

REPORT ON THE VISIT BY A DELEGATION OF THE COMMISSION TO KYRGYZSTAN

Secretariat Memorandum

1. Following the invitation by the Kyrgyz authorities, a delegation composed of members of the European Commission for Democracy through Law (Mr Batliner (Liechtenstein), Prof. Malinverni (Switzerland) and Prof. Zbudun (Turkey)), accompanied by Mr Buquicchio and Mr Markert, visited Kyrgyzstan on 5-7 March 1993. The fourth rapporteur on Kyrgyzstan, Mr Kedzia, was unable to participate in the visit but made written comments. The written comments by all four rapporteurs appear in document CDL (93) 16. The draft constitution of Kyrgyzstan is reproduced in document CDL (93) 12.

2. Although the programme of the visit prepared by the Ministry of Justice of Kyrgyzstan had to be somewhat shortened due to the delayed arrival of the delegation (the delegation arrived 13 hours late at Alma Ata Airport since the airport had been closed because of adverse weather conditions), it was still very extensive. If the main emphasis was on the exchange of views with the Constitutional Commission, there were also meetings at the Ministry of Justice, the Legislative Commission of Parliament and with the Minister for Foreign Affairs.

3. Before starting the official programme, the delegation was invited to a working breakfast by the Ambassador of Turkey, Mr G?ker. The Commission wishes to thank the Turkish authorities for this kind invitation. Present at the breakfast were the Charge d'affaires of Germany in Kyrgyzstan, Mr Scheller, the American Ambassador, Mr Hurwitz, and representatives of the European Community and the international organisations active in Kyrgyzstan. They all confirmed that Kyrgyzstan is a country governed by democratic leaders where human rights are respected. This happy state of affairs may however be threatened by the bad economic situation. If living standards continue to fall, the population might reject the present democratic leaders. All foreign diplomats therefore stressed the need to give economic aid to this country. There are some natural resources, including gold and oil, but these are often difficult to exploit and the development requires foreign capital.

4. The first working meeting was held at the Ministry of Justice under the chairmanship of the first Deputy Minister of Justice and observer on the Venice Commission for Kyrgyzstan, Mr Kosakov, who replaced the Minister of Justice who had fallen ill. Apart from leading officials from the Ministry of Justice, the Vice-President of the Supreme Court and other senior judges were also present. The Kyrgyz participants expressed their interest in co-operation with the Council of Europe in the legal field, in particular as regards criminal law and prison administration. The chapter in the draft Kyrgyz constitution on the judiciary was discussed, in particular the provisions on the constitutional chamber of the Supreme Court.^[1]

5. The delegation had two meetings with the Constitutional Commission during which the main drafters of the Constitution were present, among them Mr Kosakov, the Commission's chief co-ordinator, Mr Cholponbayev, People's Deputy and the legal adviser to the President, Professor Levityn. The draft constitution was, after its first reading in parliament, submitted to popular discussion and numerous amendments were received. Popular discussion had been officially ended at the end of February and the visit of the Commission members was particularly timely since the comments can be taken into account for the second reading and published together with the comments coming from the population. The adoption of the constitution by an assembly comprising the 350 members of the Supreme Soviet and 350 personalities is foreseen for May.

Discussions with the Constitutional Commission focused on the chapters in the draft Constitution on Human Rights and the Judiciary. Members of the delegation emphasised :

- the need for detailed provisions on the right to liberty and on the right to due process, comparable to Articles 5 and 6 of the European Convention on Human Rights;
- the need for administrative courts and an administrative chamber in the Supreme Court;
- the need to fully grant to non-citizens most of the fundamental rights, with the exception of some political rights;
- the need for more detailed human rights provisions with limitations specific to each right instead of a general limitation clause.

The Kyrgyz participants acknowledged the pertinence of the remarks and seemed ready to take them into account.

6. The delegation also had a meeting with the legislative Committee of the Supreme Soviet. The Supreme Soviet was elected in March 1990 when Kyrgyzstan still belonged to the Soviet Union under the Presidency of Mr Gorbachev. Since this election it had been partially renewed, but even before it had been a very young parliament (with 50 % of members under 50 years), containing mostly (91 %) newcomers to politics. Practically all nationalities are represented. Even if the Supreme Soviet does not always fully agree with the President, it was this Parliament which first elected President Akayev, preferring him to the head of the Communist Party.

The Chairman of the Legislative Committee underlined that the new Parliament had already adopted 161 laws and that it had a heavy workload providing for the legal foundations of an independent State. In particular, there was a lack of specialists on international law.

The discussion focused on the provisions in the draft constitution on parliament and the separation of powers. The members of the delegation questioned in particular the need for the final paragraph of Article 59 of the draft Constitution, giving to Parliament the competence to take up any matter for its consideration and doubted the feasibility of providing for very strict majority requirements for decisions of Parliament.

7. The Turkish Embassy arranged a meeting of the delegation with two parliamentarians, one of them representing the minority of Meshetian Turks. The discussion focused on the advisability of declaring Kyrgyz the only official language while allowing the Russian speaking population to use Russian in legal and administrative proceedings, and on the advantages of a full-time or part-time parliament. The representative of the Turkish minority seemed fully satisfied with the situation of this minority in Kyrgyzstan.

8. At the end of its visit, the delegation was received by the Minister for Foreign Affairs, Mr Karabayev. Minister Karabayev stressed the differences between the Central Asian States which should not be treated en bloc. In particular, in Kyrgyzstan there was no danger of Islamic fundamentalism. He expressed interest in co-operation with the Council of Europe.

9. Summing up its impressions on the visit, first of all the delegation would like to thank the Kyrgyz authorities for the efficient organisation and generous hospitality.

As regards the political climate in Kyrgyzstan, the visit confirmed the impression that Kyrgyzstan is very advanced on the way to the rule of law and pluralistic democracy. Members of the delegation were in particular struck by a general climate of tolerance which augurs well for future political development. Islamic influence on everyday life seems, at least in the capital Bishkek, minimal; women occupy important positions in the administration and their dress is European. It is difficult to imagine that Islamic fundamentalist forces could come to power under such conditions.

With regard to the economy, it is clear that the economy of the Republic is not very developed. Even though fruit, vegetables and meat seem to be more generally available than in Russia, the general level of industrial development is clearly lower than in either Russia or neighbouring Kazakhstan. There is an obvious need for economic aid.

In conclusion, assistance to Kyrgyzstan seems indicated not only because of the situation in the country but also because Kyrgyzstan might serve as a model in an area where there is no tradition of pluralistic democracy.

[1] *The views expressed by the members of delegations are reflected in their written statements (see document CDL (93) 16).*