

Transition without the rule of law and human rights?

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A. Introduction

I. The context of transition

When the former Soviet Union disappeared from the political landscape in December 1991, the Cold War was declared over. Some even went so far as to prematurely declare an “end of history”.¹³⁶ The common understanding prevailed that the new order was to be based not only on market economy, but also on the concept of pluralist democracy and the rule of law. The rule of law was meant to become a cornerstone of a strong and viable democratic state providing for institutions to safeguard fundamental freedoms. This common understanding is reflected in particular in the OSCE Paris Charter for a New Europe and in the OSCE Copenhagen document of 1990.¹³⁷

Thus, all that remained for the States of the former Eastern block was to

define the path of transformation in order to achieve these common goals. The notion of transition suggests that the best path to choose may be subject to debate, but not its goal and end-result. The realization of the rule of law and human rights are in this context seemingly only a question of time. Failure to fulfil commitments is linked to normal obstacles encountered within a naturally difficult transformation. Human rights violations are likely to be perceived as less serious, since they are not the result of an intentional policy of an authoritarian State. They are rather a “collateral damage” within a well meaning but imperfect transition process at the end of which “everything will be fine”. This paradigm was meant to apply also to the successor Republics to the Soviet Union, including those of Central Asia and the Caucasus. Virtually overnight, the Central Asian Republics became not only newly independent States, but also *States in transition*.

¹³⁵ The author is Co-ordinator of ICJ’s National Implementation Programme. The views expressed in this article are in the author’s individual capacity and do not necessarily reflect the views of the International Commission of Jurists.

¹³⁶ An allusion to the debate surrounding Francis Fukuyama’s, *The End of History and the Last Man*, Avon Books, 1993.

¹³⁷ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990 and Charter of Paris for a New Europe, 21 November 1990, reprinted in: OSCE ODIHR, *OSCE Human Dimension Commitments – A Reference Guide*, at 205 and 221, Warsaw 2001.

The starting point was arguably different from country to country. While Central Eastern Europe quickly found its direction, this turned out to be much less obvious for the former Soviet Union. This holds true especially for Central Asia, where independence and civil rights movements were marginal. A brief look at the region shows that the transition is incomplete at best. Democratic structures reach at best a formal level of democracy. Pluralism is permitted as long as it does not reach the threshold of a threat to presidential authority. Very importantly in Central Asia, the legal system is still awaiting major reform. This paper will therefore analyze rule of law related reforms in Central Asia in order to better understand the status of transition.

II. The notion of the rule of law

At the outset, it seems important to understand the notion of the *rule of law* and its significance for transition processes. Similar to many countries with an authoritarian system, the function of law in the former Soviet Union was to be understood as a tool to govern. It thus was understood as a *rule by law* rather than a *rule of law*. Law was a tool for the government and the communist party to implement policies. Even in this, law could during Soviet times easily be set aside. While such an understanding is not unusual for authoritarian societies, it is the

extent to which such understanding entrenched the institutional, legal and judicial system.

It thus comes as no surprise that the OSCE, constituting the natural forum for discussion in the early 90's, identified the rule of law as an important missing link and as a key challenge to change. The rule of law is thus not a technical side issue of transition, but one of fundamental importance that requires political will and attention. The best international definition is to be found in the OSCE Copenhagen document¹³⁸, which places the rule of law at the heart of democracy and defines an aspiration of the time in stating:

“The participating States are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not merely mean a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression”.

The standard to be achieved is thus not pure legal positivism, where a law is to be applied whatever its content, but it is a qualitative concept. Rule of

138 See supra note 3, par.2 at 206.

law is based not on a “formal legality”, but on “human rights”. Consequently, laws manifestly violating human rights cannot be considered part of the notion of the rule of law. We have thus to understand law not as the *rule by law*, but as *rule of rights*. The legal system provides the framework, procedures and remedies to ensure that rights are respected (“the supreme value of the human person”) and accessed by those in need. We should also note, that the rule of law is not only an important condition for the protection of human rights, but equally for stability as well as a condition for economic growth.

B. Rule of law in Central Asia

Before considering some specific reforms and the extent to which they reflect a process of transition, it seems noteworthy to look briefly into the starting position for legal reform in the region and the requirements under international human rights law.

I. The point of departure for rule of law reform

The point of departure for legal reform was the same for all former Soviet Republics.¹³⁹ In a nutshell the Soviet legal legacy included the following: The legal culture was a positivist one

dominated by the Prosecutors Office (Prokuratura) exercising “overall legal oversight” and overshadowing the legal system. The judiciary was largely politically dependent and lawyers and advocates were weak and controlled by a Collegium of Advocates. Overall, the prerogative of the criminal justice system was one of “effectiveness” and not of “legitimacy”. Convictions were based mainly on confessions as the “queen of evidence”, and the criminal justice could be described as “militarized”. International law was considered to be completely distinct from domestic law. Domestic constitutional freedoms were perceived largely as general principles with little if any bearing on legal reality. Moreover, the legal community was itself part of the establishment explaining some of the opposition from within the legal community against reform agendas.

II. International rule of law standards

In joining the OSCE process, the countries of Central Asia had to accept all previous politically binding commitments on the rule of law. Moreover, international human rights bodies¹⁴⁰ took the view that all CIS Republics would automatically be bound by the obligations of the former

139 See in this context also: ANDRE GERRITS & GER VAN DEN BERG, Human rights and legal change in the Russian Federation, in Helsinki Monitor 2003, No.3, at 6 et seq..

140 For the Human Rights Committee, see UN Doc. E/CN.4/1996/76 at 2:“(..) all the people within the territory of a former state party to the Covenant remained entitled to the guarantees of

Soviet Union, including the UN Covenant on Civil and Political Rights (ICCPR) entailing important rule of law standards.¹⁴¹ By 1999, all Central Asian Republics with the exception of Kazakhstan had formally acceded to the major six UN Human Rights treaties.¹⁴² Kazakhstan has recently signed both major UN human rights treaties and it is to be hoped that ratification will soon follow, possibly with the accession also to the first additional Protocol.

An important difference between Central Asia and the Caucasus is that the latter joined the Council of Europe whereas the former is not eligible to do so. The Caucasus Republics are State parties to the European Convention on Human Rights and subject to the jurisdiction of the European Court of Human Rights. This important enforcement mechanism is not available for Central Asia. This is significant, since compliance with this instrument was an important driving force for rule of law reforms in CIS countries.

C. Areas of Rule of law reforms

In order to better assess the level of transition, it seems useful to look into those reform fields that are typically relevant in transition countries or have particular significance in the CIS. It should be noted that the situation is clearly different in the various countries of the region and one should not equate Kazakhstan and Kyrgyzstan with Uzbekistan and Turkmenistan. On the other hand, it holds also true that just because some countries are comparatively more advanced, they do not necessarily qualify as being truly *in transition*.

I. Constitutional reforms

Constitutional reforms are among the most central features in most countries overcoming an authoritarian past, where arbitrary rule is replaced by “constitutionalism”. With obtaining independence, the Republics of the former Soviet Union had to draft Constitutions establishing formally democratic forms of government.¹⁴³

the Covenant” and that, in particular the former entities of the Soviet Union “were bound by the obligations under the Covenant as from the date of their independence”. See on the question of state succession to human rights treaties, REIN MULLERSON, *The continuity of and succession of States*, 42 I.L.C.Q. at 490,91 (1993) and with further references: JOSEPH, SARAH, SCHULTZ, JENNY; CASTAN, MELISSA; *The International Covenant on Civil and Political Rights: Cases, Material and Commentary*, Oxford University Press, at 5 et seq., 2000.

141 Most notably Art.9 (liberty and security), Art.14 (right to a fair trial) and Art.7 and 10 (prohibition of torture, degrading and inhuman treatment).

142 UN Covenant on Civil and Political Rights (ICCPR), UN Covenant on Economic, Social and Cultural Rights (ICESCR), UN Convention of the Elimination of Racial Discrimination (CERD), UN Convention on All Forms of Discrimination Against Women (CEDAW) and the UN Convention Against Torture (CAT).

143 ANDRE GERRITS & GER VAN DEN BERG, *supra* note 5, at 8-10.

Human rights provisions were included in the Constitution, and following an international trend, human rights treaties were made applicable as part of domestic law. Unfortunately, however, in none of the countries of Central Asia a viable constitutional culture exists today. Three explanations may be offered:

First, while democratic on surface, the constitutional framework is entrenched with the dominance of presidential powers.¹⁴⁴ This is typically reflected in the appointment powers over other key positions. Presidential influence exists also with regard to law-making (presidential decrees) or veto powers with regard to legislation. The philosophy of the Constitutions is partly expressed in the clause that the President is the “guarantor of human rights”, which could be understood as reflecting that it is the wise leader protecting rights rather than a judicial system enforcing rights.¹⁴⁵ Second, implementation mechanisms are limited or not properly functioning. The judiciary is independent on paper, but lacks sufficient additional

legal guarantees, such as long tenures. Constitutional courts or national human rights institutions are either non-existent, have limited mandates or are controlled by the President. Third, and maybe most important, constitutionalism and constitutional culture is lacking. Most judges, lawyers and prosecutors are not sufficiently familiar with human rights norms and concepts. The fact, that the existing separation of powers has not been respected as illustrated by the lack of free and fair elections¹⁴⁶, and that the legal system has been compromised in political cases, has contributed to a further degeneration in constitutional culture.

It is interesting to note that three countries of the region have recently changed their constitutional framework.¹⁴⁷ We should therefore ask whether these reforms have been a move of transition towards more democracy and the rule of law?

The answer is a case in point and a sad expression of a transition to more authoritarian rather than democratic

144 It should be noted, however, that this does not apply to Turkmenistan that seems not even on a formal level to establish a democratic government as evidenced among others by the possibility of life presidency.

145 Ironically, this argument has been advanced both in the Caucasus and in Central Asia to argue that the Constitution would require a National Human Rights or Ombudsman Institutions to be placed within the Executive/Presidential apparatus.

146 See in this regard various OSCE ODIHR Election reports accessible under <http://www.osce.org/odihhr>

147 Referenda were held on constitutional reforms in Kyrgyzstan and Tajikistan during 2003 and in Uzbekistan in 2002.

rule. Generally, presidential powers have been strengthened and the terms of office have been extended in Uzbekistan and Tajikistan.¹⁴⁸ In Kyrgyzstan a provision of lifetime immunity has been introduced for former Presidents. This clearly suggests that these reforms were conducted with a view to safeguard power or to ensure a safe political hand-over. A serious concern to be raised in all three countries undergoing constitutional reform was its lack of process. Probably, the most disappointing example has been the constitutional reform in Kyrgyzstan. While for a long time considered the most liberal of Central Asian States, hope was generated as the country went through a constitutional consultation process in 2002. The process was originally conducted with relative openness towards civil society. A draft version though being far from perfect included a number of improvements.¹⁴⁹ The process was then abruptly diverted and a new constitutional text was rushed through a Referendum. The Constitution – cynically presented as a Constitution of Human Rights – does reduce the existing protection

and in some elements even explicitly contradicts Kyrgyzstan's obligation under the UN Covenant on Civil and Political Rights.¹⁵⁰ The text poses questions as to the continuous direct applicability of international standards and limits the individual access to the Constitutional Court. In terms of substance and process this reform marks a missed opportunity and constitutes a serious setback for rule of law transition in Kyrgyzstan.

II. Judicial reforms

All CIS countries and also its Central Asian Republics have witnessed extensive legal reforms with repeated changes and amendments. This seems indicative of a genuine transition process. While some positive changes have undoubtedly occurred in this context, it seems that the difficult reforms to overcome the Soviet legal legacy have not been tackled in a single one of the Central Asian states.

1. *Judicial independence*

While formally independent, the court system performance and independence is largely defunct. A recent monitoring report on Uzbekistan conducted by ABA on the basis of a standardized methodology

148 In Uzbekistan the presidential term has been extended from 5 to 7 years, whereas in Tajikistan the Constitution allows now for two consecutive terms of office instead of previously one.

149 The original draft was reviewed by the Venice Commission. The document is available at <http://www.venice.coe.int/site/interface/english.htm>. The Venice Commission of the Council of Europe is an independent expert body that was set up to provide assistance and high-level authoritative advice in the context of democratic transition.

150 For example with regard to article 9 par. 4 ICCPR.

is a telling example of the problems for the judiciary in Central Asia.¹⁵¹ Appointment, dismissal, disciplining and judicial career advancement are not based on clear, transparent and objective criteria. Together with the duration of tenure in Central Asia this leads to improper influence on judges and facilitates corruption. In some countries, such as Tajikistan and Uzbekistan, there are frequent complaints that the reappointment processes is used to clean the judicial ranks from judges that are too independent minded, do not follow the submissions of the Prokuratura or for other improper reasons. The situation in Kyrgyzstan and Kazakhstan might be better, but independence is still limited and anecdotal evidence strongly suggests that corruption is rampant. International human rights standards, albeit applicable in theory have little practical use and many judges and prosecutors see them as mere general principles without importance for their work.

The role of lawyers improved in comparative terms, but governmental

influence over issues of self-governance, licensing and disciplinary procedures remain of concern. The ICJ recently intervened on behalf of a lawyer being sued in a criminal libel case for statements made in court in the defence of her client during a politically sensitive case.¹⁵²

2. *Lead role of highest courts*

In successful transition processes, leading courts have taken important human rights decisions. In Eastern Europe they have referred directly to international standards and played a crucial role in the strengthening of a rule of law culture. It is noteworthy that the Council of Europe obliged accession countries, such as Azerbaijan, to introduce individual complaint procedures with the Constitutional Courts.¹⁵³ Some courts in the region, such as the Russian Constitutional Court, have also set positive examples in deciding against state interests and in referring to international standards.¹⁵⁴

The track record of constitutional and supreme courts in Central Asia

151 American Bar Association and Central Eastern European and Eurasian Law Initiative (ABA Ceeli), *Judicial Reform Index for Uzbekistan*, Washington D.C., May 2002, available also at: <http://www.abanet.org/ceeli/publications/jri/home.html>

152 For more details: See ICJ intervention on the case of Ms. Kaiserova at: www.icj.org.

153 Parliamentary Assembly of the Council of Europe, *Opinion 222 (2000)*, Azerbaijan's application for Membership in the Council of Europe, par.15.

154 Bill Bowring, *Russia's Accession to the Council of Europe and Human Rights*, (2000) *European Human Rights Law Review*, 362–379; also ANDRE GERRITS & GER VAN DEN BERG, *supra* note 5, at 8. A recent example is a case of the Constitutional Court ruling a law unconstitutional that would have limited media coverage during election campaign.

is rather sinister and an indication of the lacking rule of law. While the Kyrgyz Constitutional Court enjoyed a reasonably good reputation in the past¹⁵⁵, its role has been reduced in recent constitutional changes. In a similar token, Kazakhstan's Constitutional Court has been replaced by a comparatively weaker Constitutional Council in the mid 90's. In the other Republics, leading courts have no visible impact on human rights whatsoever, but rather serve as a legitimizing façade for an authoritarian system. The ABA report on Uzbekistan is an illustration in stating that: "Neither lawyers nor lower court judges could cite one key Constitutional Court decision with an influence on civil rights or liberties".¹⁵⁶ This shortfall of leading judicial authority indicates a clear lack of rule of law transition.

3. *Arbitrary application of the law*

A critical feature in many CIS countries, including Central Asia, is the arbitrary application of the law. People falling in dissent are easily the target of a selective use of law. This can take the form of using "neutral provisions", such as tax codes and alike, selectively. In countries, such as Kyrgyzstan, we often see the use of libel suits for defamation, often initiated by

state officials in their private capacity, leading either to criminal prosecution or to civil damages threatening the existence of independent media. The problem is not the law, but its arbitrary application, which in the worst scenario may amount to a "dictatorship by law". Politically motivated cases all over the region further limit the credibility of the legal system.

4. *Continued dominance of the Prokuratura*

Among the most fundamental challenges to a genuine rule of law transition in the CIS are its weak checks and balances and the continued dominance of the Prokuratura over the legal system. Those Republics joining the Council of Europe had to go through a difficult and lengthy process of reforms in order to meet key requirements under human rights law. In terms of rule of law reform this marks the fundamental difference between Central Asia and the Caucasus. Whereas the latter achieved to put the "formal rule of law infrastructure in place", Central Asia still has to tackle this problem. As long as this reform is not really addressed, the legal system will remain largely Soviet in nature. In Tajikistan and Uzbekistan the Prosecution pertains

155 Despite a doubtful holding that allowed the President Akaev an additional term in office (since his first term was under a different constitution).

156 American Bar Association and Central Eastern European and Eurasian Law Initiative (ABA Ceeli), Judicial Reform Index for Uzbekistan, supra note 16, at 11.

all classical functions stemming from Soviet legal theory. But also in Kyrgyzstan and Kazakhstan, where a number of reforms have taken place, key issues have yet to be addressed. Among them is the transfer of authority over arrest and detention to the Courts. In the legal structure of Central Asia, it is the prosecution that controls house searches, wire tapping, arrest and detention, and not the judicial authority. As a result of the lack of judicial control mechanisms, suspects remain in pre-trial custody under difficult circumstances. The system induces a reliance on confessions and therefore contributes to systemic ill treatment. Overall, the continued dominance of the Prokuratura strongly impedes fair trial guarantees.

While various reforms have taken place to improve the system¹⁵⁷, especially in Kazakhstan and Kyrgyzstan, no country has yet even set the agenda for a true reform that would readjust the power attribution in the administration of justice. As long as this issue is not addressed any rule of law reform will have limited effect.

III. Legislative reform and law making process

All Central Asian States constantly change laws in various human rights related fields. However, despite this activism, major concerns remain. Important elements for the rule of law are a transparent law-making process, laws reflecting international human rights norms.¹⁵⁸ In both aspects shortcomings remain throughout the region. In fact, it is often difficult to predict which laws will pass, and civil society input is generally limited. Rule of law reform in a democratic society should normally be placed on a broad public platform, which is typically not the case in Central Asia. On a substantive side there is no systematic and transparent screening of legislation with regard to international human rights standards, be it in the context of treaty ratification or in the normal legislative process. The lack of transparency is closely linked to the lacking political relevance and legitimacy of Parliaments within the region. In the reality of Central Asia, political support in the presidential apparatus is the most essential prerequisite for reforms. The ODIHR, ABA and other organizations provide

157 For example: Kazakhstan's consideration to introduce more adversarial aspects in the criminal process.

158 See in this context: "Legislation will be formulated and adopted as a result of an open process reflecting the will of the people, either directly or through elected representatives (...)", Document of the Moscow Meeting of the Conference on Security and Cooperation in Europe, 1991, par. 18.1, in: OSCE ODIHR, OSCE Human Dimension Commitments – A Reference Guide, at 63, Warsaw 2001.

support on ad hoc basis. In contrast to the Caucasus, which went through an adjustment process with regard to the European Convention on Human Rights, no similar process has been generated in Central Asia.

IV. Penitentiary reform

Prison reform is one of the few areas with significant progress during the last couple of years in Central Asia. Like many other parts of the justice system, the prison system used to be heavily militarized and subject to the control of the Ministry of the Interior instead of the Justice Ministry. Within the democratic and economic transition, things usually worsened for the prison administration in the CIS. The reform of the prison system was not high on the agenda, funds were reduced, overcrowding increased considerably, and the outbreak of TBC became pervasive. The lack of reform, including of punishment policies, gravely contributed to overcrowding remedied in last resort by arbitrary yearly presidential amnesties preventing the total collapse of the system.

However, recent years have seen positive changes. Due to the work of organizations, such as PRI¹⁵⁹ and the ODIHR, the Central Asian Republics engaged into a reform process similar to the reforms in the Caucasus. Today,

the penitentiary services have been transferred from the Ministry of the Interior to the Ministry of Justice. An opening can be observed and NGOs have been allowed to enter prison facilities in some of the countries. In Kazakhstan a prison college has been established, adjusted to the needs of penitentiary staff and discussions are under way to place NGO monitoring on a more permanent basis, similar to developments in Armenia and Georgia. Even in Uzbekistan, modest changes in its punishment policies have been introduced, and the ODIHR and PRI have been allowed access to prisons. Certainly, the situation remains precarious; overcrowding is still persistent, and blatant corruption is another serious problem in the prison systems of Central Asia. However, while a lot of work remains to be done, it should be acknowledged, that inroads to rule of law transitions have been made. We may ask why the reform of prisons has been comparatively more successful than reforms in other fields. The answer may be that the system was literally falling apart, generating some support for reform from within the system. Moreover, the reform was heavily supported by international organizations and posed at the same time little if any threat to the basis of presidential power. Opening the system was praised in the OSCE fo-

rum without costing a high political price. For the international community on the other hand, prison reform could be an inroad to broader criminal justice reform.

V. Establishing National Human Rights and Ombudsman Institutions

Another key feature in successful transition processes in Central Eastern Europe has been the emergence of so-called National Human Rights Institutions, usually in the form of Human Rights Ombudsman Institutions.

Frequently, the question is asked of how much democracy and rule of law is required to consider the establishment of such an Institution? The underlying assumption is that the transfer of a Western Ombudsman concept cannot work in countries of transition. I suggest, however, that it is the lacunae of the formal justice system, which make a more informal Human Rights Institution particularly useful. If remedies and administrative procedures are not working and if international standards are not yet rooted in the legal culture, such institutions can play a valuable part in fostering a culture of rule of law. In fact, the role played by the Polish Ombudsman Office, established even before the end of communism is a telling example of this approach. On

the other hand, some democratic culture is required to respect an independent institution. The serious risk in authoritarian states is that such institutions function as a pre-text or fig-leave for human rights.

Unlike the situation in Central Eastern Europe, we find only one institution in Central Asia that can be considered meeting international standards¹⁶⁰, namely the Kyrgyz Ombudsman Office which is based on a relatively solid legal mandate, with institutional guarantees of independence not subjected to presidential control. The support to the office comes largely from the international community. The experience in the rest of Central Asia is more sinister and reflects that in authoritarian societies there is an inherent contradiction between being independent and influential at the same time. The institutions in the region are largely presidential in nature. An example is the new Ombudsman in Kazakhstan that has been created by Presidential decree despite intensive assistance over a period of some years by the UN and OSCE.

The essence of this experience is, that inroads are possible with regard to rule of law reforms as long as they are not too independent, carrying the potential of challenge to executive

160 In particular, the UN Principles Concerning the Status of National Institutions, par. 3 a (i), GA Resolution 48/134, 20 December 1993, annex.

powers. This explains the limited prospect for such institutions at present.

VI. Leadership, lack of vision and legal elites

Another impediment to reform in Central Asia is an obvious lack in leadership both on the political as well as the legal level. The various reforms do not follow a clear agenda or vision. Some elements seem to contribute to this lack of reform agenda and vision. First, unlike in Western countries, legal policy is made less in the Ministry of Justice, but in the Ministry of the Interior, the Prosecutors Office and most of all the Presidential Administration. Within leading positions, one can notice a constant re-shifting of positions – clearly preventing continuity and the development of a consistent reform agenda. Another factor is that there is no strong outside process assisting in setting a clear agenda for rule of law reforms. Another impediment exists in migration away from the region, particularly in the context of civil war in Tajikistan.

D. Conclusions and recommendations

The above brief description illustrates that rule of law reforms have been limited throughout the region. None of the countries have addressed the

systemic underlying issues to overcome Soviet legal legacy. Human rights continue to be violated on a large scale in Central Asia and the rule of law is far from being the rule of rights.

Any notion of transition should therefore be treated with great care in order to avoid the use of an euphemism for authoritarian States. The above discussion meant to show some indicators and overriding trends in the region. As mentioned earlier, it is obvious that the situation differs in the five Republics. The grave and constant violations of human rights in Turkmenistan evidenced by the first ever invocation of the OSCE Moscow Mechanism has few international precedents, and it is thus no coincidence that the country has rarely been mentioned in this article. Any connotation of transition in Uzbekistan needs to be met with cynicism. While the situation in Tajikistan could probably be described as a consolidation of peace in the sense of the absence of war, it should not be mistaken as a genuine rule of law transition towards “positive” peace. Even in Kazakhstan and Kyrgyzstan, where some positive developments go alongside substantial setbacks and degenerations of the rule of law, the case for transition is far from clear. Rule of law transition is not a linear process and can include occasional setbacks. However, transition is only possible with an understanding of

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an overall direction and must entail political will for reforms. Both seem to be fundamentally missing in Central Asia.

The above, however, cannot mean that the international community wraps up and “accepts defeat”. To the contrary, a reinforced effort for genuine rule of law reform is required. It should be noted that reforms taking place in the Caucasus or the rest of the former Soviet Union do not go unnoticed. With these legal reforms in sight, a certain momentum for reform remains also in Central Asia. Recent positive steps in transferring the authority over the prison service to a more civilian institution, which was arguably influenced by similar reforms undertaken within the CIS in the context of Council of Europe accession, illustrate this point. Some of the Central Asian countries have to make an important choice at this point whether to follow at least the level of systemic restructuring of other countries in the region or whether to retain for the time to come an essentially post-Soviet legal infrastructure.

In this context it is essential that the international community sets clear benchmarks for rule of law reforms. Legal policies clearly lack not only political will, but also orientation and

vision. Different international and bilateral organizations work on rule of law issues within Central Asia, but often in isolation and without a clear understanding of the benchmarks for such reforms. International human rights treaties, such as the Covenant on Civil and Political Rights can constitute such a benchmark – like the European Convention on Human Rights for legal reform in Central Eastern Europe. The OSCE ODIHR, the UNHCHR, the EU and other important actors in the region could achieve setting such a benchmark through concerted effort.

This requires, however, that the international community is not compromising the fight against terrorism with human rights and the rule of law. The international community has long advanced the argument of comprehensive security for Central Asia. The new military partnerships with some Central Asian States in the fight against terror includes the risk that the international community could concede to the rhetoric of authoritarian leaders in the region of a “security first and human rights second”. Such an approach – even if only implicit – would not only be a terrible departure from the idea of comprehensive security, but would also threaten any rule of law transition in the region.

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