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ШКОЛА ПРАВА

Analysis of the Draft Constitution of the Kyrgyz Republic

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Authors:

Klara SOORONKULOVA

Roman MARTYNIUK

Leila Nazgul SEITBEK

Translation: Nicholas LEWIS

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the Norwegian Helsinki Committee

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LAYOUT AND DESIGN: Dinara Chokotaeva

TRANSLATION: Nicholas Lewis

ABOUT THE AUTHORS:

Klara Sooronkulova – PhD in Jurisprudence, Judge of the Constitutional Court of the Kyrgyz Republic 2011-2015, Founder of the Kyrgyz NGO “Shkola Prava”

Roman Martyniuk – PhD in Political Science, Associate Professor at the Department of State Legal Studies of the Malynovskii Academic and Research Institute of Law, Ostrozhskaya Academy National University

Leila Nazgul Seitbek – Lawyer, expert at Freedom For Eurasia NGO, currently studies Law at University of Wien, Austria.

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EXECUTIVE SUMMARY

1. Background

At a session of the country's Jogorku Kenesh (Parliament) on October 14, 2020, Sadyr Japarov was elected Prime Minister of Kyrgyzstan. In his speech to members of parliament, Japarov reiterated the claim that he had made up until that day in a number of public speeches and interviews – that Kyrgyzstan needs to move to a presidential form of government and alter its constitution.¹

On October 20, 2020, in an interview with Al Jazeera, Japarov claimed to be in possession of a draft of a new constitution providing for a majoritarian system and a kurultai – a kind of representative body to which both the President and Parliament would in theory be accountable.²

On October 22, 2020, in flagrant and open violation of procedures for the adoption of new laws, the Jogorku Kenesh passed the constitutional law of the Kyrgyz Republic “On the suspension of certain provisions of the constitutional law of the Kyrgyz Republic ‘On the election of the President of the Kyrgyz Republic and members of Jogorku Kenesh of the Kyrgyz Republic.’”

The law suspended the regulations of the electoral law that provided for mandatory deadlines for repeat elections. The law itself made it clear that the purpose of the cancellation of the elections was the need for constitutional reform in order to amend the existing Constitution of the Kyrgyz Republic. Article 2 of the newly adopted law originally stipulated that the existing Constitution be amended no later than January 10, 2021.

The Venice Commission, in its Opinion on the issue, noted the following: 1) Parliament cannot approve constitutional reforms during the period of prorogation; 2) The process of initiating and carrying out constitutional reform requires a comprehensive analysis and public discussion both inside and outside the legislature; 3) Constitutional procedure and statutory periods for constitutional amendments must in any eventuality be respected; 4) The suspension of elections on account of the need for constitutional reform demonstrates a purely instrumental conception of the Constitution and cannot be considered in line with democratic standards.³

¹ Excerpt from the speech of S. Japarov in Parliament on October 10, 2020: “The people want a majoritarian system, and political forces want just repeat elections. We have to come to a compromise. We will resolve this issue together with you,” Sadyr Japarov replied to “Bir Bol” leader Altynbek Sulaymanov’s question regarding the date of the next elections. “We propose a majoritarian system. We therefore have to carry out constitutional reform as soon as possible. There will be a president, there will be no prime minister, there will be a kurultai system. I believe that if parliamentarism remains, the number of deputies will be reduced to 75 or even 50. But this issue will be resolved together with you,” he told parliamentarians.

² https://kaktus.media/doc/423246_mojno_li_naznachit_referendym_po_popravkam_v_konstityciu_kommentariy_urista.html

² <https://kloop.kg/blog/2020/10/20/govorit-cto-ya-prishel-k-vlasti-cherez-zapugivanie-i-ugrozy-nepravilno-pereskazyvaem-intervyu-sadyra-zhaparova-telekanalu-al-jazeera/>

³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)015-e)

On November 17, 2020, a draft of the law of the Kyrgyz Republic “On the Holding of a Referendum (Popular Vote) on the Draft Law of the Kyrgyz Republic, ‘On the Constitution of the Kyrgyz Republic,’”⁴ the Draft Constitution of the Kyrgyz Republic⁵, and the Explanatory Notes to the Draft Law of the Kyrgyz Republic “On the Constitution of the Kyrgyz Republic”⁶ were presented for public discussion. Article 1 of the draft law “On the Holding of a Referendum” called for a referendum on January 10, 2021.⁷

The draft laws were initiated by 80 members of parliament, but one of the initiators, MP Akylbek Japarov, who also had the position of adviser to the acting president, gave the following answer to media questions concerning the authors of the new draft constitution: “It was developed by the Presidential Administration, the Ministry of Justice and the government. But first Sadyr Japarov expressed his proposals, which were reflected in this constitution.”⁸

On November 20, 2020, Acting President Talant Mamytov issued a decree “On the Establishment of a Constitutional Council.”⁹ According to the decree, the Constitutional Council was to examine ways of making improvements to the foundations of the constitutional order; the rights and freedoms of the individual and the citizen; the system of government; the optimization and delineation of powers between the branches of government, as well as other issues attaching to these topics, and report back to the Kyrgyz Republic’s Jogorku Kenesh with proposals for the draft law “On the Constitution of the Kyrgyz Republic.”

On January 27, 2021, the Constitutional Council concluded its work.

On February 9, 2021, the Jogorku Kenesh published a draft of the new constitution on its website, finalized by the Constitutional Council and signed by the Chairman of the Council, B. Borubashev.

On February 12, 2021, in an interview with the media, President Sadyr Japarov announced his intention to hold a referendum on April 11, 2021.

Thus, the sequence and nature of the events in this process, and the actions, decisions and statements of their participants, clearly indicate that the amendment of the country’s constitution is solely due to political expediency. The current administration, whose legitimacy is highly questionable, sees the adoption of the new constitution as the final stage in the legitimization of the October 2020 coup d’état.

⁴ <https://bit.ly/3mnetG7>

⁵ <https://bit.ly/2Q1GsyP>

⁶ <https://bit.ly/3msOrkL>

⁷ bit.ly/3wmXatg

⁸ <https://rus.azattyk.org/a/30960644.html>

⁹ The President does not have the authority to convene a Constitutional Council, nor do any of the laws of the Kyrgyz Republic define the status and procedure for the formation of such a body as the Constitutional Council. As a rule, constitutional councils in the history of the independent Kyrgyz Republic were formed as public bodies designed to draft the Constitution for its subsequent introduction in Parliament.

2. Can the Constitution be changed?

A constitution, as a country's fundamental law, is a legislative act of long-term effect, the legal property of which is stability – that is, stability of content. The stability of the constitution is the most important precondition for the stability of the rule of law, the organization and exercise of state power, and relations between the individual, society and the state. The *stability* of the constitution, however, does not mean its absolute immutability.

The science of constitutional law distinguishes different modalities of introducing new provisions into the text of a constitution – a complete revision (the adoption of a new constitution), supplementation (introducing amendments without altering the content of existing provisions) and altering the content of certain provisions (a new edition).

The social relations enshrined at the time of the adoption of a constitution necessarily evolve and the balance of socio-political forces changes. All of this necessitates the periodic re-alignment of constitutional regulations with the changes taking place in society. When such changes affect the foundations of the constitutional order, there may be a need to replace the existing constitution with a new one. In other words, a complete revision of the existing constitution can only be justified if the changes in social relations that form its content, or the shift in the balance of socio-political forces, are truly substantial.

In any case, regardless of whether a new constitution is adopted or amendments and supplements to the existing constitution are made, the initiators of the project are obliged to justify the need for constitutional reform, to convince society that socio-political or socio-economic relations really have changed in a way that requires new constitutional and legal regulation. In this regard, the initiator of the legislative proposal, in this case the Jogorku Kenesh, ought to have presented a “Concept” (outline) of the draft law on amending the Constitution for public discussion.

However, Sadyr Japarov, as prime minister and acting president and then as president-elect of the Kyrgyz Republic, has repeatedly made statements about the need for the adoption of the new constitution, which is an open admission that the head of state and his inner circle are the initiators of this process.

This fact raises serious concerns: the open lobbying for a complete revision of the Constitution on the part of an official (the President) who is not the initiator of the legislative proposal in question indicates the existence of a backroom agreement – far from both public scrutiny and the public interest – concluded with loyal deputies by means of bribery and the promise of favors, and pressure on those who resist.

3. The legal procedure for amending the Constitution.

The existing constitution of the Kyrgyz Republic was adopted on June 27, 2010, through a referendum. The key points about the 2010 Constitution are the following:

1. Adopted as a result of the events of April 7, 2010, during which President Kurmanbek Bakiyev fled the country and the country's parliament was dissolved.

2. Devised by a group of lawyers convened by the Provisional Government of the Kyrgyz Republic.

3. The final version was approved during a discussion of the Constitutional Council convened on May 3, 2010 with 75 members (the Constitutional Council served as the Constituent Assembly and concluded its work on May 20, 2010).

4. The drafting and adoption of the Constitution took place against the backdrop of tense social and political events (ethnic conflict in the south of the country).

5. The Venice Commission, in its Opinion of June 4, 2010, praised the draft Constitution as follows:

"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 parliamentary 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 invitation of the Provisional Government, a delegation of the Venice Commission, composed of Ms Angelika NUSSBERGER (Substitute Member, Germany), Mr Aivars ENDZINS (Member, Latvia), Mr Nicolae ESANU (Member, Moldova), Mr Anders FOGELKLOU (Expert, Sweden), visited Bishkek. The delegation held meetings with representatives of the Provisional Government, members of the working group on the drafting of the Constitution and members of the Constitutional Council).

6. For the first time in the history of the independent Kyrgyzstan, the 2010 Constitution laid foundations for the formation and development of a parliamentary republic.

The Constitution of the Kyrgyz Republic, according to the generally accepted classification, belongs to the category of rigid constitutions – its amendments procedure is complicated. The procedure is governed by Article 114 of the Constitution. It is important to note that this article governs only the procedure for amending the Constitution; in other words, the Constitution does not contain regulations on the adoption of a new constitution.

Under Article 114 of the Constitution, not all constituent parts of the Constitution are subject to change in the same way. Sections on the foundations of the constitutional order, on human rights, and on the procedure for changing the Constitution are the fundament of the Constitution, provide it with the necessary staticity and are immutable.

Other sections, relating to the structure of state power, are dynamic and can be amended both by a referendum and by a legislative body. Thus, Part 2 of Article 114 allows the Jogorku Kenesh to amend only the provisions of Sections 3-8.

By Jogorku Kenesh:

i. A legislative initiative is introduced, i.e. a draft law to amend the Constitution. This right belongs exclusively to two subjects – the majority of the total number of deputies or at least 300,000 voters (Part 2 of Article 114).

ii. The draft law is reviewed in three readings, with a two-month break between readings (a public discussion must take place in between the readings). In total, this process should take at least six months, perhaps longer.

iii. The law is adopted by a qualified majority (no less than two thirds of the total – 80 deputies or more).

iv. At the initiative of two thirds of the total number of deputies, the adopted law can be put to a referendum. This is a common practice around the world, known as “ratification by popular vote”.

By Popular Initiative

In the case of a popular initiative, 300,000 voters, after going through the necessary procedures (creating an initiative group, collecting signatures on signature sheets, checking signature sheets, etc.) propose a draft law on amending the Constitution to the Jogorku Kenesh, which is then obliged to call a referendum.

The referendum is set by the Jogorku Kenesh’s adoption of a law on the holding of a referendum, in which the date of the referendum and the full name of the draft law are set. It is forbidden for the Jogorku Kenesh to make any changes to the text of the law initiated by the people.

4. Violations

80 deputies of the Jogorku Kenesh (which constitutes the majority required by the Constitution) initiated the draft of the new constitution – in other words a complete revision of all of the Constitution’s sections – which is a flagrant violation of Article 114 of the existing Constitution which doesn’t provide avenues and procedures for adoption of a new Constitution.

The deputies grossly violated the rules of legislative procedure set out by the laws of the Kyrgyz Republic “On Normative Legal Acts of the Kyrgyz Republic” and “On the Regulations of the Jogorku Kenesh of the Kyrgyz Republic”: no “Concept” of the draft law was developed and published, not a single legal or academic examination was conducted (for instance with regard to human rights, gender, environment, anti-corruption), no preliminary reviews of the draft law were conducted by parliamentary committees, not a single parliamentary hearing took place, the authors of the draft law are not identified, and the draft law was not sent to the Constitutional Chamber. Moreover, on January 20, 2021, a number of deputies initiated a bill “On the Introduction of Amendments to the Laws of the Kyrgyz Republic ‘On the Regulations of the Jogorku Kenesh of the Kyrgyz Republic’ and ‘On Normative Legal Acts of the Kyrgyz Republic,’” providing for the adoption of a draft law on amending the Constitution in three readings in one and the same session, in contravention of constitutional regulations.

5. Conclusions:

- I. In the Kyrgyz Republic, there are no objective reasons and preconditions justifying the adoption of a new constitution.
- II. The Constitution and legislation of the Kyrgyz Republic do not contain provisions governing the adoption of a new constitution.
- III. Constitutional regulations provide only for the possibility of amending and supplementing the Constitution, with Sections 1, 2 and 9 remaining immutable.
- IV. The text of the draft of the new Constitution was developed behind the scenes in the office of the Presidential Administration, and the deputies of the Jogorku Kenesh were used as tools to lobby the interests of narrow political circles.
- V. The preparation, initiation and public discussion of the draft Constitution, the convening of the Constitutional Council, and the initiation of the referendum were all carried out with gross violations of established procedures.
- VI. The formal initiation of the draft law was carried out by a parliament whose constitutional term of office expired in October 2020, calling into question the legitimacy of the adopted Constitution.

PART II

Analysis of the Proposed Amendments

1. CHANGES MADE TO THE PREAMBLE TO THE CONSTITUTION

Preamble

“We, the people of the Kyrgyz Republic;
recognizing our right to determine our own destiny;
in order to ensure the rule of law, justice, and equity;
wanting to establish the foundations of a true people's government;
following the traditions of our ancestors, continuing to live in unity, peace and concord, and
in harmony with nature, based on the precepts of Manas the Magnanimous;
affirming the rights and interests of the people of the Kyrgyz Republic;
expressing an unwavering will to preserve and strengthen statehood;
reaffirming the commitment to protect and respect human and civil rights and freedoms;
declaring the recognition of universal human principles and values;
filled with a determination to promote social justice, economic prosperity, education,
science and spirituality;
honoring the memory of the heroes who gave their lives for the freedom of our people;
aware of our responsibility for our Fatherland to present and future generations, we adopt
this Constitution”

Commentary: In the science of constitutional law, it is generally accepted that the preamble to a constitution should contain principles and provisions that are conceptually purposeful, value-oriented and systemically organizing in relation to the text of the constitution. The provisions of the preamble are of fundamental significance for other regulations of the constitution, i.e. the principles and provisions of the preamble must be embodied, deployed and interpreted in constitutional regulations. Thus, the preamble is an integral part of a constitution, and the subsequent provisions of the constitution, especially the principles of the constitutional order, must be interpreted and applied in the light of the constitution's preamble. An analysis of the proposed additions to the Preamble of the Constitution of the Kyrgyz Republic allows us to draw the following conclusions:

1) The authors have significantly altered and expanded the Preamble to the Constitution. Was such a step necessary? Unfortunately, the authors of the draft appear not to understand the connection between the Preamble and the subsequent constitutional text, perceiving the Preamble as a lyrical introduction to the Constitution.

Changes to the Preamble are justified only if the historical context of the state's development has changed significantly, or the state intends to develop in a new, significantly different direction to before. By altering the Preamble, the authors of the Constitution ought to be cognizant that they are changing its main objectives and goals, which entails a change in the direction in which constitutional norms are to develop.

2) For instance, the Preamble of the Constitution has been supplemented by the expression “recognizing our right to determine our own destiny.” The designation of such a goal is characteristic for states going through the historical stage of a struggle for independence. For a sovereign state with full state power over its own territory, and which autonomously implements its domestic and foreign policy, such a designation is politically superfluous and ideologically inappropriate.

Consequently, the proposed addition distorts the true purpose of the adoption of the Constitution and overloads the text of the Preamble with a meaningless affirmation.

3) Regarding the addition of the phrase “reaffirming the commitment to protect and respect human and civil rights and freedoms.” As a value-oriented starting point, these additions are legally illiterate and raise doubts about the professional competence of the authors of the draft. The most common and generally accepted wording in legal texts is to affirm a “commitment to *human rights and freedoms*,”¹⁰ rather than a “commitment to protect” such rights. Protection and respect for human rights and freedoms are not a commitment, but a duty of the state.

4) The next addition is “following the traditions of our ancestors, continuing to live in unity, peace and concord, and in harmony with nature, based on the covenants of Manas the Magnanimous.” Kyrgyzstan is a multi-ethnic state. The goal and purpose of the adoption of the Constitution that should flow from this – to preserve the unity of the people – requires the consecration in the Constitution of provisions that safeguard inter-ethnic and interfaith harmony, and equality of opportunity in economic, social, cultural and spiritual development for members of all of the various ethnic groups that make up the people of Kyrgyzstan. A multi-ethnic nation is obviously composed of a multitude of cultures, traditions and languages. Yet the proposed addition refers to one distinct national heritage.

If the authors of the constitutional amendments intend to declare the dominant, special position of the Kyrgyz ethnic group as the bearer of statehood, then the Constitution should contain the appropriate supporting regulations. In this case, exceptions should be made to the principle of non-discrimination of individuals on the basis of ethnicity. However, no additions aimed exclusively at the promotion of the precepts of Manas have been made to the draft. Instead, the new version of the Preamble in the section in question stands in clear contradiction to provisions prohibiting discrimination on the basis of race, language and ethnicity.

5) The expression “affirming the rights and interests of the people of the Kyrgyz Republic” is also legally untenable. If the intended reference here is simply to the collective rights of peoples (nations, ethnic groups, other social communities and collectives), then these rights are derived from universal human rights.

¹⁰ Preamble of the European Convention on Human Rights

There is therefore no need to affirm them separately. If the authors of the text imply any rights exclusive to the people of Kyrgyzstan, then these rights should accordingly be clearly reflected in the content of the Constitution. If the authors intend this statement to be about the primacy of collective interests over private ones then it means that the entire orientation of the Constitution should be directed towards socialism.

As stated, any amendments and additions to the Preamble to the Constitution are justified only if the goals and value orientation of state development are thereby substantially altered. In this case, the new provisions of the Preamble should be reflected and detailed in the regulations of the Constitution. The draft under review does not meet these requirements, and therefore there is no objective need to amend or supplement the Preamble to the Constitution.

Moreover, the constituent nature of the provisions of the Preamble to the Constitution (“We, the people of Kyrgyzstan, adopt this Constitution”) implies that the Preamble can only be changed if there is broad popular participation in its drafting and discussion. The draft of the new Constitution was prepared virtually without any public participation.

Moreover, the initiative also did not come from the people. The ruling clique are imposing on the people the constitutional amendments that they consider necessary, formulating them in accordance with their own interests and their understanding of the required principles of the organization of state power and state structure.

2. AMENDMENTS TO SECTION ONE THE FOUNDATIONS OF THE CONSTITUTIONAL ORDER

CHAPTER I. POLITICAL FOUNDATIONS OF THE CONSTITUTIONAL ORDER

Article 1

1. The Kyrgyz Republic (Kyrgyzstan) is an independent, sovereign, democratic, unitary, secular and social state governed by the rule of law.
2. The sovereignty of the Kyrgyz Republic is unlimited and extends over its entire territory.
3. The Kyrgyz Republic independently conducts its domestic and foreign policy.
4. The people of the Kyrgyz Republic are the bearer of sovereignty and the sole source of state power.
5. The people of Kyrgyzstan is composed of citizens from all of the ethnic groups of the Kyrgyz Republic.
6. The President and the Jogorku Kenesh are entitled to speak on behalf of the people of the Kyrgyz Republic.

Commentary: Article 1 of the Constitution is important because it defines the Kyrgyz Republic and lists its fundamental features, which must be enunciated and fleshed out in the first section. To the traditional six features of the Kyrgyz Republic, the authors of the draft redundantly add another – “independent state.” Sovereignty is generally accepted to mean precisely the independence of the state in external affairs and the supremacy of state power in matters domestic.

Article 2

1. The right to independently determine the foundations of the constitutional order is a sovereign right of the people of the Kyrgyz Republic.
2. In the Kyrgyz Republic, popular sovereignty is based on the principles of full authority belonging to the people, of the protection of human and civil rights and freedoms, and of free and real access to the management of the affairs of the state and society.
3. Citizens of the Kyrgyz Republic exercise their authority directly in elections and referendums (popular votes), as well as through the system of state organs and local self-government organs in accordance with the Constitution and laws of the Kyrgyz Republic.
4. Elections and referendums are held on the basis of free, universal, equal and direct suffrage by secret ballot. Citizens of the Kyrgyz Republic who have reached 18 years of age have the right to vote.
5. Laws and other issues of national importance may be submitted to a referendum. The procedure for holding a referendum is determined by constitutional law.
6. It is forbidden to influence the free choice of voters through the use of financial, administrative or other resources prohibited by law.

Commentary: Article 2 establishes the principle of popular sovereignty (народовластие) and sets out the features of a democratic state. The content largely duplicates Article 2 of the Constitution currently in force. A new addition is Part 1, which establishes that it is a sovereign right of the people to independently define the foundations of the constitutional order. The term “sovereign rights” is used in constitutional and international law to relate to state sovereignty in the same way as “parts” relate to the “whole”. Sovereign

rights as a “part” of the “whole” of the sovereignty of the state clarify the latter’s structure and content. The basic sovereign rights of the state, as they relate to the content of domestic sovereignty, include the right to adopt and amend the Constitution and laws; the right to establish systems of public governance; the bestowal of citizenship; tax collection; the establishment of administrative territorial divisions; the management of the state’s territory and natural resources; legal enforcement; the creation of armed forces, and so on. External sovereignty includes sovereign rights to conclude international treaties; to establish diplomatic relations; to declare war and peace; the right to neutrality, etc.

The term “foundations of the constitutional order” (основы конституционного строя) is widely used in Russia in the science of constitutional law; it is this term that has provided the title of the first section of the Russian Constitution since 1993. In the Constitution of the Kyrgyz Republic of 1993, the first section was entitled “General Principles,” as is traditional for the majority of constitutions around the world. The title became analogous to its Russian counterpart in 2006. The precise meaning of the term is a matter of debate, but most authors consider it to be derived from the widely used term “foundations of the social order” employed in the constitutions of the Soviet Union. A review of scientific literature shows that there is no unity of opinion in the legal science of the Russian Federation regarding the concept and content of the foundations of the constitutional order; they simply reveal one aspect or another of the constitutional order. The most common definition of the foundations of the constitutional order is that of a set of basic principles of the structure of state and society, and of the relationship between the individual and the state, in which the rights and freedoms of the individual and the citizen are respected, and the state acts in accordance with the Constitution. From this point of view, it is entirely unclear what meaning the authors of the draft have placed in the provision granting the people the right to determine the foundations of the constitutional order independently. This provision is in need of further clarification, or else its implementation may be subject to different interpretations. Perhaps the authors’ intention was that Section 1 of the Constitution, which sets out the foundations of the constitutional order, be alterable only through an expression of the will of the people? In this case, this right of the people should be realized through the mechanism for amending the Constitution. Part 2 of Article 2 refers to the principle of the protection of rights and freedoms of the human being and a citizen as a principle of popular sovereignty. The protection of the rights and freedoms of the human being and the citizen is the duty of the state and is carried out through a system of legal provisions, principles, mechanisms and various procedural regulations directly intended for this purpose. The principle of the protection of human rights and freedoms is derived from the recognition of human rights and freedoms as the highest value, which in turn is a key feature of a state governed by the rule of law. Traditionally in jurisprudence, the institution of the authority of the people is concretized through the concept of the people’s sovereignty, free and equal access to the management of the affairs of the state and society, and a combination of direct and representative forms of the exercise of power. Article 2 of the existing Constitution contains an important clause declaring that the state is obliged to create the conditions for the representation of various social groups, defined by law, in national and local government organs, including at decision-making level. On the basis of this clause, highly important legislation has been adopted ensuring the right of women, people with disabilities and ethnic minorities to participate in state governance. This clause is absent from the proposed draft.

Article 4

State power in the Kyrgyz Republic is based on the principles of:

- the supremacy of the power of the people, represented and guaranteed by a popularly elected President and Jogorku Kenesh;
- the division into legislative, executive, and judicial branches, and their coordinated functioning and interaction;
- the openness of state organs, local self-government organs and their officials, their exercise of the powers vested in them in the interests of the people;
- the separation of powers and functions of state organs and local self-government organs;
- the prohibition of state and municipal officials from committing actions (or omissions) that create conditions for corruption;
- constitutional-legal and other accountability of state organs, local self-government organs and their officials to the people.

Commentary: Article 4 duplicates Article 3 of the current Constitution and supplements the principles of the exercise of state power with a prohibition of public and municipal officials from committing actions (or omissions) that create conditions for corruption. Constitutional principles are general guidelines of constitutional and legal regulation, which possess the highest degree of normative generalization.

When designing legal provisions, it is vital to understand their place in the legal system. Thus, provisions of principle have the highest level of abstraction and determine the initial principles, the foundations of the legal regulation of public relations. This is their essential function. Such initial principles are not rules of conduct for legal subjects in particular situations, but rather contain within themselves certain directions for provisions on legislative and legal enforcement activity.

As for prohibitions, they are, by their legal nature, aimed at deterring and preventing unlawful actions on the part of legal subjects. Unlike provisions of principle, therefore, they must be as clear and specific as possible, since prohibitions are primarily regulations aimed at human behavior in a very direct sense, while the initial principles act in a more indirect manner.

Actions and omissions on the part of state and municipal officials that promote corruption are offenses and are listed in detail in the anti-corruption and criminal legislation of the Kyrgyz Republic. There is therefore no need to prohibit corruption at the constitutional level. If the authors of the draft believe that by doing so they are elevating the fight against corruption to the constitutional level, it should be noted that these provisions do not apply to the heads of agencies, organizations and enterprises whose activities are financed from national or local government budgets or in whose statutory capital the state has a share, or to members of tender commissions, members of the Council for the Selection of Judges, members of electoral commissions, and others, since under Kyrgyz law they do not hold state or municipal office. The same is true of other national and municipal-level employees who are not state officials.

The enunciation of the principle of “constitutional-legal accountability” (конституционно-правовая ответственность) is also not unproblematic from a legal point of view. Firstly, there is no clear definition in legal science defining the meaning of the term, and secondly, assuming that it refers to accountability for the violation of constitutional obligations as prescribed by the Constitution, this accountability is political in nature, taking expression in, for example, the resignation of the government. By including the principle of the constitutional accountability of public organs, local governments and their officials in the Constitution, the authors ought to have provided for some mechanism for holding legal subjects accountable for infringements such as, for example, violation of oath. However, no such provisions can be found in the proposed draft, and hence this principle remains declarative and populist in nature.

Article 5

1. The state and its organs serve the whole of society, and not only one particular part of it.
2. Actions aimed at forcibly seizing and illegally retaining state power, appropriation of powers of state bodies, local governments and their officials are not allowed.

The usurpation of state power is a particularly serious crime.

Comment: In the existing Constitution, Paragraph 1 of this article is formulated as follows: “The state and its authorities serve the whole of society, and not a certain part thereof.” Thus, political groups and clans are not allowed to use state resources and opportunities for their own private purposes. This rule prohibits the usurpation of power. The proposed version stating that “The state and its organs serve the whole of society, and not *only* [emphasis added] one particular part of it” in fact legitimizes the usurpation of power by the addition of the word ‘only’, which technically allows the state to serve one group. Moreover, the authors of the draft excluded from this article the important provision that no part of the people, no association and no individual have the right to appropriate power in the state.

Article 6

1. This Constitution has supreme legal force and direct effect in the Kyrgyz Republic.
2. Constitutional laws, laws and other normative legal acts are enacted on the basis of the Constitution.
3. The generally recognized principles and norms of international law, as well as international treaties that entered into force under the laws of the Kyrgyz Republic, are an integral part of the legal system of the Kyrgyz Republic.

The procedure and conditions for the application of international treaties and generally recognized principles and norms of international law are determined by law.

4. The official publication of laws and other normative legal acts is a prerequisite for their entry into force.

5. A law or other normative legal act which establishes new obligations or aggravates liability has no retroactive effect.

Commentary: In the version of the Constitution adopted in 2010, Part 3, Paragraph 2 of Article 6 established the direct effect and priority of the provisions of international human rights treaties over the provisions of other international treaties. This clause was removed in 2016. As an addendum, it was affirmed that “The procedure and conditions for the application of international treaties and generally recognized principles and norms of international law are determined by law.” In the analyzed draft, the authors have preserved the entire version of the existing Constitution, paraphrasing Paragraph 1 of Part 3. It should be noted that the wording in the existing Constitution: “International treaties to which the Kyrgyz Republic is a party that have entered into force under established legal procedure” is well-established and common. According to the rules of legislative technique, the stability and robustness of legal terminology and legal definitions require the avoidance of unjustified linguistic innovations which impair the language of legislation and lead to vagueness, inaccurate comprehension and the ambiguous interpretation of legal documents.

In addition, Paragraphs 1 and 2 of Part 3 stand in clear semantic contradiction to one another. Recognition that those international treaties to which the Kyrgyz Republic is a party that have entered into force, as well as the universally accepted principles and norms of international law, are an integral part of the legal system of the Kyrgyz Republic is based on a monistic approach to the relationship between international and domestic law, by which the norms of international law are incorporated into the system of existing provisions in the Kyrgyz Republic, and therefore have direct action and direct application. Based on Part 3, Paragraph 1 of Article 6, interested individuals and entities may refer directly to international law in dispute resolution, and courts and public bodies are required to comply with them in legal practice.

Paragraph 2, on the other hand, is based on a dualistic approach that assumes the independence and autonomy of international and national legal systems. In this approach, the state recognizes the need for interaction and mutual influence between the systems, but at the same time each of them has supremacy only in certain spheres of legal relations. In this context, a provision of international law will have direct effect on the territory of the state only if it is incorporated into the national legal system by the enactment of the appropriate legislation, that is, when international norms are transformed into domestic ones.

Thus, the wording of Paragraph 2 of Part 3 of Article 6 directly contradicts Paragraph 1 of Part 3 of the same article. The existence of two legal provisions governing the same relationship, yet whose joint application is impossible, is certain to hinder the harmonious operation of the legal system, negatively impact upon the law and the effectiveness of legal regulation, contribute to the infringement of citizens' rights, and create significant inconveniences in legal enforcement practice. Such defects in constitutional regulation are a fertile ground for abuses by the subjects of legal-constitutional relations.

Article 7

1. The People's Kurultai is a public representative assembly.

The People's Kurultai is a consultative, supervisory assembly, and gives recommendations on areas of social development.

2. The organization and procedures of the People's Kurultai are determined by the Constitution and by constitutional law.

Commentary: The above provisions are presented to society as significant innovations and important achievements of the proposed new Constitution. In the existing Constitution, the People's Kurultai is a mode of exercise of citizens' right to peaceful assembly and participation in the management of state affairs. Kurultais as self-regulated people's assemblies are popular in Kyrgyz society and are a widespread phenomenon. They are not regulated by any legal acts, but simply convened on the initiative of active citizens, and participants of a kurultai may discuss any important issues of the day and pass on their recommendations to the state authorities. In the proposed draft Constitution, in terms of the Constitution's structure, the Kurultai belongs to the foundations of the constitutional order and takes on a special constitutional status, according to which the People's Kurultai is at once a:

1. Public body
2. Representative body
3. Consultative-advisory body
4. Supervisory body

At the same time, the Kurultai duplicates many key powers of the Jogorku Kenesh, such as conveying to the President proposals for the dismissal of ministerial cabinet members and the heads of executive organs, participating in the formation of the Council of Judicial Affairs, hearing the annual reports of the President and, most importantly, the Kurultai has the right of legislative initiative. The creation of such a body undermines the legitimacy of the Jogorku Kenesh, especially in cases when the decisions of the Jogorku Kenesh contradict the recommendations of the People's Kurultai or when the Jogorku Kenesh rejects a bill proposed by the People's Kurultai. It is also obvious that the People's Kurultai is vulnerable to being used by the dominant state actor, the President, in order to legitimize his own decisions in spite of and in opposition to the decisions of the Jogorku Kenesh.

Article 7, Part 2 of the draft Constitution states that "The organization and procedures of the People's Kurultai are determined by the Constitution and by constitutional law." However, the draft does not contain any provisions on the organization and procedure for the activities of the People's Kurultai. Clearly, there are no such provisions in the existing version of the Constitution of Kyrgyzstan either. Thus, the Constitution contains no guarantees whatsoever of the representative character of the People's Kurultai. The fragmentary nature of the constitutional provisions on the status of the People's Kurultai obviously makes it possible to distort its character as an organ of popular representation at the legislative level.

Article 8

1. Political parties, professional unions and other public associations may be established in the Kyrgyz Republic to implement and protect the rights, freedoms and interests of the individual and the citizen.
2. Political parties contribute to the diverse expression of the political will of different social strata and groups in society.
3. In the Kyrgyz Republic, the following are prohibited:
 - 1) the establishment and functioning of party organizations within national and municipal institutions and organizations; the conduct of party work by public and municipal employees, except when such work is performed outside of public service;
 - 2) membership of military personnel, law enforcement officers and judges in political parties, or their support of any political party;
 - 3) the creation of political parties on a religious and ethnic basis, or the pursuit of political goals by religious associations;
 - 4) the creation of paramilitary groups by associations of citizens;
 - 5) the functioning of political parties, social and religious associations, or their offices and branches, whose activities are aimed at the violent change of the constitutional order, undermining national security, or inciting social, racial, inter-ethnic and religious discord.
4. Political parties, professional unions and other public associations must ensure transparency in their financial and economic activities.

Commentary: In the existing Constitution, the provisions of a similar article (Part 1 of Article 4) affirm the principles of political and party pluralism which are fundamental principles of any rule-of-law state. The main purpose of these principles is to guarantee citizens the right to form parties, diverse associations, movements, unions, organizations, etc., and to freely express their political opinions, views, positions, concepts and initiatives, including alternative, oppositional ones, as well as to reveal the diversity of political interests, goals, guidelines and values of different social groups and strata and of individual citizens. Also crucially important is the fact that the principle of political pluralism obliges state authorities to take this diversity into account, and to ensure that it is reflected and implemented in government policy.

By removing the provision of Part 1 of Article 4 of the existing Constitution (“The Kyrgyz Republic recognizes political pluralism and the multi-party system”), the authors of the proposed draft have effectively refused to declare the principles of political and party pluralism, even though these principles are fundamental for the constitutional and legal regulation of the status of political parties and other public associations. By this omission, the state weakens safeguards for a multi-party system, for political opposition, and for the freedom of civil society organizations.

It is particularly important to note the narrowing of the scope of activity of civil society organizations to issues only of the protection of human rights and freedoms. In reality, public associations are created for a much broader range of purposes – to satisfy a wide variety of interests in various areas of public life, not necessarily related to the protection of rights. In

addition, Article 8 does not meet the demands of international standards in such key constituents of freedom of association as:

- freedom of expression and the right to voluntary participation;
- freedom from government interference in determining types of activities, sources of funding and means of attracting new members;
- ensuring that the restrictions placed on freedom of association are only those admissible by law.

Thus, the proposed formulation of Article 8 allows for a wide range of legislative restrictions, which poses a serious threat to the freedom of association.

In addition to this, instead of providing guarantees, the authors of the Constitution have added the demand for transparency in financial and economic activities as fundamental rules, reflecting a growing trend of demonization of non-governmental organizations and of discrediting the active representatives of civil society who criticize the actions of the authorities. In discussing the draft Constitution in Parliament, a number of MPs have repeatedly employed hostile nationalistic rhetoric, accusing non-governmental organizations of receiving financial assistance from Western countries to destabilize the political situation, renounce traditional values and support LGBT people. This narrative also permeates the public consciousness, generating hatred for those who defend and promote human rights.

This is not the first attempt by the state to establish total control over the activities of NGOs, but the common efforts of civil society have until now been able to stop them or temporarily keep them at bay. The introduction of special requirements for NGOs at the level of the Constitution proves that the current government intends to further intensify the policy of interference, control and restrictions in relation to civil society. Such tendencies are in direct contravention of generally accepted principles of international law and human rights and standards, and show that the authorities in the Kyrgyz Republic do not intend to abide by their obligations under international treaties.

The right of associations to seek, receive and use funding from domestic, foreign and international sources is an integral part of the right to association. The UN Human Rights Council has stressed the importance of civil society organizations being able to receive funding and urged states not to criminalize or delegitimize human rights activities based on the origin of their financial support. Similarly, the UN Human Rights Committee and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has drawn attention to the need to guarantee that NGOs are able to receive funding and argued that funding restrictions preventing associations from engaging in their statutory activities constitute violations of Article 22 of the ICCPR.

Moreover, Article 2 of the International Covenant on Economic, Social and Cultural Rights sets out the obligation of states to participate in international assistance and cooperation, particularly in the economic and technical fields, in order to fully realize the rights enshrined by the Covenant. Such assistance and cooperation includes financial support for civil society organizations working to ensure that these rights are fully realized. On the basis of their Covenant obligations, states should not allow their own administrative needs to restrict the

right to freedom of association, for instance through excessive inspections of organizations or onerous bureaucratic reporting requirements. While the UN Special Rapporteur recognized the right of independent bodies to study associations' accounting documentation in order to ensure transparency and accountability, he pointed out that states should ensure that such a procedure is not arbitrary and respects the principle of non-discrimination and the right to confidentiality of activities, otherwise it will threaten the independence of associations and the security of their members.

Article 9

1. In the Kyrgyz Republic, no religion may be established as the state or mandatory religion.
2. Religion and all religious cults are separated from the state.
3. Religious associations, clerics and ministers of religion are prohibited from interfering in the activities of the organs of state power.

Commentary: In Part 3, terms such as cleric and minister are distinguished, as opposed to the current version of the Constitution, which uses only the term “ministers of religion.” Clerics are in fact ministers of religion, so there is no need to highlight their status separately. The admission of such errors into the Constitution is unacceptable as they create conditions for arbitrary interpretation and errors in enforcement.

The use of the expression “organs of state power” in Part 3 presents a similar problem. In legislative drafting praxis, a legitimate, widespread and well-established term is that of “state organ.” It should be noted, though, that there is no consensus in legal science that these concepts are identical. Many scholars point out that it is necessary to distinguish “organs of state power” from “state organs,” as not all state organs have power – for example those operating in the field of public services. Generally speaking, terms that have no stable legal meaning and clear interpretation can be found throughout the proposed draft.

Article 10

1. The mass media are guaranteed the right to receive information from state and local self-government bodies and to disseminate it, and the right to freedom of expression.
2. Censorship is not permitted in the Kyrgyz Republic. The mass media are free and operate in accordance with the law.
3. Information security in the Kyrgyz Republic is protected by the state.
4. In order to protect the younger generation, activities contrary to moral and ethical values and to the public conscience of the people of the Kyrgyz Republic may be restricted by law.
5. The list of activities subject to restriction and the list of information whose access and dissemination is restricted is established by law.

Commentary: The article under review guarantees the mass media the right to access information administered by state and local governments. Yet the right to receive information and disseminate it freely is not only limited to the media. According to the Universal Declaration of Human Rights, this right belongs to everyone and is a fundamental political and personal right. In this context, the purpose of constitutional and legal regulation remains unclear. Firstly,

enshrining the right to freedom of information exclusively for the media is a form of discrimination and violation of the principle of equality. Secondly, according to Article 19 of the Universal Declaration of Human Rights (1948): *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.* Consequently, the right to receive and disseminate information is derived from the freedom of expression. At the same time, freedom of expression also belongs to everyone, not only the media. In formulating and presenting legal provisions, a fortiori the provisions of the Constitution, the authors should have understood the meaning of the concepts and terms employed in the relevant human rights standards, used them systematically, and set them out in a logical fashion. It seems that the authors of the draft do not understand the legal nature of the concepts contained in international documents, have a superficial view of them and thus allow regulatory defects that represent a threat to human rights protections to enter into the Constitution.

The design of the article under consideration does not meet the requirements of legislative drafting technique. An article is the main structural unit of a legal act. Each article of a legal act represents an internally unified whole and should express the finished thought in its entirety. The article may contain several provisions that have a close logical relationship with one another, complement and define each other, or go from the general to the particular, i.e. subsequent provisions clarify and develop the previous ones. The article should be a complete normative regulation with a distinct and clearly defined topic, a unified content and a single subject of regulation. It is therefore unjustified for there to be various provisions in one single article that do not have direct connection with each other.

For example, Part 3 of Article 10 obliges the state to protect information security. Information security is the protection, in a balanced manner, of the vital interests of the individual, society and the state in the information sphere from internal and external threats.

This definition of information security can be found in the National Strategy for Information and Communication Technologies for the Development of the Kyrgyz Republic (“Информационно-коммуникационные технологии для развития Кыргызской Республики”), approved by Presidential Decree of the Kyrgyz Republic on March 10, 2002, No. 54, which defines the purpose of information security as the protection of the national interests of the Kyrgyz Republic in the information sphere, balancing the interests of citizens, society and the state. Information security therefore has its own specific object of regulation – the storage and protection of information. Moreover, the targets of information security are not only the media, but also the state and its organs, business organizations, citizens, etc.

Thus, the main requirement for the creation of a distinct article of a normative legal act – the close connection and inseparable unity of the legal provisions presented in it – is violated. It is difficult to answer the question of what it was that moved the authors to place guarantees of freedom of speech for the media, prohibition of censorship and protection of information security in one and the same article. It should also be noted that the expression “information security protection” is not entirely felicitous, since security inherently implies a state of protection and preservation. The term “ensuring security” has taken root in the Kyrgyz Republic’s legislation and is widely used. Moreover, it is not only the state that is an actor in the sphere of ensuring information security.

Parts 4 and 5 of Article 10 pose a serious threat to individual rights and freedoms. The rules are vague and ambiguous, which in turn can lead to arbitrary interpretations, and hence to violations of individual rights and injustice. In particular, it is impossible to define in legal categories the concepts of “moral and ethical values” and “the public conscience of the people.” Moreover, care for the younger generation is not a common cause and therefore cannot be used as a basis for restricting rights and freedoms. By granting the legislator the right to establish a list of prohibited activities, the authors of the draft in fact introduce censorship into the polity, thus nullifying the purpose of Part 2 of the same article.

Article 11

1. The Kyrgyz Republic has no goals of expansion and aggression or military objectives. The armed forces of the Kyrgyz Republic are established in accordance with the principles of self-defense and defensive sufficiency.
2. The right to wage war is not recognized, except in the case of aggression against the Kyrgyz Republic or other states bound to it by collective defense obligations. Permission in each case of deployment of the Armed Forces of the Kyrgyz Republic outside the territory of the Kyrgyz Republic is granted by the Jogorku Kenesh by a majority of at least two-thirds of the total number of deputies.
3. The use of the Armed Forces of the Kyrgyz Republic to settle domestic political issues is prohibited.
4. The Kyrgyz Republic seeks to coexist with other states in harmony and justice, and is committed to mutually beneficial cooperation and the peaceful resolution of global and regional problems.

Commentary: In the Constitution currently in force, a similar article exhaustively and precisely affirms the principles, goals and objectives of the state in the sphere of military defense. The militarization of the state is rejected and the refusal to make the state and its activities subordinate to the goals of warfare is declared. The proposed draft does not reflect these principles, confining itself only to the principles of self-defense and defensive sufficiency.

Part 1 declares that the state has no military objectives. In this regard, it should be noted that, according to the Military Doctrine of the Kyrgyz Republic, the state cannot but have military objectives and is obliged to establish an effective military organization, including a professional armed forces supplied with modern weapons and equipment, capable of adequately responding to threats to military security in peacetime and wartime and guaranteeing the protection of the sovereignty, territorial integrity and constitutional order of the Kyrgyz Republic and the implementation of its international obligations. The proclaimed principle of defensive sufficiency does not mean a complete abandonment of military objectives, which can and should be to provide, in military, technical and strategic terms, the level of defense and the modes of activity of the armed forces necessary for preventing war and ensuring sufficient defense.

Article 13

1. The Kyrgyz language is the state language of the Kyrgyz Republic.
The procedure for the use of the state language is regulated by constitutional law.
2. In the Kyrgyz Republic, the Russian language is used as the official language.
3. Members of all of the ethnic groups that make up the people of the Kyrgyz Republic are guaranteed the right to create conditions for the preservation, study and development of their native language.

Commentary: Part 3 of Article 13 states that the people of the Kyrgyz Republic are made up of *members* of all of the ethnic groups, while Article 1 establishes that the people of Kyrgyzstan are *citizens* of all of the ethnic groups in the Kyrgyz Republic. It is very important to respect unity in the usage of terms in legislation and to employ the same term throughout the text of the legal act when designating the same concept. The people are one of the main subjects of constitutional and legal relations, hence the phrase requires a clear terminological definition.

CHAPTER II.

THE SOCIO-ECONOMIC FOUNDATIONS OF THE CONSTITUTIONAL ORDER

Article 16

1. The land, mineral resources, airspace, water, forests, pastures, flora and fauna, and other natural resources are the exclusive property of the Kyrgyz Republic.
2. Land and natural resources are to be used as the basis of the life and activities of the people of the Kyrgyz Republic with the aim of preserving a unified ecological system and sustainable development, and are under the control and special protection of the state.
3. Land, with the exception of pastures and forests, may also be privately and municipally owned.
Land may not be owned as private property by foreign nationals and legal entities with foreign participation.
4. Safeguards for the protection of the rights of landowners shall be determined by law.

Commentary: This article defines the constitutional basis of the legal regulation of land relations and, except for Paragraph 2 of Part 3, duplicates the rules of the existing Constitution. Part 3, Paragraph 2 prohibits private ownership of land by foreign nationals and entities with foreign participation. The law of the Kyrgyz Republic differentiates between the legal status of a foreign legal entity and a legal entity with foreign participation, in which the main criterion is the place of registration and location of the legal entity. Thus, under the law of the Kyrgyz Republic “On State Registration of Legal Entities and Branches (Offices)” (“О государственной регистрации юридических лиц, филиалов (представительств)”), a foreign legal entity is established in accordance with the law of its country of origin, while a legal entity with foreign participation is established and registered in accordance with the legislation of the Kyrgyz Republic.

In the Land Code of the Kyrgyz Republic, the concept of a foreign legal entity is broader and includes not only a legal entity created and registered in accordance with the law of a foreign state, but also a legal entity registered in the Kyrgyz Republic with foreign participation – that is, a legal entity belonging entirely to one or more foreign individuals or entities; controlled or managed by one or more foreign individuals or legal person through: a written contract, the right to exercise the majority of voting shares, or the right to appoint a majority of members of an executive or supervisory body; at least 20% of the share capital of which belongs to foreign nationals and legal entities or stateless persons; or, a legal entity created on the basis of an interstate treaty or agreement.

Thus, it should be assumed that this constitutional prohibition does not apply to foreign legal entities. But judging by the nature of this ban, the authors of the draft law are lacking in even basic aspects of legal knowledge. Dilettantism and a lack of professionalism in drafting regulatory acts, especially those of such a high level as the Constitution, inevitably lead to chaos in the entire judicial system.

It should also be noted that such a peremptory prohibition of land ownership of private property by foreign nationals is inadmissible, since such a right may arise by way of inheritance

or bequest. Such cases are governed in law by the designation of specific terms (periods) of ownership and by compulsory alienation. Thus, the Land Code of the Kyrgyz Republic allows a foreign national to own a plot of land acquired as an inheritance for a period of 10 years.

Article 17

1. The Kyrgyz Republic creates the conditions for the development of various forms of economic activity and defends the interests of the national economy.

2. The directions of economic and social development of the Kyrgyz Republic are reflected in national programs.

3. The State guarantees the protection of investments and investment actors in accordance with the law.

Commentary: This article sets out the constitutional and legal bases of economic activity. The novel addition here is Part 3 of Article 17, which provides guarantees for the protection of investments and investment actors. Of course, enhanced legal protection of investments is an important step in the formation of a favorable investment climate in any state. And perhaps the authors of the draft believe that enshrining guarantees at the constitutional level will facilitate the inflow of investment. In this case, the Constitution should have also explicitly affirmed the key basic guarantees for investors (e.g. guarantees of stability of the law, the inviolability of investments).

Guarantees of investor rights are specific commitments made by the state in order to safeguard the conditions for investment activities. In terms of its regulatory significance and its significance as a guarantee, the clause in question is of no value for the protection of investments and investor rights, as it is of a purely referential nature. In addition, there are clear defects in its formulation. For example, the term “protection” in relation to such a thing as a natural or legal person is more properly used in conjunction with rights and interests – in other words, laws and the state do not protect individual legal entities, but rather protect their rights and interests.

A significant defect in this provision is also that the Constitution guarantees only a certain form of protection, determined by the law. In this regard, it should be noted that the rights and interests of investors (as well as other investment actors) are established not only by national legislation, but also regulated by international laws and investment agreements. The defects described above clearly demonstrate that the authors of the draft lack the skills and legal knowledge necessary for crafting legislation.

Article 19

1. The State attends to the welfare of the people and their social protection.

2. The Kyrgyz Republic provides support to socially unprotected categories of citizens, and the protection of occupational safety and health.

3. The Kyrgyz Republic develops a system of social services and healthcare, and provides guarantees of state pensions, benefits and other guarantees of social protection.

Commentary: Logically, this article should develop and elucidate the concept of a social state enunciated in Part 1 of Article 1 of the draft. Part 1 of Article 19 is clearly declarative in nature. Constitutions allows for declarative provisions, but the large number of them in the current draft will significantly detract from the proposed Constitution's role as an act of direct legal effect and means it will be perceived as an abstract document rather than directly regulatory in nature. Regardless of their type, legal provisions must meet the requirements of formal certainty and be set out in accordance with the rules of legislative drafting technique.

The law must have a clear, precise and understandable meaning for all legal subjects to understand and apply it uniformly. In this regard, attention should be drawn to the fact that, according to Part 1 of this article, the state assumes the function of attending to the welfare and social protection of the entire people. Firstly, it is impossible to clearly define and measure the welfare of the people, and secondly the people as a whole cannot be the object of social protection. Such a goal obliges the state to completely revise its social policy, abandon the free market and move to equalization, as the socialist state did. The social role of the modern Kyrgyz state, on the other hand, is aimed at eradicating dependency and mitigating social inequalities by supporting and caring only for socially vulnerable members of society.

It is important to understand that declarative provisions have value only if they are developed and clarified by subsequent articles of the Constitution and other legislation with the help of clearly regulatory provisions. In Part 2 of the same article and in Article 44 of the draft, the social function of the state is set out in more detail.

The state guarantees social security at state expense in old age, in case of illness, loss of breadwinner and disability; and social assistance provides a standard of living not lower than the minimum subsistence level established by law. At the same time, it is clearly stated that the social policies of the state should not take the form of state guardianship, limiting the economic freedom and activity of the citizen and their ability to achieve economic wellbeing for themselves and their families. Thus, the main areas of the social policy of the state elucidated in Article 44 directly contradict the duty of the state declared in Article 19 to attend to the welfare and social protection of the entire people.

Part 2 uses the wording "socially unprotected categories of citizens." Based on the principles of the social state, which guarantees citizens social security at the expense of the state in old age and in case of illness, loss of a breadwinner and disability (Part 1 of Article 44 of the draft), the very question of the existence of socially unprotected citizens is precluded. Based on the constitutional provisions on social protection and social security, as well as the existing social legislation and social policy framework, the use of the expression "socially unprotected categories of citizens" seems to be erroneous, as in a social state such citizens a priori should not exist. The social legislation of the Kyrgyz Republic instead employs the recurrent expression "socially vulnerable segments of the population (citizens)". Moreover, the task of the state is not simply to support such citizens, but to guarantee them social security.

Article 20

1. The family is the foundation of society. The family, fatherhood, motherhood and childhood are under the protection of society and the state.
2. Respect and care for their father and mother is a sacred duty of children.
3. Children are the highest value of the Kyrgyz Republic. The State, creating conditions conducive to the full spiritual, moral, intellectual and physical development of children, fosters in them patriotism and a sense of citizenship.

Commentary: Part 3 of Article 20 of the draft is a novelty in the constitutional history of Kyrgyzstan. Part of the wording of this paragraph is borrowed from the Constitution of the Russian Federation, according to which "Children are the most important priority of Russian state policy. The state creates conditions conducive to the comprehensive spiritual, moral, intellectual and physical development of children, and to fostering in them patriotism, a sense of citizenship and respect for their elders" (Article 67.1, Part 4).

In the Kyrgyz legislator's version, children are the highest value of the state. Firstly, value is an abstract concept and has no legal meaning whatsoever. Secondly, children are valuable to their family and to their parents, and the position of the state with respect to children should be expressed in the protection of their rights and in social support. Thirdly, the concept of "the highest value" implies a set hierarchy of values for the state, running from less important to more important. However, it is unclear what criteria are used to determine the relative importance of values, especially given that value and importance are identical concepts.

The provision obliging the state to foster patriotism and a sense of citizenship in children raises serious concerns. Following the adoption of similar amendments to the Constitution in Russia, in order to implement these provisions, the law "On education" was amended, obliging educational institutions to carry out moral upbringing (воспитательная) work, aimed at "forming in pupils a sense of patriotism and citizenship, respect for the memory of the defenders of the Motherland and the heroic deeds of the heroes of the Motherland," and so on, as part of their education programs. Many experts have rated Putin's draft law as a reversal in the educational sphere in Russia, aimed at the unification and monopolization of educational programs on the part of the state, in essence introducing state ideology into education, in contradiction of the principles of the depoliticization and de-ideologization of education. It is not yet known exactly what motivated the authors of the draft to copy this provision of the Russian Constitution. But given that the policy of the Russian Federation serves as the main guideline for the state policy of the Kyrgyz Republic, this deviation from the principle of ideological pluralism and the imposition of a state ideology – state patriotism – are in many ways an expected outcome.

CHAPTER III . SPIRITUAL AND CULTURAL FOUNDATIONS OF SOCIETY

Article 22

1. The development of society and the state is based on scientific research, modern technology and innovation.
2. The state supports all types and forms of education in educational organizations, regardless of their ownership.
The state is attentive to every student and the quality of teaching and enhances the status of educators.
The state finances and provides material and technical support for the activities of public educational organizations.
3. The state promotes the development of science, scientific and creative development, scientific and technological achievements, discoveries and inventions. The state finances and supports scientific institutions and organizations, and implements a strategy for their development.
4. The state ensures the certification of scientific and scientific-pedagogical personnel contributing to scientific and technological progress.
5. The National Academy of Sciences of the Kyrgyz Republic, based on the principles of continuity and scientific progress, coordinates directions in the field of fundamental and applied sciences.

Commentary: Any normative legal act and, even more so, any constitution must meet the requirements of logical unity and internal consistency. The logical structure of the Constitution is important and is an indicator not only of the quality of the text of the Constitution itself and its technical and legal fitness for purpose, but also an indicator of the level of competence and professionalism of its authors. The logical structure of the Constitution should ensure the systemic unity of the diverse components of the objects of constitutional regulation. That is, the structure of the Constitution cannot be viewed as a kind of mechanical summation of its parts that permits both the arbitrary arrangement of its sections and chapters relative to one another and the division of a single constitutional text into isolated and weakly compatible parts. The study of the draft Constitution and the arrangement of its structural components indicates that the structure of the Constitution has been determined by the subjective judgements of the authors (or "ideological architects") of the constitutional text, and not by these components' objective relationship.

From the point of view of conceptual and semantic content, both the title and the content of the third chapter raise many questions. Two articles in this chapter contain provisions related to morality, religion, education, science and culture. At the same time, the complete lack of logical unity, consistency, clarity and definiteness of terms and legal expressions is clearly visible.

1. The title of the third chapter is much broader in its meaning than the title of the section. The section is called "The foundations of the constitutional order," while the chapter is "Spiritual and cultural foundations of society." In this connection, the main ideologist and author of the project, B. Borubashev, in one of his academic articles, has stated that: "The constitutional order (in the narrow sense) is a manner of organizing the state, which is

enshrined in its Constitution and receives further regulation through currently valid legislation. The constitutional order (in a broad sense) is a set of economic, social, political, legal and ideological relations, regulated chiefly by the provisions of the Constitution, arising from the organization of the highest organs of power and administration, the state structure and legal relations between an individual, civil society and the state.”¹¹ Consequently, the constitutional order consists of relations regulated by the Constitution, and the foundations of the constitutional order are “the concisely expressed and summarized generally accepted norms of conduct of subjects of constitutional law regarding the most important issues.”¹² Yet the concept of society is much broader than the constitutional order. Unlike the constitutional order, society includes a very wide range of relations, including those that do not require constitutional regulation.

2. The concept of “spiritual” used in the title of the chapter heading is employed in the legal system of the Kyrgyz Republic in laws regulating the religious sphere. Yet in the content of the chapter, only the provision that affirms interfaith consent can be considered related to spirituality.

3. Part 2 of Article 21 obliges citizens to honor their elders and respect the younger generation, claiming that this is a sacred tradition of the people, without specifying which people, although the expression of the “people of Kyrgyzstan” is twice mentioned in the same article. The definition of the people of Kyrgyzstan is provided in Article 1 of the draft – “The people of Kyrgyzstan is composed of citizens from all of the ethnic groups of the Kyrgyz Republic.” The authors of the draft have therefore decided that reverence for elders and respect for the younger is a sacred tradition of all ethnic groups living on the territory of the Kyrgyz Republic. “Respect” as a regulator of social relations is more related to moral values, although it is used in such legal phrases as “respect for rights” and “respect for the dignity of the individual,” and is applied to legal subjects regardless of their age. The phrase “sacred tradition” is also devoid of legal meaning and may be subject to varying interpretations.

4. In Part 3 of Article 22, the authors have chosen to make it an obligation of the state to finance and support scientific institutions and organizations, as well as to implement a strategy for their development. Of course, science is of immense importance for society and the state, but the inclusion of scientific institutions and the National Academy of Sciences in the foundations of the constitutional order is clearly ridiculous. Behind this desire to regulate relations between science and the state can be perceived lobbying for the interests of scientists and employees of the NAS, who comprised the majority of the members of the Constitutional Council – in other words, the clear implementation in the Constitution of the selfish interests of individual actors.

Lobbyists from among the Kyrgyz scientific community decided to oblige the state, at the constitutional level, to finance and support scientific institutions and organizations, as well as to implement a strategy for their development. Yet the current catastrophic state of science in Kyrgyzstan cannot be improved by means of constitutional declarations. Reform of the Academy of Sciences requires wide discussion and deep reforms. The authors of the project oblige the state to finance scientific institutions, while all over the world science finances itself

¹¹ <http://www.lib.krsu.edu.kg/uploads/files/public/2019.pdf>

¹² Ibid.

through the attraction of private investments and grants. Scientific institutions act as legal subjects independent of the state, and autonomously determine and implement their own development strategy. Lobbying for the interests of scientific institutions, the draft's authors adopt a position of dependence and total reliance on the state, when it is of far greater importance to guarantee scientific institutions and scientists autonomy and self-regulation.

5. The quality of the text of the draft Constitution (which given the significance of the Constitution ought to be flawless) is significantly impaired in comparison with the existing Constitution due to its oversaturation with provisions for which there is no objective necessity. The obligation of the state to ensure the certification of scientific and scientific-pedagogical personnel does not necessarily need to be established in the Constitution or in laws. Such issues can be regulated by subsidiary legislation. Moreover, according to Part 4 of Article 22, the state provides certification only for those personnel who contribute to scientific and technological progress. The application of such vague evaluative criteria to legal entities provides fertile ground for discrimination.

6. It is difficult to understand the intention of the drafts' authors in deciding that the National Academy of Sciences of the Kyrgyz Republic ought to have constitutional status. The NAS, according to the laws of the Kyrgyz Republic, is a non-profit organization (a legal person) and therefore is an institution under private law, not public law. At the same time, the actual phrasing of the article significantly narrows the status of the NAS, limiting its activities only to the role of coordination.

3. AMENDMENTS MADE TO SECTION TWO RIGHTS, FREEDOMS AND OBLIGATIONS OF THE HUMAN BEING AND THE CITIZEN

Commentary: In the title of the second section of the draft Constitution, the authors have placed together the rights, freedoms and duties (obligations) of the human being and the citizen. Traditionally in the Constitutions of the Kyrgyz Republic (since 1993), regardless of the amendments introduced, a distinction has always been maintained between human rights and freedoms and the rights and obligations of a citizen. Human rights are universal, natural and innate properties of every human being and do not depend upon their recognition by the state.

The rights of a citizen are derived from human rights, but their implementation is mediated by the presence of citizenship – the legal link between the individual and the citizen. These rights usually imply the possibility of participation in public affairs, in the elections of higher and local government bodies, admission to public service in one’s own country, military service, as well as the provision of social protection. Based on this differentiation, the state has the right to impose restrictions upon persons with foreign citizenship and dual citizenship and upon stateless individuals.

Behind the terminological difference lies a difference in legal status, that is, in the scope of rights and obligations of a human being and those of a citizen. The terminological combination of “human being” and “citizen” in one legal construction has no basis in sound sense.

Failure to mention the word “citizen” in a certain provision does not mean that a citizen does not possess the referenced rights. At the same time, it is important to note that the word “citizen” is not mentioned in all of the Constitution’s relevant normative provisions, which creates the impression of a careless, frivolous or ignorant attitude towards the drafting of the Constitution. Thus, in Part 2 of Article 23 below, both human and civil rights are mentioned as being subject to limitation, but in Part 5 of the same article, the Constitution prohibits restricting human rights and freedoms only.

Chapter I. GENERAL PRINCIPLES

Article 23.

1. Human rights and freedoms are inalienable and belong to everyone from birth. They are recognized as absolute, inalienable and protected by law and by courts against infringement by anyone.

Human rights and freedoms are among the highest values of the Kyrgyz Republic. They have a direct effect and determine the meaning and content of the activities of all state bodies, local self-government bodies and their officials.

2. Human and civil rights and freedoms may be restricted by the Constitution and laws with the aim of protecting national security, public order, public health and morals, and the rights and freedoms of others. Such restrictions may also be imposed according to the specific requirements of the military or other state services. The restrictions imposed must be proportionate to the stated goals.

3. The adoption of subsidiary legislation restricting rights and freedoms of a human being and of a citizen is prohibited.

4. The law may not impose restrictions on human rights and freedoms for other purposes and to a greater extent than those provided for in the Constitution.

5. The human rights and freedoms established by the Constitution are not subject to any restriction.

6. The constitutionally established guarantees of prohibition are not subject to any restriction.

Commentary: The inalienability of rights is mentioned twice in the article. The duplication of provisions in normative legal acts, and even more so in the Constitution, is a clear defect in legal drafting. In the second sentence, human rights and freedoms are recognized as absolute. At the same time, in the same article, in Part 2, the possibility of restricting rights and freedoms for the purposes of universally accepted constitutional purposes is permitted. These two structural parts of the same article thus directly contradict and mutually exclude one another.

The existing Constitution clearly distinguishes between absolute and relative human rights; several articles of the Constitution indicate the absolute nature of certain rights and freedoms and establish a prohibition on their restriction under any circumstances.

Part 5 of Article 23 is mutually exclusive with Part 2 by its prohibition of the restriction of human rights and freedoms, while Part 2 allows restrictions. The expression “rights and freedoms established by the Constitution” contradicts Part 1, which recognizes the inalienability and naturalness of rights and freedoms. The constitution of a democratic state does not establish rights; it recognizes, safeguards and protects them.

The provision in Part 6 of Article 23 lacks semantic completeness. The authors of the draft should from the start have specified a list of rights to which the guarantees of prohibition apply, as set out in the existing Constitution.

The following guarantees of prohibition established by the existing Constitution are not subject to any restrictions:

- 1) on the use of the death penalty, torture and other inhuman, cruel or degrading treatment or punishment;
- 2) on the conducting of medical, biological and psychological experiments on people without their voluntary consent, expressed and duly certified;
- 3) on slavery and human trafficking;
- 4) on the exploitation of child labor;
- 5) on imprisonment on the sole ground that the person is unable to fulfill a contractual obligation;
- 6) on criminal prosecution for the dissemination of information damaging to the honor and dignity of a person;
- 7) on coercion to express opinions, religious and other beliefs or to renounce them;
- 8) on coercion to participate in a peaceful assembly;
- 9) on coercion to determine and indicate ethnic belonging ;
- 10) on arbitrary deprivation of housing.

CHAPTER II. PERSONAL RIGHTS AND FREEDOMS

Commentary: Section 2 of the draft is divided into 6 chapters based on the classification of human rights and freedoms. The draft's authors consider this to be one of their great achievements, as such a division has been absent in all previous Constitutions. In this regard, it should be noted that the classification of human rights according to the spheres of his life bears an arbitrary stamp, since many rights can be equally attributed to different groups. It is now generally accepted that human rights are inseparable and interrelated, and that no single category of rights should be given priority.

For example, freedom of speech, assembly and association, classified as political rights, can also satisfy personal needs, such as needs to unite according to interests that are far from politics, to disseminate information that has no political significance, and so on. In other words, the criterion for classifying rights according to their social purpose does not permit the strict systematization human rights, it indicates only the intended scope of their implementation.

The Venice Commission concluded that "the principle of interdependence and indivisibility of all human rights may suffer from an artificial division of Section II into multiple Chapters, as well as from the inclusion of provisions of relevance for human rights in other Sections of the Constitution. A reconsideration of these structural features is advised in order not to undermine the rights that the Draft Constitution wishes to entrench in the text." It should also be noted that the current Constitution does not differentiate human rights into groups; they are structured by articles, each of which contains a description of the right in question, its guarantees and the possibilities of its restriction.

Article 25

1. Each person has an inalienable right to life. Encroachment on personal life and health is not permitted. No one may be arbitrarily deprived of life. The death penalty is prohibited.
2. Each person has the right to defend his life and health and the lives and health of others against unlawful encroachments, within the limits of necessary defense.

Commentary: In contrast to the existing Constitution, the authors of the draft have chosen to combine the right to life and its guarantees with the right to health. Undoubtedly, human life and health are closely interrelated, but in legal regulation they are independent objects. The right to life addresses issues related to life and death. The right to health refers to matters related to the promotion and restoration of health. The right to health includes timely and adequate health services, as well as fundamental prerequisites for health such as access to drinking water, safe food, safe working conditions, etc.

The right to health is thus a complex legal institution, related not only to the right to life, but also to other rights (the right to food, equality, the prohibition of torture, access to information, etc.). Consequently, the right to health is an independent object of legal regulation and its assimilation with the right to life is incorrect.

The Constitution, in its previous and existing versions, has traditionally proclaimed the inalienability of the right to life and the prohibition of the death penalty.

In the proposed draft, the authors have included the inadmissibility of encroachment on life and health. The Russian term for “encroachment” (посягательство) is used in criminal law and, depending on the context, is used in a meaning identical to that of the term “crime,” and also as the attempt to inflict harm. The draft’s authors ought to have refrained from using terms in the Constitution that do not have a clear definition in order to avoid arbitrary interpretation.

The attempt to develop the right to self-defense in Part 2 of Article 25 through the institute of necessary defense seems highly unfortunate, since the forced defense of life and health can be carried out under conditions of extreme necessity, under mental and physical coercion and other circumstances established by the Criminal Code of the Kyrgyz Republic. We believe that there was no need for such a clarification, particularly expressed in such an apparently comprehensive form, without making mention of other conditions.

Article 26

1. A family is created on the basis of the voluntary marriage of a man and a woman who have attained the legal age of marriage. Marriage is not permitted without the consent of the two persons entering into the marriage. Marriage is registered by the state.
2. Child care and upbringing are equally the right and duty of both father and mother. Adult children capable of working are obliged to take care of their parents.
3. Spouses shall have equal rights and responsibilities in marriage and the family.

Commentary: Part 1 of Article 26 recognizes as a “family” the voluntary marriage of a man and a woman. The authors of the constitutional amendments have significantly narrowed the definition under consideration in comparison with the Family Code of the Kyrgyz Republic, according to which a family is a circle of persons linked by property and personal non-property rights and obligations, arising from marriage, kinship, adoption or other forms of taking in children in order to raise them, and designed to contribute to the strengthening and development of family relations (Article 2 of the Family Code of the Kyrgyz Republic). It follows from this that a family can be created not only on the basis of marriage, but also on the basis of kinship or adoption, and the conclusion of marriage is not an indispensable condition for the creation of a family. The family, as a circle of persons, is a collective subject of legal relations.

The provision in Part 2 obliges adult children who are capable of working to take care of their parents, regardless of circumstances. Meanwhile, Article 92 of the Family Code merely establishes that adult children who are capable of working are obliged to support and take care of disabled parents who require help. The ignorance of the authors of the draft Constitution of existing legislation can have far-reaching consequences, giving rise to inconsistency and haphazardness both in the legislation itself and in the process of law enforcement. Given the direct effect of the provisions of the Constitution, each parent, regardless of their social status, will have the right to demand maintenance from their children. Thus, this constitutional provision, aimed at achieving social justice, will in reality end up directly contradicting it

Article 27

1. Every child has the right to a standard of living necessary for their physical, mental, inner spiritual, moral and social development.
2. The principle of ensuring the best interests of the child applies in the Kyrgyz Republic.
3. The responsibility for providing the living conditions necessary for the child's development rests with each of the parents, guardians, and custodians.
4. The state takes care of, raises and educates orphans and children left without parental care up to the age of 18. At the same time, they are given an opportunity to receive free secondary and higher vocational education. They are provided with social security.

Commentary: Article 27 sets out a number of guarantees for ensuring the rights of the child. It should be noted that, structurally, the article is placed here under personal rights. The rights of the child have their own special place in the general system of human rights and are not subsidiary to personal human rights. The rights of the child are a system of rights that consists not only of the personal, but also the economic, social, cultural and other rights of children.

In the context of a general deterioration in the observance and protection of the rights of the child in Kyrgyzstan, a significant increase in instances of violence against children, and a high level of child mortality, the inclusion in the Constitution of a separate article on the rights of the child could be welcomed. However, the normative provisions of Article 27 do not introduce anything new into the sphere of the legal regulation of the rights of the child, but simply reproduce and duplicate in partial format the provisions of the Children's Code of 2012. Thus, Part 4 of Article 27 obliges the state to take care of orphans and children left without parental care. The flaw in this provision is that the Constitution here specifies and concretizes the duty of the state, while a constitution ought, on the contrary, to generalize the state's role as much as possible in order to leave to the legislator the possibility to provide the necessary legislative detail. In this case, the state is obliged to take care of children with disabilities, child victims of violence, and so on – in other words all children in difficult life circumstances.

In many of the structural parts of the draft Constitution (sections, chapters, articles), there is a lack of consistency in the presentation of normative information. The various fragments of the text are not connected with one another or are repeatedly duplicated, and there is no interdependence and correlation of regulatory provisions combined into one article. Each article of the Constitution should be something unified, and express a single, complete idea in full. Moreover, the more important ought to precede the less important. In Article 27, the principle of the best guarantee of the rights of the child must precede the listing of rights.

Article 28

1. Slavery and human trafficking are not allowed in the Kyrgyz Republic.
2. The exploitation of child labor is prohibited.
3. Forced labor is prohibited, except in cases of war, the reparation of the consequences of natural disasters and other emergencies, as well as by way of execution of a court decision. Involvement in military or alternative (non-military) service is not considered forced labor.

Commentary: The Forced Labor Convention¹³, the Abolition of Forced Labor Convention¹⁴, as well as the International Covenant on Civil and Political Rights¹⁵ and regional human rights conventions¹⁶, prohibit “forced or compulsory labor.” The Forced Labor Convention defines “forced or compulsory labor” as any work or service, demanded of a person under threat of any penalty, and for which that person has *not* voluntarily offered his services.

Unpaid forced labor is prohibited, including in the context of military operations. In addition, according to the norms of international humanitarian law, the involvement of prisoners of war and civilians in forced or compulsory labor can be declared a war crime.

The Forced or Compulsory Labor Convention and the European Convention on Human Rights stipulate that any work or service required in an emergency, that is, in cases of war or disaster or threat of disaster, such as: fires, floods, famines, earthquakes, severe epidemics or epizootics, invasions of animals, insects or plant parasites, and other circumstances that endanger or may endanger the life or normal living conditions of all or part of the population, are not included under the term “forced labor.” Labor pursuant to a court decision is also not equated with forced labor.

All of these norms ought to have been reflected in Article 28, taking into account the provisions of international law, so that it is not interpreted as permitting the use of forced labor.

Article 29

1. Each person has the right to privacy and to the protection of honor and dignity. Human dignity in the Kyrgyz Republic is absolute and inviolable.
2. No one may be subjected to criminal prosecution for disseminating information that defames or demeans the honor and dignity of a person.
3. Each person has the right to the privacy of correspondence, telephone and other conversations, postal, telegraphic, electronic and other communications. Restriction of these rights is permitted only in accordance with the law and on the basis of a court decision.
4. Collection, storage, use and dissemination of confidential information and information about a person’s private life without his consent, except in cases established by law, is not permitted.
5. Each person is guaranteed protection, including judicial protection, against unlawful collection, storage and dissemination of confidential information and information about a person’s private life, and the right to compensation for material and moral harm caused by unlawful actions is also guaranteed.

¹³https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms_346435.pdf

¹⁴https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_346434.pdf

¹⁵ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁶ https://www.echr.coe.int/documents/convention_eng.pdf

Commentary: The defect of Article 29 above lies in the authors' narrow understanding of the concept of personal dignity ("human dignity" as it is expressed in the article above). The authors define personal dignity via the prohibition of interference in privacy. In this understanding, "personal dignity" is reduced to the level of one of the human rights. Yet international legal acts recognize the right to dignity as an all-encompassing property of a person, embracing all rights and freedoms. In other words, the right to the preservation of dignity is precisely the goal of guaranteeing rights and freedoms in general. Consequently, human dignity cannot be limited to the sphere of personal rights and freedoms.

The preamble to the ICCPR emphasizes that recognition of the inherent dignity of all members of the human race is the basis of freedom, justice and universal peace, and affirms that human rights derive from the inherent dignity of the human person. Thus, personal dignity, its inviolability and the duty of the state to protect the right to dignity should have been enshrined in a separate article in the first section of the "Fundamentals of the Constitutional Order."

Under Part 5, "each person" means not only a natural person, but also a legal one. With regard to legal persons, the expression "protection of business reputation" is used, since honor and dignity are properties inherent exclusively to a natural person. This factor ought to have been taken into account when formulating such safeguards.

In the existing Constitution, restriction is possible only in accordance with the law and solely on the basis of a judicial act; in other words, such a requirement was strictly imperative, leaving no other options for the law enforcement agencies. On the basis of this provision, specified in the Criminal Procedure Code of the Kyrgyz Republic, any steps taken by law enforcement agencies related to the invasion of a person's personal space (surveillance, wiretapping, etc.) require judicial authorization. In the proposed draft, this rule is of a discretionary nature, and therefore allows law enforcement agencies the possibility of choosing. The decrease in the level of safeguards of rights and freedoms in the new Constitution in comparison with the current is thus a cause for great concern.

Article 31

1. Each person has the right to freedom of movement, and choice of place of stay and residence within the territory of the Kyrgyz Republic.
2. A citizen of the Kyrgyz Republic has the right to freely leave and return to the Kyrgyz Republic. Restrictions on the right to leave the country are permitted only on the basis of the law. The right of citizens of the Kyrgyz Republic to unimpeded return shall not be subject to any restrictions.

Commentary: Part 2 of this article speaks of the right to freely leave the country in relation only to citizens of the Kyrgyz Republic, despite the fact that this right should apply not only to citizens, but also to non-citizens, as well as to stateless persons.

Freedom of movement is one of the fundamental human freedoms, closely related to the realization of other, no less important human rights and freedoms. The main international normative legal acts securing the right to exit are the Universal Declaration of Human Rights¹⁷ and the International Covenant on Civil and Political Rights.¹⁸

According to the Universal Declaration of Human Rights, everyone has the right to leave any country, including his own. The ICCPR reiterates this right. ICCPR states that the aforementioned rights may not be subject to any restrictions, “except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”

According to General Comment No. 27 adopted at the 67th session of the UN Human Rights Committee¹⁹, the ICCPR stipulates exceptional circumstances under which the rights enshrined in Paragraph 2 may be restricted. This provision allows the state to restrict the exercise of these rights only for the protection of national security, public order, public health or morals or the rights and freedoms of others.

To be admissible, restrictions must be provided for by law, must be necessary in order to protect the stated objectives within a democratic society, and must be consistent with all other rights recognized in the Covenant. In this Article the draft’s authors refer only to the law as grounds for restricting travel. This broad interpretation could lead to a violation of the right to freedom of movement and a number of related fundamental rights. In order to protect the rights guaranteed in Article 31 from interference not only by the state, but also by individuals, the authors of the Constitution should have stipulated exceptional circumstances under which the rights enshrined in Parts 1 and 2 of this article may be restricted.

¹⁷ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁸ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁹ <https://www.refworld.org/docid/45139c394.html>

CHAPTER IV. ECONOMIC AND SOCIAL RIGHTS

Article 42

1. Each person has the right to freedom of labor, to dispose of their abilities to work, to choose a profession and occupation, to protection and working conditions that meet health and safety requirements, and the right to receive wages not lower than the subsistence minimum established by law.
2. Each person has the right to rest.
3. Maximum working hours, minimum weekly hours of rest and paid annual leave, as well as other basic conditions for realizing the right to rest are determined by law.
4. Citizens have the right to strike. The procedure and conditions for carrying out strikes are determined by law.

Commentary: In the existing Constitution, the right to strike belongs to everyone. In the draft law under analysis, the subjects of the right to strike are only citizens of the Kyrgyz Republic. Thus, the Constitution deprives foreigners and stateless persons working on the territory of the Kyrgyz Republic of the opportunity to protect their labor rights and social and economic interests through strikes, which contradicts the International Covenant on Economic, Social and Cultural Rights, which obliges the signatory states to guarantee the right to strike to everyone.

Article 43

1. Each person has the right to health care and health insurance. The conditions of health insurance are defined by law.
2. The state creates conditions for medical care for all and takes measures for the development of national, municipal, private and other kinds of health care organizations. The state creates the necessary conditions for employees of medical institutions and provides them with social security.
3. Citizens have the right to free use of the network of public healthcare facilities. Medical care, including on preferential terms, is carried out at the expense of the state within the scope of state guarantees provided by law.
4. Concealment by officials of facts and circumstances creating a threat to people's lives and health is subject to liability established by law.
5. Paid medical services for citizens shall be allowed on the grounds and in the manner prescribed by law.

Commentary: Insurance in its essence is not an independent subjective right; it is defined as a system of measures for the creation of an insurance money fund, from which the damage caused by an insured event is reimbursed.

Health insurance is a type of social insurance and is defined by the legislation of the Kyrgyz Republic as a system of measures for the social protection of citizens, ensuring the receipt of high-quality medical, prophylactic and other services. In other words, health insurance is a way of realizing the constitutional rights of citizens to social security in case of illness and to receipt of medical care.

According to the law “On health insurance of citizens of the Kyrgyz Republic” (“О медицинском страховании граждан КР”), health insurance is carried out in the following forms:

- basic (basic state health insurance);
- compulsory (compulsory health insurance);
- voluntary (voluntary medical insurance).

The law does not provide for the possibility of waiving insurance premiums for persons covered by compulsory health insurance. In general, in jurisprudence there is no such thing as the right to health insurance.

The first and second paragraphs of Part 3 of Article 43 are in clear contradiction. The first paragraph guarantees citizens free use of the network of public health organizations. Despite the fact that the wording of the provision is vague, it must be assumed that the Constitution guarantees free medical care in state-run healthcare facilities. However, in the second paragraph, the project provides for medical care at the expense of the state only within the scope of state guarantees. At present in the Kyrgyz Republic, according to the Program of State Guarantees, only a certain basic list of medical services is provided free of charge, on the condition that the individual in question is insured and registered at the appropriate clinic.

Consequently, the second paragraph of Part 3 of the article under review does not imply changes to the current state policy on protecting citizens’ health. The declaration that citizens have the right to free medical care therefore has no legal significance and most likely serves as a means of misleading voters ahead of the referendum.

According to Paragraph 2 of the Program of State Guarantees for the Provision of Citizens with Healthcare, the scope of medical care offered within the framework of the Program is financed not only out of the funds of the national budget, but also from the funds of compulsory medical insurance. Consequently, the assertion “at the expense of the state” does not stand up to criticism. The authors of the project clearly do not possess the necessary knowledge in the field of the legal regulation of healthcare.

Part 5 of the article contradicts Part 3, which establishes free medical care, since it does not set out the conditions of paid medical care and does not specify in which institutions (what form of ownership) services should be provided on a paid basis. In addition, the article employs phrasing that is urgently in need of clarification: what does “use of the network of public health organizations” really mean, and how does such use differ from the repeatedly mentioned “medical care”? And in addition to this, according to the law “On Healthcare Organizations in the Kyrgyz Republic” (“Об организациях здравоохранения в Кыргызской Республике”), besides state healthcare facilities, there are also municipal healthcare facilities, which, in accordance with Article 4 of the Law of the Kyrgyz Republic “On Protection of Citizens’ Health” (“Об охране здоровья граждан в Кыргызской Республике”), are also obliged to provide free medical care under the Program of State Guarantees.

According to Part 3 of Article 43, free use of the network of state healthcare facilities is provided only to citizens of the Kyrgyz Republic. Consequently, for foreign citizens and stateless persons, the state intends to establish other, special rules of medical care. In this regard, the Committee on Economic, Social and Cultural Rights, in its general comment No. 19, notes that non-citizens are among those groups “who traditionally face difficulties in exercising this right.” The Committee drew attention to a number of issues related to the provision of medical care. First of all, the Committee notes that the Covenant prohibits discrimination on the basis of citizenship. The Committee further notes that “Non-nationals should be able to have access to affordable health care and family support programs. All persons, irrespective of their nationality, residency or immigration status, are entitled to primary and emergency medical care.” The Committee devotes special attention to refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, who “should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards.” The Committee's reasoning extends to other economic, social and cultural rights as well.

Article 44

1. In the manner and cases provided for by law, social security are guaranteed in the Kyrgyz Republic at the expense of the state in old age, in the event of illness, disability, loss of the ability to work, loss of a breadwinner.
2. Pensions, social benefits and other social assistance ensure a standard of living not lower than the minimum subsistence level established by law.
3. The state ensures the functioning of the system of social protection for disabled persons, based on their full and equal exercise of human and civil rights and freedoms, their social integration without any form of discrimination, the creation of an accessible environment for disabled persons and the improvement of their quality of life.
4. The state encourages voluntary social insurance, the creation of additional forms of social security and charitable activities.
5. The social activity of the state must not take the form of state patronage that restricts the economic freedom, activity, and opportunities of the citizen to achieve economic well-being for themselves and their family.

Commentary: Social security in old age is provided not only at the expense of the national budget; in fact the major part of it is funded by the accumulated insurance contributions of citizens themselves. Provisions such as this one, which are repeatedly mentioned in the draft yet do not correspond to reality, particularly when it comes to social protection, are clearly populist in nature.

The full and equal exercise of human rights and freedoms by people with disabilities is the goal of their social protection, and not the basis. The basis of social protection is such principles as, for example:

- the observance of human and civil rights in relation to persons with disabilities;
- non-admission of discrimination on the basis of disabilities;
- guarantees by the state of social protection of persons with disabilities;

- ensuring equal opportunities in receiving social benefits, compensations and services, categories and groups of disabilities, etc.

The authors of the draft ought to have correctly identified the goals and the foundations of constitutional-legal regulation.

Article 45

1. Each person has the right to housing.
2. No one may be arbitrarily deprived of their home.
3. State bodies and local self-government bodies encourage housing construction and create conditions for the realization of the right to housing.
4. Low-income and other vulnerable persons are provided with housing from state, municipal and other housing funds or in social institutions on the grounds and in the manner prescribed by law.

Comments: According to the existing Constitution, housing for the poor and needy should be provided free of charge or at an affordable price. In the proposed draft, the level of housing security for the poor is significantly reduced.

Article 46

1. Each person has the right to education.
2. Basic general education is compulsory.
3. Each person has the right to receive free pre-school, basic general, secondary general and primary vocational education in state educational organizations.
4. The state creates conditions for teaching every citizen the state, the official and a foreign language, starting from pre-school educational institutions to secondary general education.
5. The state creates equal conditions for the development of national, municipal, private and other forms of educational institutions.
6. The state creates conditions for the development of physical culture and sports.
7. The state assists in the improvement of citizens' professional qualifications in the order prescribed by law.

Commentary: The constitutional guarantees established in Part 4 of Article 46 contain elements of discrimination on the basis of citizenship. Non-citizens of the Kyrgyz Republic, stateless persons, and their children, should have equal opportunities with citizens to receive education. Most of the regulations in Article 46 are safeguard provisions. In jurisprudence, safeguard provisions are understood as various means, methods, procedures and special measures that are designed to directly ensure the implementation and protection of the rights and freedoms of the individual, the satisfaction of interests, and the enjoyment of the benefits lying at the basis of this or that right and freedom. The purpose of guarantees is so that the rights affirmed in the Constitution can end up reflected in the real position of a concrete person. Constitutional safeguards should be formulated as provisions of a general nature, indicating mainly to the state and its organs a certain way of acting aimed at securing the conditions for the unhindered enjoyment of rights and freedoms. In the draft under review, a number of safeguard provisions are of a referential nature.

For example, Part 7 of Article 46 obliges the state to promote the professional development of its citizens. The mention that there is a certain order for such assistance, to be established by law, rather undermines the safeguarding value of the provision. All the more so since the definition of order in jurisprudence is identical to the concept of legal procedure – a certain order of legal actions aimed at achieving a legal result. In this aspect, for a person as the main subject to whom the safeguarding provisions of the Constitution are addressed, the procedure is not as important as the conditions of implementation of the right (for example, free professional development for teachers, medical workers, government officials, etc). It is important to note that the Constitution, as the fundamental law, should contain the most important and general provisions (this requirement also applies to the safeguard provisions). Narrow, specialised provisions unnecessarily overburden the text of the Constitution, which negatively affects its legal properties as the fundamental law. When formulating legal guarantees, it is especially important to find solutions to specific economic, social and cultural problems, while eliminating unrealistic and thus misleading promises.

Article 48

1. For the purpose of self-realization and personal development, each person is guaranteed the freedom of scientific, technical, artistic and other types of creative activity, teaching and education. Each person has the right to exercise creative activity in accordance with their interests and abilities.
2. Everyone has the right to participate in cultural life and to have access to cultural values.
3. The state creates conditions for increasing the legal culture and legal awareness of citizens.
4. Intellectual property is protected by law.

Commentary: The rights guaranteed by Article 48 relate to cultural rights, while the chapter in which these regulations are located deals with economic and social rights. Cultural rights are an independent group of rights, and their distinctive feature is that they have their own specific sphere of action – the spiritual and cultural sphere of human life. It can be stated that the authors of the project have driven themselves into a dead end by structuring the text of the Constitution strictly on the basis of the division of rights and freedoms into the spheres of human life. This is evidenced by Article 49, which regulates environmental rights, as well as Article 50, which refers not to rights, but to obligations: they too cannot structurally be attributed to the Constitution's fourth chapter. As mentioned above, there is no need to classify rights and freedoms in the text of the Constitution due to their indivisibility and interconnectedness. In the draft under analysis, there is a clear discrepancy between the structure of the document and its content, and this must be seen as a significant rulemaking defect. The flaw of Part 1 of Article 48 is that, guaranteeing freedom of creativity and teaching, the authors limited it to the goals of self-realization and personal development. Freedom of creativity cannot be conditioned only by the goals of self-realization and personal development – each person has the right to choose the goal of his creative activity himself. Conditioning creative freedom with strictly defined goals creates fertile ground for possible undue restrictions. Compared to the existing Constitution, Part 1 of Article 48 presupposes, along with the freedom of teaching, freedom of education. The concept of education (обучение) has a double meaning: 1. The mastering of knowledge, skills and abilities by students; 2. The activity of the teacher (in the same sense as teaching). It is common knowledge that ambiguous terms should be avoided in the formulation of legal provisions.

Chapter V. CITIZENSHIP. RIGHTS AND OBLIGATIONS OF THE CITIZEN

Article 51

1. Citizenship of the Kyrgyz Republic is a sustained legal relationship between a person and the state, expressed in the sum of their mutual rights and obligations.
2. No citizen may be deprived of their citizenship. Persons who are citizens of the Kyrgyz Republic may be recognized as being affiliated to another state in accordance with the laws and international treaties to which the Kyrgyz Republic is a party.
3. Each person who has proven their affiliation with the people of Kyrgyzstan has the right to acquire citizenship of the Kyrgyz Republic in a simplified procedure.
Kyrgyz people residing outside the Kyrgyz Republic, despite having citizenship of another state, have the right to obtain citizenship of the Kyrgyz Republic under the simplified procedure. The procedure and conditions for acquiring citizenship of the Kyrgyz Republic are determined by law.
4. The passport of a Kyrgyz citizen is the property of the state.
5. A Kyrgyz citizen may not be deported from the republic or extradited to another state.
6. The Kyrgyz Republic guarantees its citizens protection and patronage outside its borders.
7. Foreign citizens or stateless persons who were previously citizens of the Kyrgyz Republic have the right to obtain a residence permit under the simplified procedure.

Commentary: The existing Constitution (Article 50) contains an important rule that a citizen of the Kyrgyz Republic cannot be deprived of the right to change his citizenship. The right to change citizenship is an important guarantee of individual freedom, since it ensures an individual's complete freedom in deciding whether to terminate legal ties with the state. Article 50 of the current Constitution fully corresponds to Article 15 of the Universal Declaration of Human Rights, according to which no one can be arbitrarily deprived of the right to change their citizenship. In Article 51 of the proposed draft, these provisions are excluded, which should be considered as a derogation from international legal obligations under universal human rights treaties, as well as a significant decrease in the level of protection of rights related to citizenship.

In the second sentence of Part 2 of Article 51, citizens of the Kyrgyz Republic are recognized as belonging to another state in accordance with laws and international treaties. From the meaning of this constitutional provision, it is impossible to understand what the authors mean by the concept of being "affiliated to another state" – dual citizenship or other citizenship, since the legislation of the Kyrgyz Republic clearly distinguishes between these two definitions.

Dual citizenship means that a person simultaneously has citizenship of another state, arising from agreements between states. An example of the legalization of dual citizenship is the Treaty of the Russian Federation with Tajikistan On the Settlement of Issues of Citizenship. The agreement specifies that each of the parties recognizes for its citizens the right to acquire the citizenship of the other party without forfeiting the previous one.

Persons with dual citizenship enjoy the protection and patronage of each of the parties, while the issues of the social security and military service of “dual citizens” are also resolved by agreement of the parties. The Kyrgyz Republic, however, does not have an agreement on dual citizenship with any state.

Other (second) citizenship also implies simultaneous citizenship of different states. However, in this case there is no agreement between states on dual citizenship. According to the Law of the Kyrgyz Republic “On Citizenship” (“О гражданстве”) a citizen of the Kyrgyz Republic can acquire the citizenship of another state while remaining a citizen of the Kyrgyz Republic if obtaining citizenship of another state does not contradict the legislation of the Kyrgyz Republic and the legislation of the foreign state.

Part 3 of Article 51 grants the right to obtain citizenship of the Kyrgyz Republic in a simplified manner to everyone who has proven their membership of the people of Kyrgyzstan. If we proceed from the legal definition of the people of Kyrgyzstan in Article 1 of the draft (the people of Kyrgyzstan is composed of citizens from all of the ethnic groups of the Kyrgyz Republic), then anyone who proves their membership of one of the more than 100 ethnic groups living within the territory of the Kyrgyz Republic has the right to obtain Kyrgyz citizenship in a simplified manner.

This provision is vague and indeterminate and does not give a clear idea of what evidence may provide the basis for obtaining citizenship. This analytical paper has repeatedly emphasized that such provisions open up opportunities for varying interpretations, abuse and discrimination. In addition, it is important to take into account that an excessively liberal attitude towards the acquisition of citizenship on the part of the state can pose a serious threat to national security.

Article 52

1. Foreign citizens and stateless persons in the Kyrgyz Republic have rights and obligations equal to citizens of the Kyrgyz Republic, except in cases established by law or an international treaty to which the Kyrgyz Republic is a party and which has entered into force in the manner prescribed by law.
2. In accordance with its international obligations, the Kyrgyz Republic grants political asylum to foreign citizens and stateless persons persecuted on political grounds, as well as on grounds of violations of human rights and freedoms.
A person granted political asylum may not be extradited to another state.

Commentary: In international law, one finds the terms “refugees” and “asylum.” A refugee is a person who has been forced to leave his country due to persecution, war or violence. Article 14 of the Universal Declaration of Human Rights states: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

Political persecution is just one type of persecution. In addition to their political views, a refugee may have other well-founded fears of persecution, for example, on the basis of race, religion, nationality or membership in a particular social group.

As a result of these fears, the individual in question finds themselves outside of their country of citizenship and is unable or unwilling to return home. War, humanitarian disasters and ethnic, tribal and religious violence are common reasons for refugees to flee their countries. The list of grounds for recognizing a person as a refugee is clearly not limited to politically motivated persecution.

Since the 1990s, victims of sexual harassment (which may include domestic violence or systematic gender-based violence or harassment of sexual minorities) have been viewed as having a legitimate claim to asylum.

Persecution based on the violation of human rights and freedoms does not carry any meaning at all. For example, in the very same clause, politically motivated persecution is clearly also a violation of human rights and freedoms.

Article 53

1. Observance of the rules and norms of social behavior and a respectful attitude to the interests of society is the duty of every person. The exercise by a person of their rights and freedoms must not violate the rights and freedoms of others.
2. Each person has the right to carry out any actions and activities, except for those prohibited by the Constitution and laws.
3. Each person is obliged to comply with the Constitution and laws, and to respect the rights, freedoms, honor and dignity of others.

Commentary: The rules and norms of social behavior do not have a clear legal definition. Rules and norms of social behavior exist in some public places but are developed and applied by the administrations of these places independently. There are no rules and regulations that could be applied universally across the whole of society, regardless of the situation, place, time and other circumstances.

A “respectful attitude” is also a subjective concept which has no definition in jurisprudence. The concept of the “interests of society” is also open to an overly broad interpretation. What exactly these interests are, respect for which is a duty of every person, remains entirely unclear.

CHAPTER VI. SAFEGUARDS OF RIGHTS AND FREEDOMS OF HUMAN BEING AND CITIZEN

Commentary: The title of chapter six bears witness to the flawed structuring of the text of the Constitution, since safeguards of human rights and freedoms are actually contained in each chapter of this section. Safeguards are in systemic connection with rights and freedoms and determine their essence and purpose. It is consequently totally unnecessary to separate safeguards into a distinct structural part of the Constitution.

Article 55

In the Kyrgyz Republic, rights and freedoms of a human being and citizen are recognized and safeguarded in accordance with universally recognized principles and norms of international law, as well as international treaties to which the Kyrgyz Republic is a party and which have entered into force in the manner prescribed by law.

Article 56

1. The state ensures the rights and freedoms of citizens, according to the order defined by the Constitution and laws.
2. In the Kyrgyz Republic, no laws are passed that abolish or diminish human rights and freedoms.
3. Restrictions concerning the physical and moral integrity of the individual are permissible only on the basis of the law, by a court sentence, as punishment for a committed crime.
4. No one may be subjected to torture or other inhuman, cruel or degrading treatment or punishment.
5. Each person deprived of their liberty has the right to be treated humanely, without degrading their human dignity.
6. Medical, biological and psychological experiments on people without their voluntary consent, expressed and properly certified, are prohibited.

Commentary: The defect of the provision lies in the expression that obliges the state to provide rights and freedoms in a certain order. As mentioned above, the term “order” in the legal sense presupposes a legal procedure, a certain order of actions. Yet ensuring rights is not only a matter of procedures, but of a whole system of conditions and special means that ensure the implementation, preservation and protection of human rights and freedoms. In addition, in Part 1 of Article 56, a discriminatory element on the basis of citizenship can be seen, since the Constitution obliges the state to ensure only the rights and freedoms of citizens.

From the content of the article it is impossible to determine its subject. The law of the Kyrgyz Republic “On Normative Legal Acts” (“О нормативных правовых актах”) requires that an article of law as a structural part regulate a homogeneous set of legal relations. However, Parts 1 and 2 of Article 56 are of a general nature. The rest of the provisions are directly related to the inviolability of the person; Parts 3, 4 and 6 are safeguarding provisions, while Part 5 enshrines subjective rights. The unsystematic nature of the structural parts is a characteristic feature of this draft Constitution.

For example, the provisions establishing a ban on the adoption of laws abolishing or diminishing human rights and freedoms (Part 2 of Article 56) are systemically linked to the provisions of Article 23, and it is unclear on what basis the authors of the draft decided to isolate them in a separate article.

Gross defects of legal drafting were also committed in the formulation of Part 3 of Article 56, as set out below:

- The authors seemingly have no idea that there is a huge difference between constitutional restrictions and sanctions (penalties). Limitations of constitutional rights, as a rule, pursue the goal of limiting positive (lawful) activity and, unlike sanctions, are not a measure of responsibility for misconduct. Moreover, the proportionality of the sanction is determined by the nature of the offense, and not by universally accepted constitutional goals. A constitutional restriction is not a punishment.
- The right to physical integrity consists in the right of every person to self-determination. By its legal nature, the right to physical integrity is closely related to and derives from human freedom. The existing Constitution, in Article 20, guarantees an absolute prohibition on the use of torture and other inhuman, cruel or degrading treatment or punishment; the conduct of medical, biological and psychological experiments on people without their voluntary consent, duly expressed and certified; slavery, human trafficking; imprisonment on the sole ground that the person is unable to fulfill a contractual obligation; criminal prosecution for the dissemination of information defaming the honor and dignity of the individual; and the restriction of the right of each person deprived of their liberty to humane treatment and respect for human dignity. The 2010 Constitution thus established a high level of protection for the right to liberty and physical integrity. In the draft of the new Constitution, the above safeguards are excluded; on the contrary, in Part 3 of Article 56, the legislator is granted wide discretion in establishing restrictions on the right to physical integrity, which must be assessed as a significant reduction to the previously established safeguards and as opening for the possibility of arbitrary legislative regulation unlimited by the Constitution.
- Part 3 of Article 56 allows for the possibility of limiting the right to physical integrity on the basis of the law and by a court sentence only. At the same time, Part 3 of Article 59 establishes that no one can be detained, taken into custody, or deprived of liberty except by a court *decision* and only on the grounds and in the manner prescribed by law. Consequently, such restrictions on the right to liberty and physical integrity as arrest and detention, within the meaning and content of Part 3 of Article 59, can be applied exclusively by a court decision, that is, the application of restrictive measures is not allowed through the use of any other procedures except through the judicial system. Thus, Part 3 of Article 56 directly contradicts Part 3 of Article 59 of the draft Constitution under review. Moreover, the right to liberty and physical integrity cannot be limited by a sentence, since the court's sentence determines the penalty and not the restriction. As a rule, courts issue interim judicial acts – decisions – on the legality of arrest and detention, which are not verdicts. Such clear and gross defects in legal drafting testify to the low professional qualifications of the authors of the draft.

- A significant flaw in Part 3 of Article 56 is the use of the term “moral integrity.” In legal science, as it applies to personal inviolability, the concept of “moral inviolability” is applied, the content of which is the inviolability of honor and dignity. In the event that the authors of the draft mean to employ moral integrity in the same sense, Part 3 of Article 56 directly contradicts Part 1 of Article 29, which states that human dignity is absolute and, therefore, cannot be subject to any restrictions.

Article 58

1. Each person has the right to trial by jury in cases provided for by law.
2. Every convicted person has the right to seek pardon and commutation of sentence.
3. No one should be held legally responsible twice for the same offense.
4. Every convicted person has the right to have their case heard by a higher court in accordance with the law.
5. Each person has the right to appeal for the protection of their violated rights and freedoms to international human rights bodies in accordance with international treaties that have entered into force in the manner prescribed by law.

Commentary on Part 5 of Article 58: In the Constitution of the Kyrgyz Republic of 2010, in Part 2 of Article 41, it was for the first time affirmed that if international human rights bodies declare instances of violation of human rights and freedoms, then the Kyrgyz state is obliged to implement their decisions and take measures to restore or compensate for the harm caused to the individual in question. The readiness of the Kyrgyz Republic to comply with and implement international legal obligations to ensure and effectively protect human rights and freedoms was thus demonstrated at the very highest legal and political level. This constitutional innovation of 2010 was extremely important, since it not only affirmed the right of every person to appeal to international human rights bodies, but also served as the constitutional basis for the creation of a national-level mechanism to ensure the execution of these bodies’ decisions. By this means, the provisions of Part 2 of Article 41 were aimed at achieving guaranteed and effective results in the field of protecting human rights and freedoms.

Thus, over the years of the country’s independence, the UN Human Rights Committee has adopted 17 decisions in relation to the Kyrgyz Republic, declaring violations of the provisions of the International Covenant on Civil and Political Rights related to the right to life, torture, the right to liberty and security of person, and the right to a fair trial (8 of them after the adoption of the 2010 Constitution). However, despite the direct constitutional prescription, the decisions of the Human Rights Committee were ignored by Kyrgyz state authorities due to their unwillingness or inability to comply with them.

In the following constitutional reforms of 2016, the aforementioned safeguard provisions were excluded from the Constitution, on the argument that they contradicted the principle of state sovereignty and infringed upon the independence of the Kyrgyz Republic. This was a clear indication of state authorities’ intention to block and withdraw from the execution of the decisions and recommendations of international human rights bodies and confirmed the absence of a political will to fulfill such decisions and the state’s irresponsibility in relation to the obligations it had assumed. In the current draft of the Constitution, the amendments adopted in 2016 are left unchanged.

The authors of the draft did not take into account that the human and civil rights and freedoms proclaimed in the Constitution of the Kyrgyz Republic and recognized as the highest value can in reality only be considered safeguarded when both domestic and international safeguards for their implementation are affirmed in national-level legislation, along with the possibility to make use of various paths set out in laws and international treaties for restoring and defending violated rights.

Moreover, any amendments made to the Constitution should be aimed at its development, at improving the constitutional system, and at ensuring higher standards in the protection of human rights and freedoms. In this regard, ignoring the decisions of international human rights bodies should be viewed not only as a sign of the state's disregard for its international obligations, but also as depriving citizens of the subjective right to restore violated rights and receive compensation for harm done. This approach is contrary to the principles of a democratic state governed by the rule of law and violates fundamental human and civil rights and freedoms.

Article 62

1. The state guarantees the publication of laws and other normative legal acts concerning human rights, freedoms and obligations, and this is a prerequisite for their application.
2. The rights and freedoms set forth in the Constitution are not exhaustive and shall not be construed to deny or diminish other universally recognized human and rights and freedoms and rights and freedoms of a citizen.

Commentary: These provisions duplicate Part 4 of Article 6. The official publication of laws and other legal acts as a prerequisite for their entry into force is a general requirement. There is therefore no need to devote a separate provision to stipulating the publication of legal acts concerning human rights and obligations.

Article 65

In the Kyrgyz Republic, folk customs and traditions that do not infringe on human rights and freedoms are supported by the state.

Commentary: This article duplicates Part 1 of Article 21.

4. AMENDMENTS MADE TO SECTION THREE, PUBLIC AUTHORITIES CHAPTER I. THE PRESIDENT OF THE KYRGYZ REPUBLIC

Article 66

1. The President is the head of state, the highest official and head of the executive power of the Kyrgyz Republic.
2. The President ensures the unity of the people and state power.
3. The President is the guarantor of the Constitution and human and civil rights and freedoms.
4. The President determines the main directions of the domestic and foreign policy of the state; ensures the unity of the state power, and the coordination and interaction of the governmental bodies.
5. The President represents the Kyrgyz Republic in domestic and international relations; takes measures to protect the sovereignty and territorial integrity of the Kyrgyz Republic.

Commentary: On January 10, 2021, a referendum was held in the Kyrgyz Republic, in which 81% of the participants opted for a presidential form of government. According to the will of the majority of the referendum participants, the mechanism for the functioning of state power should be completely redrawn from a parliamentary republic to a presidential one in the draft of the new Constitution.

a) While there exist a variety of forms of presidential republic in current global practice, legal science has determined the characteristic features of this type of government, which are clearly manifested in the relationship between the president and the executive branch. In a classic presidential republic, the president is the head of the executive branch, with which he is connected both structurally and functionally; the government as an independent collegial body of executive power does not exist, and there is no post of prime minister; and all the traditional powers of the government are in the hands of the president. As the real head of the executive branch, the president independently determines government policy, and the legitimacy of the presidential administration is not dependent upon obtaining a vote of confidence from parliament, since the president is elected by the people.

In the draft under analysis (Part 1 of Article 65), the President heads the executive branch, but at the same time performs the functions of head of state. Parts 3 and 4 of Article 65 indicate that the President, as the head of state, is called upon to ensure the unity of state power. As a rule, from the point of view of ensuring the unity of state power, the President should not be structurally included in any of the branches of government, but rather has the duty of ensuring their coordinated functioning and promptly freeing the state system from possible deadlocks caused by conflicts between the branches of state (for example, by dismissing the government or dissolving parliament). Thus, the President acts as an arbiter, called upon to ensure the unity of state power under the conditions of the separation of powers. The status of the President as an arbiter is one of the main features that define the state as a mixed republic, in which the President is not allowed to be identified with the executive branch, since this is incompatible with his mediating role in conflicts between the highest organs of the state. Thus, the President can head the executive branch or be an arbiter in the system of the separation of powers but cannot combine both roles. Consequently, the legal status of the President as defined in Article 65 cannot characterize Kyrgyzstan as a presidential republic.

Endowing the President as the head of the executive branch with the enhanced powers of the head of state, the draft of the new Constitution essentially creates a personalized authoritarian regime and weakens all other institutions of power by making them directly dependent on the President. Thus the goal of creating a presidential republic, which is widely promoted by the authorities and has been supported by a referendum, is only a screen to conceal the criminal intent to establish a regime of one-man rule; in other words, to usurp state power.

According to the theory of the separation of powers, the President is only one of the highest bodies of the state, along with the parliament, the government, the highest judicial authority of general jurisdiction and the organ of constitutional jurisdiction. The supremacy of the authority of the President would entail the subordination to him of all other higher organs of the state. An intrinsic component of the mechanism for ensuring the principle of the separation of powers is a system of checks and balances. The restraints and balances applied by the highest bodies of the state in relation to one another – and particularly in relation to the President – testify to their fundamentally equal status. Therefore, the normative definition of the President as the highest official of the state demonstrates a distorted understanding of the relationship between the President and the other top-level organs of state.

b) In accordance with Article 65, the President is also the guarantor of the Constitution, human rights and freedoms, the President determines the main directions of the domestic and foreign policy of the state and takes measures to protect the sovereignty and territorial integrity of the Kyrgyz Republic. All of the listed features of the status of the President were rewritten from Article 42 of the Constitution of the Kyrgyz Republic of 2007, according to which Kyrgyzstan was formally considered a mixed republic, and the President was not part of any of the branches of government. In addition, the wording “The President is the guarantor of the Constitution and human and civil rights and freedoms,” due to its indeterminacy and vagueness, paves the way for the unlimited expansion of his powers by laws, since nowhere is it spelled out exactly how the head of state guarantees the Constitution and human rights, by what methods, ways, and means. All this is turned over to his personal discretion.

c) As the head of state, the President alone determines the main directions of domestic and foreign policy. In terms of its content, this particular function of the President surpasses any other presidential function in scope and significance, since it is all-encompassing in nature and could give rise to the most extensive of powers and practically any means of exerting influence over virtually the entirety of the state apparatus.

The above points indicate clearly that the draft’s authors made no attempt to implement the principle of the separation of powers and ensure the rule of law – rather they sought above all to give as much power as possible to the current President of the Kyrgyz Republic, Sadyr Japarov.

Article 67

1. The President is elected by the citizens of the Kyrgyz Republic for a period of five years.
2. The same person cannot be elected President for more than two terms.

Commentary: In the existing Constitution, the President is elected for 6 years by citizens of the Kyrgyz Republic, and the same person cannot be elected President twice. The limitation on the re-election of the President for a second term was directed against the re-establishment of presidential authoritarianism. Until 2010, the Presidents of the Kyrgyz Republic, through successive re-elections, in practice secured this position for themselves, and made attempts to transfer it to their family members. To curb this vicious practice, the 2010 Constitution categorically prohibited the same person from becoming President twice. Apparently, in allowing presidents to be elected twice, the authors of the draft have forgotten the bitter lessons of presidential authoritarianism, which claimed the lives of hundreds of Kyrgyz citizens. Moreover, with the new wording, the former President retains the possibility of re-election for a third or fourth term, subject to the separation of a new term by a “placeholder” presidency.

Article 68

1. A citizen of the Kyrgyz Republic who has reached the age of 35, speaks the state language, and has lived in the republic for at least 15 years in total may be elected President.
2. There is no limit on the number of candidates for the office of President. A person who has presented a national development program and collected at least 30,000 voters’ signatures may be registered as a presidential candidate. The procedure for the election of the President is determined by constitutional law.

Commentary: Part 2 of Article 68 establishes the submission of a national development program as a prerequisite for the nomination of a candidate for the office of President. It is a matter of course that a candidate has an electoral political program, and the electoral legislation obliges candidates to publish their programs for public information. Consequently, there is no need to require the presentation of the program at the constitutional level.

In the absence of a general “Concept” of the draft Constitution and the necessary justifications, it is difficult to understand what the authors’ intention was in this instance. In our opinion, not only is such a requirement superfluous, but a real danger lies in the fact that it could become the basis for spurious restrictions on passive suffrage (the right to be elected). The content of programs could be censored for its consistency with state policy and become a serious obstacle to nomination.

It should be noted that according to the election law, in addition to the requirement to collect 30,000 signatures, candidates are required to pay a deposit of 1 million soms. In this regard, the Venice Commission has repeatedly recommended removing the simultaneous requirements of collecting signatures and paying a deposit as excessively restrictive of the right to be elected: “The right to participate in government, including the right to be a candidate for President, should be broad, inclusive, and not limited to a few members of society.”²⁰

²⁰ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)025-e)

However, instead of simplifying the requirements for being a candidate for the presidency, the authors of the new Constitution have further complicated the existing procedure.

Article 69

1. Upon taking office, the President takes an oath to the people of the Kyrgyz Republic.
2. The powers of the President terminate upon the assumption of office by the newly elected President.
3. During his term of office, the President suspends his membership in a political party and ceases any activities related to the activities of political parties.

Commentary: The oath of the President has important legal significance: firstly, taking the oath is a necessary condition for the President to take office and the beginning of his term of office; and secondly, it is an oath before the people, violation of which should entail the liability of the President in the form of his dismissal from office. That is why most states either directly insert the text of the oath in the Constitution itself or else determine its general content there. Given the negative experience of presidentialism in the Kyrgyz Republic in the past, the text of the President's oath should have been explicitly stated in the Constitution and the President's violation of the oath ought to have been affirmed as a basis for impeachment. Alongside his possession of unprecedentedly wide powers, the President of the Kyrgyz Republic, according to the draft, is not made to bear any actual liability.

Section 70

1. The President:
 - 1) determines the structure and composition of the Cabinet of Ministers;
 - 2) with the consent of the Jogorku Kenesh, appoints the Chairperson of the Cabinet of Ministers, his deputies and other members of the Cabinet of Ministers;
 - 3) receives resignation letters of the Chairman of the Cabinet of Ministers, his deputies and other members and decides on their resignation;
 - 4) on his own initiative or as proposed by the Jogorku Kenesh or the People's Kurultai, dismisses members of the Cabinet of Ministers and heads of executive bodies within the framework of the law;
 - 5) appoints and dismisses heads of other executive authorities;
 - 6) appoints and dismisses heads of local state administrations;
 - 7) forms the Presidential Administration;
 - 8) forms and chairs the Security Council;
 - 9) appoints and dismisses the Secretary of State;
 - 10) appoints and dismisses the Ombudsman for Children's Rights.

Commentary: Part 1 of Article 70 has a systemic relationship with Article 89 of the draft, set forth as follows:

Article 89

1. Executive power in the Kyrgyz Republic is exercised by the President.
2. The structure and composition of the Cabinet of Ministers is determined by the President. The Chairman of the Cabinet of Ministers is the head of the Presidential Administration.

3. The President directs the activities of the executive branch, gives instructions to the Cabinet of Ministers and its subordinate bodies, supervises the execution of its instructions, cancels acts of the Cabinet of Ministers and its subordinate bodies, and temporarily dismisses members of the Cabinet of Ministers on the basis of constitutional law.
4. The President presides at meetings of the Cabinet of Ministers.
5. The President is personally responsible for the results of the activities of the Cabinet of Ministers and the executive branch.
6. If the Jogorku Kenesh pronounces the report on the execution of the state budget unsatisfactory, the responsibility of the members of the Cabinet of Ministers is reviewed by the President.

1. Articles 70 and 89 contain overlapping provisions. It should be noted that when declaring the President the sole bearer of executive power, the authors provided for separate chapters “The President” and “The Executive Power” in Section III, which is an obvious defect in structuring the text of the Constitution. If the executive power is exercised by the President, and the Cabinet of Ministers is completely dependent on the President, then provisions related to the executive power, including the Cabinet of Ministers, should structurally relate to the chapter that determines the status and powers of the President.

2. Part 1 of Article 89 establishes that the President exercises executive power. The executive branch in the Kyrgyz Republic, as in any other state, is an extensive system of government agencies. The exercise of executive power by one official is inconceivable. Consequently, the President does not exercise executive power, but is the head of the executive branch. Based on the configuration of the executive branch in this draft, executive power will still be exercised by the Cabinet of Ministers under the leadership of the President.

3. Paragraph 1 of Part 1 of Article 70 and Part 2 of Article 89 duplicate one another and establish that the President alone determines the structure and composition of the Cabinet of Ministers. It is difficult to understand the intention of the authors in changing the name of the Government to the Cabinet of Ministers. In the Anglo-Saxon system, the government and the cabinet are not equivalent; the cabinet is an organizationally separate part of the government that plays a special role.

4. Part 2 stipulates that the Chairman of the Cabinet of Ministers is also the head of the Presidential Administration. The separate mention of the Presidential Administration suggests that executive power will be exercised by two parallel structures, but that both of them have a common head – the Chairman of the Cabinet. Generally speaking, dualism of executive power (two centers of executive power) is an element of a mixed form of government, in which the “administration” plays the role of a second center of executive power, often alternative to the government. In the proposed configuration, the ambiguity of the legal status of the Presidential Administration may lead to excessive bureaucratization, the undue proliferation of the structures of executive power, and the duplication of functions by units of the Cabinet of Ministers and the Administration. It should be stressed that the creation of two parallel structures of executive power in the presidential republic is completely absurd from a juridical point of view. Why does the President need his own administration if the entire system of state administration is subject to him and the functions of ensuring the activities of the President can be performed by the apparatus of the Cabinet of Ministers?

5. The illogicity of the analyzed provisions of the draft also lies in the fact that the whole vast scope of the President's powers demonstrates that he alone manages the entire system of executive power and directly controls the Cabinet of Ministers: he appoints and dismisses the Chairman of the Cabinet, his deputies and members of the Cabinet, presides over meetings of the Cabinet, and bears personal responsibility for the activities of the Cabinet, although the Cabinet of Ministers also has another head in the Chairman of the Cabinet of Ministers. At the same time, the draft does not contain a single provision defining the status of the Chairman of the Cabinet and the division of powers between him and the President.

6. A further legal non sequitur and absurdity of the draft are the provisions of Parts 5 and 6 of Article 89. Part 5 establishes in an imperative form that the President is personally responsible for the results of the work of the Cabinet and the executive branch. Personal responsibility is the individual responsibility of an official for the performance of the duties assigned to him; it means that the person in question will periodically report his activities to a higher competent authority, be subject to the latter's assessment, and in the event of a negative assessment will suffer adverse consequences and thus be held accountable. However, there is not a single provision in the draft that provides for a mechanism for holding the President personally accountable. Personal responsibility for the actions of the President, in accordance with Part 6 of Article 89, will be borne by the Chairman of the Cabinet.

7. Part 6 of Article 89 establishes that if the Jogorku Kenesh pronounces the report on the execution of the national budget unsatisfactory, the responsibility of the members of the Cabinet of Ministers will be reviewed by the President. This is either clear stupidity or a deliberate ploy on the part of the authors of the draft to create a completely unaccountable presidency and shift all responsibility to the Chairman of the Cabinet of Ministers, who is assigned the decorative role of a "scapegoat" or a sort of political lightning rod.

8. Paragraphs 5 and 10 of Part 1 of Article 70 set out the powers of appointment of the President. According to these provisions, the President appoints and dismisses the heads of other executive bodies. This means that the President single-handedly appoints the heads and deputies of all departments in the executive branch. The President single-handedly appoints and dismisses the heads of local state administrations.

9. The right of the President to form and head the Security Council, as is traditional for post-Soviet countries, stems from the President's status as head of state, separate from all branches of government. It is therefore a feature of a mixed form of government. In conditions where the President heads the entire system of executive power and, except for the Toraga of the Jogorku Kenesh, almost all members of the Security Council are directly subordinate to the President, the purpose of this body as a center for coordinating the efforts of state bodies on the most important strategic and conceptual issues of internal and external security and defense loses its meaning, particularly since the President not only coordinates, but also directly controls all areas within the competence of the Security Council (national security and defense). In mixed forms of government, the President has the opportunity to influence the policy of the government and Parliament through the Security Council, which explains the tendency observed in the Russian Federation and the Republic of Kazakhstan to strengthen the powers of the Security Council. But in circumstances of near-absolute presidential authority,

the role of this body becomes symbolic only. What is the point in the President consulting with persons under his direct subordination within the framework of a separate consultative and advisory body?

10. According to Paragraph 9 of Part 1 of Article 70, the President appoints and dismisses the Secretary of State, while there are no provisions in the Constitution that define the Secretary of State's status. The post of Secretary of State existed in the Kyrgyz Republic between 1996 and 2010. The Secretary of State was an official who was directly subordinate to the President of the Kyrgyz Republic and carried out his instructions to ensure the implementation of the constitutional powers of the head of state in the field of the country's cultural and spiritual development. In other words, the Secretary of State served as the country's chief ideologist. This position was abolished in 2010, as it does not conform to the principle of ideological pluralism. The emerging tendencies of imposing a certain state ideology on society for the purpose of the moral and spiritual development of the individual give ground for serious concerns. On January 29, 2021, the President of the Kyrgyz Republic, Sadyr Japarov, signed a decree "On the spiritual and moral development and physical education of the individual" ("О духовно-нравственном развитии и физическом воспитании личности"). Within the framework of this decree the President recommended that the government, by June 1, 2021, develop and introduce a Concept on the spiritual and moral development and physical education of the individual, based on the principles of the priority of spiritual and moral motives of life conduct over material interests, the priority of public and state interests over the individual, and so on.

We believe that the introduction of the post of Secretary of State is associated with President Japarov's aim of imposing a certain state ideology on society, the purpose of which is to develop the spiritual and moral values of the individual. In its meaning and content, the presidential decree rejects the idea of the rule of law and the highest value of human rights and freedoms, replacing them with values of traditional society and declaring the priority of the interests of the state over the interests of the individual. It is obvious that the ideological basis of the draft Constitution has been formed by the political preferences of certain individuals. In these political tendencies toward the "brainwashing" of society, there is a close parallel with the propaganda policy of the President of the Russian Federation Vladimir Putin on the formation of a sense of patriotism in citizens, respect for national traditions, etc.

11. Paragraph 10 of Part 1 of Article 70 gives the President the right to appoint and dismiss the Ombudsman for the Rights of the Child. Traditionally, the institution of human rights ombudsman and its derivative special mandates are instruments of parliamentary oversight. In Kyrgyzstan, the institution of the Ombudsman has existed since 2011 and, according to the Constitution, the Ombudsman exercises parliamentary control over the observance of human and civil rights and freedoms. The staff of the Ombudsman's office numbers around 100 people. By its status, the Ombudsman is a person independent from any state bodies and officials. The law prohibits interference with the activities of the Ombudsman. Unlike the independent Ombudsman, the Ombudsman for the Rights of the Child included in the draft, appointed by the President as the head of the executive branch, should be structurally included in the system of governing bodies and, therefore, will be accountable and dependent on the President. We believe that with the existence of an independent Ombudsman in the country, there is no need to establish a position which duplicates its functions. The establishment of

various positions in the absence of any justified public need leads to an unnecessary “swelling” of the state apparatus.

Regarding the analyzed powers of the President, the Venice Commission noted in its Opinion that for the most part this represents a restoration of the powers of the President of the Kyrgyz Republic from the Constitution of 2007. These broad powers of the President were of concern then and remain highly problematic today. The power of the President to single-handedly appoint and dismiss virtually the entire administration of the state can lead to a lack of accountability, undermine healthy democratic political processes, and open up opportunities for abuse, and it is therefore recommended to introduce significant changes to the draft Constitution.

2. The President:

1) on his own initiative or on the initiative of at least 300,000 voters or of the majority of the total number of deputies of the Jogorku Kenesh, decides to schedule a referendum;

2) schedules elections to the Jogorku Kenesh in cases stipulated by the Constitution; decides on scheduling early elections to the Jogorku Kenesh in the manner and cases stipulated by the Constitution;

3) schedules elections to local councils (Keneshes); in cases and in the manner prescribed by law, dissolves local councils; calls early elections to local councils.

3. The President:

1) submits draft laws to the Jogorku Kenesh;

2) signs and promulgates laws; returns laws with objections to the Jogorku Kenesh;

3) addresses the people, the Jogorku Kenesh, and the People's Kurultai with annual messages about the situation in the country and the main directions of the domestic and foreign policy;

4) annually submits information on his activities to the Jogorku Kenesh;

5) has the right to call extraordinary sittings of the Jogorku Kenesh in necessary cases and determine issues to be considered;

6) has the right to speak at sittings of the Jogorku Kenesh and the People's Kurultai.

4. The President:

1) submits candidates to the Jogorku Kenesh for election as judges of the Constitutional Court and the Supreme Court on the nomination of the Council of Judicial Affairs;

2) submits to the Jogorku Kenesh candidates for dismissal as judges of the Constitutional Court and the Supreme Court on the nomination of the Council of Judges, in cases stipulated by this Constitution and constitutional law;

3) appoints local court judges on the nomination of the Council of Judicial Affairs;

4) dismisses local court judges on the nomination of the Council of Judges in cases provided for by the Constitution and constitutional law;

5) on the nomination of the Council of Judges and with the approval of the Jogorku Kenesh, appoints presidents of the Constitutional Court and the Supreme Court for a five-year term from among the judges of the Constitutional Court and the Supreme Court; dismisses

presidents of the Constitutional Court and the Supreme Court in the manner prescribed by the Constitution and constitutional law;

6) on the nomination of presidents of the Constitutional Court and the Supreme Court, appoints vice-presidents of the Constitutional Court and the Supreme Court for a 5-year term from among the judges of the Constitutional Court and the Supreme Court.

5. The President:

1) in agreement with the Jogorku Kenesh, appoints the Prosecutor General; in cases stipulated by law, dismisses the Prosecutor General with the agreement of at least half of the total number of deputies of the Jogorku Kenesh; on the proposal of the Prosecutor General, appoints and dismisses his deputies;

2) proposes to the Jogorku Kenesh a candidate for the position of the President of the National Bank; appoints the vice-president and members of the Board of the National Bank on the nomination of the President of the National Bank, and dismisses them from their positions in cases stipulated by law;

3) proposes to the Jogorku Kenesh for election or dismissal half of the members of the Central Commission for Elections and Referendums;

4) proposes to the Jogorku Kenesh for election and dismissal one third of the members of the Accounts Chamber;

5) appoints the Chairman of the Accounts Chamber from among the members of the Accounts Chamber elected by the Jogorku Kenesh, and dismisses him in cases provided by law.

6. The President:

1) represents the Kyrgyz Republic at home and abroad;

2) conducts negotiations and signs international treaties; has the right to delegate these powers to other officials;

3) signs instruments of ratification and accession to international agreements;

4) appoints heads of diplomatic missions of the Kyrgyz Republic in foreign countries and permanent representatives in international organizations; recalls them; accepts credentials and letters of recall of heads of diplomatic missions of foreign countries.

7. The President decides on issues of the issuance and renunciation of citizenship of the Kyrgyz Republic;

8. The President is the Commander-in-Chief of the Armed Forces of the Kyrgyz Republic, determines, appoints and dismisses the highest command staff of the Armed Forces of the Kyrgyz Republic.

9. The President:

1) in cases stipulated by constitutional law, announces the introduction of a state of emergency, and if necessary, introduces it in certain areas without prior announcement, immediately notifying the Jogorku Kenesh;

2) declares general or partial mobilization; declares a state of war in case of aggression or immediate threat of aggression against the Kyrgyz Republic and immediately submits this issue to the Jogorku Kenesh for consideration;

3) declares martial law in the interests of protecting the country and providing for the security of its citizens, and immediately submits this issue to the Jogorku Kenesh for consideration.

10. The President:

- 1) awards state awards, state prizes and the honorary titles of the Kyrgyz Republic;
- 2) assigns the highest military ranks, diplomatic ranks and other special ranks;
- 3) grants pardons.

11. The President exercises other powers stipulated by the Constitution and laws.

Commentary: In its Opinion on the 2007 Constitution of the Kyrgyz Republic, the Venice Commission noted the following regarding the powers of the President: “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.”

Summarizing its analysis of the Constitution, the Venice Commission drew the following basic conclusion:

“On the whole, the negative elements of the text prevail. The main thrust of the new version of the Constitution is to establish by all possible legal means the indisputable supremacy of the President with respect to all other state powers. This corresponds to an authoritarian tradition which Kyrgyzstan has tried to overcome. While the Constitution proclaims the principle of the separation of powers, the President clearly dominates and appears both as the main player and the arbiter of the political system. Few obstacles exist for the President having his tenure prolonged by changing the Constitution. Moreover, if there are no legal constraints on the powers of the President and few opportunities for an opposition to effectively make its views heard, the consequence might be that changes of power in the country will also in the future be based on revolutions and not on a peaceful and constitutional transfer of authority.”. The Venice Commission’s forecast came true three years later, in April 2010.

We have compared the powers of the President of the Kyrgyz Republic under the 2007 Constitution and under the new draft Constitution of 2021. A comparative analysis demonstrates that under to the new draft Constitution, the President will exercise all the powers of the President of the Kyrgyz Republic under the 2007 Constitution. The drafters have simply rewritten the wording of Presidential powers from the 2007 Constitution. In addition, the President has received a significant degree of prerogative powers in the executive sphere.

According to Paragraph 1 of Part 2 of Article 70 of the draft, the President of Kyrgyzstan “on his own initiative or on the initiative of at least 300,000 voters or of the majority of the total number of deputies of the Jogorku Kenesh, decides to schedule a referendum.” Thus, in line with the sense of the above constitutional provision, the announcement of a referendum is a discretionary power, and not a constitutional obligation of the President. In fact, guided by

personal considerations or political expediency, the President may block a referendum initiated by voters or by the Jogorku Kenesh.

The authors of the draft Constitution, in justification of the unprecedented expansion of presidential powers, refer to the example of the successful construction of democratic statehood with a presidential form of government in the United States. The reason why the presidential republic has been effective in the country in which it originated is quite simple. For the effective functioning of a presidential republic, an extremely wide set of political and legal components is needed. Among them are the peculiarities of the country's party system (in the conditions of a two-party system, the fact that the president belongs to one of the parties in power implies that one of them controls "its" president, fearing defeat in the next elections), a strict separation of powers, the dominance of case law over positive law, well-established traditions of democracy, in particular parliamentarism, federalism, a high level of political and legal culture of the population, a developed civil society, etc. The necessary set of relevant components turned out to exist only in the political system of the United States of America. In pre-war continental Europe, in contrast, these components of democracy were absent or too weak to resist the growing authoritarianism of government structures and the concentration of the powers of the head of state and head of government in one person, which led to deeply reactionary political consequences.

The concentration in the hands of Adolf Hitler of the powers of Reich President and Reich Chancellor was a key moment in the process of Germany's slide towards totalitarianism. The combination of the powers of the head of state and the head of government in one person was far from an accidental attribute of the authoritarian dictatorship of Francisco Franco. It should be considered entirely understandable that in the modern democracies of Western and Central Europe, governmental systems do not apply the above-mentioned concentration of powers. Strictly following the criteria for the classification of forms of government established in the theory of state and law, at present, in fact, not a single European state can be counted among the list of countries with a classical presidential-republican form of government.

Indeed, presidential rule negatively affects the functional characteristics of the state mechanism and, as a consequence, the legitimacy of power. As evidenced by the recent history of Kyrgyzstan, presidential republics regularly fall victim to coups and upheavals. Attempts to revive this model are unlikely to lead to the desired result, and Kyrgyzstan will most likely face further social upheaval. The existing experience of the functioning of the presidential republic in numerous political-legal systems allows us to draw the clear conclusion that it is potentially dangerous for democracy.

In Article 70, Part 11 of the draft Constitution, it is affirmed that "the President exercises other powers stipulated by the Constitution and laws." The powers of the President are therefore open-ended. Considering the President's dominant position in the mechanism of state, the possibility of the legislative expansion of the President's constitutional powers creates the legal prerequisites for the unrestrained hypertrophy of his authority.

CHAPTER II. THE LEGISLATIVE POWER OF THE KYRGYZ REPUBLIC

Article 76

1. The Jogorku Kenesh, the Parliament of the Kyrgyz Republic, is the highest representative body exercising legislative power and oversight functions within its competence.
2. The Jogorku Kenesh consists of 90 deputies elected for a five-year term. Any citizen of the Kyrgyz Republic having reached 25 years of age as of the election day and possessing the right to vote may be elected to the Jogorku Kenesh. The procedure of electing deputies to the Jogorku Kenesh shall be defined by constitutional law.
3. A deputy of the Jogorku Kenesh may be recalled in the manner and cases provided for by constitutional law.
4. Deputies of the Jogorku Kenesh may unite in factions and deputy groups.

Commentary: The number of deputies in comparison with the current Constitution has been reduced from 120 to 90. At the same time, the text of the Constitution does not indicate the principles and conditions for the formation of the parliament of the Kyrgyz Republic. We believe that the provisions establishing the principles and basic rules for organizing and holding parliamentary elections ought to be stable and not be subject to constant changes under the influence of shifting expediency or to please the ruling political leaders and political groups, otherwise the electoral legislation risks turning into a flexible instrument of political games.

In Part 2 of Article 76, the age limit for a candidate for the position of deputy of the Jogorku Kenesh is 25 years of age; in the current Constitution the limit is 21 years old. The establishment in 2010 of the age limit (21 years old) was aimed at the broad involvement of young people in electoral and political processes. In the absence of any explanation or justification, it is difficult to determine the reason for the increase in the age limit. These kinds of constitutional changes concerning fundamental rights should be adopted after extensive public debate and reflect the attitude of society towards them. However, this fundamental issue, like many other issues, has remained beyond public scrutiny.

Part 3 introduces the procedure of recalling deputies. The recall is a procedure from the Soviet electoral system, a kind of mechanism of a deputy's accountability to the population, allowing for the possibility of early termination of the deputy's powers at the will of the voters. Generally, the reasons for the recall of a deputy are loss of voter confidence due to the failure of the elected individual to fulfill pre-election demands or the obligations imposed on him. In mature democracies, the recall of a deputy is not allowed, since it poses a serious danger to democracy and can be used to restrict the independence and initiative of a deputy, to create obstacles to his legitimate activities. The recall makes it possible to legally organize campaigns against independent (and inconvenient) deputies and giving voters or parties the right to initiate the recall procedure should be considered a factor that distorts the meaning of elections and, ultimately, the essence of direct democracy.

In Part 4, the provision on the right of deputies to unite in factions has been preserved. In the conditions of a super-presidential authoritarian regime with a parliament deprived of the right to form and control the executive branch, association in a faction ceases to have any legal significance.

Article 77

1. The Jogorku Kenesh assembles for its first session not later than 15 days after the results of elections are announced.
2. The oldest member of the Jogorku Kenesh opens the first sitting of the Jogorku Kenesh.
3. The powers of the previous Jogorku Kenesh cease from the day of the first sitting of the newly convened Jogorku Kenesh.
4. The powers of deputies of the Jogorku Kenesh commence from the day of their taking the oath.

Commentary: Part 3 of Article 77 establishes the moment of termination of the powers of former Parliament members. It is important to note that if the elections are declared null or invalid, the termination of the powers of the previous convocation becomes a serious legal problem, since the need to hold new or repeated elections automatically extends the term of the old convocation. For example, following the declaration of the October 2020 as invalid, rather than ensuring the organization of repeat elections, the deputies of the 6th convocation of the Jogorku Kenesh, whose term of office expired in October 2020, amended the law on elections by suspending the provisions prescribing mandatory set terms and thus extended their powers for an indefinite period. The authors of the draft ought to have taken this situation into account since it was precisely during the prorogation period that the parliament, while not being a fully legitimate body, initiated the process of the adoption of the new Constitution. The authors should have clearly defined the powers of the deputies in the event of a forced extension of their mandate beyond 5 years.

Article 79

1. The powers of a deputy of the Jogorku Kenesh are terminated simultaneously with the termination of the relevant convocation of the Jogorku Kenesh.
2. The powers of a deputy of the Jogorku Kenesh are terminated prematurely in the following cases:
 - 1) his submission of a letter of resignation from his mandate as deputy;
 - 2) renunciation of citizenship or acceptance of citizenship of another state;
 - 3) revocation of the deputy's mandate;
 - 4) transfer to another job or failure to leave a job incompatible with the performance of parliamentary powers;
 - 5) invalidation of the elections;
 - 6) leaving the Kyrgyz Republic for permanent residence abroad;
 - 7) recognition of the deputy as incapable by a court;
 - 8) entry into legal force of a court verdict against the deputy;
 - 9) unexcused absence from sittings of the Jogorku Kenesh for 10 working days during one session;
 - 10) entry into legal force of a court decision to declare the deputy missing or dead;
 - 11) death of the deputy.
3. A decision on early termination of the powers of a deputy of the Jogorku Kenesh on the above grounds is made by the Central Commission for Elections and Referenda, adopted no later than 30 calendar days from the date the grounds arose.

Commentary: Paragraph 3 of Part 2 of Article 79 provides for the recall of a deputy, thereby making the mandate of a deputy imperative. If a portion of the mandates are distributed according to a proportional system, the implementation of this provision will create serious problems, allowing the arbitrary use of the possibility of withdrawal and the likelihood of its abuse for political reasons, especially as a tool to deprive independent or oppositional MPs of their mandates. In addition, it creates the possibility of political pressure from the leaders of a faction or a political party, enabling them to impose their own will, which in turn is a deviation from the principles of political pluralism and an encroachment on the independence of a deputy. We therefore consider this provision to undermine the democratic foundations of the representative body.

Article 80

1. The Jogorku Kenesh:

- 1) makes amendments and additions to the Constitution in the manner prescribed by the Constitution;
- 2) passes laws;
- 3) provides official interpretation of the laws;
- 4) ratifies and renounces international treaties in the manner prescribed by law;
- 5) considers issues of changing the state borders of the Kyrgyz Republic;
- 6) consents to the appointment of the Chairperson of the Cabinet of Ministers, their deputies and members of the Cabinet of Ministers;
- 7) approves the state budget;
- 8) hears the annual report of the Cabinet of Ministers on the execution of the state budget;
- 9) considers issues of the administrative-territorial structure of the Kyrgyz Republic;
- 10) issues acts of amnesty.

2. The Jogorku Kenesh:

- 1) calls presidential elections;
- 2) submits to the President proposals for a referendum in the manner prescribed by the Constitution.

3. The Jogorku Kenesh:

- 1) on the nomination of the Council for Justice submitted by the President, by the votes of at least half of the total number of deputies of the Jogorku Kenesh, elects judges of the Supreme Court and the Constitutional Court; in cases provided for in the Constitution and constitutional law, dismisses them on the submission of the President;
- 2) by the votes of at least half of the total number of deputies of the Jogorku Kenesh, approves candidates submitted by the President as presidents of the Constitutional Court and the Supreme Court from among the judges of the courts, for a period of 5 years;
- 3) gives its consent to the dismissal of the presidents of the Constitutional Court and the Supreme Court on the submission of the President based on a proposal of the Council of Judges, in cases prescribed by constitutional law;
- 4) approves the composition of the Council for Justice in the manner prescribed by constitutional law;

5) elects the President of the National Bank on the submission of the President and dismisses him from this position in cases prescribed by law;

6) elects members of the Central Commission for Elections and Referenda: one half as submitted by the President, and the other half on its own initiative, and dismisses them in cases prescribed by law;

7) elects members of the Accounts Chamber: one-third of the members as submitted by the President, two-thirds on its own initiative; and dismisses them from their positions in cases prescribed by law;

8) elects and, in cases prescribed by law, dismisses the Akiykatchy (Ombudsman); gives its consent for holding him criminally liable;

9) elects and, in cases prescribed by law, on the submission of the Akiykatchy (Ombudsman), dismisses his deputies, and gives its consent for holding them criminally liable;

10) gives its consent to the appointment, dismissal, and criminal prosecution, of the Prosecutor General, on the submission of the President, by at least half of the votes of the total number of deputies of the Jogorku Kenesh;

11) approves, by a majority of at least two-thirds of the total number of deputies of the Jogorku Kenesh, an initiative of one-third of the total number of deputies of the Jogorku Kenesh to dismiss the Prosecutor General in cases prescribed by law.

4. The Jogorku Kenesh:

1) imposes a state of emergency in cases and in the manner prescribed by constitutional law; approves or repeals presidential decrees on this matter;

2) decides on questions of war and peace; the imposition of martial law; the declaration of a state of war; approval or revocation of presidential decrees on these matters;

3) decides on the possibility of using the Armed Forces of the Kyrgyz Republic outside its borders when necessary to fulfill interstate treaty obligations to maintain peace and security;

4) establishes military ranks, diplomatic ranks and other special ranks of the Kyrgyz Republic;

5) establishes state awards, state prizes and honorary titles of the Kyrgyz Republic.

5. The Jogorku Kenesh:

1) hears annual messages and information of the President and speeches of representatives of foreign states and international organizations;

2) hears the annual report of the Akiykatchy (Ombudsman) and the Chairman of the Central Commission on Elections and Referendums;

3) hears annual reports of the Prosecutor General, the President of the National Bank, and the Chairman the Chamber of Accounts.

6. The Jogorku Kenesh may, in accordance with the procedure stipulated by the Constitution, bring charges against the President; and take a decision on removing the President from the office.

7. The Jogorku Kenesh exercises other powers stipulated by the Constitution and laws of the Kyrgyz Republic.

Commentary: In comparison with the existing Constitution, the role of the Jogorku Kenesh is significantly curtailed in terms of its place in the system of checks and balances in relation to the President and the executive branch headed by him. Almost all Jogorku Kenesh control functions are removed. As regards the powers to supervise the implementation of the budget law, the Jogorku Kenesh has the right to hear the report of the Chairman of the Cabinet of Ministers; however, in case of finding the report unsatisfactory the Jogorku Kenesh has no authority to hold the Cabinet of Ministers accountable.

In addition, the Jogorku Kenesh is deprived of the right to initiate and adopt a law on a referendum; its powers are limited only to the possibility of submitting proposals to the President (Paragraph 2 of Part 2 of Article 80). The scheduling of a referendum is the exclusive prerogative of the President, who therefore has the right to reject the proposal of the Jogorku Kenesh to initiate a referendum. Thus, the holding of a referendum, the most important instrument of direct democracy, will be entirely at the discretion of the President. In the recent history of the country, the presidents of the Kyrgyz Republic have repeatedly abused their discretion in initiating and calling referendums in order to strengthen their personal power. At the same time, the article contains serious defects in the powers defined as “giving consent.” For example, it is not determined what number of votes is necessary to approve nominees for the Chairman of the Cabinet of Ministers and its members.²¹

Article 85

The right of legislative initiative belongs to:

- 1) 10 thousand voters (popular initiative);
- 2) the President;
- 3) Deputies of the Jogorku Kenesh;
- 4) the Chairman of the Cabinet of Ministers;
- 5) the Supreme Court in matters of its jurisdiction;
- 6) the People’s Kurultai;
- 7) the Prosecutor General on matters under his authority.

Commentary: The list of subjects of legislative initiative has been excessively expanded, which can lead to a high workload of the legislative body, as well as an increase in lobbying for private interests. The President and the Chairman of the Cabinet of Ministers are recognized as the subjects of legislative initiative, so the right to initiate laws is granted to two subjects of the executive power. It is obvious that the Chairman of the Cabinet of Ministers, as a person subordinate to the President, is unlikely to be able to exercise this right independently.

²¹ For a comparative overview of the powers of the Jogorku Kenesh, see Table 2 on page 95.

In 2010, a phased process of reducing the powers of the prosecutor's office and abandoning its Soviet model began in the Kyrgyz Republic. Today, the idea of general supervision over the observance of the rule of law being the main function of the prosecutor's office is something inconceivable. In the Kyrgyz Republic, there are a number of sectoral control and supervisory inspections and an administrative court has been created to consider claims of citizens against state and municipal bodies.

The supervisory functions of the prosecutor's office should therefore be abolished. However, instead of reforming the prosecutor's office and eliminating duplicate functions, there is a marked tendency in the present draft toward strengthening its status and expanding its scope of competence. This is clearly evidenced by the assignment of the right of legislative initiative to the Prosecutor General.

Article 86

1. Draft laws are submitted to the Jogorku Kenesh.
2. Draft laws specified by the President and the Chairman of the Cabinet of Ministers as urgent are considered by the Jogorku Kenesh in extraordinary procedure.
3. Draft laws providing for an increase in expenditures covered by the state budget are adopted by the Jogorku Kenesh after the Cabinet of Ministers determines the source of funding.
4. Laws are passed by the Jogorku Kenesh in three readings.
Laws and decisions are adopted by the Jogorku Kenesh by a majority of the total number of deputies, unless otherwise stipulated by the Constitution.
5. Constitutional laws, laws on altering state borders are adopted by the Jogorku Kenesh in at least three readings by a majority of at least two-thirds of the total number of deputies of the Jogorku Kenesh.

Commentary: Part 2 of Article 86 gives the President and the Chairman of the Cabinet of Ministers the right to submit draft laws that must be considered on an extraordinary basis. At the same time, the article does not contain an exhaustive description of features that substantiate a draft law's urgency. When allowing any kinds of exceptions to the general rule, the authors should have provided an exhaustive list of reasons for their application. Otherwise, the introduction and adoption of draft laws bypassing the procedures established by law may become commonplace and thus pose a serious threat to human rights and freedoms.

Article 87

1. Laws adopted by the Jogorku Kenesh are sent to the President for signing within 14 working days.
2. The President signs the law or returns it to the Jogorku Kenesh with his objections for reconsideration no later than one month from the date of receipt.
3. If after reconsideration the law is approved in an earlier version by a majority of at least two-thirds of the total number of deputies of the Jogorku Kenesh, this law is signed by the President within 14 working days from the day of its receipt.

Commentary: In the current version of the Constitution (Part 3 of Article 81), there is a rule stating that, in the event of the President’s failure to sign a constitutional law or a law approved in a previously adopted version within the prescribed period, such a law is signed by the Toraga (Chairman) of the Jogorku Kenesh within 10 days and is subject to publication. This rule is excluded in the proposed draft.

Consequently, if the President refuses to sign a law after his veto has been overridden by Parliament (such a situation is a very real possibility), the law will not be signed and will not enter into force.

Since the President’s failure to sign a law adopted by the Jogorku Kenesh, in respect of which Parliament has already overridden the President’s veto, is not a criminal offense, the President may, contrary to the prescription of Paragraph 3 of Article 87 of the draft, refrain from signing a law approved “approved in an earlier version by a majority of at least two-thirds of the total number of deputies of the Jogorku Kenesh.”

Thus, the draft law “On the Constitution of the Kyrgyz Republic” gives the President the ability to block the legislative process at the stage of promulgating the law. An effective way to solve this problem would be to enshrine in the Constitution the provision that if the President does not sign a law, in respect of which the Jogorku Kenesh has already overridden the President’s veto, within the prescribed period, then the law is considered signed and enters into force.

The art of writing the text of a Constitution consists in the ability to project the provisions of the law into reality and find the best ways to overcome possible conflicts and deadlocks to avoid political destabilization. Therefore, the Constitution should be written by highly professional lawyers endowed with the necessary theoretical knowledge, practical experience and lawmaking skills.

CHAPTER III. THE EXECUTIVE BRANCH OF THE KYRGYZ REPUBLIC

Article 89

1. Executive power in the Kyrgyz Republic is exercised by the President.
2. The structure and composition of the Cabinet of Ministers is determined by the President. The Chairman of the Cabinet of Ministers is the head of the Presidential Administration.
3. The President directs the activities of the executive branch, gives instructions to the Cabinet of Ministers and its subordinate bodies, supervises the execution of its instructions, cancels acts of the Cabinet of Ministers and its subordinate bodies, and temporarily dismisses members of the Cabinet of Ministers on the basis of constitutional law.
4. The President presides at meetings of the Cabinet of Ministers.
5. The President is personally responsible for the results of the activities of the Cabinet of Ministers and the executive branch.
6. If the Jogorku Kenesh pronounces the report on the execution of the state budget unsatisfactory, the responsibility of the members of the Cabinet of Ministers is reviewed by the President.

Commentary: See commentary to Article 70.

Article 91

1. The Cabinet of Ministers:
 - 1) enforces the Constitution and laws;
 - 2) implements the main directions of the state's domestic and foreign policy;
 - 3) implements measures to ensure the rule of law, the rights and freedoms of citizens, the protection of public order, and fighting against crime;
 - 4) ensures the implementation of measures to protect the sovereignty and territorial integrity of the state and the protection of the constitutional order, as well as measures to strengthen defense capability, national security and the rule of law;
 - 5) ensures the implementation of financial, pricing, tariff, investment and taxation policies;
 - 6) prepares the republican budget and ensures its implementation;
 - 7) implements measures to ensure equal conditions for the development of all forms of property and their protection, and the management of state-owned property;
 - 8) ensures the implementation of a unified state policy in the socio-economic and cultural spheres;
 - 9) prepares and implements nationwide programs of economic, social, scientific, technological and cultural development;
 - 10) ensures the implementation of foreign economic activity;
 - 11) ensures effective interaction with civil society;
 - 12) exercises other powers reserved to it by the Constitution and laws.
2. The organization and procedures of the Cabinet of Ministers are determined by constitutional law.

Commentary: According to Part 2 of Article 90, the main function of the Chairman of the Cabinet is to organize the activities of the Cabinet. As can be seen from Article 91, the organization of the Cabinet of Ministers' activities implies the implementation of 11 constitutional powers and other powers determined by laws. These provisions are copied in full from Article 88 of the existing Constitution. In fact, these are the main directions of government activity, for the implementation of which the government is currently accountable before the Jogorku Kenesh.

In the proposed draft, the Cabinet of Ministers (i.e. the government) is responsible for the activities of the Cabinet and answerable to the President, who in turn, according to Article 89, is also responsible for these activities – indeed personally responsible, although it is not stated who he is answerable to.

Article 93

1. Executive power on the territory of the respective administrative-territorial unit is exercised by the local state administration.
2. The organization and activities of the local state administration are defined by law.
3. Local state administrations act on the basis of the Constitution, laws, and normative legal acts of the President and the Cabinet of Ministers.
4. Decisions of the local governmental administration, adopted within the limits of its authority, are binding within the relevant territory.

Commentary: Given the right of communities to independently manage local affairs, it is crucial that local self-governing bodies are able to influence the appointment of heads of local administrations in a clearly defined way. In general, as practice has shown, the local state administrations serve little real purpose – particularly useless from the point of their functionality are the regional (oblast) administrations. Most of these bodies duplicate the functions of municipal authorities and impede the development of local self-government.

CHAPTER IV. THE JUDICIAL BRANCH OF THE KYRGYZ REPUBLIC

Article 95

1. Judges are independent and subject only to the Constitution and laws.
2. Judges have the right of inviolability and may not be detained or imprisoned, or subjected to searches of their property or person, except when caught in the act of committing a crime.
3. No one has the right to ask a judge to report on a particular case.
Any interference in the exercise of justice is prohibited. Persons guilty of influencing a judge are held liable as prescribed by law.
4. Judges are provided with social, material and other guarantees of their independence according to their status.
5. To serve as judges of the Constitutional Court, candidates must be citizens of the Kyrgyz Republic no younger than 40 years and not older than 70 years, who have a higher legal education and at least 15 years of experience in the legal profession.
To serve as judges of the Supreme Court, candidates must be citizens of the Kyrgyz Republic no younger than 40 years and no older than 70 years, who have a higher legal education and at least 15 years of experience in the legal profession, including at least a five-year experience as a judge.
6. Judges of the Constitutional Court and the Supreme Court are elected to serve until reaching the age limit.
7. From among judges of the Constitutional Court and the Supreme Court, the President appoints presidents of the Constitutional Court and the Supreme Court on the submission of the Council of Judges and with the agreement of the Jogorku Kenesh, for a period of five years. Vice-Presidents of the Constitutional Court and the Supreme Court are appointed by the President on the submission of the President of the Constitutional Court and the Supreme Court, for a period of 5 years.
8. To serve as judges of local courts, candidates must be citizens of the Kyrgyz Republic no younger than 30 years and no older than 65 years, who have higher legal education and at least 5 years of working experience in the legal profession.
Local court judges are appointed by the President on the submission of the Council of Judicial Affairs, initially for a period of five years, and thereafter until reaching the age limit. The procedure for the nomination and appointment of local court judges is determined by constitutional law.
From among judges of local courts, the President of the Supreme Court appoints presidents of local courts and their deputies for a period of five years.
9. The status of judges of the Kyrgyz Republic is determined by constitutional law, which may establish additional requirements for candidate judges and certain restrictions for judges of the Constitutional Court, the Supreme Court and local courts.

Commentary: Most of the provisions regulating the status of judges and the foundations of justice have retained their constitutional continuity and are set forth in the wording of the existing Constitution. The provisions governing the procedure for the appointment of chairpersons of courts at all levels, however, have undergone significant changes. According to the current Constitution, the chairmen of the Supreme Court and the Constitutional Chamber are elected by the assembly of judges of these courts for 3 years

without the right to be re-elected for a second consecutive term. The current Constitution does not provide for the early removal from office of the chairmen of the Supreme Court and the Constitutional Chamber elected by judges, except in cases of loss of the status of a judge.

This provision was first included in the Constitution in 2010 in order to ensure judges' independence and is fully consistent with international standards, according to which: procedures for the selection of heads of courts must be transparent; all judges who meet the requirements of the law must be able to submit their applications; the optimal method of selection is the election of the chairperson by the members of the court itself; if the leadership of the court is appointed by the President, then the latter should not have the right to appoint chairpersons without taking into account the opinion of the bodies of the judicial community.

In the proposed draft, the authors restore the procedure for appointing chairpersons that existed under the authoritarian regimes of the previously ousted presidents. Thus, the chairpersons of the Supreme Court and the Constitutional Chamber will be appointed by the President for a period of 5 years from among the judges of these courts, with the agreement of the Jogorku Kenesh, expressed by at least half of the votes of the total number of deputies, while there are no restrictions on appointment for a following term. The early dismissal of the chairpersons of the Supreme and Constitutional Courts also depends on the President.

The President even appoints deputy court chairpersons at the nomination of the chairpersons. Such a procedure for appointing and dismissing the chairpersons of the Supreme and Constitutional Courts and their deputies poses the greatest threat to the independence of courts and judges, through the emergence of a special "caste" of coopted judges who unquestioningly carry out any and all assignments and instructions from above. As a rule, such judges are favored by the authorities and do not encounter any obstacles in their career advancement. Both the chairpersons of the courts and the judges themselves, who are formally independent but in reality subordinate to the President, will not differ in any way from officials and will display corresponding attitudes and values.

The chairpersons of local courts, in accordance with Part 8 of Article 98, are appointed by the Chairperson of the Supreme Court, thereby restoring the hierarchical structure of the judicial system (President - Chairperson of the Supreme Court - chairpersons of local courts - judges). As a result of this, judges' independence will be significantly impaired even within the framework of the judicial system itself.

Article 96

1. Judges of all courts of the Kyrgyz Republic hold office and retain their powers as long as their conduct is irreproachable. Violation of the requirements for irreproachability is grounds for holding the judge liable in accordance with the procedure determined by constitutional law.
 2. If the requirements for irreproachability are violated, a local court judge is removed from office as proposed by the Council of Judges in accordance with constitutional law.
- Judges of the Constitutional Court and the Supreme Court may be prematurely dismissed by the Jogorku Kenesh on the above grounds by a majority of at least two-thirds of the total number of deputies of the Jogorku Kenesh as proposed by the President, except in cases specified in the Constitution.

Local court judges in cases specified in the Constitution are dismissed by the President following recommendation of the Council of Judges.

A person dismissed from a judicial position due to a breach of the requirements for irreproachability is not entitled to hold any further judicial positions or positions in law enforcement bodies as established by law, and is deprived of the right to use privileges established for judges.

3. On the submission of the Council of Judges, the powers of a judge are terminated by the body that appointed the judge, in accordance the constitutional law, from the day the following grounds arise:

- death of the judge;
- reaching of the age limit;
- voluntary resignation or transfer to another job;
- declaration of the judge dead or missing;
- recognition of him as legally incompetent;
- renunciation of citizenship or acquisition of a foreign citizenship
- in other cases not involving violations of the requirements for irreproachability.

4. The temporary removal of judges from office and holding them criminally and otherwise liable is allowed with the consent of the Council of Judges in accordance with the procedure determined by constitutional law.

5. The selection of candidates for judges of local courts is made by the Council of Judicial Affairs in the manner determined by constitutional law.

6. The transfer (rotation) of a judge of a local court is carried out by the President on the submission of the President of the Supreme Court in the manner and cases determined by the constitutional law.

7. Council of Judicial Affairs is formed of at least two thirds judges, and one third are representatives of the President, the Jogorku Kenesh, the People's Kurultai and the legal community.

8. The organization and activities of the Council of Judicial Affairs, its powers and procedure of formation are determined by constitutional law.

Commentary: The new draft Constitution abolishes such bodies as the Council for the Selection of Judges. According to the existing Constitution, the Council is an independent body, formed from representatives of the judiciary (one third) and civil society (two thirds – from the coalition majority and the parliamentary opposition). This procedure was first introduced in 2010 and allows the selection of judges without direct interference from the President (although shadow interference persists).

The draft introduces the Council of Judicial Affairs, which consists of judges making up at least two-thirds of its composition, while one-third are representatives of the President, the Jogorku Kenesh, the People's Kurultai and the legal community. The status, term of office and size of the Council of Judicial Affairs are not defined by the Constitution. The participation of the President's representatives in the selection body means it cannot be excluded that political considerations will prevail over the professional knowledge and qualifications of candidates for judicial office. In addition, the draft abolishes the Disciplinary Commission under the Council of Judges.

This body was also introduced into the Constitution in 2010 and its composition ensured the participation of representatives of civil society through the parliamentary quota (1/3). According to the draft, instead of the Disciplinary Commission, issues of the disciplinary liability of judges will be decided by the Council of Judges – an organ of judicial self-government, consisting exclusively of judges. However, its sphere of competence is limited to giving its consent to the President on holding judges accountable. It is important to note that the rotation of judges will henceforth be carried out by the President too.

Thus, the proposed draft renders null all the important measures to ensure the independence of courts and judges achieved by the 2010 Constitution. The draft restores the total dominance of the President in deciding upon issues of judicial appointment that was a feature of the high point of presidential authoritarianism between 2005 and 2010.

Article 97

1. The Constitutional Court is the highest body of judicial power exercising constitutional control through constitutional proceedings in order to protect the foundations of the constitutional order, fundamental human and civil rights and freedoms, and to ensure the supremacy and direct action of the Constitution.

2. The Constitutional Court:

- 1) gives official interpretations of the Constitution;
- 2) resolves cases on the conformity of laws and other normative legal acts of the Kyrgyz Republic to the Constitution;
- 3) issues opinions on the constitutionality of international treaties to which the Kyrgyz Republic is a party and that have not entered into force;
- 4) resolves disputes over competence between the branches of state power;
- 5) issues opinions on draft laws amending and adding to the Constitution;
- 6) issues opinions on compliance with the established procedure for bringing charges against the President.

3. Each person has the right to challenge the constitutionality of laws and other normative legal acts if they believe that these laws and acts violate the rights and freedoms recognized by the Constitution.

4. Decisions of the Constitutional Court are final and are not subject to appeal.

5. Decisions of the Constitutional Court on the unconstitutionality of laws or parts thereof invalidate them on the territory of the Kyrgyz Republic, together with other normative legal acts based on laws or their provisions declared unconstitutional, with the exception of court decisions.

Decisions of the Constitutional Court on the unconstitutionality of subsidiary laws or parts thereof invalidate them on the territory of the Kyrgyz Republic.

6. Judicial decisions based on provisions of laws deemed unconstitutional are reviewed by the court on a case-by-case basis upon complaints of citizens whose rights and freedoms have been affected.

7. The composition and procedure for the formation of the Constitutional Court, as well as the order for constitutional proceedings are determined by constitutional law.

Commentary: The draft expands the competence of the Constitutional Court through such powers as the interpretation of the Constitution; the resolution of disputes over competence between branches of state power; the provision of a ruling on the observance of the established procedure for bringing charges against the President. Strengthening the status of the Constitutional Court might be welcomed if it were not for the procedure for appointing judges and the chairman of the Constitutional Court.

In the entire history of independent Kyrgyzstan, there has not been a single instance of the body of constitutional oversight adopting a principled position in relation to anti-constitutional actions on the part of Presidents bent on strengthening their authoritarian regime.

According to Part 6 of Article 95 of the draft, “Judges of the Constitutional Court and the Supreme Court are elected to serve until reaching the age limit.”

Unlike courts of general jurisdiction, members of specialized constitutional review bodies should be appointed and elected for a specific, relatively short term. While there is an idea accepted in the theory of constitutional law that the profession of a judge, which requires specialist knowledge and experience acquired over an extensive period of time, can only be practiced by those who engage in it for a long period (preferably for life), this rule does not extend to members of bodies of constitutional jurisdiction. And although in some countries the law limits the duration of their stay in office only after reaching a certain age, such an approach is not typical of the majority of democratic states.

In order to ensure the political neutrality and the impartiality of the constitutional jurisdiction body, besides fixing a certain age threshold for the tenure of its members, legislation should limit their tenure of office to a defined period. The requirement that members of the constitutional review body be appointed or elected for only one term corresponds to this goal. A significant flaw in the draft law is the lack of provisions on the number of members of the Constitutional Court and the procedure for its formation.

Part 7 of Article 97 of the draft Constitution states that: “The composition and procedure for the formation of the Constitutional Court, as well as the order for constitutional proceedings are determined by constitutional law.”

Determining the size of the constitutional jurisdiction body and regulating the procedure for its formation directly in the Constitution are of fundamental importance. The absence of constitutional regulation of these issues creates the possibility of politically motivated legislative changes in the number of judges of the Constitutional Court and the procedure for its formation. By this means, certain individuals and political forces will be able to exert pressure on the Constitutional Court to pronounce decisions in line with their interests.

Moreover, if the order of the formation of the Constitutional Court of Kyrgyzstan is to be subject exclusively to legislative regulation, there are no guarantees that this procedure will not allow influence to be exerted on the activities of the Court by the dominant component part of public authority under the new Constitution – the President of Kyrgyzstan. It is no

coincidence that the absolute majority of constitutions of countries with a European model of constitutional review, with rare exceptions, set the number of members of the body of constitutional jurisdiction and determine the procedure for its formation.

The constitutional determination of the size of the composition of the Constitutional Court and the procedure for its formation, of course, does not mean the immutability of these elements of the Court's constitutional and legal status. But the "rigid" procedure for amending the Kyrgyz Constitution presupposes that the number of judges of the Constitutional Court and the procedure for its formation, as well as other elements of the Court's constitutional status, can be amended in accordance with the interests of the entire population, and not those of particular individuals and of political forces representing these individuals' interests.

Article 98

1. The Supreme Court of the Kyrgyz Republic is the highest body of judicial power.
2. The Supreme Court reviews court decisions on appeals of participants of judicial proceedings in civil, criminal, economic, administrative and other cases, in the manner prescribed by law.
3. The Plenum of the Supreme Court gives explanations on issues of judicial practice, which are binding for all courts and judges of the Kyrgyz Republic.
4. Decisions of the Supreme Court are final and not subject to appeal.

Commentary: In accordance with the Constitution of the Kyrgyz Republic, judges are independent and subject only to the Constitution and laws (Part 1 of Article 94 of the Constitution). This "constitutional" principle means that a judge considering a case should not be subjected to any form of influence. This prohibition applies not only to officials of the legislative and executive branches, but to the judiciary itself. The independence of the courts excludes the possibility of any subordination of courts of one level to others.

The binding nature of the interpretive explanations of the Plenum of the Supreme Court is a phenomenon characteristic of the Soviet socialist system. Thus, Article 3 of the USSR law "On the Supreme Court of the USSR" established that "Guiding explanations of the plenum of the Supreme Court of the USSR are binding for courts, other bodies and officials applying the law with respect to which the explanation was given. The Supreme Court of the USSR exercises control over the implementation by the courts of the guiding explanations of the Plenum of the Supreme Court of the USSR."

In the Soviet legal system, the binding explanations of the Plenum of the Supreme Court were justified by the political concept of the unity and indivisibility of state power. The decisions of the plenum actually served as instructions for judges when considering a case. It is generally accepted that the elaboration of such explanations was a special form of supervision over the judicial activities of lower courts and established the essence of the Supreme Court as a supervisory authority.

Now, it is important to note that such a phenomenon as the Plenum of the Supreme Court and its interpretative explanations is entirely lacking in the judicial systems of European countries.

In the existing version of the Constitution of the Kyrgyz Republic, for the purpose of uniformly applying laws in judicial practice, the authority of the Plenary Session of the Supreme Court was retained in order to provide clarifications on issues of judicial practice, but such clarifications were not made binding.

The authors of the draft, in contrast, establish the binding nature of the explanatory decrees of the Plenum of the Supreme Court, thereby equating their legal force with the force of law. This perception of the explanations of the Plenum severely risks undermining the authority of the law and contradicts the principle of the separation of powers in a state governed by the rule of law. As bodies enforcing the law, courts cannot and should not be engaged in lawmaking.²²

Moreover, given the Kyrgyz Supreme Court's lack of real credibility as an independent, highly professional and competent body, there is a danger that the explanations of the Plenary Session will not meet the requirements of legality and validity, and, as a result, will lead to the issuance of unfair and unlawful decisions.

In the absence of the possibility of appealing such decrees on the grounds of their contradiction of the Constitution and laws, the mandatory application of these explanations can pose a serious threat to citizens' rights and interests.

Thus, the changes introduced are in violation of the principle of the separation of powers, the independence of judges and their subordination only to the law.

²² Livshits RZ Judicial practice as a source of law / RZ Livshits // Judicial practice as a source of law. - M.: Publishing house of IGiP RAS, 1997, p. 3-15.

Chapter V. THE PUBLIC AUTHORITIES OF THE KYRGYZ REPUBLIC WITH SPECIAL STATUS

Article 105

The exact and uniform implementation of laws and other normative legal acts is supervised by the prosecutor's office of the Kyrgyz Republic. The prosecution organs conduct criminal prosecutions, participate in court proceedings, supervise the execution of court decisions and exercise other powers stipulated by constitutional law.

Commentary: The existing Constitution (Article 104) establishes the powers of the prosecutor's office in an exhaustive form, without the possibility of their expansion by laws. According to its provisions, the prosecutor's office is responsible for: overseeing the accurate and uniform implementation of laws by executive authorities, local government bodies and officials of these bodies; supervising the observance of laws by bodies carrying out operational-search activities and investigations; supervising the observance of laws in the execution of court decisions in criminal cases, as well as in the application of coercive measures related to the restriction of the personal freedom of citizens; the representation of the interests of a citizen or the state in court in cases determined by law; ensuring public prosecution in court; the initiation of criminal cases against officials of state bodies, the list of which is determined by constitutional law, with the transfer of cases for investigation to the appropriate authorities; as well as the criminal prosecution of persons with the status of military personnel.

As shown above, the prosecutor's office has many functions which duplicate those of other bodies, particularly following the introduction of the new Criminal Procedure Code in 2019, according to which the investigating judge is in charge of the supervision of investigating authorities, and the introduction in 2020 of administrative courts, where individuals and legal persons can appeal against the actions (or omissions) and decisions of state bodies. There are also control and supervisory bodies in certain sectors.

However, instead of completely revising the status of the prosecutor's office and reducing its functions, the authors of the draft have left most of the powers of the prosecutor's office at the discretion of the legislator.

5. CHANGES TO SECTION FIVE

THE PROCEDURE FOR ADOPTING, AMENDING AND SUPPLEMENTING THE CONSTITUTION

Article 116

1. The Constitution may be adopted on the initiative of at least 300,000 voters or the President or two-thirds of the total number of deputies of the Jogorku Kenesh in a referendum appointed by the President.
2. Amendments and additions to the provisions of sections 1, 2 and 5 of the Constitution may be adopted at the initiative of at least 300,000 voters or the President or two-thirds of the total number of deputies of the Jogorku Kenesh at a referendum called by the President.
3. Amendments and additions to the provisions of sections 3 and 4 of the Constitution may be adopted by the Jogorku Kenesh at the initiative of the President or two-thirds of the total number of deputies of the Jogorku Kenesh.
The Jogorku Kenesh adopts a law on amendments and additions to the Constitution no later than six months from the date the draft law is submitted to the Jogorku Kenesh.
A law on amending the Constitution is adopted by the Jogorku Kenesh by a majority of at least two-thirds of the total number of deputies of the Jogorku Kenesh after at least three readings with a break of two months between the readings.
4. The Constitutional Court of the Kyrgyz Republic issues an opinion for amendments and additions to the Constitution.
5. The adoption of the Constitution and the introduction of amendments and additions to the Constitution during a state of emergency or martial law is prohibited.
6. Laws on the adoption of the Constitution, its amendments and additions are signed by the President.
7. Amendments and additions to the Constitution may provide for the adoption of a new version of the Constitution.

Commentary: The draft also contains a number of truly reactionary provisions. Part 4 Article 116 (which serves as the first article of Section 5) declares: “The law on the adoption of the Constitution, its amendments and its additions is signed by the President,” and in Article 2 of the same section it is stated: “The Constitution of the Kyrgyz Republic, as set forth by this law, is signed by the President of the Kyrgyz Republic.” According to the concept of constituent power, the constituent power of the people is primary in relation to the prescribed, secondary powers derived from it – legislative, executive and judicial – which are personified by the relevant organs of the state. Constitutional laws, which introduce new provisions into the legal act of constituent power – the Constitution – are, in their essence, also acts of constituent power. The President, as a legal subject who personifies one of the prescribed powers (derived from the constituent power), is not entitled to exercise either the right of veto or the right to promulgate constitutional laws.

Moreover, he should not sign the act of the primary constituent power of the people – the Constitution. Granting the President the authority to sign constitutional laws gives him the opportunity, contrary to the relevant injunction of the Constitution, to block the implementation of decisions taken by the constituent power of the people by failing to sign the constitutional law.

In addition, the President alone can initiate not only changes to the current Constitution, but also the draft of a new Constitution. Thus, the authors of the project gave the President (chief executive) the founding power, which should belong exclusively to the people.

The content of the founding power includes the right to adopt a new constitution and, through it, to establish the foundations of the social and state structure that the people themselves choose. The convening of a constituent assembly is necessary to draft and initiate a new Constitution, and of all known ways of adopting a new constitution, the creation of a representative constituent body for that purpose is the most democratic way.

CONCLUSIONS:

The draft law “On the Constitution of the Kyrgyz Republic” provides for a strongly presidentialized form of government, which in its key features gravitates towards a presidential republic, but is not identical to it. The main differences between the form of government envisaged by the draft and a presidential republic are the absence of a “strict” separation of powers and the presence of elements of parliamentarism. This is indicated, in particular, by the fact that the President and the Chairman of the Cabinet of Ministers have the right to initiate legislation (Parts 2 and 4 of Article 85 of the draft) and the obligation of the Cabinet of Ministers to report to the Jogorku Kenesh on the implementation of the republican budget (Article 89 of the draft).

Also contrary to the logic of the organization of state power in a presidential republic is the provision of Article 70 of the draft according to which the President of Kyrgyzstan “with the consent of the Jogorku Kenesh, appoints the Chairperson of the Cabinet of Ministers, his deputies and other members of the Cabinet of Ministers.” From the content of this article, it is obvious that the consent of the Jogorku Kenesh is based not only on formal legal, but also on political criteria.

The form of government stipulated by the draft law “On the Constitution of the Kyrgyz Republic” has a number of fundamental defects. First, it deprives political parties of the necessary incentives for development. The proposed form of government greatly weakens the influence of political parties on the state system, since it fails to establish any mechanisms for the direct participation of political parties in the process of forming a government.

Since the method of forming the Cabinet of Ministers is extra-parliamentary, the parties represented in the Jogorku Kenesh will neither be able to determine the political course of the Cabinet of Ministers, nor introduce correctives to it while it is under implementation, nor exercise effective control over the Cabinet’s activities or hold it to account.

Secondly, in the form of government envisaged by the draft, there are no constitutional mechanisms for resolving conflicts between the President and the Jogorku Kenesh, which may arise following the failure of policies pursued by the government, which the President heads. Such conflicts are in fact inevitable whenever the parliamentary majority and the President represent opposing political forces. But the conflict between the President and the Jogorku Kenesh cannot be resolved either through the accountability before parliament of the Cabinet of Ministers, or through dissolution and early elections to the Jogorku Kenesh, since such mechanisms are absent from the form of government established by the draft.

There is no doubt that the lack of constitutional mechanisms for resolving disputes between the President and the Jogorku Kenesh will lead to their resolution by more political and forceful means.

It is important to note that the history of sovereign Kyrgyzstan is no stranger to the flaws of the presidentialized republic. In many respects, and above all with respect to the presidential

hypertrophy and the relationship between the head of state and the executive branch, the presidential polities of the country's past resemble the form of government proposed by the initiators of the current constitutional reform. According to the Constitution of Kyrgyzstan of May 5, 1993 and its later modifications (particularly the 2007 version of the Constitution) the President, who was named as the highest official of the state, was the real head of the executive branch. He determined the structure of the government; appointed the Prime Minister with the consent of the lower house of Parliament, and – after consultation with the latter – the other members of the government; had the right to dismiss the Prime Minister or the government, and the right to suspend or abrogate government acts. Acts of the President did not need to be countersigned by the Prime Minister (or by government ministers).

The assumption of office by a newly elected President resulted automatically in the resignation of the government. The President supervised the work of the government and could preside over its meetings. It is strange that the experience of the type of rule established by the Constitution of A.Akaev and K.Bakiev does not seem to have taught the drafters of the new proposed Constitution anything at all.

Thirdly, in the Explanatory Note to the draft law “On the Constitution of the Kyrgyz Republic,” the initiators of the constitutional reform argue that the existing system of government is ineffective and devoid of “mechanisms of accountability.” Such a statement is unfounded to say the very least. The current Constitution of Kyrgyzstan of June 27, 2010 provides for a parliamentary mode of forming a government and the government's accountability before Parliament. Thus, the existing form of government in Kyrgyzstan not only makes it possible for voters on parliamentary election day to identify who it is who bears responsibility for the results of government policy, but also makes it possible to constantly hold the government accountable for the consequences of its policies.

The existing form of government guarantees the opportunity to carry out the continuous correction of the government course during implementation, and the threat of parliamentary accountability forces the Cabinet of Ministers to take into account the demands addressed to it by the parliamentary majority. But in the form of government envisaged by the draft, the institution of parliamentary accountability of the government is absent and full responsibility for the results of government policy is assigned to the head of the executive branch – the President.

In Article 89, Part 5 of the draft it is asserted: “The President is personally responsible for the results of the activities of the Cabinet of Ministers and the executive branch.” But how can the President of Kyrgyzstan really be responsible for the results of the activities of the Cabinet of Ministers and the executive branch? Indeed, according to the draft Law “On the Constitution of the Kyrgyz Republic,” the failure of the political course of the Cabinet of Ministers does not provide a constitutional basis for the impeachment of the President. Part 6 of Article 89 states: “If the Jogorku Kenesh is not satisfied with the report on the execution of the state budget, the responsibility of the members of the Cabinet of Ministers (emphasis added) is reviewed by the President.” So where exactly do the initiators of the constitutional

reform see the President's personal responsibility for the results of the work of the Cabinet of Ministers?

In the proposed form of polity, the lack of accountability before parliament of the government headed by the President means that society has no alternative but to put up with the failures of the government's political course until the next presidential election. And, of course, it is to be hoped that the authoritarian president in place refrains from falsifying these elections to secure a new term in power. But even the election of a legitimate and talented presidential candidate in one presidential election does not guarantee that he will have a worthy successor.

This strengthening of the President's means of influence over the legislative and executive branches ought to be accompanied by a proportional increase in the level of his constitutional and legal accountability. Yet the procedure for removing the President of Kyrgyzstan from office, as established by Article 73 of the draft law, shows the complexity of its actual implementation. According to Part 4 of Article 73 of the draft, "The President may be removed from office based on charges brought by the Jogorku Kenesh, confirmed by a conclusion of the Prosecutor General confirming the presence of criminal elements in the President's actions and a conclusion of the Constitutional Court in compliance with the established procedure for bringing charges."

However, in accordance with Paragraph 1 of Part 5 of Article 70 of the draft, the Prosecutor General is appointed and dismissed by the President. And although the President exercises these powers of appointment "in agreement with the Jogorku Kenesh," it is obvious that the Prosecutor General is an official who is overly dependent on the President. It is therefore doubtful that in the impeachment procedure, the Attorney General will be able to make a decision which entails the removal of the President from office. It seems that a ruling "confirming the presence of criminal elements in the President's actions" should rather be made by the Supreme Court. The members of the Supreme Court, appointed by the Jogorku Kenesh "until reaching the age limit" (Article 95, Part 6 of the draft), will be sufficiently independent from the President in their actions. The complexity of the impeachment procedure does not even lie in the fact that the President's appointee, the Prosecutor General, will be in no position to give an impartial judgement on the presence of evidence of crime in the President's actions. Article 73, Part 5 of the draft stipulates that: "The decision of the Jogorku Kenesh on removing the President from office must be adopted by a majority vote of at least two-thirds of the total number of deputies of the Jogorku Kenesh no later than three months after bringing charges against the President. If the Jogorku Kenesh fails to make the decision within this period of time, the charges shall be considered as rejected." Thus, the President will not be removed from office if, within the three months following the indictment against the President, the Prosecutor General fails to take any action.

There is another problem related to the impeachment of the President. Article 73, Part 2 of the draft Constitution states that "The President may be removed from office (...) for violating the Constitution (...)." At the same time, the President can be removed from office only if there is a conclusion of the Prosecutor General "*on the presence of criminal elements in the President's actions*" (emphasis added). It is obvious that not every action of the President which violates the Constitution, such as his refusal to sign a law adopted by the Jogorku Kenesh

and in relation to which the President's veto has been overcome, or his refusal to call a referendum to approve amendments to the Constitution, entails criminal liability.

So, in reality, the form of government envisaged by the draft Constitution fundamentally lowers the level of accountability of the government to society.

The fourth fundamental defect of the presidentialized form of government provided for by the draft law "On the Constitution of the Kyrgyz Republic", is that it is, without exaggeration, dangerous for democracy. The transition to this form of government will mean that the chances of success of democratic reforms will depend to an overwhelming degree on the personal characteristics of the President. However, the unchallenged power of the President is a risky means of democratic change. As world practice has shown, and, in particular, the practice of many post-Soviet states, the combination of the status of head of state and head of the executive branch in the person of the President inevitably becomes a source of authoritarianism.

The combination of the statuses of head of state and head of the executive branch by the President can be described as a regressive genetic trait "inherited" by the presidential republic from absolute monarchy. In parliamentary and mixed republics, the strengthening of democratic principles of the organization of state power has led to the replacement of the sole form of leadership of the executive by the collegial one. In the modern period of development of the republican form of government, a mode of state organization so unnatural for the principle of popular sovereignty as the combination in one person of the statuses of head of state and head of the executive branch is encountered in a "pure form" less and less frequently.

The combination of the statuses of head of state and head of the executive branch by the President explains the inherent gravitation of the presidential republic to authoritarianism. It is no coincidence that the phenomenon of superpresidentialism is found in those countries where the President is de facto, and often also de jure, the head of the executive branch.

The initiators of the constitutional reform should be reminded that it was the endowment of Hitler with the powers of both Reich Chancellor and Reich President that paved the way for him to absolute power, and for the country to totalitarianism. Could the reform's initiators perhaps name even one post-Soviet state, where the combination of the statuses of head of state and head of the executive branch in one person has ensured the formation of a fully fledged civil society and a democratic direction for the country's political development? It is also noteworthy that in the countries of Western and Central Europe, adherence to the principles of democratic state building led to the abandonment of the presidential form of government and a significant constitutional limitation of the power of the head of state.

It seems that the consequences of the excessive presidentialization of the form of government in Kyrgyzstan will be the development of superpresidentialism and the erosion of the country's still-weak institutions of democracy. In Kyrgyzstan, the transformation of the power of the President into his personal dictatorship can be effectively prevented only by the preservation and further strengthening of the existing level of influence of Parliament over the executive branch.

Comparative Table of the Powers of the President under the Constitutions of 2007 and 2021

2007	2021
Powers in the executive branch	
	Executive power in the Kyrgyz Republic is exercised by the President
	Determines the structure and composition of the Cabinet of Ministers
	Directs the activities of the executive branch
	Gives instructions to the Cabinet of Ministers and its subordinate bodies, controls the implementation of his instructions
Has the right to suspend the effect of regulatory legal acts of the Government and other executive authorities	Cancels acts of the Cabinet of Ministers and subordinate bodies
	Temporarily dismisses members of the Cabinet of Ministers in accordance with constitutional law
	Presides over sessions of the Cabinet of Ministers
	Bears personal responsibility for the results of the activities of the Cabinet of Ministers and the executive branch.
	Considers the responsibility of the members of the Cabinet of Ministers if the Jogorku Kenesh declares the report on the execution of the republican budget unsatisfactory
Appoints the Prime Minister and members of the Government according to the following procedure: Deputies from the party that won more than 50% of seats in the Jogorku Kenesh propose to the President a candidate for the post of Prime Minister. If for any reason, for example, due to the absence of a party that received more than 50% of the seats, this fails, the President invites, in accordance with Article 70, the deputies of another party to present a candidate who will head	Appoints the Chairman of the Cabinet of Ministers, his deputies and other members of the Cabinet of Ministers, with the consent of the Jogorku Kenesh

the coalition government. If this attempt fails again, the President asks another party's MPs to nominate a candidate for Prime Minister who will form a coalition government. The procedure can be repeated a third time with a third party. If the nomination process fails, the president dissolves parliament, announces new elections and forms an interim government, which, however, is not limited to the functions of an interim government.	
Accepts requests for resignation from the Prime Minister, the Government or its individual members; decides on the resignation of the Prime Minister or the Government	Accepts requests for the resignation of the Chairman of the Cabinet of Ministers, his deputies and other members, and decides on their resignation
On his own initiative or at the request of the Prime Minister, dismisses members of the Government	On his own initiative or taking into account a proposal of the Jogorku Kenesh or the People's Kurultai, within the framework of the law, dismisses members of the Cabinet of Ministers and the heads of executive authorities
Appoints, upon the <u>proposal of the Prime Minister</u> , heads of administrative agencies and other executive bodies; on his own initiative or <u>on the proposal of the Prime Minister of the Kyrgyz Republic</u> , <u>has the right to dismiss</u> the head of an administrative department or other executive authority	Appoints and dismisses the heads of other executive bodies
Appoints, in consultation with the Prime Minister, heads of local state administrations; dismisses them from office	Appoints and dismisses the heads of local state administrations
Forms the Presidential Administration, ensures its operation	Forms the Presidential Administration
Forms and heads the Security Council and other coordinating bodies	Forms and heads the Security Council
Appoints the Secretary of State, determines his status and powers	Appoints and dismisses the Secretary of State
	Appoints and dismisses the Ombudsman for Children's Rights
Powers related to elections and referenda	
Calls a referendum on his own initiative; decides on calling a referendum	Decides on calling a referendum on his own initiative or on the initiative of at least 300

on the initiative of at least 300,000 voters or a majority of the total number of deputies of the Jogorku Kenesh	thousand voters or on the initiative of the majority of the total number of deputies of the Jogorku Kenesh;
Calls elections to the Jogorku Kenesh in cases determined by the Constitution	Calls elections to the Jogorku Kenesh in the cases provided for by the Constitution; decides on calling early elections to the Jogorku Kenesh in the manner and in the cases provided for by the Constitution
Calls elections to local Keneshes; dissolves local Keneshes in cases stipulated by law	Calls elections to local Keneshes; dissolves local Keneshes in cases and in the manner prescribed by law; calls early elections to local Keneshes.
Powers in the legislative branch	
Submits draft laws to the Jogorku Kenesh	Submits draft laws to the Jogorku Kenesh
Signs and promulgates laws; returns laws with objections to the Jogorku Kenesh	Signs and promulgates laws; returns laws with objections to the Jogorku Kenesh
Addresses the people of Kyrgyzstan with annual messages on the state of affairs in the country, announced at a session of the Jogorku Kenesh	Addresses the people, the Jogorku Kenesh and the People's Kurultai with annual messages on the state of affairs in the country and on the main directions of the domestic and foreign policy of the state
	Reports annually to the Jogorku Kenesh on his activities
Has the right to call sessions of the Jogorku Kenesh early and determine issues to be considered	Has the right to convene, if necessary, an extraordinary session of the Jogorku Kenesh and determine the issues to be considered
	Has the right to speak at meetings of the Jogorku Kenesh and the People's Kurultai
No later than one month from the date of receipt of the law, signs or returns it with his objections to the Jogorku Kenesh for reconsideration. If, upon reconsideration, the law is approved in the previously adopted version by a majority of at least two-thirds of votes, the law must be signed by the President within 14 days from the date of receipt. In case of failure to sign a law approved in its previously adopted version, within the established time limit, the law is considered signed and subject to publication.	No later than one month from the date of receipt of the law, signs or returns it with his objections to the Jogorku Kenesh for reconsideration. If, upon reconsideration, the law is approved in the previously adopted version by a majority of at least two-thirds of the total number of deputies of the Jogorku Kenesh, such a law must be signed by the President within 14 working days from the date of receipt.
Powers in the Judicial Branch	

Presents to the Jogorku Kenesh candidates for election to the posts of judges of the Constitutional Court	представляет Жогорку Кенешу кандидатуры для избрания на должности судей Конституционного суда по предложению Совета по делам правосудия;
On the proposal of the National Council for Judicial Affairs, submits to the Jogorku Kenesh candidates for election to the posts of judges of the Supreme Court	Presents to the Jogorku Kenesh candidates for election to the posts of judges of the Supreme Court on the proposal of the Council for Judicial Affairs;
Submits to the Jogorku Kenesh candidates for dismissal from the post of judge of the Constitutional Court	Presents to the Jogorku Kenesh candidates for dismissal from the post of judge of the Constitutional Court <u>upon the proposal of the Council of Judges</u>
Presents to the Jogorku Kenesh candidates for dismissal from the post of judge of the Supreme Court	Presents to the Jogorku Kenesh candidates for dismissal from the post of judge of the Supreme Court <u>upon the proposal of the Council of Judges</u>
On the proposal of the National Council for Judicial Affairs, appoints judges of local courts	Appoints local court judges on the proposal of the Council of Judicial Affairs
On the proposal of the National Council for Judicial Affairs dismisses judges of local courts	Dismisses judges of local courts on the proposal of the Council of Judges in cases stipulated by the Constitution and constitutional law
From among the judges of the Constitutional Court elected by the Jogorku Kenesh, the President appoints, with the consent of the Jogorku Kenesh, the chairman of the Constitutional Court and his deputies for a term for five years	On the proposal of the Council of Judges, from among the judges of the Constitutional Court, with the consent of the Jogorku Kenesh, appoints the chairman of the Constitutional Court for 5 years
	Dismisses the chairman of the Constitutional Court in the manner prescribed by the Constitution and constitutional law
From among the judges of the Constitutional Court elected by the Jogorku Kenesh, appoints, with the consent of the Jogorku Kenesh, deputy presidents of the Constitutional Court for a period of five years	<u>On the proposal of the President of the Constitutional Court</u> , from among the judges of the Constitutional Court, appoints the Deputy Presidents of the Constitutional Court for a period of 5 years
From among the judges of the Supreme Court elected by the Jogorku Kenesh, appoints, with the consent of the Jogorku	On the proposal of the Council of Judges, from among the judges of the Supreme Court and with the consent of the Jogorku

Kenesh, the President of the Supreme Court for a term of five years.	Kenesh, appoints the President of the Supreme Court for a period of 5 years
	Dismisses the President of the Supreme Court in the manner prescribed by the Constitution and constitutional law
From among the judges of the Supreme Court elected by the Jogorku Kenesh, appoints, with the consent of the Jogorku Kenesh, deputy presidents of the Supreme Court for a period of for five years.	On the proposal of the President of the Supreme Court, from among the judges of the Supreme Court, appoints the deputy president of the Supreme Court for a period of 5 years
Carried out by the National Council for Judicial Affairs	The transfer (rotation) of a judge of a local court is carried out by the President on the proposal of the Chairman of the Supreme Court in the manner and in cases determined by constitutional law
	Appoints one third of the membership of the Council of Judicial Affairs
Powers in relation to other bodies with special status	
Appoints, with the consent of the Jogorku Kenesh, the Prosecutor General; appoints, upon the proposal of the Prosecutor General, Deputy Prosecutors General; dismisses them from office	Appoints, with the consent of the Jogorku Kenesh, the Prosecutor General; in cases stipulated by law, dismisses the Prosecutor General <u>with the consent of at least half of the total number of deputies of the Jogorku Kenesh</u> ; on the proposal of the Prosecutor General, appoints and dismisses his deputies
Submits to the Jogorku Kenesh candidates for election to the office of Chairman of the National Bank; on the proposal of the Chairman of the National Bank, appoints the deputy chairmen and board members the National Bank; dismisses them from office	Submits to the Jogorku Kenesh candidates for election to the post of the Chairman of the National Bank; on the proposal of the Chairman of the National Bank, appoints the deputy chairmen and members of the board of the National Bank, in cases provided for by law, dismisses them from their posts
Appoints, with the consent of the Jogorku Kenesh, the Chairman of the Central Commission for Elections and Referenda; appoints half of the members of the Central Commission for Elections and Referenda; dismisses them from office;	Submits to the Jogorku Kenesh candidates for election and dismissal for <u>half of the composition</u> of the Central Commission on Elections and Referenda

submits to the Jogorku Kenesh a proposal for the election and dismissal of auditors of the Accounts Chamber.	Submit to the Jogorku Kenesh for election and dismissal from office <u>one third of the members</u> of the Accounts Chamber
Submits to the Jogorku Kenesh proposals for the election and dismissal of the chairman of the Accounts Chamber	Appoints the Chairman of the Accounts Chamber from among the members of the Accounts Chamber elected by the Jogorku Kenesh and dismisses him in cases stipulated by law
Powers in the sphere of foreign policy	
Manages the foreign policy of the Kyrgyz Republic	Represents the Kyrgyz Republic within the country and abroad
Negotiates and signs international treaties of the Kyrgyz Republic	Negotiates and signs international treaties; <u>has the right to transfer these powers to other officials</u>
Signs the instruments of ratification	Signs the instruments of ratification and <u>instruments of accession to international agreements;</u>
Appoints, <u>in consultation with a committee of the Jogorku Kenesh</u> , diplomatic representatives of the Kyrgyz Republic in foreign states and international organizations; recalls them; accepts letters of credence and recall from heads of diplomatic missions of foreign states and representatives of international organizations	Appoints the heads of diplomatic missions of the Kyrgyz Republic in foreign states and permanent representatives in international organizations; recalls them; accepts letters of credence and recall from heads of diplomatic missions of foreign states
Powers in the sphere of citizenship	
Decides issues of the adoption and renunciation of citizenship of the Kyrgyz Republic, and the <u>granting of political asylum</u>	Decides on issues of adoption and renunciation of citizenship of the Kyrgyz Republic
Powers in the military sphere	
The President is the Commander-in-Chief of the Armed Forces of the Kyrgyz Republic	The President is the Commander-in-Chief of the Armed Forces of the Kyrgyz Republic
Determines, appoints and dismisses the highest command personnel of the Armed Forces of the Kyrgyz Republic	Determines, appoints and dismisses the highest command personnel of the Armed Forces of the Kyrgyz Republic
Emergency powers	
In the event of grounds provided for by constitutional law, warns of the possibility of introducing a state of emergency, and, if necessary, introduces it in certain localities	In cases stipulated by constitutional law, warns of the introduction of a state of emergency, and, if necessary, introduces it in certain localities without a prior

without prior announcement, while immediately informing the Jogorku Kenesh	announcement, while immediately informing the Jogorku Kenesh
Announces general or partial mobilization; announces a state of war in case of aggression or imminent threat of aggression against the Kyrgyz Republic and immediately submits this issue to the Jogorku Kenesh for consideration	Announces general or partial mobilization; declares a state of war in the event of aggression or an imminent threat of aggression against the Kyrgyz Republic and immediately submits this issue to the Jogorku Kenesh for consideration
Declares martial law in the interests of protecting the country and the security of its citizens and immediately submits this issue to the Jogorku Kenesh for consideration	Declares martial law in the interests of protecting the country and the security of its citizens and immediately submits this issue to the Jogorku Kenesh for consideration
Assignment of titles and awards	
Awards state awards of the Kyrgyz Republic; confers honorary titles of the Kyrgyz Republic	Awards state awards and <u>state prizes</u> and confers honorary titles of the Kyrgyz Republic
Confers the highest military ranks, diplomatic ranks, class ranks and other special titles	Confers the highest military ranks, diplomatic ranks and other special ranks
Other powers	
Pardons	Pardons
On the basis of and in accordance with the Constitution and laws, issues decrees and orders. Decrees and orders of the President are binding over the entire territory of the Kyrgyz Republic	Exercises his powers through the adoption of decrees and orders, which are binding over the entire territory of the Kyrgyz Republic
Exercises other powers provided for by the Constitution and the laws of the Kyrgyz Republic	Exercises other powers provided for by this Constitution and the laws of the Kyrgyz Republic
Powers of the Cabinet of Ministers, which are in essence the powers of the President, since he exercises executive power	
	1) enforces the Constitution and laws; 2) implements the main directions of the state's domestic and foreign policy; 3) implements measures to ensure the rule of law, the rights and freedoms of citizens, the protection of public order, and fighting against crime;

- 4) ensures the implementation of measures to protect the sovereignty and territorial integrity of the state and the protection of the constitutional order, as well as measures to strengthen defense capability, national security and the rule of law;
- 5) ensures the implementation of financial, pricing, tariff, investment and taxation policies;
- 6) prepares the republican budget and ensures its implementation;
- 7) implements measures to ensure equal conditions for the development of all forms of property and their protection, and the management of state-owned property;
- 8) ensures the implementation of a unified state policy in the socio-economic and cultural spheres;
- 9) prepares and implements nationwide programs of economic, social, scientific, technological and cultural development;
- 10) ensures the implementation of foreign economic activity;
- 11) ensures effective interaction with civil society;
- 12) exercises other powers reserved to it by the Constitution and laws.

Comparative Table

The Jogorku Kenesh:

Constitution of 2010	Draft Constitution of 2021
Introduces amendments to the Constitution	Introduces amendments and additions to the Constitution in the manner prescribed by the Constitution
Adopts laws	Adopts laws
Ratifies and renounces international treaties in the manner prescribed by law	Ratifies and renounces international treaties in the manner prescribed by law
<u>Decides</u> issues of changing the state borders of the Kyrgyz Republic	<u>Considers</u> issues of changing the state borders of the Kyrgyz Republic
Approves the republican budget and the report on its implementation	Approves the republican budget;
	Hears the annual report of the Cabinet of Ministers on the execution of the republican budget
Decides on issues of the administrative-territorial structure of the Kyrgyz Republic	Considers issues of the administrative-territorial structure of the Kyrgyz Republic
Issues acts of amnesty	Issues acts of amnesty
Calls presidential elections	Calls presidential elections
Elects judges of the Supreme Court and the Constitutional Chamber of the Supreme Court on the proposal of the President; in the cases provided for by the Constitution and constitutional law, dismisses them from office on the proposal of the President	On the basis of the <u>proposal of the Council of Judicial Affairs</u> , on the <u>proposal of the President</u> , at least half of the total number of deputies of the Jogorku Kenesh, elects judges of the Supreme Court and the Constitutional Court; in cases stipulated by the Constitution and constitutional law, dismisses them from office on the proposal of the President
The chairpersons of the Constitutional Chamber and the Supreme Court are elected for 3 years by the assembly of judges	At least half of the total number of deputies of the Jogorku Kenesh agrees to the candidates nominated by the President for the appointment of chairmen from among the judges of the Constitutional Court and the Supreme Court for a period of 5 years
Approves the composition of the Council for the Selection of Judges in the manner prescribed by law	Approves the composition of the Council of Judicial Affairs in the manner prescribed by constitutional law
Elects, upon the proposal of the President, the chairman of the National Bank; dismisses him from office in cases stipulated by law	Elects, upon the proposal of the President, the chairman of the National Bank; dismisses him from office in cases stipulated by law

Elects members of the Central Commission for Elections and Referenda: one third of the composition – on the proposal of the President, one third – on the proposal of the parliamentary majority and one third – on the proposal of the parliamentary opposition; dismisses them from office in cases stipulated by law	Elects members of the Central Commission for Elections and Referenda: one half on the proposal of the President, one half on his own initiative, and dismisses them in cases stipulated by law
Elects members of the Accounts Chamber: one third of the composition – on the proposal of the President, one third – on the proposal of the parliamentary majority and one third – on the proposal of the parliamentary opposition; dismisses them from office in cases stipulated by law	Elects members of the Accounts Chamber: one third of the composition – on the proposal of the President, two thirds – on its own initiative; dismisses them from office in cases stipulated by law
Elects and, in cases stipulated by law, dismisses the Akiykatchy (Ombudsman) from office; agrees to bring him to criminal responsibility;	elects in cases provided by law, dismisses Akiykatchy (Ombudsman) from office; agrees to bring him to criminal responsibility;
elects and, in cases stipulated by law, dismisses from office, upon the recommendation of the Akiykatchy (Ombudsman), the deputies of the Akiykatchy (Ombudsman); agrees to bring criminal charges against him	In the cases provided for by law and on the proposal of the Akiykatchy (Ombudsman), elects and dismisses deputies of the Akiykatchy; agrees to bring criminal charges against them
On the proposal of the President, agrees to the appointment of the Prosecutor General; agrees to bring criminal charges against him; gives consent to the dismissal of the Prosecutor General by at least half of the votes of the total number of deputies of the Jogorku Kenesh	On the proposal of the President, agrees to the appointment, dismissal and prosecution of the Prosecutor General by at least half of the votes of the total number of deputies of the Jogorku Kenesh
Approves, by a majority of at least two-thirds of votes of the total number of deputies of the Jogorku Kenesh, the initiative of one third of the total number of deputies of the Jogorku Kenesh to dismiss the Prosecutor General in cases provided for by law	Approves, by a majority of at least two-thirds of votes of the total number of deputies of the Jogorku Kenesh, the initiative of one third of the total number of deputies of the Jogorku Kenesh to dismiss the Prosecutor General in cases provided for by law
Introduces a state of emergency in the circumstances and in the procedure provided for by constitutional law; approves or revokes decrees of the President on this issue	Introduces a state of emergency in the circumstances and in the procedure provided for by constitutional law; approves or revokes decrees of the President on this issue
Decides questions of war and peace; the introduction of martial law; declarations of a	Decides questions of war and peace; the introduction of martial law; declarations of a

state of war; approval or cancellation of presidential decrees on these issues	state of war; approval or cancellation of presidential decrees on these issues
Decides issues of the possible deployment of the Armed Forces of the Kyrgyz Republic outside its borders, if necessary, to fulfill interstate treaty obligations to maintain peace and security	Decides issues of the possible deployment of the Armed Forces of the Kyrgyz Republic outside its borders, if necessary, to fulfill interstate treaty obligations to maintain peace and security
Establishes military ranks, diplomatic ranks and other special ranks of the Kyrgyz Republic	Establishes military ranks, diplomatic ranks and other special ranks of the Kyrgyz Republic
Establishes state awards and honorary titles of the Kyrgyz Republic	Establishes state awards, state prizes and honorary titles of the Kyrgyz Republic
Hears speeches of the President, representatives of foreign states, international organizations	Hears annual messages, information from the President and speeches of representatives of foreign states, international organizations
Hears the annual report of the Akiykatchy (Ombudsman)	Hears the annual report of the Akiykatchy (Ombudsman)
Hears the annual reports of the Prosecutor General, the Chairman of the National Bank, the Chairman of the Accounts Chamber	Hears the annual reports of the Prosecutor General, the chairmen of the National Bank, the Accounts Chamber
The Jogorku Kenesh, in the manner prescribed by the Constitution, brings charges against the President; decides on the removal of the President from office	The Jogorku Kenesh, in the manner prescribed by the Constitution, brings charges against the President; decides on the removal of the President from office
The Jogorku Kenesh exercises other powers provided for by the Constitution	The Jogorku Kenesh exercises other powers provided for by the Constitution and laws of the Kyrgyz Republic
Powers of the JK that were not included in the draft of the new Constitution	New powers of the JK
Adopts laws on calling a referendum	The JK has only the right to submit proposals to the President on holding a referendum; referendums will be called by presidential decree
	Gives the official interpretation of laws
The hearing of annual reports and reports of officials referred to in this article is carried out in accordance with the provisions of this Constitution and laws on the autonomy and independence of state bodies and their officials	
	Gives consent to the dismissal of the presidents of the Constitutional Court and

	the Supreme Court upon the proposal of the President on the basis of the proposal of the Council of Judges, in cases stipulated by constitutional law
	Hears the annual report of the Chairman of the Central Commission for Elections and Referenda
Hears the annual reports of the Prime Minister	
Decides on the expression of no confidence in the Government	
Decides on motions of no confidence in the Government	
Approves the program of activities of the Government, determines the structure and composition of the Government, with the exception of members of the Government who are heads of state bodies in charge of defense and national security	Under the new Constitution, the Jogorku Kenesh merely gives its approval for the appointment of the Chairman of the Cabinet of Ministers, his deputies and members of the Cabinet of Ministers. The procedure for giving approval is not defined by the Constitution.

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www.freedomeurasia.org

email: info@freedomeurasia.org

tel: +1315 636 6499

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NGO Shkola Prava

www.shkolaprava.kg

tel: +996 500 344 335

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