



HELSINKI COMMISSION HEARING

UNITED STATES COMMISSION ON
SECURITY AND COOPERATION IN EUROPE

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If the Republic (*res publica*) is defined as a State in which the general will of the people prevails, the Islamic Republic of Iran would offend this concept. In fact, the current Iranian regime is a clerical oligarchy in which the enjoyment of rights and liberties depends on one's affiliation to an official Islamic ideology, as justified by divine law. Thus, the rights to govern, to legislate and to judge come from clerical authority, which is considered to supersede executive, legislative and judiciary powers. Under Article 5 of the Constitution of the Islamic Republic of Iran « during the occultation of the 12th Imam (Shiite), the leadership of the community (Ummah) devolves upon the just and pious Faqih, who is fully aware of the circumstances of his age, courageous, resourceful and possessed of administrative ability ». This principle of *Velayat-e-Faghih* (the transcendence of the religious leader) is the cornerstone and foundation of Iran's legitimacy, whereas in a republic, the representative mandate through universal franchise is the expression of the will of the people and the basis of national sovereignty.

Paradoxically, the Constitution of the Islamic Republic of Iran calls for a popularly elected president and parliament (the Islamic Consultative Assembly), whose members are also elected by universal franchise. The Constitution also requires a « Council of Guardians », composed of six religious members appointed by the « Supreme Leader », to supervise the presidential and parliamentary elections. In fact, this council pre-selects the candidates, for the presidential and parliamentary elections on purely ideological grounds, and even publishes a list of selected candidates. This limited list is put to the vote and the people have no other choice. The President elected by the people has to be « appointed » afterwards by the Supreme Leader in order to make official his election. However, he is only the head of government, responsible to the Assembly, but the chief executive is the Supreme Leader which has, among other powers, full authority as chief of State. He is commander-in-chief of the armed forces, but he has no responsibility before the Assembly.

Concerning the Legislative, this assembly, elected from a predetermined shortlist, has to take into account the official ideology of the Islamic Republic of Iran. In accordance with Article 4 of the Constitution, all laws and regulations voted by the Parliament must be based on « Islamic criteria ». Therefore, all laws and regulations passed by the Parliament have to be presented to the Council of Guardians, which means that the six religious members of the Council have veto power over Parliament. If the majority of these six determines that a law passed by Parliament is incompatible with « Islamic criteria », the law is considered to be null and void. Nevertheless, such Islamic criteria are not defined either by the Constitution or legal

texts. Moreover, the Council of Guardians isn't obliged to justify its decision.

Finally, the Judiciary is controlled by a religious « head » appointed by the Supreme Leader. This head appoints in turn religious persons as head of the Supreme Court and the chief public prosecutor.

Thus, the main functions of these three branches of government, under the Constitution, are in the hands of the Shiite clergy, who in practice is not content with these constitutional responsibilities (the presidency of the State as well as various others ministerial posts are held by clerical members).

Within this context, the people's representatives, despite their representative mandates, are under the protection of the clergy which has no political mandate at the close of the vote. The Supreme Leader which governs as the 12th Imam representative, holds ultimate power. Thus, religion is ideology and theocracy doubles as an oligarchy.

Moreover, the principle of equality in law, the cornerstone of the Republic, is not recognized in the Constitution of the Islamic Republic of Iran. Instead, this Constitution institutionalizes a judicial system that discriminates on the basis of religion, sex and ideological affiliation. Shiite Islam is the official religion of the State, and non-Shiites do not have the same rights as their shiites compatriots. Concerning the non-Muslim Iranians, the Christian, Jewish and Zoroastrian minorities are « recognized minorities », and have the status of second-class citizens. Finally, others non-recognized minorities, as well as atheists have no rights, no freedom of conscience, no access to higher education or public service.

Women, in general, are victims of « legal » discrimination in civil, political, social and economic rights. Clothing restrictions are imposed on women, even Muslim women.

CONCLUSION

The Islamic Republic of Iran evidences political subversion by its religious members. The State is founded on an interpretation of Shiite Islam that consolidates clerical power, resulting in the increased religiosity of institutions and a stripping of popular sovereignty. This divine discourse is beyond human law and legitimacy, and thus means, for the religious oligarchy in power, the scorn of democratic rules and obligations that derive from internationally recognized texts and instruments.