

Visit by a delegation of the Commission to Georgia

Report by the Secretariat

At the invitation of the Georgian authorities, a delegation comprising MM. J.C. Scholsem, N. Vitrouk, J. Nicol's Mu'iz, G. Buquicchio and J. Polakiewicz visited Georgia from 6 to 9 July 1994; its written comments on the draft constitution drawn up by the Constitutional Commission are set out in doc. CDL(94) 13. This draft and two others submitted by the Republican Party and the University of Tbilisi are reproduced in doc. CDL(94) 27.

The visit provided an opportunity to exchange views with members of the Constitutional Commission, the President of the Republic, Mr Shevardnadze, the President of the Supreme Court, Mr Ugrekeldze, and numerous politicians involved in the constitutional reforms. The programme for the visit was carefully drawn up by the Secretary of the Constitutional Commission, Mr Demetrashvili.

1. The Secretary of the Constitutional Commission

Mr Demetrashvili informed the members of the delegation of the progress of work to prepare the new Georgian constitution. To date, seven draft constitutions had been submitted to the Constitutional Commission, which was made up of members of parliament (for about 60%) and experts. The Commission had created a working party which was preparing a single draft to be submitted to Parliament in September. The most controversial issues were the powers of the President of the Republic and the status of the regions of Abkhazia and South Ossetia.

2. Constitutional Commission

The meeting with the working party of the Constitutional Commission was attended by representatives of the various political groups, including the Republican Party and the Voice of the Nation (a party recently founded by Mr Shevardnadze).

The discussion focused on the structure of the State and the rights of minorities. Some Georgian politicians were reluctant to accept the idea of a federal structure. In their view, it would encourage separatist tendencies which were already virulent in several parts of the country. The Constitutional Commission's draft constitution provided for a unitary State with several levels of territorial self-government. Above local authority level there would be an intermediate regional level. Besides ten regions enjoying a normal degree of autonomy, two regions (Abkhazia and Ajaria) were to be given special autonomy. The extent of this special autonomy would be determined by legislation which had to be approved by both the national parliament and the two regions concerned. The regions would have considerable powers in the areas of justice, public order, energy, health and nature conservation, although the exact scope of these powers was not defined clearly in the draft constitution.

The delegation members stressed the need to grant broad autonomy to Georgia's different ethnic, linguistic and religious groups. This would be the only means of ensuring peaceful coexistence between the different ethnic groups and, in the long term, the unity of the Georgian State. In this respect, it was of little importance whether the State was termed a federal or regional State. What mattered was the scope of powers and degree of autonomy which central government was willing to grant regional and local authorities.

The Constitutional Commission's draft constitution contained a number of provisions on the status and rights of national minorities. Article 25, for example, forbade any attempt to obstruct the free development of any national minority. The delegation members stressed the importance of such provisions. Even if the intention was to avoid giving an exhaustive list of minority rights, there had to be at least a general clause concerning their protection so that the fundamental rights enshrined in the constitution could be interpreted favourably in respect of minorities.

3. The Republican Party

While all the other political groups favoured a presidential system, the Republican Party's draft constitution proposed a radically parliamentary system, inspired by the German model. The representatives of this middle-of-the-road party justified their choice on the ground that Georgia had in the past suffered greatly under authoritarian presidencies.

The members of the delegation felt that the choice between a parliamentary and a presidential system was a political choice which should be made in the light of the political, cultural and social realities of the country concerned. At any event, there had to be a balanced separation of the powers to prevent any abuses.

The Republican Party representatives denied the utility of constitutional provisions guaranteeing minority rights. They believed that effective human rights protection and the constitutional guarantee of regional and local autonomy were sufficient.

The delegation members pointed out that this had not been borne out in the experience of several countries and that international instruments, particularly those of the CSCE, now recognised minority rights as distinct categories of human rights in general.

4. The University of Tbilisi

The work of the Constitutional Commission has received support from lecturers and researchers at the University of Tbilisi, who have translated numerous countries' constitutions into Georgian and have also submitted a draft constitution themselves.

Discussions with representatives of the university focused on the utility of including social rights in the constitution, territorial organisation and the powers of the President. These last were substantially reduced compared with the Constitutional Commission's draft this was welcomed by the members of the delegation.

5. The President of the Supreme Court, Mr Ugrekeldze

The President of the Supreme Court, Professor Ugrekeldze, outlined the composition and functions of the Supreme Court.

At present, the Supreme Court consisted of three chambers (civil, criminal and military). The Court functioned mainly as a court of cassation but, since there were no appeal courts, it was also the court of first instance and last instance for certain particularly serious crimes which carries the death penalty. The Supreme Court also supervised constitutionality and handed down decisions of interpretation which were binding on lower courts.

6. The President of the Republic, Mr Shevardnadze

The delegation was also received by the Georgian President, Mr Shevardnadze. Thanking the Venice Commission for its active collaboration, Mr Shevardnadze said that the constitution was important for the stability of his country. He believed it vital to find a proper solution to the conflicts in Abkhazia and South Ossetia. The other thorny problem was choosing the system of government. Mr Shevardnadze favoured strong government.

modelled on the new Russian constitution, which was the only system capable of preserving the unity of a country with over seventy different ethnic groups.

7. Appraisal and future work

Summing up its visit, the delegation wishes above all to thank the Georgian authorities for their efficient organisation and generous hospitality. The political climate in Georgia is characterised by pluralism of opinion and tolerance of minority groups, which augurs well for the future development of the country. There is a substantial desire among Georgia's politicians to espouse Western models of rule of law and market economy. At the same time, they are aware that Western models cannot be adopted without taking account of Georgia's political, economic and social situation.

The Georgian authorities have expressed the wish to continue co-operating with the Venice Commission. The Secretariat will shortly be receiving Georgia's application to accede to the Partial Agreement as an associate member. This application will be transmitted to the Committee of Ministers of the Council of Europe.