STATE POWER IN THE CENTRAL ASIAN COUNTRIES: QUO VADIS?

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Introduction

Despite the honorable slogans set forth in the constitutions of most of the region's former Union republics, not one of the newly independent Central Asian countries has been able to build a true democracy or law-based state. It is obvious that this situation did not come about by accident. It is the very legitimate and entirely explainable result of these countries' development throughout the entire period of their existence, beginning in 1991.

Almost none of the public politicians, including the leaders of the post-socialist states, has spoken out directly against democracy. On the contrary, they like to talk about their adherence to democratic development. But this is often just a front, propaganda, and not a genuine desire to establish democratic rule in a particular state. For at one time, outright dictators and the supporters of communist totalitarianism called themselves democrats. Today the Turkmenistan mass media, for example, also claim that their country has created true democracy.

In a literal translation from the ancient Greek, the word "democracy" means power of the people. The words of Abraham Lincoln, one of America's outstanding presidents, are also very well known: democracy is government of the people, by the people, for the people. Of course, these brief formulas do not divulge the academic meaning of democracy. But here I would like to emphasis an obvious point: European thinkers, beginning with Plato and Aristotle, always juxtaposed the concept

of "democracy" as a way of governing the political life by many entities against other categories, such as monarchy or tyranny (that is the power of one person), or the power of a small tight-knit group of people (oligarchy, aristocracy).

In our opinion, there is an obvious difference here in the approaches of the European and the Oriental thinkers of the past. In the East, we often hear arguments about the need for the broad participation of different entities in executing power in the state. As a rule, Eastern political thought went in a different direction—it attempted to exalt the power of one person (a monarch). The works of the thinkers of China, India, Persia, the Arab countries, and Turkey are full of such advice. Even the communal traditions which many contemporary politicians are inclined to unambiguously interpret as historical examples of power of the people are not, upon close inspection, very much different from the noted approach of the Oriental thinkers.

In this respect, Central Asia is explicitly following the example of Oriental tradition, whereby nation-building is largely finding its manifestation in creating and perfecting the power of one political entity—the head of state. If we look at the region's most recent history (after the collapse in the U.S.S.R.) from this viewpoint, it is easy to see that it is the struggle of specific individuals to attain the supreme power of the head of state and to retain and hold onto this power that is the essential factor defining not only the political process as such, but also nation-building and constitutional changes. Most likely this was a manifestation of one of Georg Wilhelm Friedrich Hegel's dialectic laws, the law of "negation of the negation." Presidential posts in the republics of Central Asia were formally introduced in order to democratically break down the omnipotent regime of the communist nomenklatura. However, the regimes subsequently created began striving for absolute power themselves, thus being hardly any different from the power of the former general secretaries.

In so doing, there is no doubt that the true reason for many of the constitutional and political crises that the newly independent states have encountered and continue to encounter is in fact not the defects and flaws in the mechanism for constitutionally dividing power in a particular state, but something else. The thing is that this has been a time of ubiquitous economic changes, which went hand in hand with the redistribution of property. Some power figures obtained previously unprecedented opportunities to gain financial benefits from their position in the state structure. And the absence of true democracy in political life only promoted the formation of this new group of property owners. The arising crises appeared to stem from various intrigues or the struggle for power between the "old" and the "new," while in actual fact they were caused by the struggle for ownership and other material paybacks.

Of course, major changes have occurred in the countries of the region during the years of independence, and attempts have been made more than once to reform the state structure. But these reforms cannot be considered consistent. In the sphere of political-power relations, presidential power has gradually transformed their ostensibly democratic course of reforms into something that is not at all characteristic of democratic states, but instead reminiscent of authoritarian regimes. Instead of creating a system where the actors compete and vie for the electorate's votes and come to power as a result of free, open, and fair elections, the political course of the leadership in these republics became all the more obviously inclined toward forming a system with a dominant actor, unambiguously understood as the head of state. This is precisely what the constitutional changes were aimed at.

The Indicative Drift of the Central Asian "Island of Democracy"

In this article, we will look at the nature and trends in nation-building designated above using the example of only one Central Asian country. We will focus our attention on Kyrgyzstan, since this small republic can be considered the most democratic and liberal in the region. In general, its leadership likes

to exploit the theory that Kyrgyzstan is the pioneer of almost all the reforms, not only in the region, but throughout the CIS as a whole. So a critical analysis of how the "leader," the "best research target among the given alternatives," is doing might help us to define the problem as a whole.

In this country, the nation-building reforms have not been fast-moving and radical. On the contrary, they were drawn out over time and were not as evident as in Turkmenistan and Kazakhstan, for example. But, from our viewpoint, this only indicates that the power structures in Bishkek did not have the necessary resources for carrying out rapid reforms. An abrupt and unequivocal turn toward authoritarianism might have led to a significant reduction in interest toward the republic on the part of foreign states, international organizations, and various foundations. And under Kyrgyzstan's conditions (the country does not possess raw hydrocarbon resources), this was fraught with immense difficulties. A scrupulous and objective analysis shows that during the political and constitutional reforms the question of how to create an efficient mechanism for uniting the declarative human and citizen rights and freedoms and institutions of a civil society with the activity of the higher state power institutions had essentially not been imperatively raised as realistic. The folly of this approach is extremely obvious: after all the main driving belt for helping the population and institutions of a civil society stay connected to the power structures—multiparty democracy—is something the republic has given very little attention to.

The country adopted its first constitution after gaining independence on 5 May, 1993 at the twelfth session of the 12th Supreme Soviet. A few years later, Askar Akaev would write that the old constitution had by that time become an obstacle blocking the way to the state's sovereign development.[1]

On the whole, the content of this constitution reflected the desire to build a contemporary democratic law-based state with the priority on universal human values. It can be presumed that at that time, this standpoint was entirely genuine and reflected the intentions actually existing in society. What is more, several provisions of this act were clearly brought about by the desire to avoid the abuses characteristic of the recent communist past. The people of the republic were declared the only source of state power (Art 1.3); no part of the people, no association, and no individual was to have the authority to appropriate power in the state (Art 2.2).

Nevertheless, it must be noted that to a certain degree this constitution was a compromise document, which probably suited all the most prominent political forces in the republic at the time. The leftists were indulged (Art 4.3 stated that the buy-sell of land was forbidden, although on the whole the Basic Law recognized the right to private property). The nationalists were to be inspired by the provisions in Art 5.1, which set forth that the state language of the Kyrgyz Republic is exclusively the Kyrgyz language.

Of course, a significant step forward was the formulation of the articles on human and citizen rights (sections II, III). They were now based on the theory of natural rights, so the emphasis was made on liberalism in constitutional regulation.

The constitution declared plurality (Art 8) and division of power (Art 7). The previous system of power of the Soviets was replaced by a system of state power and local self-government, and the president was called the head of state, acted as the guarantor of the inviolability of the constitution and the unity of state power, and ensured the coordinated functioning and interaction of the state structures (Art 7.1, Art 42.1, 2).

The president had an impressive list of powers, he was not the head of the executive power, but he defined the structure of the government, appointed the cabinet head with the consent of the parliament and, on the initiative of the former and with the consent of the parliament also appointed the cabinet members, controlled the work of the cabinet and had the right to chair its meetings. He also made decisions about dissolving the government (within the framework of a special procedure) and could cancel or stop its acts and the documents of certain government bodies from going into effect. The head of state had the right to dissolve the parliament, but only in compliance with the results of a national referendum. What is more, the parliament could be dissolved on a decision made by a qualified majority of the deputies

[1] See: A. Akaev, *Pamiatnoe desiatiletie*, Bishkek, 2001, p. 163.

themselves. It is interesting to note that the Basic Law made it possible to transfer presidential powers to the parliament chairman with respect to holding international negotiations and signing interstate agreements. The president himself could also be removed from his post by the parliament based on a decision issued by the Constitutional Court (Arts 51-53).

According to the 1993 Constitution, the republic's parliament—the Zhogorku Kenesh—was made up of one house and consisted of 105 deputies. It had the traditional prerogatives of a legislature of that rank. But it should be mentioned that they also included the right to officially interpret the normative acts the parliament adopted itself, and the right to bring up questions at the referendum. An important power enforced in Art 59.1.25 of the Constitution was the right to decide (by a two-thirds majority) if necessary the question of confidence in the cabinet or one of its members. The parliament chairman could temporarily be transferred the powers of the head of state if the latter were unable to perform his duties.

It should be noted that the very text of this constitution has not get presented sufficient opportunity to judge the effectiveness of the parliament's representative function. The text of the Basic Law did not mention the proportional election system, although according to districts, political parties could participate in nominating candidacies for deputy posts. On the other hand, historically, the republic's domestic political problems are largely related to the regional characteristics of its northern and southern regions. And the fact that the higher representative power was a one-house body would make it impossible for an upper parliamentary house to make use of the system of taking into account the interests of regional constituencies widely applied in world practice. Finally, in this respect, attention should be drawn to yet another aspect: the number of parliamentary deputies compared with the Soviet era has significantly decreased (there used to be 350), which in itself was not conducive to best representing the interests of various groups of the population.

The president had the right to protest in the Constitutional Court any law adopted by the parliament (just as any international agreement ratified by it). It is interesting to note that the constitution set forth the right to recall deputies (Art 56.5), although the constitutional theory of contemporary parliamentarianism repudiates it as part of the so-called "imperative mandate."

In general it can be said that despite the shortcomings mentioned above, the text of the 1993 Constitution was quite well executed from the technically legal viewpoint. The frequently expressed opinion among those close to the country's presidential structures that this constitution was in many respects a concession on the part of the reformers, who, for understandable reasons, the authors of these statements considered to be the president's supporters, to the "conservatives"—the parliamentary deputies, is not sufficiently justified. Such things always occur during the constitutional process and judgments like these should be taken with a pinch of salt. The formulation that it was impossible to fully implement private ownership of land really was a concession, but it has its roots in the past and in this sense was justified. It could not have been otherwise under the actual conditions existing in Kirghizia at that time. Any other wording would have led to an open conflict.

As for the system of power institutions, it would hardly be justified to unequivocally talk of any concessions. First, we should not forget that the Constitutional Commission was headed by the head of state himself. It is characteristic that criticism of the Basic Law was heard much later, when the political necessity for it arose. Some Kyrgyz lawyers believe that the 1993 Constitution implemented the formula "weak president—superstrong parliament," whereby they claim that this supposedly contradicted the division of power declared in this same constitution. This could only be true if division of power was understood as a system characteristic of a classical presidential republic, and with several major stipulations at that. But a presidential republic, no matter how dear it may be to the hearts of its supporters in Kirghizia, is not the only way to implement the principle of division of power. The Basic Law carried out this division, although perhaps not in an ideal way. A certain balance of power was also established. Of course, this constitution cannot be called the classical version of a presidential, parliamentary, or semi-presidential republic, but it nevertheless formally tended toward the model that combines elements of a semi-presidential and a parliamentary republic, and not only toward a parliamentary republic, as certain authors believe.

From our viewpoint, the problem with the effectiveness and workability of the constitutional model adopted in 1993 is not the theoretical and juridical arguments about the virtues or vices of this model, but how it could function under the changes the country was going through at that time. In reality, the republic underwent a serious socioeconomic crisis. Given the fact a civil society and party democracy had not yet formed, this crisis inevitably escalated into political crises and upheavals, the solution to which some actors of the political process tried to look for subjectively in further constitutional reforms. In so doing, the stimulating motives, in this case, the desire to reinforce presidential power as much as possible, were masked by criticism of the parliament, saying that it was not only the highest representative and legislative power body, but also the highest state power body in general, essentially, the "usurper" of all important state and power prerogatives. Therefore instead of honing the interactive "president—parliament—government" mechanism, some of the actors decided to go for more radical "repair" of the constitutional power mechanism.

Thus, the new constitution has not brought peace to the country's domestic life, which Askar Akaev explained by the contradictions between the reform wing and the conservative part of the deputy corps. This view was rather widespread in the political circles of the CIS states. What is more, the parliament was not distinguished by any particular high work quality. This was natural since it was still carrying the baggage it inherited from Soviet times. Most deputies were not professionals in legislative activity, which reflected on the quality of the laws adopted. Of course, the elected representatives of the people were extremely carried away by purely political questions, in some cases, by personnel appointments, and zealously fought for leading posts in the parliament itself. They tried to grab as much power as possible for themselves. In the transfer from totalitarianism to the new rule, this was not that surprising, particularly since the authorities themselves called the republic an "island of democracy."

The president finally began conducting a policy of cutting back the prerogatives of the legislative power. The events relating to the corruption scandals in the republic also prompted him to take this approach to some extent. The balance of power began to dissipate not so much because of the imperfection of the constitutional model, as due to certain entities of the political process conducting a primarily selfish, lopsided, and subjective policy. The state power structures fought among themselves, clearly having no consideration for society in the process. The president, whose rights were supposedly reduced under the constitution, would ultimately opt for dissolving the parliament.

Of course, the head of state tried to resolve the crisis, but at the same time initiated extremely serious and noteworthy constitutional changes. Whereby they were made in an extremely short time. On 21 September, 1994 Askar Akaev issued a decree On a Referendum to Introduce Amendments and Addenda into the Constitution of the Kyrgyz Republic.[2] According to this act, a referendum was to be held in the republic within a month (!)—on 22 October. The decree also set forth the main formal side of the constitutional changes themselves: the parliament was to consist of two houses. The country's entire population was to be represented by 35 deputies of the first house—the Legislative Assembly, and the second house was to be elected on the basis of representation of territorial interests and called the Assembly of People's Representatives. The first was to work on a permanent basis, the second in sessions. But counter to world practice and the common sense invested in the approaches to democratic rule, the second house was to be twice as large as the first, with 70 deputies. Whereby according to the authors of this reform, both houses were not to constitute the classical version of hierarchy—"upper and lower houses." It was presumed that they would essentially be horizontal to each other.

Brainwashing of the population yielded the desired results. A decision was made at the referendum to reform the parliament into a two-house body (75% of the votes in favor).[3] The president's team managed to organize self-dissolution of the acting parliament. The election system itself was changed to ensure that its majority model would minimize the possibility of the head of state's political adversaries, primarily the communists, of effectively participating in the elections. In February 1995, elec-

[2] See: *Slovo Kyrgyzstana,* 23 September, 1994.
[3] Reuters, 24 October, 1994.

tions, which were rampant in mass violations, were held to the new parliament, the work of which began on 28 March of the same year. This was an obvious political victory for Askar Akaev, who outsmarted his rivals. As a result of the constitutional reform, the head of state, by technically remaining the arbitrator over all power branches, obtained even greater powers than before, including executive functions.

But the head of state's victory was not total. Under the conditions of the continuing socioeconomic crisis, the new parliament had not only deputies sympathetic to the president. Within the legislative body, criticism of the cabinet and the president himself began again. The republic's leadership was unable to make the work of the Cabinet of Ministers productive, and the numerous undertakings to reform individual areas of the national economy based on liberal market conceptions, mainly in nonproduction branches, failed to qualitatively improve the main macroeconomic indices. Upon inspection, the accelerated movement declared by the authorities toward a democratic society also looked dubious to say the least.

As a result, the constitution was subjected to various "repairs," each time with the assertion that this was a huge, decisive, etc. step toward democratic rule.

On 10 February, 1996, another referendum was held to introduce new amendments and changes into the Basic Law. The procedure for removing the head of state from his post has become much more complicated. Now, such an initiative can only be proposed by the majority of the deputies of the Legislative Assembly, and with a decision by a special deputy commission at that. This house made impeachment decisions according to the same procedure and with the same number of votes as in the former version of the Constitution. But the Assembly of People's Representatives was now also able to make this decision by a majority of no less than two thirds of the total number of deputies, whereby there was a set term for this procedure: no later than two months after the Legislative Assembly made its indictment of the president (otherwise it was considered denied). The main thing was that henceforth this constitutional norm spelled instant death for the deputies: if the Constitutional Court issued a negative decision on the indictment of the president put forward by the Legislative Assembly, it was followed by dissolution of this house (Art 51.2-4).

The parliament's powers were also significantly cut back on several major issues. For example, the president could dissolve both of its houses (or one of them) prior to term in the following cases: according to the results of a referendum, if when voting the deputies refused three times to consent to the appointment of the prime minister, as well as on the extremely flimsy grounds "of any other crisis caused by irresolvable disputes between the houses of the Zhogorku Kenesh, or between one or both of the houses of the Zhogorku Kenesh and other branches of state power" (Art 63.1-2, Art 71.4).

Having two houses complicated the legislative process, particularly during voting when the head of state used his right to veto (Art 66). But it is extremely indicative that norms were introduced into the constitution, which were borrowed from neighboring Kazakhstan, where as a result of the constitutional reform of 1995, the country's president, Nursultan Nazarbaev, gained extremely significant prerogatives for himself at the expense of the parliament. Art 68 appeared in Kirghizia's constitution, the norms of which permitted the parliament to delegate its legislative powers to the president for no more than one year (Item 1). What is more, legislative powers were also transferred to the head of state when both houses, or even one of the houses, of parliament were dissolved (in the latter case only the legislative powers of the particular house were transferred). In this way, the president could legislate by issuing decrees (Art 68.2-4), as a result of which the division of power and its balance clearly tipped in favor of the head of state in one of the most important spheres of activity in any parliament—the legislative.

The essence of the reform obviously consisted of reinforcing the powers of the head of state both in his relationship with the parliament and with the Cabinet of Ministers. In so doing, the president did not belong to one of the power branches, but was raised above them, and obtained real and very serious levers of influence over all of its branches.

The powers of the head of state were technically restricted by the constitutional limitations imposed on the term of office of a specific figure in a high-ranking government post and the fact that the parlia-

ment was able, at least in theory, to instigate an impeachment procedure against the president. But under Kyrgyz conditions, these guarantees were clearly insufficient, which was revealed by further practice. The constitutional limitations on term of office were later "adjusted" with the help of a decision by the Constitutional Court.[4]

Soon thereafter Askar Akaev initiated a new stage in the constitutional changes. This was not the most laudable stage in the republic's constitutional development. Of course, there is nothing wrong in making amendments to the constitution, but any changes should be suitably processed. This primarily requires that an in-depth investigation be conducted of why the previous norms were ineffective along with an extensive discussion of the alternatives. This was not done in 1994, or in 1996, or in 1998. Discussions of the most important constitutional changes were nothing more than formal.

On 1 September, 1998, a presidential decree was issued on yet another referendum to vote on the draft law On Introducing Amendments and Addenda into the Constitution of the Kyrgyz Republic. This time, the "repairs" to the constitution were motivated by indications that one of the houses of parliament was not working efficiently. The reproaches were targeted at the Legislative Assembly of the Zhogorku Kenesh. It accounted for the most of the legislative activity, and it was this house that reviewed and adopted most of the laws. Due to the above-mentioned injudicious changes to the Constitution in 1994, however, this house was clearly too small and its productive work during the legislative process was often brought to a halt due to the trivial absence of a quorum at the meetings. Essentially any of the state's most important normative acts could be adopted if 17 deputies voted for it.

What is more, when striving in 1994 to ensure greater administrative resource at the elections of deputies to the Legislative Assembly, which was expressed in a reduction in its size, the "architects" of the constitutional changes did not keep in mind another very obvious danger of this step. The small number of deputies in this house raised the "status," significance, and weight of their votes not only with respect to the presence or absence of a quorum at meetings. It was enough for those interested in the voting going a certain way to incline (using various methods) the rather small number of elected representatives in their favor in order to pass a particular decision through parliament (or, on the contrary, come down on it). In other words, in light of the republic's largely clan and regional society, the faulty decision on the size of the parliament adopted in 1994 opened up broad opportunities for uncivilized lobbying.

The measures proposed this time by the president were not radical: he proposed raising the number of seats in the Legislative Assembly to 67 and reducing the number in the Assembly of People's Representatives to 38. In so doing, there was an attempt (which was inconsistent) to introduce the element of representation by political parties into the formation of one of the houses. It was suggested that approximately 22% of the seats in the Legislative Assembly (15 mandates) be distributed on the basis of the election results according to party lists, thus creating a 5% barrier.

At the same time, there were suggestions to introduce several amendments into the constitution, realistically aimed this time at changing the status of the parliament and specific deputies, mainly with respect to various limitations on their status and prerogatives. For example, there were proposals to establish a residence qualification of no less than five years. In so doing, a deputy of the Assembly of People's Representatives must meet another residence qualification of at least three years on the territory of the corresponding region or in the city of Bishkek (Art 56.1). This was a formal attempt to strengthen the ties between voters in the regions and their elected representatives, but at the same time this measure was really aimed against the possibility of a large number of deputies obtaining seats in parliament from the most politicized and "advanced" region in the party respect—the republic's capital.

Deputy immunity was also restricted, which the authorities motivated by the need to eliminate the contradiction between the constitutional principle of equality of all citizens before the law and court and this institution. The restriction on deputy immunity was apparently an attempt to put pressure on several elected representatives who were becoming too active in the political struggle.

[4] See: A. Kurtov, «Presidential Elections in Central Asia,» *Central Asia and the Caucasus*, No. 6 (18), 2002, pp. 28-29.

The latest constitutional innovations also cut back parliamentary powers in the sphere of financial and budget relations. Now any amendments and addenda to the law on the republic-level budget, as well as new draft laws in any way related to taxes and increasing budget spending could only be introduced with the consent of the Cabinet of Ministers (Art 65.3).

Another important reason prompting the holding of the 1998 constitutional referendum was the problem of private ownership of land unresolved by the 1993 constitution. In the interim, the parliament discussed this question more than once, but did not adopt any decisions. Therefore Askar Akaev decided to make use of the referendum in order to introduce the institution of private ownership to land. This was done by changing the wording of Art 4.3 of the Basic Law.

As was to be expected, the brief referendum did not lead to serious adjustments of the mentioned presidential draft of the constitution. Only the number of seats in the houses of parliament was adjusted slightly: the Legislative Assembly was to have 60 seats, and the Assembly of People's Representatives 45 (Art 54.2).

On 17 October, 1998 a new referendum was held. The latest changes in the constitution were given legal force. And to make sure the deputies would not put up any resistance, two additional sections were introduced into the final eighth chapter of the constitution, the main sense of which was that the parliamentary deputies should retain their powers for the term for which they were elected.

As a result, the country's model of power united elements of a semi-presidential and presidential republic. Although he was not the head of the government, the president had vast opportunities to control its formation and activity. But, as practice showed, none of this raised the work efficiency of the executive power. During the past few years, the country's cabinet has changed hands ten times. And the republic is by no means prosperous. The average wage is one of the lowest in the CIS, now it is just a little more than 30 dollars.

Nation-Building Reaches Its Finale

The latest version of the constitution has not made life any easier for the country's citizens. The weakness of Kyrgyz statehood was demonstrated during the so-called Batken conflicts. But even after the Islamic militants were routed, life did not calm down. Internal civil problems became aggravated. Even the appearance of the forces of the North Atlantic Alliance, which were perceived at first as manna from heaven, did not justify the hopes of fattening up the state's emaciated treasury at the expense of the new "apartment owners" and of resolving several other problems. What is more, in March 2002 clashes of residents in the republic's south, who were protesting against the government's policy, ended in tragedy. Several of the demonstrators were killed by the police. The bloodshed only caused the opposition to become more brutal. Acts of civilian disobedience followed one after the other, spreading to more and more regions of the country. President Askar Akaev was forced to dissolve the government and swore to punish those who caused the demonstrators' deaths.

Kyrgyzstan, which for the past ten years has been trying to pose as the most democratic state in the region, could not resort to tightening screws and unbridled repression of the opposition. The people, who had already tasted the sweet air of freedom, were unlikely to part voluntarily with the rights they had acquired. And resorting to violence with an empty treasury would have made it hard for the Bishkek authorities to obtain more credits and financial aid from the world community, thus condemning the state to death from starvation.

So again the solution was found in adjusting the republic's political and state structure. At first Akaev put forward a new national idea—"Kyrgyzstan is a country of human rights." In November, the first ombudsmen—plenipotentiary on human rights—appeared in the country. The leader of one of the political parties, parliamentary deputy Tursunbai Bakir Uulu, was elected to this post. Admittedly, the authorities' human rights protecting efforts did not go as far as pardoning several opposition leaders,

such as Felix Kulov. And the president essentially did not keep the promise he made in the spring to punish those guilty of killing the demonstrators.

On the other hand, society's attention was diverted to constitutional reform. The republic's main political forces were drawn into its discussion. As early as 26 August, the president, to the surprise of many, announced the need for constitutional changes. And as early as 4 September, an urgently formed Constitutional Assembly set to work. On the basis of the half-finished articles of the presidential administration, it was able in just six weeks to draw up a draft of amendments to the Basic Law.

This haste was due to the desire to make use of a broad public discussion on the constitutional innovations as a counterbalance to the growing unrest and demonstrations by the irreconcilable opposition. What is more, it was important for Akaev to show those around him that the state ship was still moving confidently along the democratic route. In addition, the referendum on introducing amendments into the constitution was joined up with the question of the current president remaining in his post until 2005.

As a result, for the fifth time the authorities declared the need for constitutional reforms, announcing again that they planned to redistribute powers between the parliament and the president. The population was convinced that now the head of state would yield some of his powers, and the matter would henceforth concern the building of a presidential-parliamentary republic. The last version of the amendments to the constitution was published on 14 January, 2003,[5] that is just three weeks before voting day.

The voting was held on 2 February, 2003. Seventy-six point six one percent of the total number of voters said yes to adopting the Law on the New Version of the Constitution of the Kyrgyz Republic. Seventy-eight point seven four percent of citizens who had the right to participate in the referendum voted for Askar Akaev to remain president until December 2005 (until the end of his constitutional term) and put the intended positive changes to the Basic Law into practice.[6]

In our opinion, a technical and juridical analysis of the amendments introduced cannot provide exhaustive arguments for making a qualitative evaluation of the constitutional reform of 2003. But we can assert that not all the goals declared by its organizers were reached during the Basic Law's latest facelift. Let us take a look at how it was carried out and the extent to which the assertions that the parliament received powers that no other parliament in the world enjoys are legitimate.[7]

The new formulation of Art 1.4 of the Constitution was the first to attract our attention. Whereas it used to read: "Only those elected to the Zhogorku Kenesh and the President of the Kyrgyz Republic shall have the right to act in the name of the people of Kyrgyzstan," after the 2003 referendum the head of state, rather than the parliament, is in first place in this extremely important juridical formula. Art 7.2 retained the procedure for listing entities that execute state power in the country: first the head of state, then the parliament, then the government. This formulation appeared as early as 1996, when it really did replace the previous norm (the 1993 version), which said that the parliament executes legislative power, the government and local state administration executive power, and various courts and judges judicial power. As we see, the priority was not placed on the parliament, and as for the government, Item 2 was supplemented with wording to the effect that the executive power bodies are subordinate precisely to it.

The president's status, which is formulated in Art 42, has essentially not changed. Insignificant amendments regarding his election were also introduced into the section. In our opinion, the new formulation on the term for conducting presidential elections set forth in Art 44.1 is not ideal, since in the future it could lead to contradictions between the constitutional norms on the date of the elections and the term during which the president shall perform his duties. This contradiction does not arise only if the president executes his powers during the entire term set forth by the constitution (five years). But Art 44.1 talks about two different principal legal concepts—regular and early pres-

[5] See: *Slovo Kyrgyzstana,* 14 January, 2003.
[6] See: Ibid., 6 February, 2003.
[7] See: Ibid., 1-2 May, 2003.

idential elections, the deadlines for holding which are different, but precisely set. Art 52.1, which also sets forth the time for electing a new president after termination of the previous head of state's powers for the reasons set forth in Art 50.1, 2 (voluntary retirement, impeachment, inability to execute power due to illness or death), said nothing about the term of office of the new president somehow changing in this event. After all, it is doubtful that anyone believes the head of state is immortal, cannot get seriously ill, or become severely injured. Or that he is obligated no matter what, even against his will, to fulfill his duties as head of state like a slave without rights, chained to a galley's oars. Finally, the constitution prescribes an impeachment procedure. And any of these events may occur any day of the year.

For a situation could develop whereby after early elections, the next regular presidential elections must be held by the deadline set forth in Art 44.1, that is the last Sunday in October of the fifth year of the current president's term. But common sense says that this demand with probably run counter to Art 43.1 on the five-year presidency term and to Art 45.4, which regulates the time the president's powers begin and end. In other words, an obvious and gross error has been made, as the result of which one constitutional norm could contradict others.

The changes in the second section of the third chapter of the constitution were largely caused by two factors. First, the parliament now, as in 1993, consists of one house, which required replacing the formulations of those articles in which the names of the specific houses of parliament used to figure. Second, the reforms really have resulted in a redistribution of power to a certain extent between the head of state and the parliament. But this redistribution was in no way as radical as the intellectuals serving the head of state tried to make out.

The president retained his right to define the structure of the cabinet, but approval of this became the prerogative of the parliament (Art 46.1.1, Art 58.1.8). It is worth noting that the government is dissolved when the president comes into office (Art 70.1.3). The parliament's consent is required for appointing the prime minister and members of government, but the dismissal of the prime minister or a member of cabinet, just as the whole cabinet, is still the prerogative of the head of state. What is more, the president has powers with respect to several administrative structures that are not subordinate to the government. He appoints the secretary of state, forms his own administration and national security service, forms and heads the Security Council and "other coordinating bodies," the state defense and national guard service, and creates and dissolves executive bodies that do not belong to the government.

The president also has classical powers in foreign policy, but the constitution stipulates that the head of state can entrust the prime minister, cabinet members, or other officials with holding talks and signing international agreements (Art 48). We will remind you that this was also possible under the 1993 constitution, but at that time these rights were allowed to be transferred to the head of parliament. The president is also the commander-in-chief of the armed forces, and appoints and replaces their highest command.

The head of state has the right to issue two kinds of normative acts—decrees and orders. In so doing, the constitution has granted the president the following exclusive right: his decrees on questions regarding the financing of urgent measures using state funds have the force of legislative acts (Art 46.5.6, Art 47.3).

No major changes indicating a drastic redistribution of power in favor of the parliament were introduced, while the institution of impeachment was retained. And this, in our opinion, is extremely indicative. This institution of constitutional law is still constructed in a way that makes its implementation as difficult as possible. This means that in the new constitutional system too, the head of state is essentially protected from one of the most serious tools in the system of state power division at the disposal of parliaments in all of the world's civilized countries.

The impeachment procedure can only be instituted based on an accusation of state treason or other grave crime put forward by the parliament, which in itself seriously narrows down the possibility of using this institution (in the material-legal respect). In practice this means that the president cannot be subjected to impeachment for violating the constitution, for instance, but he can be for some trivial highway rob-

bery (which is highly unlikely). This is the way many former Soviet republics acted,[8] that is, we have a version of the parliament's quasi-legal powers. However, impeachment is an extremely complicated procedure. The initiative must come from at least half of the parliamentary deputies, and parliament must create a special commission, which has to issue its own conclusion on the case. After this, the impeachment question is put to the vote in parliament and a qualified majority of votes must be gathered in support of this initiative.

If the parliament supports the accusation, this decision is passed on to the Constitutional Court. It should be noted that its members are appointed by the parliament, but on the initiative of the head of state. There have often been times when this structure has made very dubious decisions in favor of the current head of state. Nevertheless, the constitution sets forth a truly Draconian norm, which cannot be justified from the viewpoint of the division of power and the theory of a law-based state. The right of any entity to appeal to court should not be accompanied by a clear and unambiguous threat to use harsh state repressive measures against the appellant. Otherwise, the fundamental principles of justice themselves are deformed. But Kyrgyzstan takes a different approach. After considering the information presented by parliament, the Constitutional Court may issue a positive or negative verdict on it. But if it issues a negative verdict, this entails dissolution of the parliament. There is no legal logic in this approach, but there is an attempt to use this norm as a kind of "Damocles sword" hanging over parliament. For in so doing, the fate of the legislative power branch, which is trying to resolve the problem related to the head of state in a system of checks and balances, is made dependent not only on its own decision or the will of the voter, but also on the intermediate (within the impeachment procedure) verdict of a third party.

If the Constitutional Court issues a positive verdict, the parliament should hold a vote on the merits of the matter. An impeachment decision may be made only if two nigh impossible conditions are fulfilled. First, at least four fifths of the total number of deputies must vote in favor of this decision. Whereby even in the previous version of the constitution, this norm was not as strict—only two thirds of the votes were required. Second, this decision must be made no later than two months from the date the accusation is made by parliament. Otherwise, it is considered denied. As we see, fulfilling all these requirements is hardly realistic, therefore the parliament is essentially denied the opportunity of using this right. That is, in this respect, the constitutional amendments testify not to a weakening, but to a strengthening of the president's position in the state power system.

Essentially, the constitutional structure applied to nation-building largely returns to the version adopted in May 1993. Reform of the Basic Law has sort of turned a full circle, or more precisely a spiral, since it was obviously accompanied by significant reinforcement of the head of state's position. Under the conditions of a small mountainous country, it has been impossible to unite strong presidential power and an efficient democratic parliament in a beneficial way. Neither the head of state, nor the higher legislative body have been able to ensure the necessary constructivism required to make the state mechanism work.

Nevertheless, the last constitutional reform did increase the parliament's powers and beginning in 2005 it will become a one-house body. The Zhogorku Kenesh has the right to participate in forming the government and other state bodies, that is, the prime minister, ministers, the chairman of the Central Election Commission, the head of the Audit Chamber and the judges of local courts will be appointed only with the consent of the parliament. It is also regaining certain control functions, and deputy immunity is being restored, although not completely.

But all these positive aspects could be reduced to naught by two very important changes. First, the higher representative power branch is being reduced to 75 deputies. Second, the proportional election system is being eliminated. Now all the parliamentary deputies will be elected only according to majority voting districts (Art 54.2). What could this mean in practice? Presidential power, which in the past has been unable to subordinate the parliament to its will, particularly since active opposition deputies have invariably entered its ranks from several districts and political parties, has now carried out an extremely cunning combination. The reduction in the size of the parliament means that the borders of the voting districts will be extended, that is, the authorities are trying to form new districts in such a way as to make

[8] For more detail, see: A. Kurtov, "Impichment: gor'koe lekarstvo ili instrument politikanov," *Obozrevatel,* No. 11, 1998.

it difficult for former opposition deputies to be elected in them. What is more, in a mountainous republic where most of the population does not have full-fledged means of communication (for natural terrain reasons), any enlargement of the voting districts will primarily play into the hands of candidates relying on the administrative resource, and representatives of the authorities are being given a head start with respect to influence on the electorate. Abolishing elections by party lists does not show progress toward multiparty democracy, but toward something else. Askar Akaev joked that Holland is called the "country of tulips," whereas Kyrgyzstan can rightly be called the "republic of nongovernmental organizations." But references to their abundance should not mislead us. It is not nongovernmental organizations, but political parties that should be created for functioning in the sphere of politics, and reducing their significance is extremely indicative.

Summary

Democracy requires the functioning of a complex system for regulating and coordinating the impulses coming from society. In any democratic state, the opposition acts as part of society. Therefore, its total or disguised isolation from politics is like a situation where an outwardly normal person takes a scalpel to engage in trepanation of his skull and removes the left hemisphere of his brain, claiming that he doesn't need it. The authorities in almost all the Central Asian states are essentially engaging in this absurd behavior, as a result of which the political process in the region's republics is an invalid suffering from a serious injury due to an operation carried out by apologies for surgeons.

The authorities of Kyrgyzstan (like of many other similar countries by the way) usually like to talk about how unprepared the opposition is to take up the reins of state rule. For example, Askar Akaev has noted on more than one occasion that there are approximately 30 active political parties in the republic at present. However, in his opinion, most of them do not reflect the political moods prevalent in society, the political field is not structured as it should be, and a systemic opposition has not yet formed. There is a grain of truth in this. Moreover, the truth is that he who does not have the opportunity will never learn to rule. Admitting that plurality is underdeveloped just happens to show the shortcomings and distortions in building a democratic nation. What is more, the participation of the opposition in the political process is much wider and more diverse than the circumstances Askar Akaev indicated, and does not merely boil down to transferring power from one party to another.

In this respect, the democratic gist of the relationship between the authorities and the opposition is very like today's understanding of the how the market economy works. The market, as a political democracy, presumes that anyone who wishes may participate in business. Not everyone has the God-given talent of becoming a successful businessman, but the law is obliged to guarantee all citizens the right to try their luck. Only then can the market economy have the necessary effect, but the market in itself cannot guarantee 100% success to every undertaking, there are also losers. The same goes for democracy, it in no way guarantees all the participants in the political process absolute success in the struggle for power, but it is obliged to guarantee them the right to try and achieve this goal in an honest way. Of course, presuming this is genuine democracy, and not its surrogate. Democracy on the whole, like the market, presupposes a priori a certain invariance, it is only in a planned economy or in the event of authoritarianism that everything is supposedly known ahead of time and for many years to come.

In the Central Asian countries, constitutions envisage a non-party nature in the organization of state power. Even if a certain political force wins a parliamentary election, it does not have the opportunity to implement its own program. Under such conditions, the meaning of political pluralism, a multiparty system, and representative rule is totally lost. The status and powers of the parliaments in all the Central Asian states without exception still do not allow these structures to efficiently control the activity of the president and the government. This is one of the sad results of nation-building in the region.