Strasbourg, 28 May 2010

Opinion no. 582 / 2010

CDL(2010)060*
Eng.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION

ON THE DRAFT CONSTITUTION

OF THE KYRGYZ REPUBLIC

(version published on 21 May 2010)

On the basis of comments by

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1. Introduction

1. In a letter dated 23 April 2010, the Acting Vice Chairman of the Provisional Government of the Kyrgyz Republic, Mr Omurbek Tekebaev, asked the Venice Commission to assist the Provisional Government of the Kyrgyz Republic in its efforts to draft a new Constitution of the Kyrgyz Republic.

2. The new Constitution of Kyrgyzstan, that is to be adopted by referendum in June 2010, is based on the text of the last Constitution of Kyrgyzstan adopted on 21 October 2007. Many parts – especially the first section explaining the basic principles of the constitutional order and the second section on human rights – have remained largely unchanged. Other parts, especially those concerning the distribution of power between the President, the Government and Parliament have been fundamentally reworked.

3. The Venice Commission has accompanied the process of constitutional change in Kyrgyzstan since 2002. The last Constitution has been commented in the "Opinion on the Constitutional Situation in the Kyrgyz Republic" adopted by the Commission at the 73rd Plenary Session (Venice 14-15 December 2007). The comments concerning the unchanged parts of the Constitution are still valid today. The present Opinion will therefore focus on the new draft provisions in the Constitution of 21 May 2010, as published in the mass media after its approval by the Constitutional Assembly and the Provisional Government (on 19 May), but takes into account the previous opinions of the Venice Commission.

4. On the invitation of the Provisional Government, a delegation of the Venice Commission composed of Mrs A. Nussberger and Messrs A. Endzins, N. Esanu and A. Fogelklou visited Bishkek and met with the representatives of the Provisional Government, members of the Working Group on the drafting of the Constitution[1] and the Constitutional Council[2]. The following draft Opinion was prepared on the basis of the draft Constitution of 12 May 2010 transmitted to the delegation by the Working Group on the drafting of the Constitution (hereinafter, the "Working group").

5. The rapporteurs received the final version of the draft on 21 May 2010.

6. This opinion was adopted at the …. Plenary Session of the Venice Commission.

2. General observations

7. The 2007 Constitution kept the semi-presidential system, but has in reality centralised political power to the Presidency. At the same time, the 2007 Constitution contains a number of other provisions aimed at reinforcing the rule of law, guaranteeing human rights and freedoms and the constitutional structure as a whole. These amendments in general and many of the specific provisions are positive and have been preserved in the present constitutional draft.

8. The draft of 12 May 2010 presented to the experts of the Venice Commission was a step towards the improvement of the system of the separation of powers. It took into account a number of important recommendations made by the Venice Commission in 2007.

[1] A group of national experts in charge of the drafting process.
[2] Constitutional Council is composed of 75 representatives of the authorities, political parties, civil society and independent experts.

9. The Working Group introduced a number of improvements to the draft of 21 May 2010 based on the preliminary comments made by the Venice Commission, which were transmitted to the drafters during the rapporteurs' visit to Bishkek on 12 – 14 May 2010. However, there seem to be some issues in the draft of 21 May that might need further clarification and/or amendments. The following opinion will focus on the provisions of the new draft and make several recommendations as well as provide comments.

3. Section I: Fundamental principles of the constitutional order

Article 1 sets out the basic principles of a modern democratic state based on the rule of law. Generally, the comments contained in the Opinion of 2007 were followed.

10. New **Article 2** provides the basis for the organisation of referendums. Whereas in the last Constitution the only rule fixed was that the procedure for holding a referendum shall be established by constitutional law, the new version is more explicit. It prescribes that the questions which can be brought before a referendum have to be enumerated in a constitutional law. The regular legislative process should not be avoided by having recourse to a referendum.

11. The Venice Commission delegation welcomed the decision of the Working Group not to include the provision on election commissions, which existed in the draft of 26 April. Issues relating to the administration of elections should be included in a specific electoral law and a law on political parties.

12. **Article 3** defines the principles on which State power is based. The introduction of the principle of openness is a positive development.

13. **Article 4,** paragraph 4.2 provides that those who are part of the military, police, security forces, prosecutors offices, justice and the judiciary cannot be members of political parties. This limitation seems to be problematic as the authors of the draft seem not to make a distinction between servicemen, prosecutors, judges and other people working in these bodies as supporting staff or under specific contracts. This problem could be solved by, for example, introducing a list of officials who cannot be members of political parties. Otherwise, this provision seems to be disproportionate and unnecessary in a democratic society.

14. In its **Article 12,** the draft establishes a rather unusual regulation on the issues of property. There are several problematic provisions in the text, notably par. 4 provides protection for the rights of property ownership. But, why do the drafters provide protection only for Kyrgyz citizens and legal persons? It would seem that a more general wording such as, for example, "The Kyrgyz Republic shall protect ownership and the right of succession" or "The property of everyone is protected" would be better and in line with international standards.

4. Section II: Fundamental rights

15. The Venice Commission welcomed Article 6, which provides that International treaties on human rights have a direct effect and have priority over other treaties. But, it is not clear whether these treaties trump Kyrgyz laws. Also, the effects of other treaties on the Kyrgyz legal system in cases of conflict remain unclear. This provision should be more clearly formulated. It should be reminded that the problem of relations between international treaties is not a mater of internal legislation and must be solved on the basis of the Vienna Convention on International Treaties. Countries cannot refuse to respect a ratified international treaty on the basis of its internal regulation.

16. The section on human rights and freedoms deserves praise for its far-reaching promises. In relation to the 2007 version, it is edited more clearly since the various rights are expressed in different articles instead of being paragraphs or sub-paragraphs in one in two simple articles. This part of the Constitution includes a catalogue of guarantees the protection of human rights, which seems to fully correspond to international standards.

17. There area also some positive substantial changes in comparison to the 2007 Constitution in the area of limitation of human rights. Firstly, the provision on proportionality has been much better formulated **(Art. 20. para. 2, last sentence**). Secondly, the rights and corresponding prohibitions, which must *not* be limited, have been clearly enumerated. **(Art.20 paras. 4 and 5)**. Thirdly, it is clearly prohibited to issue *"nodzakonnye normativnya akty"* concerning human rights and freedoms (**Art. 20. para 2, second part).** It should, however, be pointed out that *only* the Constitution and the laws passed by Parliament may limit human rights. /**Cf Art. 20. para. 2, first sentence)**

18. However, a separate Chapter on „rights and obligations of citizens" is quite unusual, even if the provisions in Articles 50 – 59 do not seem to present any problems.

19. Since the Venice Commission did not receive a specific request from the authorities of Kyrgyzstan, Chapter II was not examined in detail by the rapporteurs of the Venice Commission.

5. Section III: The President of the Republic of Kyrgyzstan

20. Chapter III is subdivided into two sections. The first section deals with the election of the President, the second section with the President's competences. The role of the President is defined in the preamble to Chapter III (**Article 60**).

- General definition of the role of the President

21. The version of the respective Article in the 2007 Constitution has been sharply criticized by the Venice Commission. In the new version, important changes have been inserted.

22. Article 60 para. 1 contains, as stated in the 2007 opinion, "the usual definition of the role of the President in presidential and semi-presidential systems" (President as "head of State"; President as "highest official"). It has to be stressed that the President is not considered as being a part of the executive since the Government is defined as the "highest organ of executive power" (Article 83 para. 2). He or she thus stands above or at least outside the traditional trilateral system described by the concept of the "separation of powers".

23. Article 60 para. 2 defines the President as the "symbol of the unity of the people and state power", but omits the characterisation as "the guarantor of the Constitution of the Kyrgyz Republic and of human and civil rights and freedoms". While it is true that other constitutions of Central and Eastern European countries contain similar provisions, the change is welcome. As a rule, the judiciary is considered to be the guarantor of human rights and freedoms and the constitutional order as a whole. Calling the President a "guarantor" might be easily misunderstood as placing him or her beyond the constitutional order. The authors of the draft have rightly seen that the defence of rights and freedoms is the task of the judiciary and, by deleting this phrase, the risk of blurring competences and of infringing the constitutional principle of the independent position of the judiciary has been diminished.

- Election of the President

24. Whereas the 2007 Constitution stated that the same person could not be elected for more than two consecutive terms, the new version (**Article 61 para. 2**) states that it is not even possible to be elected President twice. This provision is very restrictive in comparison to

worldwide practice.[3] Yet, this provision is welcome. As it provides for an obligatory change after a six-year period, it tries to avoid the establishment of authoritarian structures. If a President has no chance of being re-elected immediately, there will not be any incentive to build up a strong power base and to crunch the opposition. As experience has shown in Kyrgyzstan, the abuse of presidential power is a very serious problem. The new wording of Article 61 para. 2 can be a useful remedy if it is strictly observed and not changed during the first presidential term.

25. The number of the signatures that have to be collected in order to run for President has been reduced from 50 000 to 30 000. This is welcome as it allows for more competition. **Article 63, para. 3** provides that the President cannot be a member or act on behalf of any political party while in office. This is a positive provision.

- Competences of the President

26. Article 64 contains essential changes. The clear aim of the reform is to limit presidential powers, to integrate more state organs in the decision-making process both concerning appointments and the resolution of subject matters (what does that mean???). It might be useful to recall the comments on the 2007 version of the Constitution in order to understand why all these changes are seen as very helpful in building a truly democratic State:

"*The list of powers of the President in these Articles and other Articles of the Constitution seems inspired by the wish of the drafters of the Constitution to provide the President with all powers which may be found in European, US, Latin American or Russian constitutionalism. … The President thus is in full control of the administration in general and the power structures in particular, he or she dominates the executive and has decisive influence on appointments to judicial and other independent positions. If ever there is resistance against his or her wishes, the President can call a referendum without the involvement of the other state organs." (CDL-AD(2007)045, para. 39, 41*)

27. The changes in the list of competences are essential:

1) Appointments within the executive

- The President can no longer arbitrarily make decisions on the resignation of the Prime Minister (former Article 46 para 2), however, he or she has the right to appoint and dismiss at will members of the Government and their deputies responsible for defence and national security (Article 64 para 4.2). This right raises a question: what happens when the Government resigns – do these Ministers stay? This issue needs further clarification.

- The President can appoint and dismiss after consultations with the Parliament the Prosecutor General (para. 3), Chairperson of the National Bank (Article 64, para. 5). The system of appointment of the above-mentioned officials should be clarified in a specific law on the *Procuratura* and the National Bank. For instance, the proposed system of nomination and dismissal of the Prosecutor General could undermine the independence of the institution.

- The President can only determine the structure of the presidential administration and form and preside over the Security Council, but no longer has any influence on the appointment of the following organs:

  - Heads of administrative departments
  - Heads of local state administrations
  - Secretary of State

[3] Cf. Angelika Nußberger, Setting Limits and Setting Limits aside – The Constitutional Framework of Presidential Power in Post-Communist Countries, in: Liber Amicorum Antonio La Pergola, Strasbourg, The Hague 2008, S. 206-228.

- State organs directly subordinate and accountable to the President

The President can no longer determine terms of remuneration for state and municipal civil servants.

2) Appointments outside the executive

- As there no longer is a Constitutional Court, no appointments are made in this field;
- no competence to give consent for criminal prosecution or administrative proceedings against local court judges;
- The President can no longer appoint one half, but only one third of the members of the Election Commission; he or she can no longer appoint the chairman and has not right to dismiss those who have been appointed.

3) Powers in the field of foreign policy

- The power to direct foreign policy has been abolished.
- The power to conduct negotiations and sign international treaties has to be exercised in accordance with the Government.

28. The powers of the President in conferring State awards and granting pardon have not been changed.

4) Powers of the President in the legislative process

- The President is no longer entitled to submit draft laws to the *Jogorku Kenesh*
- The President is no longer entitled to suspend the action of legal and regulatory acts of the Government and other executive authorities
- The President is no longer entitled to call a referendum on his own initiative, but only on the initiative of 300 000 voters and the majority of the deputies (cumulative conditions)
- The right of the President to issue decrees and orders has not been changed (former Article 47, now Article 65). This wording is potentially dangerous - it is not specifically mentioned that the decrees must not contradict the Constitution and the laws or replace laws. It might be wise to complete the Article in the sense that no decree may reduce the scope of human rights.
- The President keeps the right to return legislation (veto) to the *Jogorku Kenesh* (Article 64 para. 2). Article 81 para.3 provides that the Parliament can overrule the presidential veto on legislation by a 2/3 majority vote.

5) Powers of the President in the case of emergencies and in the case of war

29. The President still has the right of immediate reaction in the case of emergencies and war. But in all those cases it is necessary "to provide prompt notification to the Jogorku Kenesh", which has the right to confirm or to abrogate the decrees of the President (Article 74).

30. All these changes are very positive, as they considerably reduce the excessive powers the President had under the 2007 Constitution. The scope of powers now assigned to the President is still large enough for securing stability in the country, especially in view of the possibilities of immediate reaction to emergency situations.

6) Immunity and protection of the President

31. The provisions on the immunity, support, service and protection of the President have been abrogated. This is to be welcomed as it seems to have been understood as a status "*legibus-absolutus*". It is clear that the international rules on the immunity of Heads of State apply to the President.

7) Termination of the powers of the President

32. There are three reasons for the termination of the powers of the President: resignation, dismissal and inability to exercise his/her duties.

33. The procedure for dismissal of the President has been changed. Whereas according to the 2007 Constitution it was necessary to accuse the President of having committed "high treason or another particularly serious crime" (Article 51 para.1), it is now sufficient to have committed a "crime" (Article 67 para. 2). On the basis of the 2007 Constitution not only the *Jorgorku Kenesh* and the general prosecutor had to support the accusation, but also the Constitutional Court; this precondition is no longer necessary. The two-thirds majority of the deputies for the decision to bring a charge against the President is replaced by a simple majority; for the initiative a vote of one-third of the deputies instead of the majority is sufficient. The vote on the dismissal has to be taken by two-thirds of the deputies and no longer by three-quarters. The – short - time-frame of three months is upheld.

34. Thus, it is now clearly easier to impeach the President. Taking into account that the President can be elected only for one term, the potential for the usurpation of power has been largely reduced.

6. Section IV: The legislature of the Kyrgyz Republic

1. Composition the Jogorku Kenesh and status of the deputies

35. The general description of the role of the *Jogorku Kenesh* as "a highest representative body exercising legislative power and supervisory functions within the limits of its competence" has been upheld (**Article 70 para. 1**).

36. The number of the deputies is to be increased from 90 to 120. There is no "ideal" number of deputies. Generally, it depends on the size of the country and the need for an equal representation of the different parts of the population and regions.

37. The deputies will be elected for five years on the basis of the proportional system. Concerning the electoral system in Kyrgyzstan, several experimental approaches have already been tried out: elections had been held on the basis of a mixed system and on the basis of a majoritarian system. The problem is the lack of a stable party system in which the parties are rooted in certain traditions and world views as it has grown in democracies such as the British or the French system. The decision to introduce a proportional system might help to strengthen the representation of a plurality of political views in Parliament. Yet, it all depends on the relevant forces in civil society to build up parties with identifiably different profiles. The warning issued in the 2007 Opinion might be recalled:

"*Since the party system is very weakly developed, there is a risk that the constitutional reform contributes to a rather artificial system in which political parties are founded from above. They may be controlled by business interests but also by the executive and may not be grounded in the concrete political experience of the people. Moreover, there is no room for independent candidates." (CDL-AD (2007)045, para. 45).*

38. In view of the later developments, this comment proved to be very much to the point. But, it has to be taken into account that the 2007 Constitution established a strong Presidential system leaving almost no possibilities for the Parliament to act. It might be hoped that the formation of political parties will be promoted by giving considerable powers to Parliament.

39. The prohibition of a single party having more than 65 out of 120 deputies should avoid the domination of one political party. Such restriction of the size of the majority seems to be innovative. The problem is that it might violate the principle of the equality of votes. The votes

for a party, which has already reached the relevant quota, can be lost. But, these restrictions might be justified as measures necessary to build up a pluralistic party system. Specific legislation should explain how the remaining votes are distributed. Previous versions of the draft included provisions on electoral threshold. The final version provides that the issue of electoral threshold will be regulated through a constitutional law.

40. Article 70 para. 3 introduces the concepts of "fraction" and of "Parliamentary majority" that were absent in the previous version of the Constitution. The deputies have to form fractions. The fraction or coalition of fractions reuniting more than half of the deputies are considered to be the "parliamentary majority". The formation of a coalition has to be officially declared.

41. These regulations aim at forming a stable representation of the parties within Parliament. As deputies lose their mandates when they leave a fraction or a party (Article 73 para. 1) their "freedom" is clearly restricted. Nevertheless, they are free to vote for or against the position of the fraction/party. Furthermore, in contrast to the 2007 Constitution, they can no longer be expelled from the party. Thus, the regulation proposed might be considered as balanced with a view to potential misuses of political mandates for other purposes. Yet, some questions remain. Is it possible to form new coalitions in the five-year period? Is it possible for deputies to refrain from adhering to any fraction? The Ukrainian example has shown very clearly that it is better to solve these questions explicitly on the basis of the Constitution.

42. In the parliaments of post-communist States, the misuse of immunity regulations constituted a widespread problem because the status of a parliamentarian could be attractive to those who wanted to escape criminal prosecution. Therefore, the concept of a very restricted immunity in the new version of the Kyrgyz Constitution is very welcome. Contrary to the former Constitution, there is no general guarantee that the deputies "shall enjoy immunity" (former Article 56 para 1). It is only the prohibition of prosecution for "opinions expressed in the course of their activities as a deputy or for the outcome of voting in the Jogorku Kenesh" that is upheld (Article 72). There no longer is any protection against arrest and searches. The consent of the majority of the *Jogorku Kenesh* remains a precondition for judicial proceedings against deputies except for "particularly serious crimes". If this does not correspond to a certain category of crimes in the Criminal Code, this notion should be clarified.

43. The rest of the regulations on the composition of the *Jogorky Kenesh* and the status of the deputies has not undergone any significant changes. It might be mentioned that the regulation of the incompatibility of business activities with the status of a deputy is particularly relevant and does not seem to have been implemented in practice.

44. The Constitution still provides the *Jogorku Kenesh* with the right to self-dissolution (Art. 78). It is not recommended that this right be guaranteed without any preconditions, as it might contribute to instability in the country.

2. Competences of the Jogorku Kenesh

45. The changes in the Chapter on the competences of the *Jogorku Kenesh* are complementary to the changes of the powers of the President and clearly show that the newly established system is mainly a parliamentary one. Whereas in the 2007 Constitution it was the President who had the right "*to define the fundamental thrusts of state domestic and foreign policy*" (former **Article 42 para. 3**), this task is now conferred to Parliament (Article 74). The *Jogorku Kenesh* has to be heard in all important decisions on personal appointments. It has to give its consent to the structure and composition of the Government (Article 74 para. 3.1) and to decide on the vote of confidence or no-confidence in the Government (Article 74 para. 3.3 ad 3.4). Yet, this right does not include expressing a vote of no-confidence in individual members of the Government, as provided in the 2007 Constitution. As already stated before, the *Jogorku Kenesh* also has the power to confirm or abrogate the decrees of the President in case of emergencies and war.

The regulations on the status of the *Toraga* of the *Jogorku Kenesh* are similar to the ones in the 2007 Constitution. Deputies of the *Toraga* are elected amongst the representatives of the opposition (Article 75 para. 1).

46. Concerning the work of the *Jogorku Kenesh,* it must be pointed out that there are special tasks reserved for the parliamentarian minority, such as the chairmanship of the committee dealing with the budget and of the committee on the legal order (Article 77). This seems to be a good mechanism of inner-parliamentarian control.

7. Section V: The Executive Power

47. The rules on the formation of Government have been changed in a surprising way. Under the 2007 Constitution, the parliamentarian majority had the right to propose a candidate and in the case of failure, this right could be passed on to other parties - now if the majority in the *Jogorku Kenesh* does not succeed to form a Government, this right is given to the other parties in the parliament. If they fail to get support for their proposal, the President has to form the Government. If his proposal is not supported, than he or she has to call for early elections. The proposed system seems to be very complex and might bring instability.

48. Contrary to the 2007 Constitution, the Government is no longer responsible to both the President and the *Jogorku Kenesh*, but only to the latter. It is therefore reasonable to expect the Government to be supported by the majority of the *Jogorku Kenesh*. In this context, the repeated vote of no-confidence of the *Jogorku Kenesh* forces the President to call for new elections.

49. Article 89 of the draft gives a list of the Prime Minister's powers. It is clear from the list that he is a head of the executive in Kyrgyzstan.

8. Section VI: The Judiciary

50. Article 93 establishes the main principles of the operation of the judiciary, which meet the requirements used in democratic States. However, some of the "Soviet" characteristics of the judicial system, such as the right of the Supreme Court to give explanations on questions of judicial practice (**Article 96 para. 2**) have been upheld; it is not clear if the system of "nadzor" is understood in a wide or narrow sense.

54. According to the **Article 94 para. 7**, the President of the Supreme Court can not be re-elected for a second term. In para. 8, the same rule applies to the presidents of other courts. There is a risk that such rotation might decrease the power for court presidents.

55. Article 94, in its para. 9, establishes the 5-year probationary period for judges, which could undermine their independence. In this respect the Venice Commission has already pointed out in its Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)[4] of the Venice Commission "**the Venice Commission strongly recommends that ordinary judges be appointed permanently until retirement. Probationary periods for judges in office are problematic from the point of view of independence".**

56. In this connection, it would also be justified to raise the issue of the role of different State bodies in ensuring the independence of the judiciary. The report on the Independence of the Judicial System Part I underlines that: "it is the Venice Commission's view that it is an appropriate method for guaranteeing for the independence of the judiciary that **an independent judicial council have decisive influence on decisions on** the appointment and career of judges. Owing to the richness of legal culture in Europe, which is precious and should be safeguarded, there is no single model which applies to all countries. **While**

[4] See document **CDL-AD (2010) 004 p. 38.**

respecting this variety of legal systems, the Venice Commission recommends that states which have not yet done so consider the establishment of an independent judicial council or similar body. In all cases the council should have a pluralistic composition with a substantial part, if not the majority, of members being judges. With the exception of ex-officio members these judges should be elected or appointed by their peers"[5].

57. **Article 95** gives Parliament the power to dismiss judges by a vote of 2/3 of MPs. This can lead to decisions which are politically motivated. Such a system could undermine the powers of the judiciary in the long term.

58. The most important change in the judicial system, however, is the abolition of the Constitutional Court as an institution. The general description of the judicial functions is not changed, although: "Judicial authority shall be exercised by means of constitutional, civil, criminal, administrative and other forms of proceedings (**former Article 82, para. 2, Article 93 para. 2**).

59. The function of constitutional control is transferred to the Constitutional Chamber of the Supreme Court. **Article 97** seems to give quite an important degree of autonomy to the Constitutional Chamber. The Chamber keeps most powers previously exercised by the Constitutional Court of the Republic of Kyrgyzstan.

60. Generally, the Venice Commission supports the establishment of a Constitutional Court, as this institution has often proved to be a motor in implementing the rule of law in a given country. It must be admitted that the experience in Kyrgyzstan has not been a positive one, especially in the process of modifying the constitutional system in 2006/2007 ((CDL-AD(2007)045, para. 9 seq.). The reluctance, therefore, to establish a Constitutional Court is understandable. Yet, the role the Constitutional Court and its decisions have played in the history of Kyrgyzstan after independence should be studied and its abolition should be reconsidered.

9. Section VII: Other State authorities

61. The Soviet institution of the *prokuratura* has not been changed. This institution keeps its power to "*oversee the proper and uniform implementation by state bodies and local authorities, legal persons and other normative legal acts within the limits prescribed by law*" as a main competence (Article 104 para 1). Although this does not seem to be a good solution, it is understandable that under the present conditions the focus of the reform is on the distribution of power between the President, Parliament and Government. Other reforms may be introduced later.

10. Section VIII: Local Administration

62. This part of the Constitution has not been analysed in detail.

11. Section IX: Modification of the Constitution

63. The Chapter on the Amendment of the Constitution has been modified in a far-reaching way. First, the role of the judiciary has been eliminated; second, the powers of the President in this process have been considerably diminished.

64. The abrogation of the President's right to initiate a referendum on a modification of the Constitution (former Article 98 para. 2) is in line with the general changes of the constitutional system from a presidential to a parliamentary system.

[5] Idem., p. 32.

12. Conclusions

The Venice Commission welcomes the effort of the Provisional Government and the Constitutional Assembly of Kyrgyzstan aimed at drafting a new constitution that is fully in line with democratic standards.

The Constitutional draft deserves serious praise for its intention to introduce, for the first time, a form of a parliamentarian regime in Central Asia. Even if this system may have certain disadvantages, the Kyrgyz experience has shown that a presidential regime can easily lead to authoritarianism. Although the party system is less developed, there still is a fairly strong civil society in Kyrgyzstan, which might be the basis for democratic development within a parliamentary system.

At the same time the Commission notes that the President keeps a number of important powers, in particular in respect of security sector, law enforcement and has extensive powers to veto legislation.

The examined draft text of the Constitution resolves a number of problems which existed in the Constitution adopted in 2007, notably:
1) it introduces a more balanced distribution of powers between the President, the Parliament and the Executive;
2) it provides for an increased role of the legislative power;
3) it contains an improved version of the Section on human rights.

However, the Commission is of the opinion that a number of constitutional provisions could still be further improved:
1) to introduce measures that ensure the independence of the judiciary;
2) that complex rules for the formation of the Government, which could lead to various, sometimes widely differing interpretations, be revised;
3) the role of the *Procuratura* should be reconsidered.

The Venice Commission also regrets the abolition of the Constitutional Court. The general experience of the Venice Commission is that such courts are important instruments in transforming the political and legal cultures in states with an authoritarian or totalitarian past. As the judges of Constitutional Courts are more focussed on purely constitutional issues than what is usual for Supreme Court judges, they tend to have more means to act as a stabilising factor in the political process within a constitutional framework.

The Commission reiterates its position that even a good Constitutional text cannot ensure stability and democratic development of society without there also being the relevant political will of different political forces, further legislation in line with democratic standards and a sound system of checks and balances that sets the basis for its implementation.