

ШЕТЕЛДІК ТӘЖІРИБЕ ЗАРУБЕЖНЫЙ ОПЫТ FOREIGN EXPERIENCE

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RULING ELEMENTS OF CONSTITUTION AND ITS OBSERVING CIRCUMSTANCE IN AFGHANISTAN

Dear Excellency Igor Rogof, Chairperson of Constitutional Council of Republic of Kazakhstan, his respectful colleagues, Honorable Representatives of Constitutional Courts and Equivalents Institution of different Countries, Amiable Guests, Ladies and Gentlemen who have participated in this conference.

First of all, I would like to express my best and profound thanks in behalf of the Afghan Independent Commission for Overseeing the Implementation of Constitution (ICOIC) delegation in occasion of inauguration of this International Conference, to his Excellency chairperson and members of constitutional council of friendcountry republic of Kazakhstan, his respectful colleagues and wish successfully to all participators to this conference.

Secondly, it is time to convey my hearty thanks to all Asian and equivalents institutions chairmen and staffs that potentially support from ICOIC candidacy to acquire the membership of AACC in congress which was organized on spring season of current year in friend country republic of Turkey/Ankaracity.

Ladies and Gentlemen!

Our peaceable nation, after forming the interim administration and transitional Islamic State of Afghanistan with direct support of international community, and passing the procrustean wars got chance to take comfortable breath and ratify the constitution which based on it organize a system which was their dream.

According to this constitution the presidential election conducted for two times, elected government organized, according to our people long wishes parliament formed and the Supreme Court high council members got vote of trust of parliament.

ICOIC commissioners with reliance to article 157 of constitution after the acquiring the confidence vote of parliament officially started to work.

People of Afghanistan in the ground of constitutional rights and freedom that are introduced in chapter two of constitution had good achievements, recently 49 TV networks, 149 radio networks and about 1000 printing publications are active, according to article 35 of constitution more than 56 political parties and 4000 social institution are registered with Ministry of Justice, more than 2180 nonprofits national and international organizations are registered with Ministry of Economy, 80 percent of people of Afghanistan has access to communication services, 31 governmental university with 126624 students and 76 private University with 60000 students are serving afghan youth generation.

About 8644144 youth and children are going to 14475 governmental Schools, Afghan Bar Association with 1700 defense lawyers in capital and provinces are working, the legal aids general directorate with 150 paralegals in the framework of Ministry of Justice is serving legal aids free of charges to poor accused people. The independent commissions such as Human rights, election, Administration reform and civil services, and other organizations are formed and conducts their works in lights of constitution and other effective laws.

With all there is serious incomplete and shortcoming in field of implementation of constitution, of course ignorance and violation of law has its own cause and reasons that the majority part of them relate to internal causes and reasons and some of them to external, I will point to some of them during my speech.

Dear friends!

For this to constitution can be implemented in society and people get able to enjoy their rights and freedoms, the government's three power can performs their relevant tasks effectively and play their role in field of society progress and development, it is need to some pillars and elements of, rule of law be observed during the performance of relevant affairs.

The elements and pillars that are important in field of observing of law is multiple, the most important of them are as follow:

1. Good-law, namely the law provisions can be answerable to the society needs for long time;
2. Good-executor for implementation of law provisions;
3. Existence of political support of law;
4. Public encouragement and giving awareness in order to observation, protection and implementation of law;
5. Existence of proper platform in order to observation and implementation of law;
6. Continuously overseeing of law implementation;
7. No foreigners interfering in country's internal affairs.

I would like to discuss regarding every aforesaid elements of, rule of law.

1. Good-law, namely to the law provision can be answerable to the society needs

One of constitution ruling elements is that, the provisions of constitution can be answerable to all necessary need of society and act as prescription that gives by a proficient Doctor to a patient, that can with use of the advised medicine to patient, can treat his illness, if the constitutional articles isn't able to meet the society's problems, in such situation can't resolve any problems, rather it will create other difficulties in front of society.

Our constitution that was ratified in 162 articles on January 2004 after 23 days discussion by real and elected representative of people from inside and outside the country in a democratic environment, is the ideal for the Afghan majority of people, we believe, this constitution is responsive to current and future society problems and difficulties.

It is clear the only existence of good law can't resolve the society difficulties and problems, for this purpose there is need to be a perfect executor for implementation of law, that will be my continue talking issue.

2. Good-executor for implementation of law provisions

The good executor for implementation of constitution provisions is one other element of rule of constitution, according to paragraph 4th of article 50 of constitution «the Citizens of Afghanistan shall be recruited by the state on the basis of ability, without any discrimination, according to the provisions of law».

Following the ratification of constitution in order to establish sound administration and realization of reform in country administration system, the require decision was made and according to provision to this article of constitution the Administration reform commission was boomed more than the past.

Right now the recruitment of civil services employees are on basis of abilities, potency and sufficiency, by open compete, finely the work is deliver to the require applicator.

3. The existence of political support of constitution

In order to the constitution could be implemented in the society, and society members feel responsibility for observation of it, in addition of the aforesaid elements, it is need to the constitution must be observed and protect by governmental officials and politicians.

For example, if high officials and politicians don't support the implementation of constitution and violet it themselves, in such a circumstances, it is imposable normal people of community observe the implementation of constitution.

As Saadi Shirazi, a Persian-language poets, has pointed to this subject by his a beautiful poetry: (If the king eat an apple of his peasant's garden, his servants will cut down the trees' stump, – If king allow half of testis oppress, do hosts thousand chicken skewers).

Therefore our government leaders and managers must be pattern and example in observing the law, by following them people make. Perspective the observation and protection of laws, otherwise many people will learn breaking law and illegality from them, finally the community is encourage to anarchism and promiscuity.

4. Public encouragement and giving awareness in order to observation, protection and implementation of law

The constitution shall be set with the supreme legal document; therefore conception of its provisions isn't easy to normal and low literacy people.

For this to constitution provision be implemented in society and the people know that obeying it is their duty, it is require to its important and significance role be introduced on social relation to people.

Although according to paragraph second of article 56 of constitution: «ignorance of the law is not seen as an excuse» but it is considered necessary, the constitution provision by different ways including the public awareness programs, conducting workshops, seminars, TV-radio interviews, has to reach to people, that people consciously take part in defense of constitutional provisions ruling.

The Independent Commission for Overseeing the Implementation of Constitution (ICOIC) in addition of conduction more than ten constitutional training in center and provinces, has signed cooperation and support of constitution MoUs with a number of ministries and governmental entities.

Due to these MoUs, the Ministry of Education and Ministry of Higher Education have committed to include the constitution teaching as a subject in their schools' and higher education institutions' curriculum, and the Ministry of communication promised to set up a website for present awareness regarding the constitution to people.

5. Existence of proper platform in order to observation and implementation of constitution provisions

One other element for observation of constitution is, existence of proper platform in the society, thus the intellectual and exact condition of community be prepared for acceptance of constitution provision, unlike if there isn't any appropriate situation for implementation of constitution provision in the society and the constitution provision is implemented by constraint and grudge, such constitution not only resolve the society problems, rather it will create another problem in the society and cause people recalcitrance of system, finely it will disturbed the society disciplines.

Our country Afghanistan during more than last thirty years, has experienced multiple types of such laws, for example during the presence of Soviet Union forces in Afghanistan there was a law ratified that changed the Municipality name which had long term background to Jirga (council) executive committee of Afghanistan's people representatives, this phrase was longer than the Municipality phrase, from other side people thought it is a stranger and imported phrase so didn't get acceptable to people.

Non acceptance of this phrase by people had two reasons one being long phrase second non preparation society condition to the mentioned law that caused the government to amend the law and replace the previews name (Municipality) instead of Jirga (council) executive committee of Afghanistan's people representatives .

Thereupon existence of proper platformfor observation and implementation of law, especially for constitution has an important role.

6. Continuously overseeing of implementation circumstance of constitution provision

Despite there is salient progress around the social life in modern world and human has great success in different fields such as Science and technology but with all we can't look for utopia in world that people keep their relation calm and friendly together and put their destinies to rule and justice. Still there are people around the world both in development countries and non-development countries that are complaining from inequality and breaking law.

In our country due to occurring long term and overbearing wars, we are witness of violating law by different category of people.

For good follow up of overseeing of implementation of constitution the official of Independent Commission for Overseeing of Implementation of Constitution had visited the Bagram prison situation which was managing by international forces.

In the first overseeing there was a series of complains and problems about the judicial decision regarding accused destiny, misuse, relative visiting that now there is a consideration improve in aforesaid situations.

For sure the continuously supervising of constitution provisions in order to prevention of violation of law and its observation has an important role.

7. Non Foreigners Interfering in Internal Affairs of Afghanistan

For this purpose to constitution provisions be implemented better and its outrage be reduced, the foreigners must not interfere on internal affairs.

That is clear to all: it is 35 years that Afghanistan is experiencing war, when Afghanistan was the field for the east and west super powers competition, the Afghan people were used as a shield against the progression of former Soviet Union forces and they sustained many sacrifices in this direction, as a result of Afghans' Jihad (Holy war), Pakistan and Iran as shelter countries achieved a huge economic developments, the republics of former Soviet Union countries got their Independence, Berlin Wall was removed and instead of two Germany, now there is one strong Germany.

But Afghanistan is still facing multiple problems and didn't achieve to a sustainable economic and political stability.

Right now under the leading of USA the foreign forces have presence in Afghanistan, the main goal of this missions according to accredited of the United Nations is developing and consolidation of state sovereignty and fight against terrorism, however as it is seen, the existence of this forces sometimes damnify our national sovereignty, some innocent people are martyred and injured during air strikes by the foreign forces, night time houses searching by foreign forces is in violation of constitution article 38 provision and it is still continuing. Some people detained by foreign troops and have been kept for long time in detention facilities under their managing, some other of them even are acquitted by the qualified court but still are kept in their detentions.

Committing such acts by foreign troops is an explicit violation of constitution article 23 provisions, which is about immunity of life right, article 38 about immunity of personal residential settlement and article 25 which states: innocence is the original status.

The most important is that, these kind acts are in clear contrast with prevision of constitution article 4, that expresses «National sovereignty in Afghanistan shall belong to the nation, manifested directly or through its elected representatives», while foreign citizens are obliged according to constitution article 57 provision to respect the laws of the state of Afghanistan within the limits of the provisions of international law.

Another issue which has been caused violating of rule of constitution specially national sovereignty of Afghanistan is no taxes payment from North Atlantic Treaty Organization (NATO) troops and their contractor transitional companies, a huge quantity of trade goods by the name of so called NATO's equipments are imported to Afghanistan and by utilizing the tax exemption are sold to market.

The interesting point is that, tax payment exemption was usual during the former Soviet Union forces aggression, on that time there was a place in Kabul by the name of Bazar-e-Brejenef and now in Afghanistan there is presence of more than 40 countries forces, usually the imported goods of these forces without paying of customs duties are sold in a market in Kabul which is called Bazar-e-Bush, it is the time according to constitution article 42, paragraph 3th the foreign individuals and organizations are also obliged to pay the taxes and duties.

While there is fight going on, in a country, certainly there are some partial persons and people with utilization of ruling, such nervous situation attempt to violation of law in the society, and with using of opportunity attain their own benefits.

Thus the foreign interfere; in internal affairs of Afghanistan can be a very important factor in field of constitution violation.

Conclusion

With considering and studying topic about the elements rule of constitution and its circumstance of observing in Afghanistan, it became clear that the Afghan people recently have achieved many success in light of constitution, as thereupon of implementation of this constitution the triplet organs (Judiciary, Executive and Legislative) have been doing their legal duties and people of Afghanistan with direct cooperation of international community have achieved much more development in different fields such as, insuring of democracy, freedom of expression, observing of human rights, establishment a civil society, good governance, fighting against administrative corruption, terrorism and narcotics.

The electoral officials such as presidential, national assembly, provincial councils, local councils, political parties, women's councils, youth and committed and responsible media were established due

to providing a platform for democracy promotion. Despite all these success and great achievements, the Afghan people are facing two challenges in near future. The first challenge is security responsibilities to transition process to local security forces. This process will be completed until 2014, due to this process the insurance security of country and independence defense from territorial integrity, national sovereignty and country independence will get the responsibility of national forces.

The second challenge which the Afghan people are facing is presidential and provincial council's election next year. It is possible during this two great examination the Afghan people face challenges. with use of this opportunity, I would like to remind that , Afghan people in order to overcome on these challenges, need to more physical, technical and proficiency cooperation of our international friends.

Therefore on behalf of the Independent Commission for Overseeing the Implementation of Constitution, which is the only protector and overseeing entity of the implementation of constitution in Afghanistan, I hope the international friends to accelerate their cooperation to Afghanistan than the past, and pave the way for cooperation's in economical, cultural and social fields, to the people and different countries of the world including the Asian countries and Kazakhstan and others friends countries such as Russian Federation be saved from probable risks of international terrorism and extremism. In the end once again, I would like to express my heartfelt thanks for warm welcoming and hospitality of the brother people of Republic of Kazakhstan, chairman and members of constitutional council of Kazakhstan and their other colleagues.

Thank you for your attention.

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