



Office for Democratic Institutions and Human Rights

KYRGYZ REPUBLIC

REVIEW OF THE STATE PROGRAM OF ENHANCEMENT OF THE ELECTORAL SYSTEM



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29 November 2006

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I. INTRODUCTION AND CONTEXT

This review comments on the State Program of Enhancement of the Electoral System in the Kyrgyz Republic for the period 2006 to 2010 which was passed by Decree #40 of the Central Commission for Elections and Referenda (CCER) of the Kyrgyz Republic, dated 5 July 2006.

The review is a result of dialogue and co-operation between the authorities and civil society of the Kyrgyz Republic and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

The OSCE/ODIHR commented in November 2003 and January 2004 on proposed amendments to the election code and, in July 2006, provided an assessment of the code as amended by the Jogorku Kenesh (Parliament) through 27 January 2006.¹ The OSCE/ODIHR also provided comments and recommendations on the legislative framework for elections and the administration of elections in its reports on the Parliamentary Elections and Early Presidential Election held in 2005,² as well as Interim Recommendations for the Early Presidential Election held in 2005³.

This review is offered for consideration by the CCER, upon its request, with the goal of assisting the authorities, election administration and civil society of the Kyrgyz Republic in their efforts to improve the electoral system and the conduct of elections in line with OSCE Commitments and other international standards. The review is based on an unofficial English translation of the State Program and does not warrant the accuracy of the translation reviewed.

II. EXECUTIVE SUMMARY

The State Program of Enhancement of the Electoral System in the Kyrgyz Republic is a welcome step towards implementing elections in line with OSCE Commitments and other international standards for democratic elections. The comprehensive Program

¹ See Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003); Assessment of the Election Code as Amended by the Legislative Assembly in the Second Reading on 25 December 2003, Kyrgyz Republic (15 January 2004); and Assessment of the Election Code (7 July 2006). The 15 January 2004 assessment was sent to the Kyrgyz authorities but not published on the ODIHR website.

² See OSCE/ODIHR Final Report on the Parliamentary Elections in the Kyrgyz Republic on 27 February and 13 March 2005 (20 May 2005) and OSCE/ODIHR Final Report on Presidential Election in the Kyrgyz Republic on 10 July 2005 (7 November 2005) at www.osce.org/odihr-elections/14475.html

³ See OSCE/ODIHR Interim Recommendations for the Early Presidential Election in the Kyrgyz Republic (12 April 2005) at www.osce.org/odihr-elections/15526.html

aims at improving the conduct of elections and enhancing national legislation and aspects of the election system and administration. Components of the Program include: (a) reform of the electoral legal framework; (b) training for election stakeholders; (c) involvement of mass media in raising public awareness with regard to elections and related issues; and (d) enhancement of the State automated system GAS 'Shailoo'.

This review offers recommendations in relation to the proposed activities. Mainly, the OSCE/ODIHR recommends that the initiatives envisaged by the Program ensure that all election related activities are in line with the OSCE Commitments and that recommendations previously made by OSCE/ODIHR are taken into consideration. It must be emphasized that the full value of the State Program to the improved conduct of elections in the Kyrgyz Republic, in line with OSCE Commitments, ultimately rests with its effective implementation.

III. REVIEW OF THE STATE PROGRAM

The review follows the structure of the State Program. First, it comments on the goals and objectives of the Program and then on the key areas: (a) improvement of electoral legislation; (b) raising the level of legal culture of participants in the electoral process; (c) participation of mass media in raising public awareness; and (d) enhancement of the State automated GAS 'Shailoo' system.

A. GOALS AND OBJECTIVES

It is commendable that the CCER of the Kyrgyz Republic has developed this State Program to continue the process of enhancement of the conduct of elections in the Kyrgyz Republic. The Program is a welcome step and indicates the intention of the CCER and the authorities of the Kyrgyz Republic to implement elections in compliance with OSCE Commitments and other international standards for democratic elections.

The goal of the Program is to further develop modern electoral policy respecting the civil and political rights of citizens in compliance with democratic electoral standards, rules and procedures. The Program identifies four basic areas for the organization and administration of elections: (a) enhancement and further development of the electoral legislation; (b) legal education of all participants in the electoral process (including voters, election officials, representatives of political parties, public associations, candidates and their representatives and observers; (c) establishment of a legal information and education infrastructure and Training Centre; and (d) further development of the State automated system GAS 'Shailoo'.

The State Program will be implemented in a concerted effort by a number of entities, including central and local government authorities, political parties, civil society, academic community, mass media, and international organizations. While it is first and foremost the responsibility of national authorities and other stakeholders to implement the State Program, it is indicated that international organizations will be consulted, and possibly requested to assist in aspects of its implementation.

The State Program also refers to the basic components of democratic elections as electoral legislation in line with international standards, an appropriate level of legal

culture and public awareness among voters, adherence of citizens and election officials to election legislation and technologies which provide transparency of elections such as the State automated system GAS 'Shailoo'.

The State Program does not explicitly refer to the OSCE Commitments for democratic elections as laid down in the 1990 Copenhagen Document. Such an election process presupposes *inter alia* that voters are provided with an informed choice between distinct political alternatives competing with the framework of equitable conditions; performance of free media; respect for the freedom of expression, association, assembly and movement; adherence to the rule of law; the right to establish political parties and to compete for public office; non-discrimination and equal rights for all citizens; and freedom from intimidation. Furthermore, democratic elections are conducted in a transparent and accountable manner, and they enjoy broad public confidence. *The OSCE/ODIHR recommends that the State Program include concrete reference to OSCE Commitments and other applicable international standards for democratic elections.*

Many of the activities foreseen in this State Program are linked to other governmental initiatives - such as the development of a civil registry – and to activities of other organizations and actors. In addition, activities may depend on support and funding from international organizations. *It is recommended that the State Program be clear about necessary preconditions and factors that could negatively influence the implementation of the Program.*

B. IMPROVEMENT OF ELECTORAL LEGISLATION

The State Program foresees the improvement of electoral legislation in the Kyrgyz Republic. Activities planned include amending the election code, raising public awareness of the amendments to the election code, developing manuals for election administrators, information brochures and materials for voters, facilitating conferences to discuss election results and other election related issues involving government and election authorities, civil society, mass media and international organizations. In addition, the collection and publication of court decisions and decrees is planned after all future elections. The State Program also foresees the study and evaluation of experiences with implementation of international standards in other CIS countries, and holding a roundtable on the further introduction of such standards in the Kyrgyz Republic.

The OSCE/ODIHR commented in 2003 and 2004 on proposed amendments to the election code and in July 2006, provided an assessment of the code as amended by the Jogorku Kenesh (Parliament) through 27 January 2006. A number of amendments to the code mark progress, but some concerns remain, including limitations on certain civil and political rights. Some amendments have not addressed prior concerns but compounded them. The OSCE/ODIHR assesses that the code requires improvement to bring it in line with OSCE Commitments and other international standards for democratic elections.

The State Program does not refer to all recommendations made previously by the OSCE/ODIHR. *The OSCE/ODIHR recommends that the election code should be further amended to:*

- Eliminate undue limitations on the rights to free speech, expression, and association;
- Remove disproportionate limitations on the right to be a candidate;
- Improve provisions for transparency and observation of all aspects of the election process;
- Improve the process for filing and adjudicating complaints and appeals to protect suffrage rights more adequately;
- Remove the possibility for indefinite delay of the determination of election results and indefinite “suspension” of a candidate’s registration while a criminal case is pending against the candidate;
- Improve inclusiveness in the composition of election commissions;
- Improve election rules, including provisions regulating the media and voting procedures;
- Improve provisions for invalidation of election results to ensure consistent and fair decisions regarding invalidation.

The OSCE/ODIHR has emphasized previously that full and effective implementation of the code is necessary to ensure conduct of elections in line with OSCE Commitments. The activities foreseen under the State Program to develop manuals, instructions, and information and training materials on election administration are a welcome step to ensure implementation of democratic elections.

The State Program foresees collection and publication of decrees concerning the referenda and elections in the year following the respective election. This is generally a welcome step towards transparency of decision-making on complaints and appeals as well as decisions by election administration. *However, the OSCE/ODIHR recommends that decrees and decisions are made public and available to all interested groups and individuals, including observers, immediately upon adoption.*

The State Program includes developing an analytical report and conducting a roundtable on the practice of law enforcement of international standards on elections in the Kyrgyz Republic based on assessment of the experience of CIS countries in introducing international standards. *While it is helpful to analyze and compare experiences within CIS and neighbouring countries, the OSCE/ODIHR recommends also studying and including OSCE/ODIHR documents and reports on election legislation and implementation in line with OSCE commitments and other international standards.*

In addition, conferences are foreseen on the results of the respective elections (local, parliamentary and presidential) and the signing of a memorandum of presidential candidates to adhere to election legislation. These are welcome confidence building measures to ensure transparency, accountability and adherence to election legislation, and involvement of civil society in the election process.

C. RAISING THE LEVEL OF LEGAL CULTURE OF ELECTION STAKEHOLDERS

The second component of the State Program focuses on providing assistance to the development of a modern electoral culture among voters, election administrators, candidates and their representatives, and other election stakeholders. It aims to strengthen the democratic character of elections by establishing a training centre of the

CEC and providing training to different stakeholders, including election officials, candidates, proxies and observers, such as voter education and raising awareness, with the involvement of the media. The underlying and welcome assumption is that electoral legislation will only be effective if it is observed and implemented by all election stakeholders.

The proposal of this extensive training and awareness program is a welcome step towards compliance with OSCE Commitments and conduct of democratic elections. *The OSCE/ODIHR recommends inclusion of OSCE Commitments and principles of genuinely democratic elections in the training program.*

A CCER Training Centre will be established with a professional team of trainers, training materials such as manuals, films and brochures will be developed and a library will be established. Training will include a test for election officials to evaluate their knowledge acquired during training. The State Program foresees the establishment of a database of potential staff for election commissions. Training for election officials will include legal training and election administration as well as particular focus on electoral violations and handling of complaints and appeals.

The training program and the establishment of a database of election officials are welcome steps towards increased professionalism of election officials.

The CCER Training Centre will also be responsible for providing training to other stakeholders of the election process, and will set up an advisory network for political parties, NGOs, candidates and their representatives, media and others. This will also include development of materials for candidates, their proxies and authorized representatives, and for observers. This is another welcome proposal to ensure implementation of elections in line with OSCE Commitments, international standards and national legislation. *However, the OSCE/ODIHR reiterates the importance of observation of elections by non-partisan domestic observers as well as by candidate and party representatives and recommends ensuring that the training remain impartial and transparent, and that it focuses on legal and electoral issues.*

This component of the State Program also involves the participation of the media in raising the awareness of the population of the Kyrgyz Republic on election issues. It includes the development of information and education programs for different social and age groups, the continuous updating of the CEC website, competitions among journalists and students for development of information and other materials and TV and radio spots, and information seminars with journalists. In addition, it is intended to hold press conferences on the results of elections and referenda, and publish materials about activities of election commissions.

This is a positive initiative to raise awareness of, and encourage participation in, the election process. Such activities should enhance the transparency of elections as well as encourage voters and other participants in an election process to hold accountable those administering the elections. It is important that freedom of expression and speech is guaranteed, including independence of the media and the possibility for media outlets to publish their own materials on an election.

D. ENHANCEMENT OF STATE AUTOMATED GAS 'SHAILOO' SYSTEM

The third part of the State Program is dedicated to the enhancement of the State automated system GAS 'Shailoo', including improvement of its functional capacity, strengthening reliability and security, creation of interaction between 'Shailoo' system and other state systems such as other state information systems (civil registry). This proposed component is a welcome follow-up to recommendations made by the OSCE/ODIHR in its Final Report on the Early Presidential Election 2005. *After reviewing this Program, the OSCE/ODIHR further **recommends** that the State automated system GAS 'Shailoo' be fully based in the legal framework for elections in the Kyrgyz Republic.*

This component of the Program aims to develop the organizational and technological base of the election process by introducing computer facilities and telecommunications at all stages, including the preparation and maintenance of voter lists and processing of voting results at all levels. It is meant to ensure voting rights of citizens and improve sustainability of the system. *The OSCE/ODIHR **urges** all actors involved in the State Program during all activities foreseen to ensure security, transparency and accountability of the State automated system GAS 'Shailoo' at all levels.* This is particularly important for the process of contracting software providers, suppliers and technical support staff for the improvement, testing and implementation of the GAS 'Shailoo' system.

IV. CONCLUDING REMARKS

This State Program is a welcome development towards ensuring compliance of the legal framework and implementation of elections with OSCE Commitments, other international standards for democratic elections and national legislation. It must be emphasized, however, that effective implementation of this State Program and its component parts, as well as other measures linked to the State Program, are necessary to ensure the conduct of elections in line with OSCE Commitments.