

Caucasus

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The discourse on re-enacting Islamic law in the post-Soviet North Caucasus uses key terms such as sharia courts, highland Muslim traditions, and Islamic insurgency. What seems important here is to shed light on these notions by answering such questions as: To what extent do these terms reflect the post-Soviet legal reality or diverge from it? What can be said of the sharia mythology shared by both adherents and opponents of re-Islamization in the North Caucasus? What is the historical background of discourse on sharia courts?

Public debates on and attempts at introducing Islamic law have become characteristic of post-Soviet Muslim and non-Muslim areas, and are especially vivid in the North Caucasus. In recent years, the so-called 'sharia courts' or *mahakim shar'iya* were established de facto by reopened mosques in a number of villages and towns in Dagestan, Chechnya, Ingushetia, North Ossetia-Alania, Karachaevo-Cherkessia and Kabardino-Balkaria. The majority of mosques are located in Northern Dagestan and Southern Chechnya. They settle small inheritance and criminal cases including divorce, theft, drinking alcoholic beverages, and the like. The decisions of these courts are final and not subject to appeal. They usually impose both fixed sharia and non-Islamic penalties. Dagestani chairmen of village and district administrations often call upon local *qadis* to settle family and land trials.

Articles 212 and 235 of the Soviet criminal code of the Russian Federation prohibiting the application of sharia norms regarding marriage and inheritance practices were abolished in its new version passed in 1996. But sharia courts have not been legalized in post-Soviet Russia with the exception of Chechnya and Ingushetia. In December 1997 the Ingush president Ruslan Aushev enacted mediating judges who are to follow 'the *adat* (i.e. local customary law) and sharia norms' while settling criminal and civil cases. Sharia norms relating to marriage (*zawaj*) and feuding (*qisas*) were legalized in the republic in 1996-1999. The Chechen Republic of Ichkeria officially proclaimed itself an independent Islamic State in 1996. The preamble of the Chechen Constitution was amended such that it then read: 'Quran and sharia are the principal source of legislation'. In September 1996, acting president Zelimkhan Yandarbiyev brought into force the new criminal code copied from the 1983 sharia criminal code of Sudan. The Supreme Sharia Court and corresponding district institutions were created. Public punishments with fixed penalties (*hudud*) were introduced for selling alcoholic beverages, illegal sexual intercourse and severe criminal offences like robbery and homicide. In reality, few death sentences and corporal punishments sentenced by Chechen sharia courts have been applied to date.

Muhammad-Sayyid Gaziev, qadi and chairman of sharia court, Khushtada village, Dagestan.



PHOTO: VLADIMIR BOBROVNIKOV

Mythologizing Sharia Courts in the Post-Soviet North Caucasus

Sharia and state-building

As soon as the first death sentence of the Supreme Sharia Court of Chechnya was given in Grozny in April 1997, vigorous debates on sharia began in the North Caucasian and Moscow media. One can identify two competing attitudes towards this issue. The majority of Muslim clergy are in favour of introducing Islamic law, regarded as the tool of national liberation and social modernization. They consider sharia as the magic solution to the problem of growing criminality and social instability caused by the collapse of Soviet rule.

The distinct flavour of this view was captured by Seyyid-Muhammad Abubakarov, the former Dagestani Mufti, in an interview with 'Izvestia' just before his assassination in August 1998: 'Do you remember the recent execution of the death sentence imposed by the sharia court in Chechnya? And such trouble and harrowing reminiscences made of it? Even those who had agreed with this sentence hesitated, their souls having been disgusted. But let's think of a quite another thing. The problem is what we should do with those who deal in kidnapping and trade the captured, turned into living goods, or with those who kill their victims and sell their cadavers. I consider sharia court as a preventive measure against new murders, not as a pure cruelty. Today a criminal knows that his case will be arranged, decided in his favour, that punishment is not inevitable. According to sharia, his responsibility is full – thus it is a good preventive measure, isn't it?'

It is amazing, that many Moscow journalists and academic scholars, quite unfamiliar with Islam, also support re-enacting the sharia law in the North Caucasus. They believe that it is the only means to maintain order and to prevent Chechnya and neighbouring Caucasian republics from anarchy. As a former member of the Soviet Union Communist Party Central Committee and now political scientist, A.S. Tsipko, put it: 'Let's take a sober view of things. The sharia laws protecting the Chechens from self-degradation are much more progressive than other laws and culture (i.e. neo-liberal) stipulating self-destruction of the people'. This view is widespread among Moscow intellectuals. A journalist, A. Fedin, expressed it as follows: 'The Chechen society is still mainly pre-state and traditional. It is based on the unwritten customary law [...] Public executions sentenced by the sharia court appear to be the beginning of the state-building of Chechnya, which is to be an inevitably bloody affair'.

Opposing views

There is also an opposite notion of sharia as 'a barbarous remnant of the middle ages'

that 'judges brutality in the Chechen manner' associated with public flogging, cutting off of hands, throwing stones, and therefore quite unsuited for the modern law and society. This view is shared by the top-level officials in the Russian Federal government such as K.M. Tsagolov, a deputy to a former minister of nationalities of the Russian Federation, and the majority of the pro-Moscow Caucasian authorities. They accuse adherents of the sharia courts of working for Chechen terrorists. Part of the Moscow mass media siding with the Putin's government propagated such a negative vision of 'Shariatists'. As another minister of the Russian Federation, Ramazan Abdulatipov, pointed in August 1999: 'Against a background of the war in Dagestan and the aggravated situation in the North Caucasus, an impression has been spread in Russia that every Muslim is an Islamic extremist'.

Paradoxically, both of these antagonistic visions of sharia have a somewhat common core. The first striking thing is the almost total absence of knowledge of Islamic law among the majority of adherents and opponents of re-enacting Islamic courts. In their view sharia is reduced to some elementary norms of criminal and family law. No one can distinguish the Shafi'ite legal school, traditionally dominant on the territory of Dagestan, Chechnya and Ingushetia, from the Hanafi one prevailing among the other Caucasian and Russian Muslims. Due to such ignorance, the Chechen authorities adopted the Sudanese sharia code based on the Malikiite *madhhab*. The majority of participants in the debates are unable to judge numerous deviations from the classic Islamic doctrine as they were attested in the work of re-enacted sharia courts in the last decade.

It is noteworthy that no Muslim judges or even academic legal theoreticians specializing in Islamic law take part in this public debate. Its participants are mainly journalists, politicians and academic scholars including political scientists, historians and anthropologists. The only exception is Prof. L.R. Syukiyaynen from the Institute of State and Law in Moscow. Syukiyaynen is Russia's leading expert on Islamic law, although his opinion is uncommon and much more realistic. While recognizing the great advantages of sharia in resolving social problems and in relaxing local tensions in present-day North Caucasus, he argues that there has not yet been adequate application of Islamic law in this region.

Myth-making about the sharia is characteristic of both opposing sides of the debate. The concepts of both are more or less divorced from reality. 'Highland Muslim traditionalism' is seen as the key to the nature of the North Caucasian law and society. This notion does not take into account the radical social and legal changes that have been inevitably caused by drastic state reforms in this region for more than a century (from the 1860s); the mass resettlement of Muslim highlanders to the plain; and even forcible

deportation of entire groups that took place under the Soviet rule. Moreover, the authors cited above completely ignored the fact that the criminal laws of the sharia were not applied in the pre-modern Caucasus. Historically, highlanders settled criminal cases in accordance with their customary laws or imposed state legislation.

Another myth typical of the discourse on sharia courts is the vision of Islamic law as a natural antagonist of the Russian state. Participants of these debates argue that in the past sharia played a significant role in the political resistance of the North Caucasian highlanders, first to the Russian conquest and later to the Soviet reforms. From this, they conclude that restored sharia courts must undermine Russian rule in the present day Caucasus. This mythology has a long history, embedded in the colonial policy of late Imperial Russia, which considered Islamic law unfavourable. After the Caucasian war of the 19th century, the possibility of Islamic uprisings haunted the mind of top-level state officials such as S.M. Dukhovskiy, Governor-General of the Turkestan Province, or K.P. Pobedonostsev, Procurator-General of the Saint Synod. This fear led the state to restrict the use of sharia norms for the Russian Muslims and to keep Muslim clergy of the North Caucasus under tight control. In turn, Muslim political opposition arose at the end of the 19th century, constantly reclaiming the full application of the sharia law.

This mythology had much influenced legal and social development of the North Caucasian Muslims in the 20th century. First, it led to the introduction of sharia courts after the Revolution of 1917 and the collapse of the Russian empire. These courts were enacted by revolutionary decrees passed by the First Congress of the Highland Peoples of the Caucasus and that of the Terek peoples held in 1917-1918. They worked under different political rules including the early Soviet one and were abolished only by 1925-1927. For the second time, the idea of 'Islamic resurgence' was realized in the North Caucasus following the break-up of the Soviet Union. Sharia courts were introduced here again. But the social and legal situation in the region had completely changed.

One should take into account that re-Islamization emerged in a context of, and in reaction to, the Soviet legacy. It presents a specific modern answer to challenges originating from the collapse of the Soviet rule in the Caucasus. Now the myth of sharia is embodied in the post-Soviet flesh and is fraught with all its negative effects due to the degradation of Islamic legal culture and growing criminalization of power and society in the region. ♦

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