

Democratisation and Human Rights in Central Asia: Problems, Development Prospects and the Role of the International Community

Eugheniy Zhovtis

The Origins of reform failure in Central Asia

To understand the reasons for the relative failures of the transition to democracy, the formation of a law-based state and the establishment of respect for human rights in the independent states of Central Asia today, as well as the role of the international community, one has to assess, first of all, the dynamics of the political process in this region of the world. In large part, the origins of the current weakness of democratic processes are the result of developments during the final decades of Soviet power. By the early 1990s, there arose a situation in which the ruling authorities Communist Party of the Soviet Union (CPSU), ruling authorities, realising the necessity of reform but at the same time wishing to retain power, initiated a set of reforms that employed democratic phraseology but which aimed first of all at protecting the interests of the ruling group.

In this context, during the late 1980s and early 1990s, the reduction of the CPSU's power, on the other hand and the beginning of independence for the former republics of the Soviet Union on the other hand resulted in a certain liberalisation of both public opinion and social institutions. The first signs of political and social pluralism appeared in Central Asia in the form of opposition's political groups and parties and independent non-governmental organisations. Independent journalists and even independent mass media also emerged. For various reasons, the process of reform took different forms in each of the Central Asian countries.

The First Secretary of the Kazakhstan Communist Party, Nursultan Nazarbaev, proved to be one of the most energetic, decisive and far-sighted representatives of the Soviet *nomenclature*. Rejecting

the Communist rhetoric, and instead offering Kazakh national statehood as a main political argument, he sought to attract foreign experts and young executive technocrats to initiate reforms. Relying upon absolute control of the State machinery and valuable experience acquired in the Communist Party institutions, Nazarbaev introduced a series of macroeconomic reforms that achieved important success; he also set up an institutional structure for the newly independent state. Skilfully balancing between Russia, China, the US and Europe, Nazarbaev's foreign policy has allowed the president to gain certain external guaranties of security. The establishment of the institutional infrastructure of a market economy and the launching of investment-efficient economic branches, focused primarily upon the considerable mineral raw material resources, including oil, gas, non-ferrous and rare metals in Kazakhstan attracted significant foreign investments to be made in the country and, correspondingly, has raised the level of economic and political interest in Kazakhstan on the part of industrialised countries.

Kyrgyzstan's President Askar Akayev, being a representative of the same Soviet *nomenclature* as Nazarbaev but belonging to its scientific branch, has managed to undertake more serious attempts at democratisation in the political system and social sphere compared with his Central Asian neighbours. In part this was possible because of the country's weak economic capacity. As a result of the poor economic conditions in Kyrgyzstan, during the 1990s the country became increasingly dependent on foreign credits and loans, which led to a positive international influence on the speed of democratic reforms. Civil society quickly developed in the country, as well as the institutions of a political system, a parliamentary-based form of power, and independent mass media.

Eugheniy Zhovtis is Director of the Kazakhstan International Bureau for Human Rights and Rule of Law, Almaty.

CEPS Policy Briefs present concise, policy-oriented analyses of topical issues in European affairs, with the aim of interjecting the views of CEPS researchers into the policy-making process in a timely fashion. Unless otherwise indicated, the views expressed are attributable only to the author in a personal capacity and not to any institution with which he is associated.

However, with scarce economic resources, the top elite belonging to the same former Communist Party *nomenclature*, were increasingly criminalised and prone to corruption, by the early part of this century, the economic reforms had slowed almost to a halt which led, eventually, to a popular uprising to remove President Akaev from power in 2005.

A brief period of political liberalisation and public activism in Tajikistan in the early 1990s was followed by a bloody civil war. The legacy of this conflict continues to cast a long shadow over Tajikistan today. The impact of the war has severely limited the economic development of the country and held back political liberalisation.

The First Secretary of the Uzbekistan Communist Party, Islam Karimov, initially demonstrated some support for a democratic way of development of his country (political opposition, independent mass media, alternative presidential elections, and a tolerant attitude towards NGOs in the early 1990s). Then in the latter part of the decade, Karimov moved clearly to a highly authoritarian form of rule. Political opponents were persecuted and imprisoned or they left the country. Under the pretence of combating Islamic radicalism and fundamentalism, many religious figures and believers were persecuted. The independent mass media were almost completely annihilated and many foreign non-governmental and international organisations were expelled from the country. Individuals who did not conform to the new political order also came under pressure.

And finally in Turkmenistan, the First Secretary of the Communist Party, Saparmurat Niyazov, very quickly stopped all the democratic reforms that had been initiated in the newly independent country. Relying upon powerful domestic security structures (the army, police and special services), he usurped power and thereby created a totalitarian regime similar to that of North Korea. During the last decade, almost all public figures and civil society activists working to develop democracy were either imprisoned or left the country. Absolute control over the mass media, the judiciary system, and the way that people think prohibition of different ways of thinking and the creation of a new 'iron curtain' were typical features of Turkmenistan under Turkmenbashi.

It should be noted that Turkmenistan has ratified almost all the international agreements on human rights but became a member of the UN and the Organisation for Security and Cooperation in Europe (OSCE) without observing its obligations, neither within the framework of the ratified international tools on human rights, nor those of OSCE. Despite the failure to fulfil its international commitments, Turkmenistan did not suffer negative consequences.

The challenges to democratisation and the protection of human rights

This example of Turkmenistan can be used as a litmus test to assess the capacity and possibility of developed democratic states to influence the development of democracy, civil society and human rights in any region of the world, including Central Asia. This case demonstrates, firstly, the weakness of the instruments available to the EU states in trying to challenge anti-democratic developments in Central Asia. Secondly it shows the shortcomings of international organisations (including the UN and the OSCE) in fulfilling their responsibility to challenge states that fail to observe their international obligations on human rights agreements.

Thirdly, the situation with Turkmenistan has highlighted the crisis of international law in the sphere of human rights. International agreements and documents on human rights (including juridical obligations on democracy and civil society development, the rule of law and respect for human rights) have become agreements of a 'second order' as compared with similar agreements in the spheres of security and economic cooperation. A failure to observe commitments made under the former types of agreement seems to imply no consequences for the delinquent country. Fourthly, the international approach to Turkmenistan points to the observance of double standards with respect to democracy and civil society development, the rule of law and respect for human rights when weighed against economic, geopolitical and security considerations. One can say that in the modern world, democracy, human rights and sustainable development have four enemies: oil, gas, the war against terrorism, and geopolitical considerations. Moreover, Turkmenistan's complete neglect of its obligations vis-à-vis the OSCE 'third basket' (the human dimension commitments), the organisation in which the European Union members play a key role, renders all the criteria and obligations into very abstract notions.

When assessing the democracy and human rights situation in the different countries of the OSCE, developed democratic states and notably European countries, instead of applying clear criteria fixed in the international human rights tools and OSCE documents, have begun to practice the so-called 'comparative method'. Under this method, politicians in Brussels, Vienna or Strasburg ask: "Is the situation in Kazakhstan, for instance, better or worse than in Turkmenistan or Uzbekistan?" "Better" answer the ambassadors of West European states in Astana, the capital of Kazakhstan. And in this way, the positive dynamics in Kazakhstan are noted! With similar success, North Korea, Burma, Cuba, etc. could be chosen as criteria for comparison.

Under these circumstances, Kazakhstan, Kyrgyzstan, Tajikistan, Azerbaijan, Russia and Belarus – all of whose records fall short in many respects of meeting

the international standards of- human rights and freedoms fixed in OSCE documents would look more or less decent, since they are being compared to Turkmenistan and Uzbekistan. Unfortunately, all the countries become hostage to this policy: both democratic OSCE countries and the ruling elites in those countries that are trying to develop democratically, and those countries that imitate democratic reforms and the peoples of those countries.

Now it should be noted that the main ‘property’ of the Party *nomenclature* in the Soviet period was the ‘armchair’ (formal position), which ensured access to comforts, privileges, scarce goods and other advantages granted to the elite. Money and property by themselves were not as important as a place in the Party hierarchy in terms of determining one’s level of influence and ensuring access to comforts.

With the transition to private property and the market economy, the situation changed dramatically. During this period of change, the main task was to convert the ‘armchair’ into money and property in the form of factories, employment, houses, ships, etc. This effort was led by the Party *nomenclature* in all the republics of the former Soviet Union. Having preserved complete control of law-enforcement structures (thus securing oneself from possible persecutions), and of the national mass media (i.e. controlling people’s access to information), the Party *nomenclature* at the same time started to build up a new statehood, reform the economy and secure its own interests during the privatisation processes.

After the basis of market economy was set up and privatisation, or to be precise, property-sharing between representatives of the political elite, was completed, three challenges have emerged to a lesser or greater extent in all the countries of the region, as discussed below.

1. *The legitimization of the outcome of privatisation before the general public.* To say it plainly, this is to ensure the agreement of the people with the fact that the majority of property has already been distributed, and to reconcile the general population with that fact. The instruments of ‘reconciliation’ are various: from absolute control of law-enforcement structures, mass media, suppressing any resentment, up to achieving consent with the results of this primary ‘savage’ stage of capital accumulation. The consent of the people is obtained by those who have accumulated this capital by their sharing it with the people through ensuring a visible growth of welfare and living standards, and then, after all, strengthening the belief that “all the same you can change nothing”.
2. *The legalisation of capital and property ‘accumulated’ during the transition period in order*

that those who have acquired wealth in this way are able to sleep calmly, without being afraid that any change of power or dissent would result in an unwanted visit by the financial police, prosecutor’s office officials or national security bodies.

3. *Securing guarantees against any revision of privatisation results, property-sharing, investigation and persecution in case of a change of power.*

Until these issues are addressed by the ruling authorities, all the former-Soviet states will be politically unstable. The first countries of the former Soviet Union (with the exception of the Baltic states) to start an active search for the answers to these questions are Georgia, Ukraine and, to some extent, Kyrgyzstan – resulting in confrontation and political change. We shall see what solutions will be found and how successful they will be. In all of these countries, the replacement of the Party *nomenclature* with a new elite has just started, and many years must pass before the process will be completed, resulting in a certain stability of political development. Against this background, let us try to assess the state of society and people 15 years after *perestroika*.

First, the notion of democracy has been significantly discredited. It is often identified with anarchy, chaos, robbery, the cancellation of social guarantees, criminal enrichment, etc. Meanwhile, public opinion does not see that all this instability is, in fact, a result of the rule by the same Communist Party *nomenclature* who were in charge of the country before the collapse of communism.

Second, freedom remains an abstract notion. The majority of society perceives no connection between a comfortable life, respect for human dignity, fairness and democracy, freedom and human rights. Third, definite ideas were formed in the society during the transition period with respect to the unjust nature of privatisation and public property-sharing, about its practical pillaging and robbery of the people. In essence, there is a widely held view that everything was taken by those who had power, their relatives and criminals closely connected with them. Such deep-rooted and not ill-founded ideas automatically render any wealth as illegitimate as in the mind of the general public in the societies of Central Asia.

Fourth, the population that grew up in an atmosphere of permanent lies and manipulation during the Soviet era has continued to be highly skeptical of official claims and does not trust official information or rather has grown used to constant lies. On the other hand, aggressive official publicity, especially the kind that proposes simple, though far from truthful answers to complicated issues, still remains a very efficient tool.

And finally, nearly two decades after the end of the Soviet Union, the sense of absolute power of the state

remains, while the notion of the futile struggle of the 'little man' with the state, which was deeply ingrained in the 'Soviet' man, continues today. The individual has simply turned away from the authorities and officials still more. The notion of an opposition between 'us' and 'them' has acquired an even more tangible form. The expectation that the State will solve our problems has been preserved and has even become stronger. We have only to wait and endure a little longer. At the same time, we only hope it will not get worse!

Distrust in democratic slogans and disbelief in the possibility to change anything have grown such that even protests against the failure to pay pensions and salaries, which has led to hunger, have attracted only as few as several hundred persons. Meanwhile, demonstrations agitating for freedom of speech, democratic development or political rights can achieve little in this atmosphere of apathy.

In short, authoritarian regimes have been established throughout the region: from the totalitarian dictatorship in Turkmenistan to the hard authoritarian regime in Uzbekistan and up to the more or less 'soft' authoritarian regimes of Tajikistan, Kazakhstan and Kyrgyzstan. National mass media of the countries of Central Asia are completely controlled by the ruling authorities. Political systems are not developed; political pluralism, in fact, is absent or reduced to a minimum and no real separation of powers has been established. Parliaments and local authorities are appendages of the executive power, while the real levers of power are held by presidential structures, with no system of restraints or counterbalances.

All the constitutions of the region's countries, which formally fix the authority of the three branches of power, i.e. legislative, executive and judicial, serve to delineate the presidency as an independent branch of power, which the ideologists of authoritarianism intend to act as a kind of arbitrator and coordinator of the other branches' concerted actions. Such is the original interpretation of constitutional democracy in Central Asia!

The most successful macroeconomic reforms have been carried out in Kazakhstan, to a certain extent in Kyrgyzstan and to a lesser extent in Tajikistan and Uzbekistan. It is difficult to judge the success of economic reforms in Turkmenistan because of a lack of information. Nevertheless, even the success of macroeconomic reform in Kazakhstan, not to mention the slow rates of reform in Kyrgyzstan and Tajikistan, as well as the relative failures in Uzbekistan and other countries of the region, highlight another major problem: economic reforms at the level of microeconomics, at the level of business development, and especially small- and medium-sized business development, have not been successful.

For such reform to succeed, at least two conditions must be met. There should be a decrease in the level of

state involvement in economic management at the micro level and a sustainable system of the 'game rules' must be created and supported by efficiently operating state institutions and mechanisms. And this, in its turn, requires the construction of a law-based state – the establishment of the rule of law, a real division of powers, the maintenance of judicial independence, equality of all citizens before law, the fostering of a legal culture and eradication of legal ignorance. Unfortunately, due to numerous reasons of a political character, these reforms, as a matter of fact, either did not begin at all, or were of a vague and inefficient nature.

In addition, there was no system of restraints and counterbalances, nor a real division of powers; country leaders were not replaced for one and a half decades following the collapse of Communism, during which time the initial accumulation of capital was effected. All this caused severe corruption of the state institutions.

Minimum conditions for political reform in Central Asia

Democratic reforms, construction of a lawful state and promotion of respect of rights include, at least, two components:

1. Reform of the national legislation in the sphere of human rights with the aim to bring it into conformity with international standards, and
2. Reform of the state institutions.

Reform of the national legislation in the sphere of human rights

It should be noted that in the early 1990s, that the countries of the region signed almost all the basic international documents on human rights: the International Covenants on Civil and Political Rights and on Economic, Cultural and Social Rights, the Conventions on Children's Rights, on the Liquidation of all Forms of Racial Discrimination, on the Elimination of all Forms of Discrimination against Women, Convention on Torture Prohibition, etc. The last country to ratify the international pacts on human rights was Kazakhstan (2005). The ratification of the international agreements on human rights binds the participating states to bring their legislation and judicial practice in conformity with their provisions. As a matter of fact, however, none of the region's states has followed this practice in a significant way.

The constitutions of all the Central Asian countries contain sections devoted to human rights and freedoms, and the main provisions of these sections repeat the articles of the General Declaration of Human Rights and the International Covenant on Civil and Political Rights. Any analysis of the laws that regulate political rights and civil liberties of these states, however, shows that there is a conceptual discrepancy between those principles and the norms

containing the international tools on human rights. For the most part, the national laws retain a Soviet legislative spirit which, first of all, was directed at the restriction of human rights and freedoms and at granting an opportunity to the state bodies and officials to interpret those or other norms of the law in their own interest. The legislation is constructed on an obvious priority of interests of the state before the individual rights and freedoms!

Fundamental principles intended to create the laws regulating human rights and fundamental freedoms, such as the restriction on admissibility check, proportionality, legal predictability and definiteness are practically not applied in the preparation of draft legal acts concerning human rights. If we analyse the acts regulating specific rights and freedoms and judicial practice, for example, in the Republic of Kazakhstan (RK), the above-stated conclusion seems to be even more obvious. See box below offering a case study of Kazakhstan.

The lack of observance of basic rights: A case study of Kazakhstan

a) The right to life. Although amendments to the criminal legislation have been approved in Kazakhstan, concerning the possibility to apply lifelong imprisonment as an alternative to the death penalty, and a moratorium on the death penalty was introduced, this is still a moratorium on the implementation of death penalty verdicts rather than a moratorium on their pronouncement.

Having ratified in 2005 the International Covenant on Civil and Political Rights, Kazakhstan did not ratify the Second Optional Protocol to it aimed at canceling the death penalty. Moreover, petitions from high-ranking officials began to appear more frequently over the last year about the need to restore the death penalty for terrorism and illegal trafficking of drugs. Finally, the national legislation does not determine the status of persons in relation to which the moratorium on execution of the death penalty verdict and the circle of their guaranteed rights is uncertain.

b) The right to freedom from torture. Despite the fact that Kazakhstan ratified the UN Convention against torture in 1998, no announcements have been made to date for clauses 21 and 22 of the Convention, i.e. the competence of the UN Commission against Torture to consider individual complaints to application of torture in the Republic of Kazakhstan has not been recognised. Nor did the country ratify the Optional Protocol to this Convention, concerning the monitoring of confinement places for persons in custody for possible application of tortures.

Having ratified the Convention in 1998, Kazakhstan thus assumed the obligation to bring the legislation into accord with the Convention, but the country did not start doing this until 2002, when the Convention-relevant definition of torture was included in the criminal legislation.

In 2001 Kazakhstan submitted a primary report on the implementation of the Convention against Torture. After the report was considered, the UN Commission against Torture submitted 16 recommendations to the government of Kazakhstan, of which only three have been implemented. There is no independent agency in the country to investigate claims of torture made by the victims, nor effective procedures for documenting torture. Moreover, judiciary experience shows that many complaints about torture in the overwhelming majority of cases are dismissed by the judges as an attempt by the defendants to escape responsibility and therefore no effective investigation is carried out.

c) The right to freedom of speech, expression and access to mass media. This right is regulated by the Law on Mass Media, which is practically a continuation of the Mass Media Law that applied in the Soviet Union in the late 1980s. Despite the constitutional interdiction of censorship, this law is practically aimed at the creation of a large-scale monitoring system for mass media, with the participation of public prosecutors and a special state body – the Ministry of Culture and Information.

The Republic of Kazakhstan's criminal legislation contains norms connected with criminal liability for insults and slander and, separately, for encroaching on the honour of the President and deputies of Kazakhstan's parliament. Statutory acts published by state agencies, such as rules mandating mass media registration or journalists' accreditation, render the laws of Kazakhstan relating to freedom of speech still more inconsistent with international standards.

Finally, legislation to combat extremism and terrorism and on national security, which is being constantly supplemented, still contains many clauses that either directly limit the freedom of speech, or give the opportunity to the authorities to interpret ambiguous definitions and in whichever way they wish. In spite of numerous appeals by the OSCE Representative to bring the RK's legislation concerning freedom of the mass-media into conformity with international standards, the situation has not changed.

d) The right to freedom of association. As with the regulation on freedom of speech, this right is regulated by the Law on Public Associations which, in essence, is a continuation of the Public Association Law accepted in the Soviet Union in the late 1980s. The requirement of obligatory registration of public associations – contradicting international standards – is still fixed in the legislation, thereby practically forbidding the activities of informal public associations.

Moreover, the administrative and criminal laws contain the norms that provide for responsibility for infringement upon the legislation on public associations on the whole, rendering it practically impossible to discern what offence has been

committed and what responsibility will be applied. And, as in the case of the regulation of freedom of speech, the process of constantly adding legislation to counter extremism and to combat terrorism means that there are more and more norms that either directly limit freedom of speech, or give the authorities the opportunity to interpret ambiguous definitions in whichever way they wish.

As a result of a mismatch between fair opaque principles and legal proceedings, some foreign and religious organisations were identified as extremist or terrorist in nature in absentia by decisions of judicial bodies. Although it is true that the majority of these organisations really are composed of extremists or terrorists, still the process of legally determining this status did not correspond to the requirements of Kazak legislation, and relevant court decisions were not promulgated.

The law on political parties also does not conform to international standards, establishing an unreasonable registration threshold of 50,000 members for a country with a population of 15 million, a complicated procedure for a person to acquire legal status, with the requirement to collect personally in one place 1,000 founding members of a party, with checks of the names performed by the judicial authorities, etc.

e) The right to participate in the management of the country. The existing election law does not provide real political pluralism and equal opportunities for opposition parties and candidates; instead, it lays the foundations for conditions favouring the government. This bias is particularly notable in the formation of election commissions, which are almost entirely composed of representatives of pro-government parties, organisations or official bodies. Thus, during the period between elections, opposition parties and candidates have practically no access to national mass media. As a result of such practices, in a country with a population of 15 million where the official number of supporters of opposition political parties totals nearly half a million persons, there is only one opposition deputy in both chambers of Parliament (out of 116 deputies), and the opposition has almost no representation in local representative authorities. The law on local government has not yet been passed, in spite of the requirement to do so in the 1995 Constitution.

The discrepancy between legislative and judicial practice in the country compared to international standards has been so great that no elections in Kazakhstan, including presidential, parliamentary or local ones, have been recognised as corresponding to international standards by the Organisation for Security and Cooperation in Europe (OSCE) during all the years it has sent election observation missions to Kazakhstan.

There is a similar situation with respect to freedom of conscience and the right to a fair court proceeding. As far as the latter right is concerned, a special lecturer of the United Nations on the independence of judges and lawyers visited Kazakhstan in 2004. He published a report about this mission in 2005 containing many recommendations, a majority of which have never been implemented. These features found in Kazakhstan are, to more or less the same degree, typical of all the countries of the Central Asian region.

Reform of the state institutions

The progress achieved with respect to reforming state institutions in Central Asia is even worse than the situation prevailing in the area of national legislation on human rights. The majority of the state institutions, – first of all, law enforcement bodies, national security, the public prosecutor's office and the courts – are the direct successors of the Soviet system and they continue to be Soviet in spirit in their organisational structure, ideology and their involvement in public policy.

The constitutions of all the countries of the region, while formally based in principle on the division of authorities and the creation of a system of 'restraints and counterbalances', are, as a matter of fact, the main laws of authoritarianism in which the competence and powers are redistributed heavily in favour of the presidential branch of power. The presidents of all the countries of the region (with the exception perhaps of Kyrgyzstan, where efforts have been taken to revise the constitutional articles with the purpose of restricting presidential power in favour of the Parliament) possess unlimited political opportunities to control the state and society.

One can say that all the levers of actual country management are concentrated in presidential administrations and agencies in which relevant

departments carry out both external and internal policy. The system of such management of the structure, ideology and style of management reminds one of the supervising structures of the Communist Party of the Soviet Union (CPSU). The small and powerful group around the president, which includes administration officials and a number of the most influential government officials, resembles, in many respects, the Politburo and administration itself – the Central Committee of the CPSU.

In practically all the countries, national security bodies and public prosecutor offices are not a part of the government, but rather are directly subordinate and accountable to the president, thus providing the basis for and supporting presidential power. In view of the almost unlimited authority of presidents in Central Asia, these state bodies have such extensive functions that they directly participate in the main political process and the political struggle inside each country.

When speaking about Kazakhstan, the unique governmental structure that has undergone structural reforms from the point of view of human rights and freedoms is the penitentiary system. Its transfer from under the authority of the Ministry of Internal Affairs to the authority of the Ministry of Justice was a serious step to its demilitarisation and transformation from a retaliatory into a corrective establishment, although there have only been initial steps in this direction.

The introduction of legal proceedings with the participation of a jury could also be worth mentioning. For the rest, the state institutions have not only not come nearer to international standards from the point of view of maintaining human rights and freedoms, but they keep on becoming tools in the political struggle reflecting and protecting the interests of the ruling elite.

As was already noted, the Ministry of Culture and Information ‘supervises’ and controls the mass media. In this capacity, the ministry periodically proposes initiatives to introduce anti-democratic amendments into the current legislation. There is a special representative body under the Ministry of Justice – the Committee on Religious Affairs that was set up to control religious associations. The Committee carries out its ideological functions in the best traditions of the Soviet past.

The control over the non-governmental organisations and political parties, which was previously carried out by the Ministry of Culture, Information and Public Consent (nowadays the Ministry of Culture and Information), is now basically carried out by the public prosecutor’s office and national security and internal affairs agencies. Thus, there are special departments on communication with public associations in the system of internal affairs and departments of public security. Those departments essentially carry out the functions of political police. According to the concept of the activities of the public prosecutor’s office, among the seven strategic directions pertaining to the realisation of supervising functions, the control of mass media and public associations is included.

Despite the introduction of legal proceedings with the participation of a jury, which, as has already been noted, could certainly be considered an important positive step, the court remains under obvious political control and it is extremely difficult to call it as an independent branch. Finally, all the state institutions are severely affected by corruption, which bears a systemic character and penetrates the state system from top to bottom.

In 1993, the Republican Commission on Human Rights was set up in Kazakhstan under the President of the Republic, and in 2002, the Institute of the Representative for Human Rights and the National Centre on Human Rights were also created. It was intended that these measures would represent a serious step on the way towards the creation of national institutions for human rights. However, these structures were created by Presidential decree, and as a result, they are essentially a part of the President’s administration and therefore cannot be considered as independent national structures for human rights. Their creation, subordination, powers and competence appreciably fall short of the Paris Principles of the United Nations regarding the status of national establishments engaged in the promotion and protection of human rights.

With conceptually suspect legislation in the sphere of political rights and civil freedoms, as well as unreformed state bodies which tend to retain Soviet habits, it is not difficult to predict the inefficiency of procedures and the discrepancy between Kazakhstan’s judicial practice and international standards.

The development of civil societies, as implied by the development of political parties, trade unions, non-governmental organisations, independent mass media and other public institutes, has practically failed in all the countries. The civil society of Turkmenistan simply does not exist in any sense of the word. The non-governmental sector of Uzbekistan is completely controlled by authorities, and any display of civil consciousness that does not coincide with the official point of view is generally persecuted. In Tajikistan, the activities of non-governmental organisations are severely limited at the psychological level due to the consequences of civil war. The most advanced development of civil society has been realised in Kazakhstan and, especially, Kyrgyzstan, but even there, one cannot speak about a consolidated and institutional expression and reflection of social needs and interests.

What is the role of the international community and, first of all, the US and the EU in this process?

Directly following the collapse of the Soviet Union, the international community, on behalf of international organisations, international financial institutions and individual states (first of all, western ones), started to render active assistance to the newly independent states to help set them on their feet. In the region of the Central Asia, these activities were also aimed at the creation of a capable state system and a strengthening of the law and order structures (army, law enforcement, national security bodies), reform of the economy and the development of democracy, a law-based state and the rule of law.

One can see that the motivation, resources, methods and technologies used were inseparable from the interests of various international organisations or individual countries. Among these interests were both geopolitical and economic interests, as well as the interests of regional and global security, and, to some extent, common human interest for promoting universal values, including democracy, freedom and human rights. In addition, it is necessary to consider that all the assistance in the reforms in this region was carried out with a geopolitical ‘amendment’ for the interests of China and Russia.

As far as the assistance is concerned for the creation of more or less capable state institutions that would allow us to speak of the countries of the region as ‘real states’, then we can speak of certain successes, although the events in Kyrgyzstan have shown that these systems are unstable, and nobody knows how

they will develop when there is a change of power. So far there are many more questions than answers in the field of economic reform in all the countries, except possibly Kazakhstan.

Now we shall try to estimate the international community's policy efficiency in Central Asia in the sphere of democracy development, building a law-based state and respect for human rights and freedoms. Looking at the problem from the perspective of someone in the region in question, this policy was based on a number of basic theses:

- Representatives of the top Party *nomenclature* are inclined to carry out economic and political reforms. They head the states that became independent and consequently aspire to be accepted in the international community, to become participants of international relations and international trade. This desire in itself can be a good catalyst on the way to democratisation.
- The process of democratisation will take a lot of time and changes of, at least, one or two generations, especially to move beyond the generation of those raised with a Soviet mentality and communist ideology. Therefore the main emphasis should be placed on 'pushing', where possible, reforms and 'work for the future', to prepare the next generations, free from the Soviet past and open to progressive and more rational mechanisms of governmental and social management, to bring change.
- Sustainable development is, first of all, about economic development and the maintenance of security. If the ruling elites guarantee it to a greater or lesser extent, then it is possible 'to forgive' some deviations from fundamental ideas of democracy and human rights fixed in international obligations.
- Encouraging freedom, democracy, ideas of the open civil society, a law-based state and human rights should be carried out, bearing in mind local attitudes, traditions and the cultural features of the region.

Such reasoning has had a direct influence on the programme of the help implemented in the region, by both international organisations and by individual states. It should be especially noted that due to a number of objective and subjective reasons, the short-term and intermediate-term measures to promote democratic reforms in the countries of Central Asia have never produced an impression of well-elaborated and well-coordinated strategies.

Instead, there is the impression that international organisations such as the United Nations and the OSCE are considerably limited in the extent to which they can facilitate reforms in such a politically sensitive spheres as the development of democracy, civil society and fostering a culture of human rights. In this respect, however, the policy of the OSCE was certainly more transparent and progressive. The international financial institutions, such as the International Monetary Fund, the World Bank, the

European Bank for Reconstruction and Development and the Asian Development Bank, did not undertake any specific steps in this direction except for declaring an interest in sustainable development and political modernisation in the region.

The European Union as a community of European states has not developed a clear and coordinated position in relation to democratic processes in the region, with the exception of some resolutions by the European Parliament. Instead, each of the European states has followed and protected its own interests in the region, first of all economic interests (namely energy resources) and geopolitical interests. It is sufficient to mention that during all the 1990s, European countries such as Germany, France, Italy, Spain and even Great Britain carried out no public policy in relation to the political processes and development of democracy in the region. Only the US made regular appeals for political reform and for the development of democracy and respect for human rights, irrespective of the motives it was guided by. In 2001-04, the situation began to change a little, while European policy became more visible only during the past three to five years.

As has already been noted, assistance to the countries of the region from international organisations and western states has basically been directed at resolving the problems of the state-building, eliminating sharp social and economic disparities, reforming the economy and strengthening the national and regional security systems. In the field of democracy and civil society development, these programmes were basically directed at the support of non-governmental organisations, reform of legislation and legal institutes and development of educational projects.

All the countries of the region developed personified authoritarian political systems, in which power is concentrated in the hands of the leaders, presidents and their close circle of advisors. No serious political or economic decision is possible without the clearly expressed political will of the head of state. And this political will should not only be clearly expressed, but also be accompanied by concrete steps to put it in practice.

It is especially important to distinguish between the genuine political will to accept democratic reform and its imitation. The ruling post-communist elites of the former Soviet Union have learned not only how to build 'manageable democracies' as defined by Russian President Vladimir Putin, but also how to build 'imitative' or 'façade' democracies. That is, the state and social systems are similar in form to constitutional democracies (provision of constitutions, elections, parliaments, local representative bodies of power, political parties, mass media, etc.), while in their content they are not so far away from the Soviet system.

Unfortunately, a large number of the programmes organised by the international community in the sphere of democracy development, state-building and promotion of human rights and freedoms in the region simply managed to support this imitation of democratic development. These were programmes on inter-parliamentary cooperation, judicial reform, legislative processes, etc. Their failure was explained by western politicians with the help of an argument offered by the ruling elites of the region's countries, based on the above-stated theses:

- Reform should first focus on the economy and security and then on democracy and human rights.
- The democratic process is a long process.
- The countries of Central Asia must first overcome the legacy of totalitarianism and communist ideology.
- The Asian mentality should be accounted for.
- Ruling elites are basically ready for political reforms, but the people are not, and geopolitical conditions are adverse.

Certainly, this criticism of the international community's role in democratic reforms (or in its absence) in the region is not universally applicable and all-condemning. Educational programmes, assistance in the development of civil society, support for public debate in the society, at least in Kazakhstan, Kyrgyzstan and Tajikistan, had and continue to have a positive impact. Some programmes aimed at the abolition of the death penalty or reform of the penitentiary system were also rather successful.

However, these are more likely to be the exception rather than the rule. As can be seen, there have been no system changes. And this means that both the strategy and the content of supporting programmes require a certain revision.

What can we say about the international strategies, policy and programme of support pursued in Central Asia?

1. The policy should be fair, especially that at the international level

During the Soviet time, the population was, metaphorically, trained to believe that $2 \times 2 = 25$ in the social and political sphere of our region. Right after 'perestroika' was finished, it was, in effect, declared by the authorities that $2 \times 2 = 8$ and still one should be grateful to the authorities that nobody forces them to say it is 25. Over 15 years after the Soviet Union's collapse, the population is no longer forced to believe what is patently false. Rather, arrangements in each of the Central Asian countries ensure that through voluntary-compulsory mechanisms the population has come to accept that $2 \times 2 = 25$, or 4.8, or 4.5, depending upon the rigidity or softness of the authoritarian tendencies in the country. And in so doing, the

authorities sometimes cite the US or a European country as an example of where they also from time to time say that for the reasons of political expediency it is temporarily necessary to consider that $2 \times 2 = 4$.¹⁵...

The European Union, as a whole, and each European country individually should consistently insist that $2 \times 2 = 4$ and that according to the international documents on human rights and the concepts accepted in the international community on freedom of speech, associations, movement and peaceful assembly, fair legal procedures and fair elections, the division of authority and systems of checks and balances are all understood as absolutely concrete things.

The problems of manipulation, distortion and substitution of concepts relating to the key elements of the human dimension – the developments of democracy, the rule of law and respect for human rights – have become so sharp in the world that they require special attention. All the governments of the developed democratic countries, international organisations and international remedial organizations must undertake serious efforts at the international level to strengthen international remedial mechanisms and world politics in the sphere of human rights.

These efforts are especially urgent in the light of direct attacks by Russia, Belarus and other authoritarian CIS states on the Organisation for Security and Cooperation in Europe, in particular, on the OSCE Office for Democratic Institutions and Human Rights, on the missions of observers from the OSCE and the European Union, and on the OSCE centres in some countries. It is also necessary to resist attempts to transform international law and international agreements in the sphere of human rights into the so-called 'soft' rights or 'soft law', as well as to default from obligations within the limits of which it is considered a usual phenomenon.

The EU should endeavour to 'reanimate' the clauses that are contained in basic documents on human rights accepted within the OSCE framework, in particular, the documents of the Copenhagen and Moscow meetings on the human dimension, especially those relating to the extraterritorial nature of human rights. It is necessary to resist the attempts to declare human rights an internal affair of the states, which in one form or another is already ideologically propagandised in the documents of the Shanghai Cooperation Organisation (SCO) and the Collective Security Treaty.

In sum, if the EU wishes to influence the observance of human rights and freedoms in Central Asia, it must interact with international organisations and the governments of the democratic states, to take advantage of every possible opportunity to exert pressure on the authorities.

2. The regional approach should be used very cautiously.

The EU has begun to use more frequently in its relations with the region. Despite their geographical proximity, the countries of the region strongly differ both in history and in economic capacity, in culture and in the way they have developed over the course of the past 15 years. Against this background, a ‘cross-border’ programme on democratic development and promotion of human rights will be artificial and in some cases simply unfeasible. Generally speaking, the regional political identification can cause erroneous strategies and decisions. Regional projects can be quite effective in limited spheres e.g. labour migration, regional trade, regional security, the struggle against the trafficking of people and drug-dealing, and projects connected with the distribution of water resources.

As a whole, there have been modest results during the past 15 years by the European Union in its participation in the political development of the countries of Central Asia, especially regarding the promotion of democracy, freedom and human rights. This shortcoming is in a certain sense a challenge to European policy, and many things depend on how deeply the results of past failings will be analysed, and whether the proposed corrections of strategy will be adequate to the task in the region.

3. European policy in the region should in full measure take account of the condition of the society 15 years after perestroika and the nature of the ruling political elite as well as the prospects for political development.

It is obvious that the internal political processes in all the region’s countries will be, first of all, connected with intra-elite processes. It is improbable that any serious political changes will be connected with movements ‘from below’. For the time being, politics in the region will be a ‘top-down’ process. And under these circumstances, such a policy should be sufficiently flexible, but consistent considering the fact that the ruling elites are not solid. To some extent, both progressive and conservatives elements are present within their ranks, and, besides, China, and especially Russia exert influence on the internal political processes in the region, because in those countries similar processes are also taking place.

Every possible effort should be made to maintain the dialogue with the society for the development of mutually acceptable political decisions, especially those connected with the continuity of power. In addition, individual efforts should be taken to counteract negative anti-democratic tendencies coming from Russia, which are appreciably supported and promoted by the authoritarian leaders of the region.

4. To facilitate democracy development in Central Asia, two strategies are available for the

construction of lawful states, civil societies and respect for human rights depending on the disposition of the country’s political leadership.

- i) *For countries where there is a clearly expressed political will to accept systemic democratic reforms and to take concrete steps towards its realisation.* In this case, the European Union, individual states, international organisations, and other donors should efficiently use the available financial, political and economic resources to facilitate these reforms with a maximum involvement in this process of local NGOs, national experts, scientists, practitioners, etc. Despite the fact that no political will is expressed for political modernisation or systemic democratic reforms in Turkmenistan or Uzbekistan, and it is poorly expressed in Kazakhstan, Kyrgyzstan and Tajikistan, it is nevertheless quite possible to initiate certain systemic steps in some directions.
- ii) *For countries where there is no political will for systemic democratic reforms on the part of the top leadership.* In this case, first, it is possible to direct efforts towards the formation of such a political will, through appeals to the observance of international obligations through economic and political levers, including a country’s aspiration to expand trade relations or to integrate more closely into European structures, including the desire to preside over the OSCE. And secondly, if the emergence of such a political will, for whatever reasons, is improbable, one can assist in preparing for such reforms in the future when either the necessary political will would emerge, or there is a change of power creating more favourable conditions. Such assistance can be provided by helping with the creation of a viable concept for such reforms, producing ideas and promoting educational programmes.

Such strategies should be directed in equal measure towards all components of democratic reform in the region: legislative, institutional and judicial.

To concentrate assistance on personnel retaining, capacity-building is inefficient when carried out under conditions of unreformed legislation and unreformed institutions. Frequently, such programmes lead to the opposite result, leading the personnel of official institutions to be more cynical and legally ignorant. Therefore the programmes aimed at achieving reform should encompass to some extent all three components, and only in the context of reforming the legislation and the institutions can one speak about the need for educational courses and training and programmes.

5. The implementation of programmes should be coordinated as much as possible.

Various international organisations, including interstate ones, frequently implement the same programmes in the sphere of human rights, and, unfortunately, with the same low degree of efficiency. External and internal actors should be brought together into a serious coalition to be able to carry out similar programmes to facilitate reforms in the sphere of the rule of law and promotion of human rights and freedoms. In doing so, the strategies and programmes will probably differ substantially from one country in the region to another.

About CEPS

Founded in Brussels in 1983, the Centre for European Policy Studies (CEPS) is among the most experienced and authoritative think tanks operating in the European Union today. CEPS serves as a leading forum for debate on EU affairs, but its most distinguishing feature lies in its strong in-house research capacity, complemented by an extensive network of partner institutes throughout the world.

Goals

- To carry out state-of-the-art policy research leading to solutions to the challenges facing Europe today.
- To achieve high standards of academic excellence and maintain unqualified independence.
- To provide a forum for discussion among all stakeholders in the European policy process.
- To build collaborative networks of researchers, policy-makers and business representatives across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

Assets

- Complete independence to set its own research priorities and freedom from any outside influence.
- Formation of nine different research networks, comprising research institutes from throughout Europe and beyond, to complement and consolidate CEPS research expertise and to greatly extend its outreach.
- An extensive membership base of some 120 Corporate Members and 130 Institutional Members, which provide expertise and practical experience and act as a sounding board for the utility and feasibility of CEPS policy proposals.

Programme Structure

CEPS carries out its research via its own in-house research programmes and through collaborative research networks involving the active participation of other highly reputable institutes and specialists.

Research Programmes

Economic & Social Welfare Policies
Energy, Climate Change & Sustainable Development
EU Neighbourhood, Foreign & Security Policy
Financial Markets & Taxation
Justice & Home Affairs
Politics & European Institutions
Regulatory Affairs
Trade, Development & Agricultural Policy

Research Networks/Joint Initiatives

Changing Landscape of Security & Liberty (CHALLENGE)
European Capital Markets Institute (ECMI)
European Climate Platform (ECP)
European Credit Research Institute (ECRI)
European Network of Agricultural & Rural Policy Research Institutes (ENARPRI)
European Network for Better Regulation (ENBR)
European Network of Economic Policy Research Institutes (ENEPRI)
European Policy Institutes Network (EPIN)
European Security Forum (ESF)

CEPS also organises a variety of activities and special events, involving its members and other stakeholders in the European policy debate, national and EU-level policy-makers, academics, corporate executives, NGOs and the media. CEPS' funding is obtained from a variety of sources, including membership fees, project research, foundation grants, conferences fees, publication sales and an annual grant from the European Commission.

E-mail: info@ceps.be

Website: <http://www.ceps.be>

Bookshop: <http://shop.ceps.be>