Who Rules Pakistan?

The question of who rules Pakistan: a parliamentary democracy or the army, has always interested observers both inside the country and abroad. In August, the Pakistani media was again flooded with publications about the military's imminent rise to power in the country. Bearing in mind that Pakistan, formed in August 1947, was led by generals for a long period, it's not difficult to imagine the social unrest.

The reason for the heated discussions was the Supreme Court of Pakistan's decision, of August 5, 2015, which confirmed the legitimacy of the military tribunals. They have the right to try cases of civilians suspected of being about to commit or having committed an act of terrorism, and waging war against the state.

The practice of previous years shows that military tribunals operating in a single legal field with the civil courts is one of the indicators of the military coming to power (the suspension of the Constitution, the restriction of civil rights and freedoms, etc.) or the approaching reign of the generals. So it was in 1953, 1958, 1969, 1977, 1998, 1998, when military administrations were in power or military units were directed to major cities (Lahore, Islamabad, Karachi) to suppress anti-government, sectarian, ethnic clashes, etc on the orders of civilian governments.

The summer-autumn events of 2014, a protest camp in the heart of Islamabad, and the SOS of Prime Minister Nawaz Sharif, his appeal to the generals with a request to resolve the political crisis in the country are still fresh in the memory. Nobody gave an order on the formation of military courts against civilians in those days, but the army, together with the rangers, was 'guarding' the demonstrators in the Red zone, thus maintaining the security regime in the capital. Taken together, these events had already testified to the failure of the civilian central government to adequately respond to domestic calls and deter the protest movement.

The introduction of tribunals - an extremely strong-willed decision of the generalship, which "pushed" it through parliamentary hearings within the shortest possible time - twenty days after the tragedy of December 16, 2014 at the Army Public School in Peshawar.

The moratorium on the death penalty by hanging was simultaneously revoked, prompting harsh criticism from the EU and the US for alleged violation of democratic rights and freedoms. Soon after began the process of enforcing the death penalty on persons who had been convicted, for example, in 2006, that is, prior to the introduction of a moratorium on the death penalty. One gets the impression that the military were waiting for a pretext for increasing the punishment for terrorists. Every decision of the military court on the death penalty is ratified by the Chief of Army Staff General R.Sharif.

The military courts and the Pakistan Army (Amendment) Act (PAA), 2015 were restored in the country on January 7, 2015. The 21st Amendment to the Constitution enshrines the legitimacy of the tribunals for a term of two years. In practice, this meant the incorporation of the military in the management of public institutions such as the judicial system.
Parliamentarians gave only 24 months to the authorities to eliminate terrorist groups in the country.

The issue on military courts in 2015 has one distinctive feature - their functioning is enshrined by the constitutional amendment. This means that it would be illegitimate to suspend or prohibit their activities by any decree of civil authorities, with the exception of the abolition of the amendment to the basic law of the country.

In April 2015 the Supreme Court Bar Association (SCBA) filed a petition with the Supreme Court, demanding its abolition, i.e. the abolition of military courts. While the lawsuit was under consideration, the carrying out of punishment on those convicted and sentenced to death was suspended ... until August this year.

The Trial Division of the Supreme Court of Pakistan controversially responded to the filed suit. The media accused the boards of the military tribunals of holding the legal proceedings in secret, in the absence of lawyers and promised legal support.

The majority of judges of the board of the Supreme Court assumed that the newly formed Military Tribunal guarantees a fair trial and the sentences issued by military courts will be judicially reviewed by higher courts and the Supreme Court. In practice it proved otherwise.

The Pakistani media have written a lot about pressure on the members of the Judicial Board, and Chief Judge of the Supreme Court N. Mulka Chief Justice Nasirul Mulk, and his ambiguous position on this claim. The case was reviewed for five months, and it was only in the beginning of August 2015 that the 21st Amendment to the Constitution 1973 was upheld by the decision of the Supreme Court by a majority of votes (eleven to six). The Chief Justice announced it ... a few days before he reached the retirement age.

Looking back to the end of the political crisis in Pakistan in 2014, which was settled by the military; the Prime Minister demonstrated a non-constructive stance towards political opponents. Help in resolving the conflict should be regarded as one of the first victories of the generals over the executive power. The second victory was won over the legislative branch of the government - by parliamentarians, who (despite the tough opposition of Islamist parties), bowed their heads and agreed to the military tribunals. The generals' third victory - over the judiciary power in August 2015 - was the introduction of military tribunals into the civil legal field. The foreign policy and its main vectors - American, Afghan, Indian, Russian, Chinese, etc. are also largely governed by generals.

There are not many public institutions in Pakistan, where the military's influence (direct or indirect) is insignificant. But it's a matter of time and national security requirements. All of these components need to be considered when building economic ties and political relations with the Islamic Republic of Pakistan.

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