

## NATION-BUILDING

**EVOLUTION OF  
PARLIAMENTARISM  
IN THE REPUBLIC OF  
TAJIKISTAN**

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The parliamentary system of government as a special political institution with all its principles and values did not become part of the theory and practice of nation-building in the post-Soviet countries, including Tajikistan, until the 1990s. This institution was totally alien to the Soviet state power system, which declared many of its features bourgeois and reactionary. After all, the Soviet system believed the bourgeois state machinery and the whole of pre-socialist statehood to be exploitative and in opposition to the interests of the working people. This was why the U.S.S.R. did not accept anything created in the theory and practice of the parliamentary system before the October Revolution.

In this respect, Soviet power was built on ideas and principles that were contradictory to the bourgeois organization of power. This in turn led to recognizing everything good and bad accumulated over the centuries as being alien to the interests of the proletariat.

The Soviets of People's Deputies elected by the people were considered a manifestation of their sovereignty, bodies authorized to decide the most important issues of state-, economy-, and social culture-building.<sup>1</sup>

<sup>1</sup> See, for example: V. Shevtsov, *Obshchestvenno-politicheskoe ustroistvo SSSR*, Moscow, 1978, pp. 56-68.

The higher state power body of the Republic of Tajikistan (as in other Soviet republics) was the Supreme Soviet authorized to decide all the issues within the republic's jurisdiction.<sup>2</sup> These powers included supervising all issues relating to state-, economy-, and social culture-building, as well as forming executive, administrative, and control bodies subordinate to it.<sup>3</sup> At the same time, sovereignty of the people and their representative bodies was formal, unrealistic, and confined to paper. In actual fact, the C.P.S.U. and its structures in the regions supervised all spheres of public and state life.

The democratic processes and changes that occurred at the end of Soviet society's existence brought these defects to the surface, and attempts were made to correct the situation. For example, the resolution of the C.P.S.U. Central Committee of 25 July, 1986 On Further Improvement of Party Leadership in the Soviets of People's Deputies, as well as the joint resolution of the C.P.S.U. Central Committee, U.S.S.R. Presidium of the Supreme Soviet, and U.S.S.R. Council of Ministers On Measures to Further Raise the Role and Increase the Responsibility of the Soviets of People's Deputies for Accelerating Socioeconomic Development in the Light of the Decisions of the 27th C.P.S.U. Congress, noted the need in particular to eliminate meticulous surveillance, duplication, and replacement of Soviets with party bodies, and talked about expanding the powers of the Soviets and raising their responsibility for all spheres of life in their territory.<sup>4</sup> But experience showed that these attempts and cosmetic measures were clearly insufficient, the entire system required an overhaul.

After the collapse of the Soviet Union, independent Tajikistan took consistent steps to build a contemporary parliamentary system, strengthen its foundation, and create other prerequisites for establishing this institution. The following features are characteristic of today's parliamentary system: its organization and functioning on the basis of the principles of the separation of powers and supremacy of law; a permanent parliament with the powers necessary to ensure its efficient functioning; specific working forms and methods and special relations between the parliamentary deputies and their voters. The parliamentary system in Tajikistan was created in keeping with the country's specific characteristics and conditions.

The Declaration on the Sovereignty of the Tajik S.S.R., adopted on 24 August, 1990, holds an important place in the evolution of the parliamentary system, as well as in the emergence of concepts and ideas about it and the legislative power.<sup>5</sup> By declaring state sovereignty, the Declaration recognized and formalized generally accepted principles and regulations for the organization and functioning of state power, including those relating to the parliament and parliamentary system. For example, Item 3 of this document set forth that "state power in the Tajik S.S.R. is executed according to the principle of its separation into legislative, executive, and judicial."<sup>6</sup> Here a vitally important principle of the parliamentary system is recognized for the first time, that is, the principle of separation of powers and recognition of parliament (in addition to the executive and judicial branches of power) as an independent branch of state power. The Declaration also added to the content of the principle of power belonging to the people.

The Soviet Constitutions only vaguely specified the content of this principle. For example, Art 2 of the Constitution of the Tajik S.S.R. of 1978 set forth that "all the power in the Tajik S.S.R. belongs to the people. The people execute state power through Soviets of People's Deputies that comprise the political foundation of the Tajik S.S.R."<sup>7</sup> This main principle of people's power was fully

<sup>2</sup> See: *Constitution of the Tajik Soviet Socialist Republic*, Dushanbe, 1978, Art 56.

<sup>3</sup> See: *Ibid.*, Art 99.

<sup>4</sup> See: *KPSS o perestroike*, Collected Documents, Moscow, 1988, pp. 145-147.

<sup>5</sup> See: *Ibid.*, pp. 234-250.

<sup>6</sup> *Vedomosti Verkhovnogo Soveta Tadzhikskoi SSR*, No. 16, 1990, Art 236.

<sup>7</sup> *Constitution of the Tajik Soviet Socialist Republic*, Dushanbe, 1978.

recognized in the Declaration. For example, the second item said that “the people are the bearer of sovereignty and the only source of state power. The people execute state power both directly and through representative bodies.”<sup>8</sup> Here, as we see, it is important that the people are also recognized as the bearer of sovereignty and the only source of state power. Moreover, it was stated that the people could also directly execute the power that belonged to them.

By fixing these principles, the Declaration laid the foundation for establishing a parliamentary system, since it, as was stressed, became the basis on which the country’s new Constitution was drafted.<sup>9</sup>

The next important step in the evolution of the parliamentary system was the adoption of a new Constitution for sovereign Tajikistan (1994). It enforced the principles of a democratic and law-based state, which formed a strong foundation for the parliamentary system and created a legislative power branch in the country. The constitution set forth such principles as declaring the republic a democratic, law-based, and secular state; recognizing man, his rights, and his freedoms as the highest value in society; recognizing the people as the bearer of sovereignty and the only source of state power; enforcing political and ideological pluralism; separating powers into legislative, executive, and judicial; recognizing the supremacy of the Constitution and the laws; recognizing international legal acts as a component of the country’s legal system and their supremacy over laws; ensuring lawfulness; ensuring that laws go into effect only after their official publication; ensuring that citizens participate in administering the state through their representatives; recognizing the parliament as the state’s highest representative and only legislative body; ensuring free mandate and free expression of deputy will; guaranteeing inviolability of the deputy mandate, and so on.

Some of these principles could not be fully observed immediately after they were constitutionally enforced since society and the state were transiting from a Soviet totalitarian system to a democratic society. The old ways of thinking and methods of working, as well as the traditions and psychology of the Soviet period were still very strong. It would take time to overcome them and gradually replace them with new ones.

Moreover, when the state gained its independence (1991), public opposition began in the country, and then a civil war broke out, which prevented the establishment of a parliamentary system and the formation of a new state. Only after peace and national accord were reached (1997) was the opportunity presented for creating this institution.

The civil war in the country ended after talks were held and a Peace and National Accord Treaty signed on 27 June, 1997.<sup>10</sup> The Treaty, in addition to other issues, also fixed the aspects important for the establishment of a parliamentary system.

For example, the third block of items on the agenda of the inter-Tajik talks was called “Fundamental Questions of the Constitutional System and Consolidation of Statehood in the Republic of Tajikistan,” in which the following proposals were made:

- 1) on drafting a new Constitution and drawing all strata of Tajik society into the constitutional process;
- 2) on drafting a new election law and drawing all strata of the republic’s population, political parties, movements, and public associations into the law-making process; and
- 3) on organizing and holding free and democratic elections in Tajikistan, to name a few.<sup>11</sup>

<sup>8</sup> *Vedomosti Verkhovnogo Soveta Tadjikskoi SSR*, No. 16, 1990, Art 236.

<sup>9</sup> See: *Ibidem*.

<sup>10</sup> See: I. Usmon, *Kniga o mire*, Collected Documents, Dushanbe, 2001, pp. 396-398.

<sup>11</sup> See: *Ibid.*, pp. 38-41.

This block also included issues relating to drawing up, discussing, and adopting the republic's new Constitution and new laws on elections to the parliament and local representative power bodies, as well as to holding democratic and free elections. During the inter-Tajik talks, these issues were clarified and specified in a Protocol on the Main Functions and Powers of the National Reconciliation Commission<sup>12</sup> and in the statute of this Commission.<sup>13</sup>

One of the most important issues relating to the establishment of a parliamentary system and its further development is the creation of a professional and permanent parliament. Its professional nature makes it possible for the representative power branch to perform the functions entrusted to it.

This was a topic of discussion even before the civil war. For example, at the extensive meetings held in Dushanbe at the end of 1991 and during the first half of 1992, the opposition demanded the early disbandment of the Supreme Soviet and the election of a new professional parliament. A decree issued by the republic's president, R. Nabiev, of 12 May, 1992 On the Formation of a National Assembly (Majlis) stated: "During the transition period, before a new parliament is elected on a multi-party basis, a National Assembly (Majlis) shall be formed from among the people's deputies and representatives of political parties and movements on an equal basis, which shall be a body for approving draft laws submitted by committees of the Supreme Soviet of the Republic of Tajikistan."<sup>14</sup> The adopting of the Constitution, introducing amendments and addenda into it, and approving the state budget were not passed on to the National Assembly, but left for the Supreme Soviet to decide before a new parliament was elected.<sup>15</sup>

Admittedly, the decree did not directly talk about the professional nature of the future parliament. However, based on the content of this document and taking into account the situation at that time, it can be concluded that the creation of a permanent parliament was implied. In addition, professional parliaments had already been created at that time in some of the republics of the former Soviet Union, which also had a certain amount of influence on those in favor of creating this kind of parliament.

The draft of the new Constitution of Tajikistan directly mentioned a professional parliament, which was drawn up by a presidential working group and published in the mass media.<sup>16</sup> Art 7 of the draft noted that "the Majlisi milli is professional and permanent, is elected to a four-year term, and consists of 63 people's deputies."<sup>17</sup> An alternative draft presented by R. Zoyir, a professor at the law department of the National University, also insisted on the professional nature of the parliament. It stated that "the Majlisi milli is a permanent professional body that is elected to a four-year term and consists of 100 people's deputies."<sup>18</sup>

The draft prepared by the communists and the draft published in the *Farkhangi Badakhshon* newspaper pointed out that only some deputies should work in the parliament on a permanent basis. For example, the latter draft emphasized that "a deputy of the Majlisi Oli who works permanently in it may not occupy another post or engage in business activity at the same time."<sup>19</sup> Whereas the communist draft noted that "a deputy who works permanently in the Supreme Soviet may not occupy another post or engage in business activity, apart from scientific and creative activity."<sup>20</sup>

These provisions of the said drafts subsequently influenced the text of the Constitution of 1994. For example, it kept quiet about the professionalism and the permanent nature of the parliament.

<sup>12</sup> See: I. Usmon, op. cit., pp. 335-337.

<sup>13</sup> See: Ibid., pp. 353-357.

<sup>14</sup> See: *Vedomosti Verkhovnogo Soveta Tadjikskoi SSR*, No. 11, 1992, Art 189.

<sup>15</sup> See: Ibidem.

<sup>16</sup> See: *Vecherniy Dushanbe*, 1 June, 1992.

<sup>17</sup> Ibidem.

<sup>18</sup> *Narodnaia gazeta*, 15 July, 1992.

<sup>19</sup> *Farkhangi Badakhshon*, No. 5, 1994.

<sup>20</sup> *Zov trudiashchikhsia*, 1-7 July, 1994 (in Tajik).

Art 49 said that “the Majlisi Oli is the highest representative and legislative body of the Republic of Tajikistan. The procedure for forming and supervising the activity of the Majlisi Oli is determined by law.”<sup>21</sup> In this way, the Constitution, by keeping quiet about the professional nature of the parliament, seemed to refer to the law determining the procedure for its formation and activity. This law was adopted on 3 November, 1995, but it did not mention anything about the professional nature of the parliament.<sup>22</sup>

So the Constitution of 1994 did not legalize the professional, permanent nature of the parliament of Tajikistan, which was sort of a step back compared to the draft published in 1992. But there were reasons for this “retreat” related to the ongoing civil war, disrupted economy, and hundreds of thousands of refugees who fled the republic. Of course, such conditions were not conducive to creating a professional and permanent parliament in the country.

This question was raised during the inter-Tajik talks and was one of the issues on which the opposition wanted to introduce corresponding amendments into the country’s Fundamental Law. This issue also related to the fact that, first, during adoption of the 1994 Constitution, most of the opposition and its supporters were living outside the country and did not participate in the voting to adopt the Constitution. So it was agreed that amendments would be introduced into the Constitution. Second, the proposal to create a permanent, professional parliament, as already mentioned, was made as early as the beginning of the 1990s, when the opposition had only just declared its existence. By making this demand, it wanted to hold early parliamentary elections, occupy a certain number of seats in the parliament, and use it as a political tribune for advancing its political claims. This idea did not come to fruition at that time, since the political struggle escalated into a civil war. But when the talks began between the government and opposition, this question was raised again and discussed for a long time both during the negotiations and in the National Reconciliation Commission.

As we already emphasized, this was one of the issues included in the third block of items on the agenda of the inter-Tajik talks,<sup>23</sup> and then fixed in the Protocol on the Main Functions and Powers of the National Reconciliation Commission and in the Statute of the National Reconciliation Commission.<sup>24</sup> These documents, along with questions related to making amendments and addenda to the Constitution, also included questions of drafting a new law on elections to the parliament and local representative bodies and submitting it to the parliament for approval, as well as for a general referendum if needed. It also contained proposals for the date on which elections to the new professional parliament should be held under the control of the U.N. and OSCE with the participation of observer countries at the inter-Tajik talks to be reviewed by the representative power branch.<sup>25</sup>

Then this question was discussed for a long time in the National Reconciliation Commission, which included representatives of the government and opposition for implementing the agreements reached during the inter-Tajik talks.

The creation of a permanent, professional parliament was a central issue in the amendments introduced into the country’s Constitution, since these amendments largely affected the representative branch of power.

In order to draw up a draft of these amendments, the National Reconciliation Commission drafted a conception of proposals on amendments to the Constitution.<sup>26</sup> The conception was approved by the Commission after a lengthy discussion between the representatives of the government and opposition. It set forth the following ideas:

<sup>21</sup> *Constitution of the Republic of Tajikistan*, Dushanbe, 1994.

<sup>22</sup> See: *Akhbori Majlisi Oli Respubliki Tajikistan*, No. 21, 1995, Art 221.

<sup>23</sup> See: I. Usmon, op. cit., pp. 38-41.

<sup>24</sup> See: *Ibid.*, pp. 335-337, 353-357.

<sup>25</sup> See: *Ibidem*.

<sup>26</sup> See: A. Dostiev, *Konstitutsiia Respubliki Tajikistan: Istoria razrabotki, printatiia, vnesenie izmeneniy i osnovnyye poniatii*, Dushanbe, 2001, pp. 180-182.

- 1) a unicameral professional parliament should be created in the country;
- 2) the number of parliamentary deputies should be no less than 71 and no more than 80;
- 3) there should be no quotas for the regions;
- 4) the procedure for electing parliamentary deputies should be set forth in the Constitution itself;
- 5) elections of deputies should be held on the basis of the principle of the absolute majority of electorate votes;
- 6) bearing in mind that a permanent parliament is being created in the country, the parliamentary presidium and other superfluous bodies should be eliminated;
- 7) the heads of the country's diplomatic missions in foreign countries and international organizations should be appointed by the president with the parliament's consent.<sup>27</sup>

The conception was sent to the president for approval. After acquainting himself with the document, he said he did not agree with several points. For example, his letter of 3 April, 1999, said that the creation of a permanent two-house parliament was a demand of the times and that it was suitable for the country,<sup>28</sup> and it also noted that it would be impossible to completely fund the functioning of a permanent parliament.<sup>29</sup>

Taking into account the president's objections, the conception was discussed for a second time in the National Reconciliation Commission, where, after lengthy debates, it was adopted on 21 June, 1999. The Commission's resolution stated that a two-house parliament was to be created in the country, the lower house of which would be permanent and professional, and the upper would be convocational. It was set forth that the deputies of the lower house would be elected, and the members of the upper house would be elected or appointed. In other words, a mixed system of elections would be used, whereby some of the lower house deputies would be elected in single-member constituencies, and some on the basis of lists of candidates nominated by political parties according to the system of proportional representation.<sup>30</sup>

On the basis of this approved conception, a draft of amendments to the country's Constitution was drawn up. Taking into account that most of its regulations applying to the organization and activity of the parliament would change, a new version of the corresponding chapter of the Fundamental Law was drafted.<sup>31</sup>

The following regulations and principles of the parliamentary government system formed the basis of this chapter. The Parliament—Majlisi Oli (Supreme Assembly) consists of two houses—Majlisi namoiandagon (Assembly of Representatives) and Majlisi milli (National Assembly). The lower house—Majlisi namoiandagon—functions on a permanent basis, and the upper house—Majlisi milli—is convocational. The deputies of the lower house are elected directly by the country's citizens according to single-member and multi-member constituencies; some deputies of the upper house are elected indirectly by local representative bodies, while others (8 people) are appointed by the country's president. The ex-president has the right to remain a life member of the upper house, if he does not waive this right.

A few other generally accepted regulations of parliamentary activity were also adopted. In particular, the president convenes the first session of the new convocation of both houses, regular ses-

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<sup>27</sup> See: A. Dostiev, *op. cit.*, pp. 177-182.

<sup>28</sup> See: *Ibid.*, p. 184.

<sup>29</sup> See: *Ibid.*, pp. 177-182.

<sup>30</sup> See: *Ibid.*, p. 184.

<sup>31</sup> See: *Ibid.*, pp. 198-209.

sions of the lower house as the permanent house are convened once a year, whereby they remain in session from the first work day of October until the last work day of June; parliamentary holidays, time for work with voters, and so on are also envisaged.

Each house has its own powers, and the houses also have joint powers which they execute at joint sessions. Powers are distributed between the houses in view of their specific features. Legislative activity belonged to both houses and other subjects of law enjoying legislative initiative. The lower house is considered legislative, all draft laws are sent to it and only it has the right to adopt them. Then the laws are sent to the upper house for approval. Laws on the budget and amnesty are an exception; they are sent to the president to be signed and promulgated.

Thus the generally recognized regulations and principles of parliamentarism, which are extremely important for establishing this political institution, were adopted in the republic for the first time. This ushered in a full-fledged parliamentary system in Tajikistan as an independent institution with all the characteristics, principles, and regulations inherent in it.

The further development of the principles and regulations of the parliamentary system was also fixed in the amendments to the Constitution introduced by the 2003 referendum.<sup>32</sup> In most cases, these amendments were editorial and clarifying in nature. For example, it was envisaged that the deputies of the lower house and members of the upper house should have a higher education.<sup>33</sup> Along with these amendments, several other changes were also made to the section on the parliament. For example, the Constitutional, Supreme, and Higher Economic Courts have the exclusive right of legislative initiative, and the Law on Amnesty was transferred to the competence of the lower house along with the Law on the State Budget, which is also under its exclusive jurisdiction.<sup>34</sup> These and other changes, in turn, made it possible to improve the constitutional principles for the organization and functioning of the parliament and opened up broad possibilities for the further development of this institution of democracy in Tajikistan.

In conclusion, it should be noted that the parliamentary system and legislative power in the Republic of Tajikistan did not appear overnight, since it takes time:

- a) to gradually do away with the old way of thinking and improve the forms and methods of parliamentary work;
- b) to gradually comprehend the principles and regulations of the parliamentary system and put them into practice;
- c) to ensure that the parliament's activity, particularly that of the permanent house, gives the finishing touches to the principles and regulations of the parliamentary system keeping in mind the reality, special features, and characteristics of the Republic of Tajikistan;
- d) to gradually strengthen and improve the parliament's regulatory-legal framework (taking into account the above-mentioned factors) and elaborate efficient ways for it to interact with the other branches of state power.

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<sup>32</sup> See: *Akhbori Majlisi Oli Respubliki Tajikistan*, No. 3, 2003, Art 97.

<sup>33</sup> See: *Ibidem*.

<sup>34</sup> See: *Ibidem*.