a different world from real social life, which has continued on a traditional basis. There is a tradition of oral transmission of information through personal contacts within a group, a tradition of informal consultation of social views on the taking of a decision important for the group, for instance at the election of the leader. The opinion of the elders of the group carries the most weight, although all the group's members are consulted.

That is why it is so difficult for an outsider, a representative of an alien culture, to perceive the double standard and the unofficial system of relations in the Central-Asian states. The outside observer as well as the majority of Russian-language inhabitants in the region are not able to understand and to react effectively to this system because of its exclusionary character and lack of information about it. For instance, Western observers and journalists, assessing the situation in the former Soviet countries on the basis of the laws adopted there, and according to the statements of the leaders, believe that the greatest violations of human rights occur in Belorussia, and that the Russian population are victims of the greatest discrimination in the Baltic. Or that there is a struggle going on in Tajikistan between 'the new democracy and 'totalitarian Communism'. As in the Soviet period, features of the Oriental social system are described in value-laden terms such as 'corruption'.

Even long-time Russian residents of rural regions of Central Asia are according to

my observations poor experts in existing social relations. They observe only the exterior features of this system and characterise it through notions which are familiar to them, such as 'corruption' or 'lawlessness'. In the major cities of the region Russian families, even when they live inside the *mahalla* quarter, may be unaware of its existence.

For many Russian-speaking groups these social institutions and relations represent an unacceptable form of social organisation, which does not correspond to their concept of the social mode of life. They tend to see the institutions as aspects of an archaic form of social life, since they are based upon a collectivist consciousness and hinder the manifestation of individualism, which is seen as characteristic of civil society. There is a further reason why representatives of the Russian-speaking population are not included and in principle cannot claim to be included in the system of traditional relations. In order to be equal to the ordinary members of an Uzbek community, for instance, one must know and observe in detail all the customs and rules of behaviour, as well as the norms of every-day Uzbek culture. Moreover, one has to be a Muslim and to attend a mosque. Clearly, a representative of an alien culture has no possibility of becoming a respected member of a community and being elected to its committee.

The autocratic character of Central Asian society, and the distribution of such institutions throughout the population of a state affect the alien population not only on the local level, but at every level of authority. 'Nontitular' populations find themselves in a social vacuum and have no opportunity to influence the situation in their countries. Even elections to the republican parliaments, for example, are organized in such a way that undesirable candidates are cut out of the electoral contest by various illegal means. As a result, in every state parliament the proportion of Russian deputies is far smaller than the proportion of Russians in the total population of the country.

In these Central Asian states open political struggle and democratic principles, as declared in the Constitutions, appear to be ineffective as means of defending civil rights because many legal abuses are not provable and are not cognisable in a juridical context. Social life develops beyond the official juridical standards and proclaimed laws.

At the same time the representatives of the European population cannot oppose to the strong social structures of the Oriental society a group solidarity of their own. Their communal or clan institutions were finally lost in the course of the migration or during the Soviet reforms, if not much earlier. Nevertheless, the reality is such that the minority of the Russian-language population which prefers to remain in Central Asia looks for ways to unite on an ethnic basis. These people believe that a

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cohesive community can enable its members to survive better in the circumstances of the region. Russian and Slavonic communities are being organized, as well as different cultural societies and Cossack organizations. But none of these organizations play a role similar to that of the traditional Oriental institutions.

The majority of the Russian diaspora (ranging from 65% to 75% according to different estimates) is inclined to consider emigration to Russia as the best solution of their problems, as the most effective way to avoid social inequality. And that is in spite of the fact that this course is attended with major hardships, both material and psychological. Emigration in this case is motivated primarily by the effort to preserve ethnic identity.