ALMANAC 2012

Governing and Reforming Kyrgyzstan's Security Sector

DCAF
a centre for security, development and the rule of law

Aida Alymbaeva (Ed.)

Almanac 2012:
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Geneva –Bishkek, 2013

Geneva Centre for the Democratic Control of Armed Forces (DCAF), www.dcaf.ch

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Aida Alymbaeva, ed., *Almanac 2012: Governing and Reforming Kyrgyzstan's Security Sector* (Geneva – Bishkek: Geneva Centre of the Democratic Control of the Armed Forces, 2013).

Security and Defence Management series no. 4

The publication of this book has been funded by the Directorate for Security Policy (SIPOL) - Swiss Federal Department of Defence, Civil Protection and Sports.

Executive Publisher: Procon Ltd., http://www.procon.bg

Cover design: Printhouse Ltd.

Translation into English: Greta Keremidchieva

ISBN 978-92-9222-278-9

PREFACE

I take pleasure in writing this preface to the first ever Almanac on Security Sector Governance in Kyrgyzstan, written and edited entirely by civil society actors. Public ownership of areas hitherto deemed 'secret,' 'difficult,' and generally inaccessible such as the oversight of the security sector (including the intelligence sphere), is an important step in the democratization of a country and an essential expression of the sincerity and 'maturity' of both the security organs and their executive, legislative and judicial oversight structures.

Accountability and transparency of the security sector do not emerge accidentally. The sector has an intrinsic tendency towards secrecy, especially in a post-authoritarian setting – some would seek to argue that secrecy is part of its mission and mandate. Transparency and accountability then need to be enforced: by the democratically elected organs, but as well by civil society actors.

The present volume is an early document and expression of civil society competence and ambition: competence to understand and document developments in and adaptations of the security sector. Ambition to play a role in shaping the security sector of the future. If the security sector is to create and safeguard security for the people, and not a party, political pressure group or high office in the administration only, and to do this in harmony with stipulations of international law, human rights and fundamental freedoms, it will heed the inputs from and monitoring by the civil society.

This volume was made possible not only by our colleagues from the Kyrgyz civil society, but is also a token of Switzerland's enduring commitment to the Partnership for Peace, and its special commitment to cooperation with the countries of Central Asia. I would like to thank the Swiss Ministry of Defence for its generous support for this volume which will simultaneously appear in Kyrgyz, Russian and English.

Thanks and congratulations also go to our Kyrgyz colleagues, most of all Ms. Aida Alymbaeva who diligently organised and edited the articles collected in this volume.

Geneva, August 2013

Philipp Fluri, Ph.D.
Deputy Director DCAF

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List of Abbreviations

BOMCA	[EU's] Border Management Programme in Central Asia
BTAP	Budget Transparency, Accountability and civil Participation
CADAP	[EU's] Central Asia Drug Action Programme
CARICC	Central Asian Regional Information and Coordination Centre for Combating illegal traffic of drugs, psychotropic substances and their precursors
CEC	Central Executive Committee (USSR)
CIS	Commonwealth of Independent States
CORF	Collective Operational Reaction Forces [within CSTO]
CPC	Code of Civil Procedure
CSTO	Collective Security Treaty Organization
EIC (Cheka)	Emergency Investigating Commission
GKKN	State Commission on Drug Control
HRC	[UN] Human Rights Council
HSC	Hardware and Software Complex
ICCPR	International Covenant on Civil and Political Rights
IDLO	International Development Law Organization
KGB	Committee for State Security (USSR)
KR	Kyrgyz Republic
MGB	Ministry of State Security (USSR)
MIA	Ministry of Internal Affairs
NGO	Non-Governmental Organization
NKGB	People's Commissariat for State Security (USSR)
NKVD	People's Commissariat for Internal Affairs (USSR)
NSS	National Security Service (KR)
OECD	Organisation for Economic Co-operation and Development
OGPU	Joint State Political Directorate (USSR)
OHCHR	[UN] Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
POC	Public Oversight Council
RSFSR	Russian Soviet Federative Socialist Republic

SCDC	State Commission on Drug Control
SCNS	State Committee for National Security (KR)
SCO	Shanghai cooperation Organization
SDCS	State Drug Control Service
SOIM	System of Operational-Investigative Measures
SSES	State Service for Execution of Sentence
SSFEC	State Service for Fighting Economic Crime
SSNS	State Service for National Security (KR)
SSR	Soviet Socialist Republic
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
USSR	Union of the Soviet Socialist Republics

Introduction

Aida Alymbaeva

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During almost the entire post-Soviet period, the national security authorities of Kyrgyzstan remained less prone to institutional change and reform. This state was maintained despite the intensifying internal and external security threats, such as organized crime, drug trafficking, religious extremism, terrorism, cross-border issues, ethnic conflicts, the rise of corruption and crime. In its brief post-Soviet history, the country also experienced an invasion of Islamic militants on its territory in 1999-2000s and two so-called revolutions in March 2005 and April 2010, both of which led to the loss of lives. Security in the country and the region as a whole may become more vulnerable following the withdrawal of NATO troops from Afghanistan in late 2014, which according to various estimates can lead to the revitalization of the Islamic extremist movements on the southern borders of Central Asia.

The attempts of the previous authorities, namely the first two presidents of the country (1991-2010), to reform the security block were mostly declarative. Some of the positive changes initially served as a response to the crisis situations that had already taken place, but the scale of these post-crisis reforms was always limited. For example, the invasion of Islam gang units in the Batken region in the summer and autumn of 1999 was the reason to launch adjustments in the military sphere. However, a radical reform in the Ministry of Defence never took place. Second, some of the leaders attempted to rebuild their power services, however the transformation they had begun was not taken to the end since presidents often moved or fired the heads of law enforcement and other government agencies.

Politicians feared that the long-term presence of their subordinates on leading positions would allow them to create a wide network of supporters, and that such support could be used against their regimes. For example, during the mandate of president Bakiyev the average length of service of persons in senior governmental positions in 2007 amounted to only 1.3 years (15 months), and during the mandate of president Akayev in 2001 this figure was also quite unstable, reaching just over 2 years (27 months).[1] In addition, the personnel policy of the first two presidents was based mainly on patron-client relationships and if the heads of services did not show personal loyalty, in spite of their contribution to the transformation of the agency, they were replaced by other individuals who were more committed to the persons in power.

[1] Alymbaeva, A., B. Urmanbetov, M. Ablyazov and T. Assanov, "The political elite of the post-Soviet Kyrgyzstan: peculiarities of formation and renewal," Bishkek, AGUPKR, 2013.

Overall, after Kyrgyzstan gained its independence, the national security authorities remained largely the same – non-democratic, closed, inefficient structures that in the post-Soviet era retained both their previous titles and old content. The legacy of the Soviet system played a dominant role in the work of law enforcement agencies in Kyrgyzstan.[2]

The main reason for hampering the reforms in the security sector were the authoritarian regimes that dominated the country until April 2010 and turned the military, law enforcement, and the judiciary organizations into an instrument to maintain their power. In fact, the reform in the security sector and the concept which implied, on the one hand, the creation of effective law enforcement agencies, and on the other – transparent and accountable public services, are unlikely to occur in authoritarian states. Authoritarian rulers benefit from having subordinate law enforcement agencies in order to intimidate political opponents, to suppress mass demonstrations, to establish control over important segments of society, including lucrative cash flows, and sometimes drug trafficking. Moreover, the managers of some of the higher, middle and lower level security structures in Kyrgyzstan, as well as most of the officers, were not interested in the reform, as the income received through corruption or patronage of criminals and gangs significantly exceeded the amount of their wages. For example, according to the words of security expert David Lewis, police officers in Kyrgyzstan in the 1990s could not exist without corruption due to the excessively lean state budget.[3] Therefore, until April 2010, neither the political establishment, nor the power structures were interested in a radical reform of the security sector.

Moreover, the weakness of the national security structures, including judicial institutions, the disregard for legal values and norms at all levels of the civil service, the protection demonstrated by certain officials over criminals, and corruption enabled organized criminal groups to achieve certain influence over governance in the country in the 2000s. This situation posed a threat not only to the stability and security of the country, but also to the existence of the state.

After April 2010, when the government was changed and a new constitution was adopted, which laid the foundation for the establishment of a parliamentary-presidential form of governance, the transition President Roza Otunbayeva and her successor Almazbek Atambayev made an attempt to change the situation in the security sector. At the suggestion of local civil society organizations, in September 2010 Roza Otunbayeva signed a decree on the establishment of Public Oversight Councils with government agencies to ensure public control over the activities of state services, to achieve transparency and accountability in their work. Public Oversight Councils in the security agencies were established in February 2011. Moreover, under the new Constitution, the Par-

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[2] Jos Boonstra, Erica Marat and Vera Axyonova, Security Sector Reform in Kazakhstan, Kyrgyzstan and Tajikistan: What Role for Europe?, *EUCAM Working Papers* 14, May 2013.

[3] David Lewis, "Security Sector Reform in Authoritarian Regimes: The OSCE Experience of Police Assistance Programming in Central Asia," *Security and Human Rights* 22:2 (2011): 103-117.

liament received more control functions in supervising the work of government agencies, including the power structures. The new Parliament was able to demonstrate in practice the expansion of its supervisory duties during the first half of their convocation (November 2010 – June 2013), when they created a number of parliamentary committees in areas related to law enforcement agencies, and they often invited to the meetings of Parliament, sections and parliamentary committees the heads of security agencies, including the General Prosecutor's Office, and requested information on the status of various issues.

The fight against corruption and organized crime was identified by President Atambayev as his key and top priority task. One of Atambayev's first decisions as president was the creation in December 2011 of the Anti-Corruption Administration under the State Committee for National Security (SCNS) of the Kyrgyz Republic with the aim of preventing and detecting corruption offences committed by government officials. Later, the new National Security Concept was adopted (June 2012); the National Strategy for Sustainable Development of Kyrgyzstan for the period 2013-2017 is being developed, in which a whole chapter is dedicated to the formation of a complex national security system (January 2013); and a new military doctrine was adopted (July 2013, the previous military doctrine was in force from 2002 till 2013).[4] The fight against organized crime under President Atambayev, who has been in office since November 2011, has led to a decrease in the influence of organized crime groups in the system of public administration and a reduced number of gang members. However, it is too early to speak about the final success in this area, as the weakness of state institutions, especially at the local level, the high level of corruption, and transnational organized crime groups make it possible for some of these groups to continue their activities.

The anti-corruption campaign led by the current authorities has resulted in the detention of numerous officials, mostly at the middle and lower level, as well as several top officials. However, the level of corruption in the country is still high (Kyrgyzstan ranks 187 out of 200 countries in terms of corruption),[5] neither has the population of the country felt any significant reduction.[6] As a consequence, citizens continue to demonstrate lack of confidence in state authorities, including the judicial system, and this encourages them to seek social justice in various religious organizations and factions that are poorly controlled by the state. Such a situation poses another type of threat to the security in the country.

One reason for the high level of corruption are the meagre salaries of civil servants, which forces them to continue to receive bribes. Another important reason is that none of the security agencies has undergone significant personnel changes. As a result, the

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4 Marat, E., "Reforming the Security Sector in the Countries of Central Asia," Geneva Centre for the Democratic Control of Armed Forces, 2012, www.dcaf.ch/Publications/Security-Sector-Reform-in-Central-Asia.

5 Corruption Perception Index in Kyrgyzstan in 2012, Transparency International, www.cpi.transparency.org/cpi2012/results.

6 Report of the National Democratic Institute, "The perception of the citizens of the activities of the Parliament of the Kyrgyz Republic for 2013," Bishkek, Kyrgyzstan, 2013.

officers are still working by the old traditions of rent-seeking, looking for opportunities to improve their own well-being through the use of public resources. Moreover, public oversight of security sector agencies, except for the police, judicial and penitentiary institutions, is the weakest, as these agencies continue to maintain their secrecy. In civil society, it is only the defenders as well as several non-governmental organizations that are active in monitoring the work of the power structures. At the same time, the Public Oversight Councils, operating within the national security agencies, have not yet become an effective instrument of monitoring and influence.

In general, after the overthrow of the authoritarian regime in April 2010 there was no radical reform of the security sector or the judiciary. Power structures are still ineffective, closed and less accountable to the public. The state authorities are taking measures to change the status quo, however with small steps, slowly and with varying success. The political environment in the country remains extremely competitive, whereas the lack of consolidation of forces, ideas and approaches affects the nature of coordination and public decision-making, including in the power agencies. Decisions are implemented inefficiently and often reconsidered, while their implementation is hampered by the lack of funds and the low professionalism of officers at different levels of governance. Kyrgyzstan in fact lacks the financial means for modernization of the power structures and their reform, but finances are still a minor and not the primary cause of sluggish change.

There is no holistic approach to reform the security sector since the law enforcement agencies do not follow the overall strategic and operational approach, mainly being treated as stand-alone structures. Moreover, no national security organization has been a subject to major personnel changes. The security sector is the most populated segment in the public administration, and it is likely that the current government fears that the huge number of retired officers could become a destabilizing opposition force. Moreover, the political establishment sees the Soviet system of building power structures as adequate in today's environment, but the new conditions and the commitment to construct an open society require the establishment of agencies, primarily oriented to the security needs of citizens. Without effective and accountable security agencies, it would not be possible to build a democratic country.

This Almanac has been published to highlight the current management and security sector reform in Kyrgyzstan, as well as to present the current view of the civil society on issues in this area. The Almanac contains articles written by representatives of NGOs, independent experts and researchers. In this regard, the Almanac is a kind of independent tool for monitoring the activities of the national security bodies.

In this edition, the representatives of civil society focus their attention on the development of the current situation in the armed forces, the national security service (State Committee for National Security), anti-drug law enforcement structures, the Ministry of Interior, and the judiciary system. On these topics, the authors provide an overview of existing challenges and share their vision on how to change the current situation. Human rights, namely the right of citizens to access information, human rights in the Ministry of Internal Affairs, the violation of prisoners' rights (torture) are among the topics in the Almanac since the overall protection and respect for human rights are to be the

core, the ultimate goal of the security sector reform. Building an effective power block is not possible without the participation of non-governmental organizations; therefore, one of the articles is devoted to the detailed study of civil control over the power structures, problems and prospects of expanding public oversight in this area. The issue of weapon safety is still relevant in Kyrgyzstan where firearms were used during the ethnic conflict in the south of the country in June 2010, when more than 400 people were killed and about 2.5 thousand were injured, as well as in the April events of that year when 90 people were killed. One of the authors discusses existing challenges in the weapon safety and measures to strengthen control over weapon use during the riots. Almost all of the authors in the Almanac formulate recommendations to the Executive, Legislative and Judicial authorities on improving the situation.

Chapter 1
The Armed Forces of Kyrgyzstan: Brief Overview and Perspectives for Development at the Current Stage

Murat Beyshenov

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Lecturer in the Law Institute of the Kyrgyz National University

Pioneers always get the hardest work. At the initial stage of the formation of the armed forces, Kyrgyzstan did not have sufficient economic opportunities to carry out a full-fledged military reform. Unfortunately, this had a major impact on the pace of implementation of military development plans and the readiness of the army to defend the country. Even in the early period when our country was part of the Soviet Union, it did not have its own system of military security, comprising governance bodies, troops, and all that is included in the concept of "military organization." Here we shall start from the very beginning, as it all happened.

For our young state, the first step towards creating a national army was the establishment of a military body responsible for the creation of armed forces, the State Committee on Defence of the Kyrgyz Republic. In January 1992, the first President Askar Akayev signed a decree (Decree no. 12, dated 13 January 1992) on the Establishment of the State Committee on Defence of the Republic of Kyrgyzstan. According to the Decree, in a month's time the Government of the Republic of Kyrgyzstan was to develop an ordnance on the State Committee on Defence and decide on the strength, financial, material and technical support to the State Committee on defence matters.

The armed forces are the most complex organism, whose effective work depends on competent and professionally trained people and which requires substantial financial and material resources. The State Committee on Defence had to perform very complex tasks. Disparate military units had to be integrated in the national security system; they had to interact with the executive authorities and the security agencies; it was necessary to establish command and control and combat training, to arrange for financial, logistical and material support. In this period, there was acute shortage of professional staff, both in management and in the military echelon. The bitter reality of those days was the fact that former Soviet officers serving in the country were leaving en masse to other republics of the Commonwealth of Independent States.

The next step after the establishment of the State Committee on Defence was the adoption under the jurisdiction of the state of military units and institutions of the former Soviet army – personnel, military equipment, weapons, and housing. It was only after the adoption of the former military forces under its jurisdiction that the State Committee was transformed in 1993 into the Ministry of Defence of the Kyrgyz Republic with significantly expanded functions and competences.

One year after the formation of national armed forces, the militaries from the Ministry of Defence stepped forward to complete the first combat mission. According to the decision of the Council of Heads of States of the Commonwealth of Independent States "On measures to stabilize the situation in the area of the state border between the Republic of Tajikistan and Afghanistan" from 22 January 1993, an infantry battalion of the Armed Forces of the Kyrgyz Republic took under control a 100-kilometer section of the Tajik-Afghan border.

In February 1999, a battalion, performing tasks to ensure the safety of the state border between Tajikistan and Afghanistan, left without any losses the territory of the neighbouring state. While our militaries gained invaluable experience from their service on the border, at that time serious problems arose in the delivery of all kinds of supplies, the effective transportation of troops and military discipline. However, the leadership did not learn any lessons. Moreover, in 1994, while on a working visit to Japan, President Askar Akayev stated in one of his speeches that "in principle, Kyrgyzstan did not need armed forces ...!?." According to him, the country was surrounded by such states that could not tolerate even the slightest aggression towards Kyrgyzstan. Seemingly, the first President Askar Akayev, being predominantly a scientist and a humanist, was far away from understanding military policy and the military component of the country.

After this statement of the Head of State and because of the low payment, in 1994-95 officers started to leave the armed forces in large numbers, while due to poor morale in the military units military discipline dropped sharply. We must pay tribute to the generals Myrzakan Subanov, then Minister of Defence of the Kyrgyz Republic, and his deputies Ismail Isakov and Kubanychbek Oruzbaev, who at this turning point managed to convince the country leadership to preserve the military institution. In fact, the top leaders of the Republic persistently discussed the radical downsizing of the Armed Forces and their subsequent liquidation. After all the turmoil, it took very little time to adopt the military defence concept of the Kyrgyz Republic (January 1994) and the Laws of the Kyrgyz Republic "On Defence" (13 April 1994) and "On Alternative Service" (12 January 1994).

Still, the lack of financial and economic resources of the state to restructure the military affected the pace of implementation of the plans for development of the armed forces.

In those years (1994-1997), military personnel did not receive their salaries for months, as a result of which First Lieutenant Ilyasbek Subankulov, as demonstration of his protest, started a combat vehicle without authorization and tried to break out of the territory of the military unit. Incidentally, officers received their salaries on the next day.

The same lieutenant is now First Deputy Minister of Defence and Chief of the General Staff of the armed forces of the Kyrgyz Republic.

That situation required urgent and effective measures. Therefore, a Directive was published by the Supreme Commander of the Armed Forces of KR number D-1 "On urgent measures to strengthen military discipline in the Armed Forces of the Kyrgyz Republic" dated 11 May 1996.

In December 1996, the Government considered measures on the development of the armed forces and the strengthening of social and legal protection of military servicemen. For the first time at this meeting, the question was raised about the need for effective reform of the military organization.

In 1997, taking into account the evolving situation in the Central Asian region due to the increasing terrorism, extremism and the rising level of drug trafficking, the military and political leadership of Kyrgyzstan came to the conclusion that the governing bodies and the Ministry of Defence required fundamental changes. To this end, draft Guidelines for the military doctrine and the Laws "On Defence" were prepared.

As a result of these measures, it became possible to activate and launch real processes of military reform. Privileges for public services were restored, i.e. payment for gas and electricity. Officers' salaries were increased by 50 percent, one single uniform was introduced and unified rules for wearing uniform were established.

However, the reform process gaining speed in the army was actually terminated in 1999 by the invasion of militants from illegal armed groups and the need to repulse their attack in the Batken region of Kyrgyzstan's Osh province.

The first stage of the so-called Batken events was a disaster for the unified group of Kyrgyz forces. The factors were both of objective and subjective nature: lack of state funds, lack of experience of the military command and the unified leadership of the security forces in the fight against international terrorism.

The terrorists' actions caused considerable moral and material damage. Innocent civilians and soldiers were killed, about 200 people were wounded, foreign nationals were held hostage; among them were General Shamkeev A. (internal troops), Colonel Matenov A. (Ministry of Defence) and several other officers from various law enforcement agencies. More than ten thousand civilians abandoned their homes and moved to refugee camps. The most violent clashes occurred in August 1999-2000. They became a serious test for the armed forces' readiness to defend their state and the moral foundation of society.

Of course, many of the soldiers showed courage and perseverance in those grim days, for which they received high government awards. In those years, the national army gained unique and invaluable experience in combat operations in high mountainous areas and the organization of comprehensive operational, combat and effective interaction between the security and civilian agencies.

During this period, the law enforcement agencies, in particular the military prosecutor's office, had to start working hard. It was in those years when the cases of desertion rose even among the officers, not to mention regular soldiers or the deficiency in logistic and financial support. Gross violations were made which led to several high-profile

criminal cases, one of them against General B. Poludy – then Deputy Minister of Defence for Logistics.

Despite all these failures and serious shortcomings, these combat activities were qualified by the leadership of the country as "victorious" and on 29 May 2002 the Head of State handed over the battle flag of the Armed Forces of the Kyrgyz Republic. More than 350 officers and soldiers received high state awards, including the Order "Manas" – second and third degree, medal "Erdik" and honour certificates by the President of the Kyrgyz Republic.

The abolition of the family and clan government regimes of the first and second presidents of the country, which occurred as a result of the revolutions in March 2005 and April 2010, contributed to the adjustments in the course of developing and reforming the armed forces. At the same time, an important feature of these two situations was the fact that the army did not become a subject to political manipulation and was not involved in the struggle for power. The armed forces managed to retain their neutrality and continued to the best of their ability to perform tasks to ensure the military security of the country.

A milestone in the development of the Armed Forces was the Decree signed by the President of the KR in 2008 "On the implementation of the Concept and the Reform Plan of the Ministry of Defence." In the course of the reform, the troops strength and the administrative apparatus were significantly reduced. It was for the first time that the number of soldiers on contract service doubled. The structure of the Ministry of Defence, in addition to the Central Office and the General Staff, included mobile forces, general-purpose forces, air defence, support and maintenance units, the military schools and military recruitment offices. A Centre for counter-terrorism and fight against illegal armed groups was established as well. During this period, foreign investments flowed for the construction of a modern military camp in the town of Tokmok and a new military unit in the village of Bujum in the Batken region. For the purpose of rearmament, a public enterprise "Kyrgyz Kural" (Kyrgyz Weapons) was opened under the Defence Ministry.

The events of April 2010 and the bitter lessons of the inter-ethnic clashes in June of the same year in the south of the country showed that the armed forces required highly professional, technically advanced units and formations, capable of taking action in different areas quickly and independently, even if separated from the main forces. Most importantly, it was necessary to train the soldiers not only in traditional forms of combat, but also in anti-terrorist operations, as well as under emergency or martial law.

In the 21st century, it is an undisputable truth that no country in the world can ensure security on its own. The understanding of this assertion determines the participation of Kyrgyzstan and its armed forces in the work of the military component of the Collective Security Treaty Organization, in the collective security under the Commonwealth of Independent States, in the Shanghai Cooperation Organization, in the framework of NATO "Partnership for Peace" and in the operation "Enduring Freedom." The Armed Forces of Kyrgyzstan today successfully interact with the armies of 25 countries. The focus in international military cooperation is on peacekeeping operations.

The main form of cooperation between forces belonging to the systems of regional collective security is through training and joint exercises in different formats, level of participation of military contingents, and level of goals and objectives. Over the past two decades, the country became an active participant in various international military exercises and manoeuvres.

In 1997, Kazakhstan and Uzbekistan hosted the first peacekeeping exercise "Tsentrazbat" where in addition to the Central Asian battalion, units from the U.S. Army, Turkey, Russia, Georgia, and Latvia took part. The multinational exercise "Tsentrazbat" was repeated again in 1999 and 2000.

In June 2001, the presidents of China, Kazakhstan, Kyrgyzstan, Russia and Tajikistan signed the Shanghai Convention on Combating Terrorism, separatism and extremism. The first practical step to regional security was made in October 2002 when the first bilateral anti-terrorism exercise was conducted in the area of checkpoint "Irkeshtam." A continuation of the real partnership in the military sphere between the SCO Member States was the joint exercise "Interaction" which was carried out in August 2003 on the territory of Kazakhstan and China.

In 1998, the first exercise "Comradeship" was organized in the framework of the Joint air defence system of Member States of the Commonwealth of Independent States. In the course of these manoeuvres, for the first time air defence units from Belarus, Kazakhstan, Kyrgyzstan and Russia worked together on the use of mixed groups of anti-aircraft missile troops.

Kyrgyz Air Defence Forces were consistent participants in the "Comradeship" exercises, held in the Russian and Kazakh fire ranges Ashluk and Saryshagan in 2003, 2007 and 2011. At a meeting of the Coordinating Committee on air defence with the CIS Council of Defence Ministers, held in Brest (Belarus) in April 2013, the countries discussed issues related to the tactical exercise "Comradeship–2013." The purpose of the manoeuvres to be held in September 2013 on the Ashuluk range in Astrakhan, Russia, is military security of the participating states, as well as the countries from the Commonwealth and the CSTO. At the 63rd session of the CIS Council of Defence Ministers, Sergei Shoigu declared that more than 500 million rubles would be allocated to the development of the Joint Air Defence System of the Commonwealth in 2013. This statement was confirmed by the Russian defence minister in May 2013 during his visit to Kant air base in Bishkek. This air base in particular will be enlarged and improved by 2014.

An important event in the history of the Armed Forces of Kyrgyzstan was the joint tactical exercise "Frontier," held in 2004 in Issyk-Kul region. The main feature of this exercise was the use of the air component of the Collective rapid deployment forces of the Central Asian region – Russian and Kazakh combat aircraft and helicopters. The "Frontier 2005" exercise—a follow-up of military partnership within the CSTO—was held in April 2005 in Tajikistan.

In 2009, joint tactical exercises "Interaction" of the Collective Forces (CORF) of the Collective Security Treaty Organization were conducted on military range "Matybulak,"

Republic of Kazakhstan, and in 2010 – on the range "Tchebarkul" in the Privolzhko-Urals Military District in the Russian Federation.

At the informal summit of Heads of State of CSTO Member States in May 2013 in Bishkek, participants discussed issues related to the development of the situation in the CSTO zone of responsibility in connection with the upcoming in 2014 withdrawal of NATO troops from Afghanistan and measures to minimize the possible negative effects. Afghanistan remains a zone of instability, a territory with hostilities and many extremist organizations. In December of last year, the Heads of States of the CSTO Member States approved a specific action plan in case of "unfavourable scenario after the withdrawal of NATO troops." This included, first, strengthening the protection of the state borders, building the potential of law enforcement bodies, special services, and the armed forces. It is planned to provide modern equipment and weapons to the collective rapid reaction force.

In September 2013, joint exercises of the special units of anti-drug agencies in the CSTO are to be held in Kyrgyzstan. These activities are based on a bilateral agreement that Russia will allocate funding to re-equip the army of Kyrgyzstan. The press cited numbers over $ 1 billion, which is hard to believe: this amount is not quite well founded only for the re-equipment of the Kyrgyz army, as talks are going on building another Russian military base (training centre) in Osh.

Now the Russian army is undergoing a full reorganization and therefore a lot of third generation weapons and military equipment are identified as surplus. If we are talking about these "weapons," then Kyrgyzstan will benefit only a little. At the beginning of 2008, the country had a sad experience: the Ministry of Defence of the Russian Federation on the request of the Defence Ministry of Kyrgyzstan provided automobile vehicles from the 80-ies, but the prices were ten times higher than the cost in today's market.

Even under these circumstances, the Kyrgyz armed forces need help, especially since Moscow is interested in providing assistance after the United States managed to settle in Uzbekistan after a few accurate steps.

It can be firmly stated that the contradictions between the republics of Central Asia do not provide for full guarantees for the security of Kyrgyzstan. It would be sufficient just to look at the diagram with the strength and the budget of the Armed Forces of the neighbouring countries to understand that each year the military budgets of these countries increase steadily.

According to the Centre for Military and Strategic Studies of the General Staff of the Armed Forces of the Russian Federation (see table), Uzbekistan annually spends more than 1.5 billion dollars on equipment and maintenance of its armed forces. The state has more than 50,000 soldiers, 840 armoured vehicles, 135 aircraft and helicopters, and 500 pieces of artillery and multiple rocket launchers. Kazakhstan spends almost the same amount with its over 66,000 military personnel, more than 3 thousand armoured vehicles, 278 aircraft and helicopters. Compared with Uzbekistan and Kazakhstan, Kyrgyzstan spends 45 times less money, which amounts to $ 11 million a year. At that, Kyrgyzstan has an army of 13 thousand people. Tajikistan spends about $ 20 million a year for an army of 30,000 people (84 armoured vehicles, 3 helicopters and 1 plane).

Table 1. The Armed Forces of the countries in Central Asia.

Country	*Strength of armed forces at the time of formation (1991-1992)*	*Strength of armed forces in 2012*	*Military budget in 2012-2012 (billion USD)*	*Payment of officers in USD (lieutenant /colonel)*	*Payment in USD (soldiers and contracted)*
Kazakhstan	167,000	66,000	1.297	470/800	50/350
Uzbekistan	60,000	52,000	1.568	180/300	2/60
Turkmenistan	35,000	26,000	0.336	250/650	3,5/100
Kyrgyzstan	11,000	12,500	0.111	250/350	5/250
Tajikistan	6,000	30,000	0.200	100/220	2/ –

Source: Centre for Military and Strategic Studies of the General Staff of the Armed Forces of the Russian Federation.

Therefore, no matter how hard Bishkek is trying to establish close relationships with its neighbours as well as the countries of Western Europe and the United States, hoping to receive from them military vehicles, equipment and uniforms for the reform of the armed forces and fight against the armed gangs, the country shall rely primarily on its own capacity.

It is not by coincidence that last year the President of the Kyrgyz Republic, Almazbek Atambayev, stated: "In Kyrgyzstan, only 25th Brigade "Scorpio" (in the town of Tokmak) meets the requirements of national defence and national security; there is no clear system of interaction and areas of responsibilities of the security agencies. In emergencies, all state agencies are helpless, especially during the well-known events of 2010."

Therefore, the decision of the Defence Council of 22 January 2011 "On urgent measures to ensure public safety and strengthening the state borders of the Republic" stated: "The political experience allows to conclude that there is no clear system of interaction and areas of responsibility between security agencies. In emergencies, almost all governmental bodies have shown poor efficiency in localization and neutralization of threats of various kinds ...."

The Sustainable Development Strategy of the Kyrgyz Republic for the period 2013-2017 points out that so far Kyrgyzstan has failed to achieve significant results in defence. To date, virtually all of the components of this system are in poor condition. The defence management and support systems are in need for revision and adoption of drastic measures. The basic goal-setting document—a military doctrine of the Kyrgyz Republic—is urgently needed.

Over the next five years, the armed forces will be practically completely re-equipped with modern weapons and equipment. And most importantly, a Unified command and control centre of the Armed Forces will be created (similar to the General Staff), which will have to address the following questions: professionalization of the army, building forces for territorial defence, solving the social problems of militaries and their families,

eradicating corruption in the military, as well as improper relationships, mockery and bullying of military servicemen.

It is really necessary to create a Central body to guide the forces which provide security to the nation. Towards this purpose, however, it is necessary to solve a number of important issues:

1. The establishment of this structure will require legislative support, and this, in turn, is most likely to come into conflict with some provisions of the Constitution of the Kyrgyz Republic.
2. A reasonable question comes out: in what way will this Centre guide the actions of all law enforcement agencies when these functions are currently attributed to the General Staff of the Ministry of Defence of the Republic of Kyrgyzstan?
3. What authority will be assigned to the head of this structure, taking into account the position of the Vice-Premier of the Kyrgyz Republic, who is in charge of all power agencies of the Kyrgyz Republic?
4. Practice shows that any new structure, established at governmental level, will require significant financial resources. Are they currently available in the state?
5. We must assume that a large number of the deputies in Parliament will not be impressed by such a decision made by the President of the Kyrgyz Republic. After all, this unified centre, apparently, will be subordinate to the Supreme Commander of the Armed Forces of the Kyrgyz Republic, and this naturally raises suspicions of a partial usurpation of power.

In case it is really crucial to create such a centre, it would be necessary to carefully carry out all the legal expert assessments and to make specific proposals to the President of the Kyrgyz Republic on making changes in the existing laws of the Kyrgyz Republic.

When it comes to the military forces, all citizens of any social status and age ask these traditional questions:

- Is it prestigious to be a military serviceman in this country?
- Is the army well equipped? What is the personnel strength of the military?
- Does the army have combat experience, and is it engaged in combat training in its daily activities?
- Is the army sufficiently funded?
- What is the social and financial status of servicemen in comparison with neighbouring states?

These are the most fundamental and important aspects of the armed forces in any country. Unfortunately, none of these questions would receive a positive response here in Kyrgyzstan.

And yet, our society is obliged and must make every effort to lay the foundations of a modern state military policy, corresponding to the security requirements of existing and projected military threats.

Chapter 2
Reforming the National Security Structures in the Kyrgyz Republic

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Prerequisites for reforming the national security structures in the Kyrgyz Republic

Section 2.10 "Formation of an integrated system of national security" of the National Strategy for Sustainable Development in Kyrgyzstan for the period 2013-2017[1] highlights as a priority task "to *reorganize* the entire security system. The focus of the reform of the security structures is to be on clear delineation of functions, depending on the tasks in the national security system, and ensure their correspondence with principles and norms of the rule of law."

Thus, the national security bodies represented by the State Committee for National Security, the Internal Affairs agencies, the Ministry of Defence divisions, border guards, etc., expect changes related to their reforms.

For three or four years before the revolution of April 2010, the national security services of Kyrgyzstan, in fact, focused on the prosecution of political opponents to the regime of President Bakiyev rather than work in their primary area of responsibility. The practice of appointing non-professionals close to the state leaders in the special services began at the time of the first President of Kyrgyzstan, Akayev A. A. The same principles were applied and developed by his successor, Bakiyev. Thus, until the last days of Bakiyev's regime, the role of the "gray cardinal" of the state's security service was played by the President's brother, Zhanysh Bakiyev, Chairman of the State Service for Protection. He organized the murder of former Chief of Cabinet of the President of the Kyrgyz Republic M. Sadyrkulov in March 2009, and on April 7, 2010 he gave the order to open fire as a result of which 86 protesters were killed in the square in front of the White House. The President's son, Marat Bakiyev, was advisor to the Chairman of the State Committee for National Security and in charge of many of the key issues in the institution. In 2012, former department head of the State Committee for National Security

[1] Approved by Decree no. 11 of the President of KR on 21 January 2013.

of the Kyrgyz Republic A. Ismankulov was sentenced to prison in Kazakhstan for a long term. By political order, he savagely treated in Almaty in 2009 Kyrgyz journalist G. Pavlyuk, who collaborated with members of the opposition. According to the opinion of human rights activist E. Baisalov, voiced as early as 2006, the police had turned into one of the major sources of civil rights violations and factors for destabilization of the socio-political situation in the country. He claimed: "The Ministry of Interior and the National Security Service as institutions are inefficient, totally corrupt and dangerous for the democratic governance. The constitutional right to privacy is violated illegally by special services only for the purpose that one day the personal record of this citizen becomes a subject to bargaining and is "deleted." This fact serves as a wake-up call and the clearest evidence of degradation and complete collapse of the system of special services designed to protect the state and defend national security!"[2]

Not fully sharing the above position of the human rights activist, we need to note that the model and style of the national security agencies of Kyrgyzstan in spring 2010 were more and more reminiscent of the KGB at the beginning of the eighties of last century, and certainly in need for a serious reorganization.

In addition, over the past twenty years, the political situation within and outside of Kyrgyzstan dramatically changed; new non-traditional security threats and challenges appeared such as international terrorism and religious extremism, the northern route of drug trafficking from Afghanistan, and other manifestations of transnational organized crime. In 1999-2000, terrorist gangs invaded the southern region of the country. There is still danger of recurrence of the ethnic violence from 2010 in the south of the country. International experts do not exclude the possibility of sharp deterioration of the situation in the entire region of Central Asia after the withdrawal of NATO troops from Afghanistan.

These and other circumstances dictate the need to reform the entire system of national security, including the national security agencies, to ensure that Kyrgyzstan is ready and capable of responding adequately to the threats and challenges.

The system of national security organizations

According to the Concept of National Security of the Kyrgyz Republic the national security system is based on a specially established and constituted set of legal rules and principles, legislative and executive bodies, as well as the means, methods and directions to ensure reliable protection of the national interests of Kyrgyzstan.

Without dwelling on the characteristics of legal rules and principles in the field of national security, we are going to outline the government bodies corresponding to the system, among which the national security structures occupy special place.

At the top of this system is the President of the Kyrgyz Republic, who in accordance with the Constitution of the Kyrgyz Republic, as the Chairman of the Defence Council and Supreme Commander of the Armed Forces, is endowed with power, sets the policy

[2] Baysalov, E., "Law enforcement – that's number one threat to Kyrgyzstan." Available at www.centrasia.ru/newsA.php?st=1085787660.

and makes decisions in the field of national security. The overall control of the national security system is performed through the Defence Council under the President of the Kyrgyz Republic.

The Defence Council of the Kyrgyz Republic (until 2012 – Security Council), discusses and approves the Concept of National Security of the Kyrgyz Republic; considers strategic issues of domestic and foreign policy; coordinates the activities of the national security system; controls through its structures the implementation of the Concept of National Security by the executive authorities.

The Parliament of the Kyrgyz Republic creates the legislation in the field of national security, decides on the use of the Armed Forces of the Kyrgyz Republic beyond the state borders, determines the resources for national security at the expense of the state budget of the country.

The Government of the Kyrgyz Republic oversees the implementation of decisions of the Defence Council, the National Security Concept, doctrines, programs, plans and policies in the field of national security; takes measures to guarantee the defence of the country; leads and coordinates the activities of the executive bodies subordinated to the Government.

Ministries, departments and agencies of the local government within the limits of their competences, based on the current legislation, in correspondence with the decisions of the President of the Kyrgyz Republic and the regulations of the Government of the Kyrgyz Republic oversee the implementation of government programmes to protect the vital interests of the individuals, society and the state. They carry out activities to engage citizens, public associations and other organizations to assist in the maintenance of national security according to legislation. They make proposals on the improvement of the national security system.

The courts administer justice in the field of national security, exercise judicial protection of the constitutional rights and freedoms of citizens, the interests of organizations and government agencies.

As mentioned earlier, the national security organizations play a special role in national security and use specific forms and methods that are not typical of other public authorities and administration, including clandestine human intelligence and technical methods of collecting and using information and affecting the opposing side.

Historical milestones in the development of Kyrgyzstan's national security organizations

The formation and development of national security bodies in the country as an instrument of the highest political authority was aimed at protecting the Soviet power and implementing political decisions.

On October 17, 1918, the regional and county Emergency Investigating Commissions (EIC) were formed, consisting of 2 sections: the investigating section and the section for struggle against counterrevolution, speculation and looting (starting with the establishment of the commissions in the towns of Pishpek and Karakol). By the order of Semirechensk regional department of justice and based on a Regulation (protocol

no. 175 from 20 December 1918) of Pishpek council of people's deputies in Pishpek, on December 20, 1918 the Emergency Investigating Commission (Cheka) was established. The Commission was given the most extensive rights and powers: arrests, searches, seizures, review of all possible papers and documents in public institutions and private persons and companies, fines and confiscation of property till a court hearing, as well as intelligence activity.[3]

Created as temporary and extraordinary, the commissions later become permanent bodies with extraordinary powers.

The massive repressions in the 1930s and 1940s held by the security services of the USSR and the Soviet republics are notorious. Endowed with extreme power, including the right of extra-judicial murders, the state security organs implemented a variety of political and ideological programmes and played an independent and leading role among the major political institutions of the Soviet state.

To carry out the repressions, a powerful punitive machine was needed, which, in fact, was not necessary to re-create. Stalin took advantage of the state apparatus, which was built and tempered in the ongoing class struggles for decades. During the "Great Terror," the apparatus faced new problems while it was constantly shaken by personnel clashes and harsh repressions for insufficient zeal in identifying the enemies of the nation. In Kyrgyzstan, where family ties were intertwined, scores of historical inter-clan feuds existed and the situation was exacerbated by local realities.[4]

Indeed, the reforms of state security bodies were quite frequent and they had their own internal logic and explanation. Above all, it was about preserving their oppressive nature and, very often, this reformation was associated with the expansion or, conversely, the restriction of repressive and non-judicial authority of the organization.

The security agencies (Cheka, OGPU, NKVD, MGB, KGB) of the USSR underwent a series of reorganizations. On February 6, 1922, the Central Executive Committee adopted a resolution to disband Cheka and to establish the State Political Directorate of the NKVD of the RSFSR. The Presidium of the USSR Central Executive Committee (CEC) created on 2 November 1923 the Joint State Political Directorate (OGPU) with the USSR Council of People's Commissars. In accordance with the decision of the CEC of the USSR, on July 10, 1934 the state security bodies became part of the People's Commissariat for Internal Affairs (NKVD) of the USSR.

On February 3, 1941, the NKVD was split into two separate parts – the NKVD of the USSR and the People's Commissariat for State Security (NKGB) of the USSR. In July 1941, the NKGB USSR and the NKVD were again merged into a single commissariat, NKVD. In April 1943, the People's Commissariat of State Security (NKGB) of the USSR was formed again.

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[3] Available at www.gknb.kg/index.php?option=com_content&view=category&layout=blog&id=28&Itemid=81.

[4] Abdrahmanov, B.J., "The activities of the State Security of Kyrgyzstan in 1918-1953," Abstract of a PhD thesis, Bishkek, 2013, p. 18.

On March 15, 1946, NKGB USSR was transformed into the Ministry of State Security (MGB) of the USSR. On March 7, 1953, a decision was made to merge the Ministry of Interior and the Ministry of State Security into a unified Ministry of Internal Affairs of the USSR.

On March 13, 1954, the Committee for State Security of the USSR (KGB) was established, which lasted until the collapse of the Soviet Union.

It is assumed that, as a rule, the reform of a body is carried out in order to improve efficiency. However, the reform of the Committee for State Security, which, according to Western experts, was the most powerful intelligence agency in the world, was carried out for political reasons. According to the ideologists of this reform, the disbanding of the KGB marked the end of the last bastion of the old political system. In this connection, apparently, the media both in Russia and in the West did not write about reforming the security services but rather about the destruction of a monster, implying the most powerful intelligence agency in the world.[5]

This large multifunctional agency was disintegrated and this affected its effectiveness.

Since 1991, with the proclamation of the independence of Kyrgyzstan, the national security structures of the Republic of Kyrgyzstan—Kyrgyz Republic—have been reformed several times:

1. With Decree of the President of the Republic of Kyrgyzstan no. 378 of November 20, 1991 KGB of the Kyrgyz SSR was reorganized into State Committee for National Security (SCNS) of the Republic of Kyrgyzstan (since 1993 – the Kyrgyz Republic);
2. With Presidential Decree no. 45 of 4 March 1996 the National Security Committee of the Kyrgyz Republic was transformed into Ministry of National Security of the Kyrgyz Republic;
3. With Presidential Decree no. 352 of 25 December 2000 the Ministry of National Security of the Kyrgyz Republic was reorganized into the National Security Service (NSS) of the Kyrgyz Republic;
4. By Law of the Kyrgyz Republic "On the structure of the Government of the Kyrgyz Republic" no. 12 dated February 6, 2007 NSS was disbanded and the State Committee for National Security (SCNS) of the Kyrgyz Republic was created;
5. With Presidential Decree no. 425 of 20 October 2010 the State Committee for National Security of the Kyrgyz Republic was transformed into the State Service for National Security (SSNS) of the Kyrgyz Republic;
6. By Resolution of the Government of the Kyrgyz Republic no. 27-V of 17 December 2010 the State Service for National Security of the Kyrgyz Republic

[5] Rykunov, V., "Which state security agencies does Russia need?" Available at www.rau.su/observer/N10-12_96/10-12_17.htm.

was transformed into the State Committee for National Security of the Kyrgyz Republic.

History has shown that attempts to reform national security bodies seem more like a mere change of the name since the model and style of work did not change significantly. In addition, frequent changes of names do not add to the value of such serious organizations like the national security agencies.

Attempts to reform the national security sector after the April Revolution of 2010

Despite the situation in the State Committee for National Security after the April Revolution of 2010, on April 8, 2010, under the leadership of the Provisional Government of the Kyrgyz Republic and the new leaders of the State Committee, the personnel was mobilized to take direct responsibility for the protection of the constitutional system, to preserve the sovereignty and territorial integrity of the Kyrgyz Republic, to detect, prevent and eliminate any harm to national security as a result of possible effects of internal and external threats.

In particular, as a result of organizational and management decisions, the organizational and staff structure of the State Committee for National Security was optimized to improve the work of intelligence and counterintelligence divisions, as well as the ongoing operational activities. Taking into account the specific work and in coordination with the state leadership, a set of organizational, legal and technical activities were carried out to incorporate the former Border Service and the State Protection Service within the State Committee for National Security of the Kyrgyz Republic. These allowed avoiding duplication of units and increasing the efficiency of search operations by eliminating ineffective forces and improving interaction between operational units and troops.

Unfortunately, in the fall of 2012, without any proper justification and apparent need, the Border Guard Service was once again separated from the State Committee for National Security. It appeared that the efficiency of the entire system had incomparable higher performance than its individual elements. Therefore, following a series of failures in the work of the Border Service of the Kyrgyz Republic it could be expected that it will be moved back to the State Committee for National Security. The Border Guard Service, being a part of the State Committee for National Security, as the case with the Soviet Union shows, notably contributes to its effectiveness as a single harmonious mechanism. This mechanism involves a single database, perfect coordination and, where appropriate, subordination of border structures to the State Committee for National Security, especially in a state of emergency or war. While the State Committee for National Security and the Border Guard are separate structures headed by different leaders, it is not clear how they will interact effectively in emergencies. As the case with Russia shows, when in the early 1990s KGB was split into a number of independent agencies, experts noted that this contradicted the central tenets of the system. The main idea to this theory is: the transformation of the individual elements builds the integrity of the system in such a way that the integrative properties will always be at a higher level than

the sum of the properties of individual elements. The principle of additivity is applied during the formation process of the system, i.e. the ability of elements to retain the overall numerical values of some properties. This system, however, is a qualitatively new level of organization, i.e. the efficiency of the whole system is significantly higher than that of its individual elements.[6]

One of the first steps of the Kyrgyz President Atambayev shortly after taking office in December 2011 was the formation of an Anti-corruption service in the State Committee for National Security of the Kyrgyz Republic, giving, in our view, a new impetus to the implementation of the anticorruption policy of the country.

In the course of twenty years of the history of independent Kyrgyzstan, the country's leadership repeatedly declared "war" on corruption, which soon turned into a trivial ostentatious campaign. In our opinion, had there been consistent and targeted action to minimize corruption, the country could have avoided the social upheavals in 2005 and 2010, which led to the fall of political regimes, wallowed in cronyism, theft and corruption.

The country's new leadership seems to take into account the lessons of history. Speaking at a meeting of the Defence Council of the Kyrgyz Republic on 30 January 2012, the President of Kyrgyzstan Almazbek Atambayev clearly stated: "it is necessary to defeat corruption that hinders the development of the country and undermines all the efforts of the Government and the citizens. We have no right to wait for things to be solved spontaneously. Unless we strongly oppose this evil, Kyrgyzstan will long remain on the margins of global development, and poverty and misery will become constant companions of our life. What is the vocation of power? It is to address the pressing problems of society and to protect citizens against crime and tyranny, rather than mindlessly command, while allowing for more corruption and lawlessness that put citizens to despair. That is the question that should be answered by each of us, especially to ourselves, and then we shall decide on which side we are – on the side of the people, or against it. This is the question. If someone thinks otherwise, then we have different paths because we declare war on corruption and we will go to the end. I am sure the people will support us."[7]

For the sceptics and pessimists the President stressed: "Today the leadership of Kyrgyzstan has the political will to eradicate corruption. I want to strongly warn all the leaders, all members of Government, members of Parliament, judges, prosecutors and other public officials that corrupted officials will not be spared. The thieves shall go to jail! ... I, as Head of State and Chairman of the Defence Council, demand from the General Prosecutor's Office, law enforcement and judicial authorities that every criminal case against corruption be brought to its logical end, and those responsible be held accountable in accordance with the law."[8]

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6 Rykunov, V., "Which state security agencies does Russia need?" Available at www.rau.su/observer/N10-12_96/10-12_17.htm.

7 Available at http://president.kg/ru/posts/4f267cddf4d55255a3000002.

8 Ibid.

As noted above, the establishment in December 2011 of a specialized structure to deal with the most odious manifestations of corruption – the Anti-Corruption Service with the State Committee for National Security of the Kyrgyz Republic, the approval at the beginning of 2012 of the Anticorruption Strategy in line with the anti-corruption Programme and Action plan of the Government of the Kyrgyz Republic, the adoption of a package of laws to enhance existing mechanisms to combat corruption, including the revised law "On Combating Corruption," as well as the high-profile arrests of officials from the highest political elites in the course of 2012, suggest that the foundations of a new anti-corruption policy were laid in the country. Actually, time will tell how successful the new anti-corruption policy will be. Right now, we can say that the formation of a structure to combat one of the most serious threats to internal security—corruption—has given considerable authority to the State Committee for National Security in general and has raised the level of trust in the law enforcement organizations.

Some problems hampering the effective work of national security bodies

Over the past twenty years of independence, the national security system has been repeatedly a subject to reforms, as a result of which not only the name of the agencies was changed, but their status as well as the organizational structure. In the process, the optimal organization of the central apparatus was always put forward. The organizational structure itself was built on the basis of strong-willed, often voluntary management decisions of the leadership, in particular the President of the Republic, who was authorized to appoint the heads of security agencies.

Thus, for example, during the last three years of President Kurmanbek Bakiyev's term, under difficult conditions of rapidly changing the socio-political situation, as a result of obvious mistakes and miscalculations committed under previous regimes in the organization and management and, in particular, in personnel management, the national security agencies were weakened, demoralized and unable to fully perform their inherent functions. As noted earlier, practically until the events of April 2010, the attention of the State Committee for National Security was focused on political investigation, prosecution of the opposition and ensuring the interests of the ruling families. In the background remained the inherent powers of a special service to collect and provide the country's political leadership with relevant information on emerging negative processes and contradictions, including in the sphere of interethnic relations within the country and beyond its borders.[9]

According to the veterans from the state security sector, over the past twenty years the appointed heads of national security were often people who were far from understanding the nature and specifics of the security services.

In the 20 years of independence, there was a high turnover of leadership cadre in the national security sector. For example, during this period 10 heads of intelligence services were replaced. The tenure of heads of security ranged from 23 days to 6 years.

9 Available at www.for.kg/news-152890-ru.html.

Out of 10, only 4 heads of special services had previous experience in national security agencies, while 6 of them did not have any experience. When new heads came into office, new deputies were appointed all the time, although many of the deputies had no previous experience from working in special services. In September 2011, the heads of the five key departments in the State Committee for National Security lacked any prior experience in the national security agencies.[10]

In the period from 2007 to 2010, about 300 soldiers in the national security system were laid off – experienced, hard-working and patriotic associates with institutional memory, occupying mostly mid-level positions. As a result, at the beginning of 2010, only the leadership of the State Committee for National Security consisted of experienced staff, who were trusted members of the ruling clan, while the operational staff was represented by newly enrolled young employees without the necessary knowledge and experience. In June 2010, the majority of SCNS employees were members with less than 5 years of experience, which did not help the operational and investigative work of professional collaborators in the special services.[11]

The well-known thesis that the personnel decide all is more than ever relevant to the system of national security. The analysis of personnel has a direct impact on the efficiency of the operational work of the entire system. It shows that the gap between the payment, the degree of social protection of staff in connection with the considerably increased burden, and the arising number of conflicts has led to a noticeable erosion of professionals and decrease of the prestige of serving in the national security system, and the outflow of the most skilled workers. All this has had a negative effect on the national security status.

If we analyse the organization of training and qualification of officers in the field of the national security, we could hardly call it systematic. The institute for re-training of SCNS officers reminds of simulating fake qualification courses.

In addition, the motivation package relating to the service in the national security system seems inadequate. What does it represent? More than 20 positions (from training and enlistment to retirement and funeral). They are described in the 1994 law of the Kyrgyz Republic “On National Security Agencies.”

A set of rules were borrowed from the Soviet past without taking into consideration the socio-political and economic system of the Kyrgyz Republic. For example, just as in the Soviet time, employees are not offered service housing. Therefore, a large part of the staff in national security are to spend their modest salaries to rent housing. Frankly speaking, during Bakiyev’s regime the officers from the state service for protection—mostly fellow citizens or relatives—in their vast majority were provided with flats since it was clear to the President that his security had to be financially motivated.

Nearly the entire motivation package has a financial component. Under conditions of chronic under-funding, the package seems empty and unrealizable. The average salary does not allow employees at this level to support their families. There is a waiting list for

10 Available at www.knews.kg/ru/action/2982.

11 Available at www.for.kg/news-152890-ru.html.

public kindergartens and the spa treatment centres are not sufficient even for one third of those in need.

It appears that not all employees can give a motivating reason for the work they do. The existing working conditions do not always help to turn to internal aspirations, such as the need to serve the oath, the ideas of patriotism, duty to society and the state, rights and legal interests of citizens, etc.

In this case, corruption, abuse of position, violence, and other illegal activities turn into motivation for the national security officers. The system of incentives should be designed to absorb the dark interests, neutralize them and make them unprofitable.

It should be emphasized that the above-mentioned problems related to the motivational package of national security officers are typical of almost all post-Soviet states.

Recommendations for the reforms in the national security system

1. Choosing the optimal model of national security service

We can distinguish two closely related models of national security bodies.

The first one has the role of a special service responsible for the collection and analysis of intelligence information, presented later to the government, law enforcement and other official bodies; control of secret intelligence-subversive and other hostile infrastructures, as well as conducting special operations against them via operational means or specially trained staff.[12]

The second model was established in the Soviet period. It is a symbiosis of the special services with governmental bodies. A characteristic feature of this type of structure was not only the inclusion of security agencies in state management, but also the recognition of their superior role for the national security. Hence, these organizations were granted interagency functions, the right to give recommendations to other ministries and agencies, and to carry out official control functions on certain types of governmental activities.

Currently, this universal function is not inherent to the national security agencies. Therefore, it would be extremely wrong to assume, even more so to assert that national security is the responsibility or is coordinated on national scale by the national security agencies. This obligation is shared by the governing authorities in the Kyrgyz Republic at all levels.[13] This was mentioned at the beginning of this article where the national security system was described.

2. Activities of the national security authorities

When implementing the optimal model of national security bodies we shall not forget the tragic lessons of history related to the secret services, functioning in some periods outside the legal framework, which led to massive repressions or to the use of services as

[12] Concept of Development of the Ministry of National Security of the Kyrgyz Republic no. 497, approved by the Government of the Kyrgyz Republic on 24 July 1998.

[13] Ibid.

an avenging sword for the elimination of opponents. The national security bodies are to serve the people as a whole, and not individual political interests or clans.

3. Modernization of personnel policy and social protection of the national security collaborators

The experience from the history of Soviet state security bodies shows that special services operated most effectively with human resource potential. Kyrgyz national security services were no exception. In this regard, the leadership of Kyrgyzstan shall terminate the practice of appointing laymen in senior positions in the system of national security. In addition, special attention shall be paid to training and retraining of employees, giving them a proper package of social guarantees.

4. Enhancement of the quantitative and qualitative potential of national security authorities

Even with today's "warming" of the political climate in the world, especially the integration of European countries to the European home, there is no visible tendency for diminishing the role of security services. On the contrary. Both to the West and to the East, there is a sustainable tendency to strengthen the intelligence services by increasing funding, as well as by improving the organizational structure in order to increase their effectiveness in implementing priority tasks. Given the difficult, conflict situation in the Central Asian region, which may well deteriorate after the withdrawal of NATO troops from Afghanistan in 2014, the unresolved border issues, the threat of international terrorism and religious extremism and other threats, Kyrgyzstan is to strengthen the potential of national security bodies and to multiply the number of employees and appropriate funding. This is required by the national interests of the Kyrgyz Republic.

Chapter 3
Reforms in the Anti-drug Law Enforcement Agencies of Kyrgyzstan: the Answer to the Current Challenges

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Justification

The anticipated Afghan drug expansion in the world starting with the withdrawal of the troops of the anti-terrorist coalition, narconomics,[1] the growth of drug-related corruption and other modern challenges necessitate further effective reforms in anti-drug agencies, especially the distribution of responsibilities and coordination of activities. This chapter tells the story of the reforms in the republican counter narcotics structures, examines the current state of affairs in the field of drug control and the prognosis for the development of the drug situation and the associated negative effects, and makes an attempt to provide guidance in the development of "tactics ahead of the curve."

The history of the issue

In Soviet times, it was considered that such negative phenomena like drug addiction, drug trafficking, prostitution, and many others were not inherent to a society building communism. Their coverage in the media was a taboo, the administrative instructions were not to raise these issues and keep silence.

Units to combat drug abuse and drug trafficking in the 1960s – 1980s were part of the criminal investigation service; however they did not practically perform their direct duties: drug trafficking was a latent crime, such offences were not reported to the police, therefore anti-drug departments were generally used for the disclosure of burglaries and robberies.

[1] Narconomics – the economy based on the income from drug business and drug trafficking. The term was first introduced in the scientific circles by Zelichenko A., PhD in history, in March 2011. See *Kyrgyzstan through the prism of narconomics* (Bishkek, 2011), p. 3.

In 1978, four years after the cessation of opium poppy cultivation in the country, an operational group arrived at checkpoint “Red Bridge” on the border between Issyk-Kul region and the regions under republican control. The group included the author of this study, then inspector in the department against drug abuse and drug trafficking in the Criminal Investigation Department in the Ministry of Interior of the Kyrgyz SSR, and a dog handler with a search dog. In one day, the dog caught 29 carriers of hashish and marijuana, produced from wild cannabis. This case became a subject of proceedings in the administrative bodies of the Central Committee of the Communist Party of Kyrgyzstan. As a result, the struggle against crimes and drug abuse for a long time was reduced to sporadic detentions, mainly of drug users.

The warnings of professionals about ties between drug trafficking and organized crime, the impact of drug use on the genetic fund and other arguments in favour of enhancing the anti-drug activities of the Ministry of Interior and other government organizations were not taken into account.

Operational and preventive work in this direction was revived for a short time in 1979-80, when the security forces tightened their control over the mail to military units. The narcotic substance hashish was detected in many letters, packets and parcels. On each occasion, rigorous investigation was carried out followed by a criminal case. However, these checks stopped after drugs were discovered in the mail addressed to a military service member who worked for governmental communications. Instead of carrying out the relevant activities, work became a taboo.

At the end of the 1980s, after the Soviet republics had gained significant independence, along with the changes in the economic, political, criminal and legal fields some positive developments occurred in the understanding of the need for strengthening the fight against drug abuse and drug trafficking. According to the existing at the time practices, drugs had a significant negative impact on crime in general. Here is an example: cannabis with a high level of active substance—tetrahydrocannabinol—did not grow in the northern regions of the former Soviet Union. In order to buy, for instance, quite expensive hashish and marijuana, one really had to commit a crime – robbery, theft, or hijacking motor vehicles.

In Kyrgyzstan, the cannabis, brought in the 1930s for industrial use, was already growing in abundance everywhere in the wild in the 1960s–80s. Measures taken by the government for its destruction were not sufficient, the drug could be produced practically everywhere without spending any money to acquire it. Yet, most of the property crimes were committed by smokers of hashish and marijuana. Anyway, it was then, in the early 1990s, when the Ministry of Internal Affairs of the Kyrgyz SSR decided to activate the fight against drug addiction and drug trafficking. As a first step, in April 1991, the units to combat drug-related crimes were removed from the Criminal Investigation Department; they were considerably enhanced with additional staff and formed a separate division – Service for combating drug trafficking at the Ministry of Internal Affairs of the Kyrgyz Re-

public.[2] In fact, this was the beginning of the reforms in the anti-drug law enforcement agencies.

Originally, it was planned to withdraw the Service for combating drug trafficking from the jurisdiction of local law enforcement bodies and subordinate them centrally. However, in this case, it would have been necessary to provide additional space for their accommodation, petrol, and employees would automatically drop out of existing waiting lists for housing, places in day care centres and other material and social benefits. Moreover, this would disintegrate the interaction within the services and departments of any specific organ of internal affairs that had been built over the years.

The first steps of the "newborn" service proved the appropriateness of the decision on its establishment. A new technique that had never been used before came into practice – infiltration of criminal groups (undercover work), controlled procurement, the interaction with anti-drug units of the Ministry of Interior and the customs offices in Russia, Kazakhstan and other countries significantly increased. As a result, in one of the largest operations on exposing an organized ethnic crime group, the export of two tons of marijuana out of the country was prevented.[3] In addition, in many cases general criminal offences were revealed, including extremely dangerous crimes – robberies and murders. Thus, while investigating a group of drug dealers in the capital, members of the anti-drug department revealed a murder committed by its members in Issyk-Kul region – the criminals could not share the loot.[4]

Meanwhile, it soon became clear that there was no inter-departmental co-ordination of the work to combat drug abuse and drug trafficking. The system of interaction created in the Soviet Union, which, even then showed to be ineffective, broke down, which significantly reduced the efficiency of the campaign against drug trafficking.

To improve the situation, proposed by the author of this article and supported by the Ministry of Interior, in 1993, a special authorized body was established – the State Commission on Drug Control under the Government of the Kyrgyz Republic (SCDC).[5] Its mandate was to regulate the legal drug trade; to create laws; the execution of representative functions, etc., but most importantly – to coordinate the work of all relevant ministries and departments.

To this end, in our opinion, the most cost-effective form was chosen: instead of creating another bureaucratic authority with its portion of the state budget, the State Commission employed members of the relevant structures – the Ministries of the Interior and Health, the Customs, and the National Security Committee. The plan was to create a public council – the prototype of today's public oversight boards set up in all state structures by ex-President of the Kyrgyz Republic, Roza Otunbayeva. The initiative to establish a specialized coordinating body was supported by international organisations and, above all, by the re-opened regional office of the UN Office on Drugs and Crime

2 Zelichenko, A., "Afghan narco-expansion of the 1990s," Bishkek, 2004, pp. 77-122.

3 Zelichenko, A., "Afghan narco-expansion of the 1990s," Bishkek, 2004, p. 81.

4 Zelichenko, A., *The Spy from Murghab*, A collection of short stories, Bishkek, 2010, pp. 19-21.

5 Zelichenko, A., "Afghan narco-expansion of the 1990s," Bishkek, 2004, pp. 122-140.

(with UNODC office headquarters in the city of Tashkent, Republic of Uzbekistan). UNODC promoted our experience in the region, organized study visits and seminars, initiated and funded anti-drug projects,[6] attracting international experts in the field of legislation. Due to this cooperation, for example, Kyrgyzstan was among the first in the CIS to carry out all the necessary preliminary work and sign three well-known UN Conventions of 1961, 1971 and 1988, creating the image of a persistent anti-drug fighter.

Except with the United Nations, contacts were established with Iran, Israel, USA, and Russia. Kyrgyz drug fighters were active, in most cases visited these countries and studied their experience, signed bilateral agreements on cooperation. Cooperation with Russia even included joint developments and arrests of drug traffickers.

In 2003, ten years after the creation of the State Commission on the control of drugs, the Anti-drug control agency was established,[7] which was originally subordinated to the President of the Kyrgyz Republic. This Anti-drug agency was founded on the initiative of Kyrgyzstan in accordance with the agreement between the Government of the Kyrgyz Republic and the United Nations Office on Drugs and Crime (UNODC) as part of a special international project.

The Anti-Narcotics Agency in the Ministry of Interior, the Office (Department) in the Customs Committee, and a division of the State Service for National Security worked in parallel.

The current state of affairs

It is well known that Kyrgyzstan, due to factors of geopolitical and economic nature, has been experiencing the powerful negative influence of Afghan drug trafficking for a number of years, beginning in 1993. In recent years, the narco-expansion has become more aggressive, it nourishes transnational organized crime, terrorism, extremism and unprecedented drug corruption, thus becoming one of the major threats to the national security of the country.

"Another serious danger is the transformation of Afghanistan into a global centre for the production of drugs and the involvement in the drug trafficking of "agents" from Central Asia – organized crime groups, some members of law enforcement agencies and even officials committed to combating drug trafficking. But the biggest threat remains the rapid growth of drug addicts in the countries of Central Asia and Russia, as well as the underestimation of the disaster by politicians (especially in Kyrgyzstan and Tajikistan)."[8]

The aggravation of the drug problem contributed significantly—under the pretext of duplication of efforts—to the elimination of the independent anti-drug department in the

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6 Zelichenko, A., "Afghan narco-expansion of the 1990s," Bishkek, 2004, p. 131.

7 By Presidential decree no. 182 of 17 June 2003, based on the State Commission on Drug Control that had existed over 10 years, a new state agency—the Agency of the Kyrgyz Republic for the control of drugs—was established.

8 Laumulin, M., Virtual security in Central Asia. CSTO on the eve of NATO withdrawal from Afghanistan. Russia in Global Affairs, www.centrasia.ru/newsA.php?st=1346822820.

Ministry of Interior of the Kyrgyz Republic in 2008, and in October 2009 – of the republican Drug Control Agency. The decision to re-establish in 2010 the Main Directorate for Combating Drug Trafficking, and later the State Drug Control Service with the Government of the Kyrgyz Republic aimed to restore the *status quo* (resurrection of closed-down agencies), but the fact remains – the idleness of special services, albeit on "objective" reasons, lowered the efficiency of drug opposition by at least fifty percent.

"In Kyrgyzstan, for a period of seven months in 2012, the police revealed 983 crimes related to drug trafficking, the press service of the Ministry of Interior announced. According to press service data, 1 103 crimes have been identified, i.e. 12 more than in 2011. The internal affairs services revealed the biggest share of drug-related crimes – 89.1 percent. It was reported that during the same period in 2012, as a result of search operations, over 13 tons of drugs were confiscated."[9]

"In Kyrgyzstan, the drug problem is acute and intense." This was stated by the head of the State Service on Drug Control of the Kyrgyz Republic, Keneshbek Duishebaev, at a press conference on August 13, 2012. According to the report of the UN Office on Drugs and Crime, "90 tons of heavy drugs are transferred each year across the countries in Central Asia and only 3 percent of them are seized by the police. According to international experts, about 20 tons of hard drugs, worth about $ 6 billion, pass through the country. According to data from the State Committee on drug control, drugs worth about $ 27 million have been confiscated."[10]

The intensity, frequency and amount of drug trafficking allow us to use the term "drug aggression" which determines a number of threats to the national security of the countries in the Central Asian subregion. They can be classified as follows:

Threats in the international sphere

- Transnational crime
- International terrorism

The so-called "drug lords" in our region are not some individual negatively charged social phenomena, but rather classic representatives of trivial organized crime. Furthermore, they possess elements of transnationalization and even cartelization. As such, as in many other countries, they have long been trying to influence politics and enter the structures of power. An example of this was a series of gang skirmishes in recent years where deputies from the then Parliament of KR were among the victims. There are also numerous facts proving the use of drug money in support of terrorism activities. "According to estimates of Kyrgyz experts, the total annual illegal turnover from drugs coming mostly transit from Afghanistan may amount to 200-300 million U.S. dollars. Kyrgyzstan, being a drug trafficking country due to its geopolitical position, is taking all

9 www.24.kg/community/134756-v-kyrgyzstane-za-7-mesyacev-2012-goda-raskryto.html.
10 www.paruskg.info/2012/08/13/67318.

possible measures to curb drug traffic. Drug traffic is also a reason for the growth of terrorism and religious extremism in the south of the country."[11]

"For the first six months of 2011, the Financial Intelligence Service received from reporting entities 80 930 communications, including 435 communications from the non-banking sector. On March 30, 2011 the total number of reports reporting entities was 36. The daily amount of information provided by them was 1 156 communications. With regard to reports on persons and entities with possible involvement in the financing of terrorism and extremism, during the phase of processing and analysis of this information links were established with counterparts in our country and countries abroad. Based on the results of financial investigations on their initiative and at the request of law enforcement authorities, the government service prepared and sent to state agencies 60 pieces of information. Of these, 20 contained facts on financing terrorism and were sent to the State Committee for National Security of the Kyrgyz Republic, 10 were related to financing extremism and were sent to the Ministry of Internal Affairs of the KR, and 29 revealed facts on financing extremism from drug trafficking. One piece of information was sent to the financial police. In order to counteract illegal income, financial investigation was carried out and the results were sent to law enforcement agencies."[12]

Threats in the economic sphere

- Narconomics
- Weakening of the unified economic space

"Legalization (laundering) of money from criminal activities is the final stage of transforming crime into a highly profitable and efficient production involving illegal and harmful to society concentration of economic and political power in the hands of an uncontrolled group of individuals. To allow legalization (laundering) of criminal income means to make drug trafficking, tax evasion, prostitution, extortion and bribery profitable."[13]

- The shadow economy

"In practice, organized crime groups involved, for example, in drug and arms trafficking, human trafficking and prostitution have incomes well above the average rate of profit in the legal business. These surplus funds not only cover the running costs of criminal gangs, but also allow them to expand their criminal activities and to establish control over the real sector of the economy."[14]

Threats in the social sphere

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11 Scientific collection "Kyrgyzstan through the prism of narconomics," "Problems in combating money laundering and related financial crimes: the experience of Kazakhstan and Kyrgyzstan," K.M. Osmonaliyev, Bishkek, 2011, p. 146.

12 www.24.kg/investigation/97329-gossluzhba-finansovoj-razvedkikyrgyzstana.html.

13 Kerner, H., E. Dah, "Money Laundering. Guide to current legislation and legal practice," Moscow, 1996, pp. 36-37.

14 Sayakbaev, T.D., Scientific collection "Kyrgyzstan through the prism of narconomics," "Money laundering and other financial crimes," Bishkek, 2011, p. 192.

- Increasing death rates in the population

The draft Concept of the State Anti-Drug Strategy of the Kyrgyz Republic contains data from the International Committee for Drug Control presented by state service on Drug Control under the Government of the Kyrgyz Republic. This draft concept admits that "according to the International Committee on Drug Control, the actual number of people who use opioids in the Kyrgyz Republic is equivalent to 0.8 percent of the population, or about 41,000 people. The annual mortality rate of this category of persons is 1.6 percent, i.e. approximately 650 people. Thus, for the last 10 years at least 6,500 people have died from an overdose of sepsis, not including death from road accidents, criminal incidents, etc."[15]

- Increased co-morbidities, including deadly HIV/ AIDS, hepatitis C

The proportion of injecting drug users among HIV-infected in 2002 was over 80 percent. On 1 February 2009, the country registered 2 057 HIV-infected persons, out of which 1 381 (67.1 percent) were injecting drug users, 534 (26 percent) – persons with HIV infection, registered in the penitentiary system of the Kyrgyz Republic.[16]

The total number of registered drug users in the country on January 1, 2010 was 9,730 people, out of which about 62.9 percent were injecting drug users.[17]

- Rate of social stratification
- Demographic decline

The tendency is confirmed by the figures of the Russian Federation, given in an interview for "Russian newspaper" by the director of the Federal Service for Drug Control, Viktor Ivanov: "Up to 90 percent of drug users are people under 35 years of age. The majority – between 20 and 30 years. There are practically no drug addicts older than 40 years – they do not live to that age. If you look at the mortality rate among the younger generation, 126,000 people between 15 to 34 years of age die every year."[18]

Threats in the governance sphere

- Drug corruption

Drug-related corruption is particularly hazardous. According to the degree of negative impact on social life, it is not inferior to the phenomenon of drug use per se. Drug corruption today really undermines the foundations of the state, regardless of whether a country is a producer, a transit point, or a drug user.

The candidates for ministers in power agencies in Afghanistan were announced. ... According to the Afghan constitution, each of the candidates for the post of Minister has to get more than half of the votes of those present. The MPs were expected to vote for

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15 KyrTAG, www.kyrtag.kg, 23 October 2012.

16 National report on the drug policy of the Kyrgyz Republic at the 52nd Session of the UN Commission on Narcotic Drugs, 2009.

17 The concept of anti-drug policy of the Kyrgyz Republic for the period up to 2015. Project of the Regional Resource Centre for Harm Reduction, www.harm-reduction.net.

18 www.rg.ru/2011/04/11/ivanov-site.html.

the Minister for Tribal and Border Affairs, Asadullah Khalid, proposed by Karzai for head of the National Security Office to replace Rahmatullah Nabil, who resigned. Deputy Muhayuddin Mahdi expressed his bewilderment by the fact that the President has proposed for the post of Chief Intelligence Officer someone who has been detained twice for drug smuggling in the neighbouring state. "When I was a political adviser to the Afghan Embassy in Tajikistan, the man was twice arrested for smuggling and he was threatened with a long prison term. Only the intervention of the embassy saved him then," the politician said.[19]

According to numerous reports, the men of power in Kyrgyzstan and the neighbouring Central Asian countries not just sit at the top of drug traffic receiving dividends. They transport drugs – the concept of 'red' (i.e. belonging to the law enforcement structures) heroin has become part of the lexicon of local drug addicts. The local press is literally bursting of facts about detention of law enforcement officers involved in drug trafficking. Here are just a few recent examples. On July 21, 2012, special service officers at the checkpoint "Chung-Talaa" in Batken Region caught red-handed a police captain and freelancer from the Main Directorate for Combating Narcotics with 15 kilograms of hashish. On April 12, 2012, three officers from the Pervomaysk police department in the town of Bishkek were arrested. The Office of Prosecutor General initiated a criminal case against them under article 247 "Illegal manufacture, acquisition, storage, transportation with intent to sell, and the illicit production or distribution of narcotic drugs, psychotropic substances, their analogues or precursors" and article 305 "Abuse of power" of the Criminal Code of KR.

According to the intelligence services, "the detainees had been selling drugs to citizens for a long time through dummies in order to further extort money from them." Furthermore, according to the words of special investigators, during the arrests the policemen physically resisted the commandos from the State Committee for National Security of the Kyrgyz Republic and tried to get away from the scene.

In April 2012, an officer with the rank of ensign from Kara-Buurinsk police department was arrested while trying to sell narcotics. During the search, a package with two plastic boxes with a substance of dark colour and specific odour was found, weighing 1 kilogram 790 grams. The expertise concluded that the tested substance was opium.

A few days later, an employee of the State Service for drug control was detained. This time the criminal "colleague" was a policeman. The staff of the Anti-narcotics police department in Osh raided the home of the 52-year-old suspect where the owner and his two guests were at that time. One of them worked for the State Service for drug control and had the rank of a lieutenant. The agents inspected his BMW and found a bundle with 1.7 grams of heroin.

Earlier, an officer from Leninsky district of the capital was taken to court, accused of drug trafficking and abuse of power. He was sentenced to five years probation.[20]

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19 Source: http://rus.ozodi.org; Permanent link: www.centrasia.ru/newsA.php?st=1346704380.

20 www.24.kg/community/134105-narkotikikg-a-borcy-kto.html.

On the Internet and in the press one can read the leaked report of the interdepartmental commission, headed by the deputy of the Department of defence, law enforcement and emergencies and monitoring the work in the Ministry of the Interior: "The amount of heroin seized in 2011 from four former officers from the services of the Ministry of Interior is equivalent to the amount of heroin confiscated for a period of a whole year by the police. It is worth mentioning the fact that one of the staff members detained for drug trafficking was once recognized by the Ministry of Internal Affairs as the best in the profession, i.e. as a fighter against drug trafficking. It is not uncommon for police officers to use drugs themselves. In fact, two cases of drug use by employees were registered for a period of eight months in 2012."[21]

Delivered through corrupt channels, drugs are then sold at dumping prices again in the "red holes" in Bishkek, Osh and Jalal-Abad, and smuggled in Kazakhstan and Russia.

To counteract this terrible and destructive phenomenon is difficult, but extremely necessary. And not only by force. It is high time to adopt a law "On combating drug abuse" which would determine the scope of work and the degree of responsibility of every ministry or department involved in drug counteraction. It is also necessary to propose the establishment of an Internal Investigation Service on the basis of the Anti-drug Centre. Its tasks shall include primarily identification of corrupt "windows" for drug transfer at the state borders. To this end, there are very specific mechanisms[22] that will be formulated at the end of this article.

Preventive tactics

According to the approved plan, the withdrawal of NATO coalition troops from Afghanistan will be completed in 2014. Will this bring new challenges and further proliferation of threats to the security of our country? What is Kyrgyzstan supposed to do in order to minimize any potential risks?

Looking ahead, we shall note that the prognosis for the situation, both inside and around the Islamic State of Afghanistan, is quite unfavourable. There are even talks on the division of the country into two parts which most probably means the beginning of a civil war, instability, and the presence of numerous uncontrolled armed groups. These are, above all, the "Islamic Party of Eastern Turkestan," "Akramiya," "Tablighi Jamaat," "Jamaati Mujahideen Central Asia," and finally – the "Islamic Movement of Uzbekistan."

If the Taliban come to power, which according to experts would help keep the country intact and therefore is considered as the most likely scenario, this would not help to calm down the situation either. It is unlikely that they will have any territorial claims or will personally promote the idea of radicalism. However, the various terrorist organizations based on the territory under their control will wake up. Even today they feel free

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[21] Source - The newspaper "Delo №," Permanent link: http://www.centrasia.ru/newsA.php?st=1355724180.

[22] Zelichenko, A., "The Third Force? (On the connection with drug trafficking in Osh tragedy)," Scientific collection "Kyrgyzstan through the prism of narconomics," Bishkek, 2011, pp. 10-11.

and, after a loyal regime takes the supreme power, this feeling will become stronger. Then, we can wait for the intruders – Batken (1999-2000) events provide a bright example.

It is also possible that the zone of conflict be moved to the Ferghana Valley, part of which is the south of Kyrgyzstan. The area is already burdened with many problems (agricultural, water, ethnic, border, etc.) and within an hour could resemble a powder keg with a spark.

In any of the above cases it is easy to predict a new round of drug trafficking – the financial basis of any local war and terrorism: the cultivation of opium poppy yields up to 40 percent of Afghanistan's GDP and this production involves more than 3.5 million Afghans (almost 15 percent of the population).[23] The sad experience of the past is also known: taking the power in the early 2000s, the Taliban reduced the area with opium crops and at the same time created many stocks potions that for a long time fed transnational criminal enterprise at dumping prices.

Under these circumstances, Kyrgyzstan is to work out some kind of "preventive tactics" with an emphasis on strengthening its state border. Such tactics, in our view, could include the following aspects:[24]

At international level:

1. Strengthening of cooperation based on mutually beneficial partnership with the UN, the OSCE, the European Union (e.g., increased assistance for "Security belt around Afghanistan" in support of the law enforcement agencies and the armed forces). Building on the experience of BOMCA/CADAP, development and deepening of existing and the creation of an increasing number of joint projects to combat drug trafficking and strengthen the borders.
2. Further deepening of regional integration through the CSTO and SCO. There should be no tolerance, for example, to delays in the finalization of agreements on the use of joint military force in case of intervention on the territory of one of the member countries. I believe, this is also in the interest of neighbouring states, especially Tajikistan, which is able to provide political support to the promotion of these initiatives.
3. Reliance on the "heavy weight lifters" in regional policy – Russia and China. Lately, this role is increasingly manifested by Kazakhstan. These countries can become a reliable guarantee to our security. Kyrgyzstan shall actively cooperate in the framework of the already mentioned here SCO and CSTO, and possibly sign bilateral agreements for military and other (logistical and political) support and assistance in case of aggression against sovereign Kyrgyzstan.
4. Intensification of contacts between our special services and foreign colleagues at all levels. Establishing of institute for "Liaison officers" when necessary.

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[23] Zelichenko, A., "The Afghan rift: a threat to the country," *Evening Bishkek*, 5 October 2012, p. 12.

[24] Ibid.

5. Contribution to the accelerated transformation of the Central Asian Regional Information and Coordination Centre for Combating illegal traffic of drugs, psychotropic substances and their precursors (CARICC) into a real "combat unit" on the way of drug trafficking from Afghanistan. Given the forthcoming presidency of Kyrgyzstan, this process seems more than real.

In-country:

1. Urgent strengthening of the Border Patrol Service, weakened by numerous managerial experiments. Under this situation, the recent decision of the President to establish an independent body for border protection, reporting directly to the Commander in Chief, seems very timely.
2. Transition to the concept of a professional army and advance of its best-trained and equipped units (assault units, "Scorpio," etc.) to the forefront. Their very presence on the territory of potential military conflicts can cool many hot heads. This process has already begun and it should be strongly accelerated.
3. Strengthening of borders like "residency requirements" for ethnic Kyrgyz returning to their homeland. Today, the majority of them are heading to the already overcrowded Chui valley, where there is clearly indication for lacking natural resources. In Batken border region, even acclimatization will be painless. After the mandatory 3-5 years, you can see many of them settle down and stay forever. Economic incentives should be of greater use – loans, mortgage loans with deferred payments, or credit at low interest rates.
4. One way to protect the frontiers is to use the experience of volunteer groups. In some localities, it would be good to put the involvement of the local population on sound legal basis, encouraging such activities through payment of wages, reducing income taxes, or considering this service as an alternative service.
5. Raising the coordination of the State Drug Control Service of the Kyrgyz Republic at a new, qualitatively higher level, involving staff from other interested ministries and agencies (Ministry of Internal Affairs, State Committee for National Security, the Border Guards, and Customs).
6. Strengthening the coordination of national drug control structures could also contribute to the development and adoption of a law "On combating drug abuse" and would determine the area responsibly of each state agency. For example, the State Committee for National Security could use its own methods of work to fight drug trafficking by strengthening cooperation with local counterparts, and would carry out anticorruption activities among the anti-drug fighters. The State Drug Control Service would get the green light to fight international drug traffic, and the Ministry of Interior – domestic drug trafficking.
7. Creating reliable schemes to counter drugs-related corruption. For example, to introduce proposals to harmonize the legislation of the Member States of the Collective Security Treaty Organization and to establish an internal security service based on this organization. Its responsibilities would include joint in-

vestigations of corrupt drug channels. It is well known that to prove drug-related corruption and prosecute culprits is difficult. However, in case of double detection of the same drug transfer channel, the suspects in drug trafficking from customs offices, border services, police, etc., are to be dismissed without any right to work in power structures in the future.

8. In our opinion, to develop preventive tactics under the code name "Afghanistan 2014," it would be appropriate to create an expert group under the Defence Committee with the possibility to attract international experts when necessary.

Based on his experience and knowledge, the author of this article intended to draw attention to the impending threat and outline some ways to minimize it.

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Chapter 4
The Judiciary in the Kyrgyz Republic and Threats to the Security of the Judicial System: Current Problems and Implementation Issues

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Introduction

Taking into account the urgent need for coordinated work on the reform of the judicial system and making long-term and comprehensive decisions, the President of the Kyrgyz Republic decided in January 2012 to establish the Commission on the development of coordinated proposals for further reforms in the judicial system of the Kyrgyz Republic (hereinafter the Commission).[1]

The Commission included leaders of Parliamentary groups, the chairpersons of relevant Parliament committees, representatives of the President of the Kyrgyz Republic, the judiciary, law enforcement agencies and civil society.

Within a short period, the Commission carried out significant work involving a wide circle of civil society representatives, independent experts and international organizations. As a result, the Commission submitted to the President of the Kyrgyz Republic some recommendation on the most pressing issues and problems of the judicial system and legal proceedings, with valuable analysis and concrete proposals on a number of priority areas of the judicial reform for the near future.[2]

Among the recommendations, it was noted that the focus of the reform of the judicial system is to ensure independence of judges. Some of the proposed measures aim to

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1 See Decree no. 6 of the President of the Kyrgyz Republic "On the formation of the Commission on the development of agreed proposals for further reform of the judicial system of the Kyrgyz Republic" of January 17, 2012.

2 See: Presidential Decree no. 147 "On measures to improve justice in the Kyrgyz Republic," dated August 8, 2012.

provide safeguards to ensure the personal safety of judges and their families.[3] It should be taken into account that the issue of personal safety of judges and members of their families is inextricably linked to the security of the judicial system as a whole.

The legal concept of security

An independent court is possible only provided that the protection of judges from the threats to their safety is guaranteed. As an example, we could mention the corrupt environment in which judges have to work and the corruption in the judiciary system. Among the causes and conditions generating corruption are: various forms of interference in the judicial system (phone calls from influential politicians, civil officials with requirements for a definite outcome of a case, demands to leave the case without consideration, to expedite the case, or, conversely, to tighten it to the specified term; guidance from the president of the court or by the judges of higher courts; personal requests; threats and intimidation, rallies by aggressive citizens, inadequate funding of the judicial system, including judges' salaries (see Appendix 2), inefficiency of the judicial process, legal nihilism in society.

It is worth mentioning the following examples. First, the conflict related to the Kyrgyz Supreme Court in 2005. In April, the Supreme Court building was seized by supporters to the party that had lost the parliamentary elections. They demanded the resignation of the Chief of Justice and the entire judiciary corps. As a result of this seizure, the Supreme Court could not perform its functions for a month and a half. During this time, hundreds of criminal, civil and commercial cases were piled. The judges repeatedly appealed for help to the Ministry of Interior, the National Security Service, the General Prosecutor's Office and the Parliament, and tried to convince the invaders to leave the building. Nevertheless, it was all in vain.

On November 30, 2010, there was an explosion at the Sports Palace, where the case for the April events of 2010 was under consideration. As a result of this terrorist act, four employees of the National Security Service were injured. The number of victims could have been higher *had the bomb exploded later*: The hearing of the court was scheduled for 10:00 am.

In September 2012, nearly 200 residents of Ala-Buka district beat the judge and the assistant prosecutor. The reason for the incident: people insisted on the arrest of the brothers suspected of beating their fellow, but they were released under house arrest by a first instance court. The Court of Appeal upheld the previous decision. This infuriated the people and they decided to act as vigilantes and give justice not only to the fighters, but also over the judge and the prosecutor. After the beating, the injured judge and assistant prosecutor ended up in hospital.

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[3] See section 3.1.1 The Commission's recommendations on the development of agreed proposals for further reform of the judicial system of the Kyrgyz Republic. Decree 147 of the President of the Kyrgyz Republic "On measures to improve justice in the Kyrgyz Republic," dated August 8, 2012.

There were numerous examples of exercising pressure on judges and participants in the judicial proceedings in June 2010, when an inter-ethnic conflict in southern Kyrgyzstan burst out: beatings of lawyers and human rights defenders, relatives of the defendants, various rallies and pickets at the courthouses.

Under these circumstances, the impotence of the system to ensure the personal safety of judges and their families, and the security of court buildings is an essential factor for lowering the level of independence of the judiciary. Thus, the issue of providing security of the judiciary system in the Kyrgyz Republic deserves special attention. The resolution of this problem will have a direct impact on national security.

The Law of the Kyrgyz Republic "On National Security" defines the concept of national security as a "guaranteed protection of the vital interests of individuals, society and the state from internal and external threats." The vital interests are a set of needs, the satisfaction of which reliably ensures the existence and the possibility of progressive development of the individual, society and the state.

The focus of national security is the individual – his rights and freedoms; society – its material and spiritual values; the state – its constitutional order, sovereignty and territorial integrity.[4]

The main subject of national security is the state exercising the functions in this area through the bodies of the legislative, executive and judicial branches of government.[5]

The list of activities of these entities to provide internal and external security is determined by the real and potential threats to national security. These threats may come from internal or external sources.[6] A threat to national security is a set of conditions and factors that endanger the vital interests of the individual, society and the state.

Thus, it is possible to formulate the legal definition of security of the judiciary system. According to Y.N. Safonenko, this is "a state of protecting the judiciary bodies from the threats that affect the legitimate exercise of justice and independence of the judiciary in the performance of professional duties from corrupt media, financial problems, social exclusion and inadequate working conditions."[7]

Governmental protection as a guarantee for independence of the judges

The Constitution of the Kyrgyz Republic contains provisions on the independence and inviolability of judges and a ban on any interference in the administration of justice. In

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4 See Article 1 of the Law of the Kyrgyz Republic "On National Security" of February 26, 2003, no. 44.

5 See Article 2 of the Law of the Kyrgyz Republic "On National Security" of February 26, 2003, no. 44.

6 See Article 3 of the Law of the Kyrgyz Republic "On National Security" of February 26, 2003, no. 44.

7 Safonenko, Y., *Legal security of the judicial system in the Russian Federation*. PhD thesis in law: 05.26.02. Moscow, 2005. 216 p.: 61 06-12/385.

accordance with their high status, social, material and other guarantees are to ensure the independence of judges.[8]

The Constitutional Law "On the Status of Judges in the Kyrgyz Republic" determines the guarantees of independence. One of them treats the state protection of judges. The state protection of judges is provided in times of threats of violence to the judges' life, health and property in connection with their official duties.[9] In fact, this provision is now in Chapter 7 of the Constitution, establishing social guarantees of the status of judges. It would be logical had it been included in Chapter 2 of the constitutional law, which defines general guarantees of the independence of judges.

The law defines the following security measures:

1) personal protection, protection of housing and property;
2) possession of weapons, special equipment for personal protection and communications when in danger;
3) temporary residence in a safe place;
4) guarantees of confidentiality of information about the protected judge;
5) recommendation on the transition (rotation) to another court, changing the place of work (service);
6) relocation to another place of residence.

According to another legal act, state protection is provided to the President of the Supreme Court of the Kyrgyz Republic[10] as an official taking high public office. The state protection body is a military unit of the Kyrgyz Republic in the system of the State Committee for National Security. Its main tasks include prediction and identification of threats to the life and health of the protected individual, taking measures to prevent this threat, security of protected persons in places of their permanent and temporary stay.

The Constitutional Law "On the Status of Judges in the Kyrgyz Republic" authorized the Kyrgyz Government (the organ of executive power) to establish the conditions and procedures for implementation of security measures. However, in my personal opinion, these issues need to be regulated in a separate law (details on that below). It would be nice if this bill were considered under the auspices of the Council of Judges.

The Council of Judges in the Kyrgyz Republic is a body of judicial self-governance. Judicial self-governance is the organization of the judicial community, dealing with inter-

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8 See Article 93 of the Constitution of the Kyrgyz Republic adopted by referendum on June 27, 2010.

9 See Article 34 of the Constitutional Law of the Kyrgyz Republic "On the Status of Judges," dated July 9, 2008, no. 41.

10 See Article 8 of the Law of the Kyrgyz Republic "On state protection," dated December 29, 1997, no. 105. In addition to the President of the Supreme Court, this Act authorizes protection to: the President – permanently, the spokesman of Parliament, the Prime Minister; in the presence of threat to life and health – Members of Parliament; from the moment of arrival in the country – Heads of foreign states, governments and delegations.

nal court issues,[11] which, I think, should also include questions on the conditions and procedures for security measures. The Council of Judges is also authorised to implement measures aimed at protecting the rights and lawful interests of the judges of the Kyrgyz Republic.[12]

Finally, the implementation of security measures requires adequate funding. By law, the Council of Judges has the authority to monitor the formation and execution of the budget of the courts.[13]

The role of the Government of the Kyrgyz Republic and the Ministry of Finance should be to spend properly the budget of the judiciary system,[14] including funding for the safety of judges.

The practical implementation of the legal procedures for ensuring safety should be entrusted to a body or bodies, responsible for the safety of judges, including the Judicial Department of the Supreme Court of the Kyrgyz Republic. The Judicial Department is currently responsible for the organizational, logistic and other support to the work of local courts.[15] If needed, the Judicial Department could carry out coordination with other law enforcement bodies, including international ones.

The Constitutional Law "On the Status of Judges in the Kyrgyz Republic" assumes that if needed the above mentioned security measures may be applied to close relatives of the judge. However, the law does not define the circle of persons who are deemed as close relatives of the judge. On the other hand, a situation may arise where the threat of attacks is aimed at persons who are distant relatives of the judges, but at a given time are in close relationship with the judge (e.g., living in the house of the judge). Therefore, this issue calls for further discussion and clarification.

Procedures of taking security measures

Currently, there is no act defining the order of implementation of security measures provided in Article 34 of the Constitutional Law of the Kyrgyz Republic "On the Status of Judges."

In the summer of last year, the Ministry of Internal Affairs developed a package of interesting documents:

- a draft Government programme "Security for witnesses, victims and other participants in criminal proceedings for 2013-2015";

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11 See Article 1 and Article 4 of the Law of the Kyrgyz Republic "On the bodies of judicial self-governance" of March 20, 2008, no. 35.

12 See Article 9 of the Law of the Kyrgyz Republic "On the bodies of judicial self-government," dated March 20, 2008, no. 35.

13 Ibid.

14 See Article 43 of the Law "On Basic Principles of Budget Law of the Kyrgyz Republic," dated June 11, 1998, no. 8.

15 See Article 43 of the Law of the Kyrgyz Republic "On the Supreme Court of the Kyrgyz Republic and local courts," dated July 18, 2003, no. 153.

- a draft Law "On state protection of judges, officers in law enforcement bodies and oversight authorities";
- draft Rules for compensation of judges, officials from law enforcement and oversight bodies or members of their families for damages resulting from destruction or harm to their property in connection with their service activity;
- draft Rules for security measures for victims, witnesses and other participants in criminal proceedings;
- draft Rules for the protection of information on the implementation of state protection of witnesses, victims and other participants in criminal proceedings;
- draft Regulations for financing and logistics of government protection provided to judges, officials in law enforcement and oversight bodies, the monetary value of which is at the expense of the state budget.

Despite the fact that the documents have been agreed by interested parties, they have not been adopted so far.

In my opinion, the treatment of state protection of judges by the draft Law "On state protection of judges, officers in law enforcement and regulatory authorities" is incorrect. Such an approach does not correspond to the constitutional status of the judge. Therefore, it would be more appropriate if the issue of protection of judges were treated in a separate law with a title "On the state protection of judges." Among other issues, this law should cover the following:

- regulate in detail the conditions and modalities of safety measures;
- define the rights and obligations of the protected person in the process of implementing a certain measure of protection, for example, the obligation to comply with the terms of protection, as well as compliance with legal provisions related to these measures;
- identify a list of reasons for taking safety measures: statement by a judge or a member of his family, operational information, etc.;
- establish a procedure for making a decision on security measures and its cancellation when (a) the security threat has become known to a judge or a member of his family, (b) operational information about a security threat was obtained by the security unit;
- define the legal status of the unit providing security, the procedure for making a decision on taking security measures and its cancellation, relationship between them and the persons protected;
- introduce a system for compulsory life and health insurance of the family and property of judges if the threat is associated with the official work of the judge;
- specify the list of family members and relatives of judges entitled to protection;
- specify the list of housing and property of judges to be protected;
- define responsibility for not taking safety measures, for the disclosure of information about safety measures for judges and members of their family.

It is necessary to consider the practical implementation of certain security measures taking into account existing conditions and realities; for example, safety measures when changing the place of work or residence of a judge. Given the size of the territory of the country, the number of courts and judges, close communication within the judiciary community, and the existence of family ties, it is not clear how these measures will be applied in practice.

Regarding the possession of weapons, some believe that this measure will be useless, especially with judges' lack of experience and skills of gun ownership and the unexpected attacks of intruders. There is also the risk of losing the weapon, as well as the responsibility of the judge in the case of violations of the rules for proper storage and use of weapons.

With regard to which authority shall take responsibility for the safety of judges, there are different ideas and suggestions:

- to establish a personal safety service in the judicial system within the structure of the Judicial Department, accountable only to the judicial community;
- to create a service within the structure of the Judicial Department to guard courthouses, judges and their families;
- to establish bailiffs;
- to designate the Ministry of Interior as the body providing protection of judges;
- to contract bodyguards and security guards from private professional services.

The debate on the creation of a bailiff service has been going for a long time. There have been various attempts to develop and adopt a separate law "On Bailiffs." The law intends to make bailiffs responsible for: ensuring order in the courts of the Kyrgyz Republic; assisting courts with the implementation of proceedings; ensuring the security of judges, other participants in the process, court officers and individuals engaged in the executive work, as well as of courthouses; assisting court officers in forcible execution of decisions.

During the discussion of conceptual issues in the draft laws, in my opinion, it is important to pay attention to the following.

First, when determining the number of bailiffs to ensure order in courts, it is necessary to take into account the number of judges, the number of floors in the building, as well as the need for the bailiff's presence in the courtroom at the time of administration of justice. In other words, the number of bailiffs shall guarantee the safety of each trial. Consequently, additional staff of bailiffs is needed to provide assistance to the court during proceedings, to ensure the personal safety of judges and their families, court officers, and persons engaged in the executive work.

Second, working time of the bailiffs: they are to protect courthouses around the clock, including weekends and holidays, and not just during business hours.

State programme to ensure the safety of judges and their families

Currently, there is no national programme to guarantee safety to judges and their families. This is a serious disadvantage. As for the National programme for protection of wit-

nesses, victims and other participants in criminal proceedings for 2013-2015, it focuses on the implementation of the Law "On protection of witnesses, victims and other participants in criminal proceedings."[16] This programme is being developed for the first time since the adoption of the Act.

The total number of crimes recorded by law enforcement authorities in the period from 2002 to 2011 exceeds 30,000 per annum. The participants in criminal cases are increasingly becoming targets of revenge or threats. As a result of this, witnesses, victims, and other participants in criminal proceedings renounce in court their initial testimony, and the perpetrators are able to evade justice. Therefore, the problem of protecting participants in criminal proceedings is urgent.

Unfortunately, the programme does not include measures to protect judges and their families. Therefore, I propose: (a) to include judges and their family members in the list of protected persons under this program, or (b) to develop a separate state programme for the protection of judges and members of their families in the mid-term period.

The judicial community and the Council of Judges should take a more proactive stance on this topic. It will be challenging. To illustrate the scale of the work, we are going to consider only one aspect: the financial provision of the programme. The financial costs associated with the implementation of this State Programme for protection of witnesses, victims and other participants in criminal proceedings for a period of three years, is estimated to amount to about 65 million soms.[17] This figure is a minimum, as these calculations are not final. For example, estimates are not yet available for expenditures required for special equipment in the offices in the investigation departments and courts of first and second instance. According to preliminary calculations of the Judicial Department, the witness protection equipment in court premises will cost 121,674,800 soms,[18] including the costs for reconstruction of 864 rooms for witnesses in 72 courts of first and second instance throughout the country.

Undoubtedly, the programme will require substantial financial resources. Therefore, to solve this problem, it is necessary to form a working group of the Council of Judges, to develop measures for protection of judges and their families, to calculate the necessary expenses and to identify the stages of financing (for example, for the period from 2014 to 2017). Then, the sources of funding are to be identified.

Security of court buildings

According to the law, court buildings and their premises have special status. They are strategic targets and their use has an effect on the national security of the Kyrgyz Re-

[16] See Law of the Kyrgyz Republic "On protection of witnesses, victims and other participants in criminal proceedings" of August 16, 2006. The newspaper "Erkin Too" on September 8, 2006, no. 67.

[17] Approximately 1,382,979 U.S. dollars at the rate of 47 KGS / USD.

[18] Approximately 2,588,826 U.S. dollars at the rate of 47 KGS / USD.

public.[19] The law sets special requirements for the mode of functioning and exploitation of the strategic sites to ensure national security.

For the effective functioning of the security system of a courthouse as a strategic object, its technical condition is of importance. Currently, 72 courts and 8 departments of the Judicial Department are located in 69 buildings with a total area of 36,721.43 sq.m. Of these, 14 courts and 6 departments of the Judicial Department are located in 9 buildings. Furthermore, 90 percent of the buildings of the local courts do not meet standards for the offices of the local courts of the Kyrgyz Republic.[20]

The functional analysis of the judicial system, conducted in 2008, highlights that almost all courts are located in buildings that are not designed for judicial institutions.[21] The report "Diagnosis of the judicial system of the Kyrgyz Republic: Measuring progress and identifying needs," prepared by the Swiss Cooperation Office in the Kyrgyz Republic with the assistance of the World Bank, points out that "it seems that only one building occupied by the courts was built as a courthouse. Other courts are located in buildings dating from the Soviet era (1950s and 1960s), and many of them were intended for other purposes ... The court buildings are basically 2- or 3-storey buildings with brick walls and wooden floors, and with few exceptions, they have not had even minor repairs due to a lack of state funding."[22]

In addition, some of the court buildings were seriously damaged during the events of April 2010: during the riots the buildings of Talas municipality court and Talas regional court were set on fire. The local courts in Osh and Jalal-Abad regions were partially destroyed. The country is in a zone of high seismic risk and after a series of earthquakes in 2008, the buildings of Chon-Alai regional court and Osh town court are in a critical state.

The functional analysis of the judicial system from the summer of 2012, as part of the USAID/IDLO programme to strengthen the judicial system in the Kyrgyz Republic, noted that "over the past four years, from 2008 to 2012, the infrastructure of court buildings has practically not changed."[23]

Thus, given the fact that the buildings originally were not intended for courts and in most cases are not of high quality, it is necessary to estimate the amount of capital investment for modernization of existing buildings and for the construction of new court buildings to meet international norms and standards.

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19 See Law of the Kyrgyz Republic "On the strategic objects of the Kyrgyz Republic," dated May 23, 2008, no. 94.

20 See Resolution of the Government of the Kyrgyz Republic "On approval of the office space for local courts" no. 492 of August 5, 2009.

21 Report on the functional analysis of the judicial system of the Kyrgyz Republic. The USAID to promote judicial reform, Threshold Programme "Millennium Challenge" of the Kyrgyz Republic, October 2008, p. 58.

22 Diagnosis of the judicial system of the Kyrgyz Republic: Measuring progress and definition of requirements, p. 61.

23 Functional analysis of the judicial system of the Kyrgyz Republic. Program USAID/IDLO to strengthen the judicial system in the Kyrgyz Republic, July 2012, p. 38.

This work can be part of the implementation of paragraph 8 of Decree no. 147 of the President of the Kyrgyz Republic "On measures to improve justice in the Kyrgyz Republic" from August 8, 2012. Under this paragraph, the Council of Judges together with the Government of the Kyrgyz Republic need to develop a national programme for "Development of the Judicial System of the Kyrgyz Republic for 2013-2017," aimed at substantial improvements in the financial and logistic support to courts, including major repairs, reconstruction, construction of buildings, their computerization and provision of other technical equipment. The programme is to be approved by Parliament.

This national programme may be based on the Strategic plan for development of the judicial system for 2013-2017, and the Plan for its implementation. The draft documents were prepared at the end of last year by a working group commissioned by the Executive Board of the USAID and IDLO on enhancing the judicial system in Kyrgyzstan. They are currently under review by the Supreme Court and the Council of Judges of the Kyrgyz Republic.

It is important to note that for 2012 and 2013 there is no funding for the security of court buildings. Despite these difficulties, the Judicial Department is trying to take measures to ensure the safety of buildings. For example, equipping courthouses and courtrooms with video surveillance cameras (Bishkek City Court, Oktyabrsky and Pervomaysky regional courts). Security cameras have been installed in the lobby and hallways of the building of the Judicial Department. Recognizing the importance of video surveillance for security, some judges have started at their own expense to install security cameras in the reception rooms and in their offices. Obviously, these measures are not sufficient. Further work is needed to procure modern technical systems in the process of upgrading the existing court buildings, as well as the construction of new court buildings, including:

- strengthening the entrance doors, including rooms for guards, storage of weapons, evidence, the room with server equipment, installation of armoured glass on the 1st floor of the building;
- securing the perimeter of protected area, outdoor area lighting, parking lots for vehicles, installation of anti-taran devices, fire hydrants;
- providing first aid kits, personal protection equipment (bullet-proof vests, gas masks, etc.), fire extinguishers, including automatic alarm systems, emergency lighting and power, fire alarm systems, automatic fire extinguishers, phones with set numbers, devices recording telephone messages, hand-held and stationary metal detectors, blast inhibitors, emergency alarm buttons.

The construction of checkpoints for court personnel, visitors, vehicles, access control, including verification of documents and personal search in the presence of any clues, will help ensure the safety of judges, trial participants, and court visitors, and will keep the order necessary for the normal work of the court. In addition, the permit regime shall ensure the principle of publicity of the proceedings.

In addition to the indoor and outdoor video surveillance, a system is needed to make audio and video recordings of trials. Video-conferencing systems would be convenient,

for example, for civil cases in the court of appeal or cassation (so that parties would not come to the regional courts or the Supreme Court) or for persons with disabilities (in hospital or at home they would be able to take part in the trials).

There is more work to be done related to the introduction of a system for electronic processing of documents in the courts, and part of this work is the transformation of all legal papers from the archives into electronic form.

It is equally important to develop safety documentation: an action plan for the prevention and elimination of emergency situations, a plan for anti-terrorist protection, an evacuation scheme, schemes locations of the alarm systems, fire hydrants, etc.

Finally, it is necessary to take into account the requirements of the technical regulations "Safety of buildings and structures"[24] which set the minimum necessary requirements for the design, construction, operation, major repair, renovation, conversion, dismantling and demolition of buildings and structures; requirements to the engineering equipment systems of buildings; the procedure for the conformity assessment for safety requirements of buildings.

Conclusion

Security is a prerequisite for the administration of justice and the independence of the judiciary, and it is the most important step for further improvement of the judicial system. At the same time, there should be a reasonable balance between security and openness of courts: on the one hand, an unprecedented security system, and on the other hand, compliance with the principle of openness and transparency of the proceedings.

Funding for the protection of judges is a responsibility of the government. Therefore, it is necessary to provide adequate funds for measures ensuring the safety of the judges.

Addressing the issue of threats to security of the judicial system will contribute to the achievement of priority strategic objectives identified in the Strategic Plan for the development of the judicial system of the Kyrgyz Republic for 2013-2017 – confidence of society in the courts, real independence of the judiciary system, transparency and accountability, efficiency, and access to the courts.

Other important issues pertaining to the security of the judges remain outside this publication. For example, countering extremist and terrorist activities against judges; prevention of crimes against judges; investigating and bringing to court defendants; establishing safe working conditions for judges (sanitary and hygienic, treatment and prophylactics, rehabilitation and other measures); protection against natural disasters, major accidents or failures, epidemics, epizootics, direct threats to the constitutional order, riots, violence and threat to life; providing training for judges in case of emergency situations. These issues could be examined in further studies and publications.

[24] See: Law of the Kyrgyz Republic on Technical Regulations "Safety of buildings and facilities," dated June 27, 2011, no. 57.

Chapter 5
The Development of Parliamentarism in Kyrgyzstan and its Impact on the Issues of Internal Security

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Introduction

The problems that now exist in the area of security of Kyrgyzstan have their roots in the Soviet Union. In each of the independent republics of the Ferghana Valley, there are enclaves and territories inhabited by ethnic groups from the neighbouring countries.[1] Ethnic conflicts were a major security issue and escalated in the Soviet period as well.[2] However, in the Soviet era the pervasive state machine steadily prevented the escalation of these conflicts, and provided security for the population.

After the collapse of the USSR, independent Kyrgyzstan and the other republics, located in the Fergana Valley, faced many problems in the field of security: terrorist groups, drug trafficking, ethnic conflicts. The young nations had been intended to exist within a single Soviet state, so they faced challenges not only in security but also in the social and economic spheres. Kyrgyzstan was able to ensure its safety and effectively prevented all ethnic conflict for a period of twenty years.

However, the confrontation between political groups led to two forced changes of government in 2005 and 2010. These two events were accompanied by a loss of power and monopoly on violence by the state. As a result, the weakening state was not able to provide security and prevent the escalation of conflict in the country. Taking advantage of the situation, various interest groups mobilized their supporters to achieve their economic and political goals. The potential conflict was kept for a decade in a latent form but finally moved into a phase of escalation.[3]

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1 Interview of the President of the Republic of Uzbekistan Islam Karimov, www.ca-news.org/news:1054967.

2 Zdravomyslov, A., Inter-ethnic conflicts in the post-Soviet space. Moscow: Aspect Press, 1999.

3 *Central Asia Online*, http://centralasiaonline.com/ru/articles/caii/features/main/2010/06/21/feature-01?change_locale=true.

Thus, the enforced regime change and the loss of monopoly on violence by the state were reasons for the revitalization of internal conflicts. In theory, conflicts exist in any society, however the main function of the state is to ensure the settlement of these conflicts within the institutional framework without the possibility of violence, and if the state is unable to manage conflicts, they escalate.[4] Therefore, the main problem for the security in the Kyrgyz Republic is the violent change of government that could trigger an escalation of conflict in society.

This chapter focuses on the fundamental issue of security – the risk of violent change of government. In comparison with 2010 and 2011, today the political shocks have passed and the government can deal with the pressing societal matters. However, after the two revolutions that took place over the last five years, the natural question arises – will there be a repetition of the events from 2005 and 2010? What are the prospects to preserve stability and order in the country? In what way does the development of parliamentarism affect the internal security of the Kyrgyz Republic?

This paper presents the hypothesis that the reforms of the past two years and the transition of Kyrgyzstan to a parliamentary-presidential form of governance reduce the risk of coercive regime change and affect positively the security in the country. First, this paper discusses the threats to internal security of the Kyrgyz Republic, then it describes the development of parliamentarism, and finally analyzes the impact of parliamentarism on the security in Kyrgyzstan. It provides some qualitative and one quantitative argument supporting the main hypothesis.

Despite the fact that the text puts forward arguments in favour of a parliamentary-presidential form of governance, the author establishes some reserves of the allegations: first, the existence of a number of other socio-political and economic security problems does not reduce the level of risk; and second, today there is a positive effect from the parliamentary-presidential form of governance. However, it is hard to predict how this effect will develop in the future. Therefore, in spite of today's positive trends, the future of parliamentary influence on the risks of violent change of government in particular, and on security as a whole, must be analyzed separately.

Internal threats to the security of the Kyrgyz Republic

For the 15 years of the presidency of Askar Akayev, the Constitution of the Kyrgyz Republic was changed three times, each time expanding the powers of the President. The government, the heads of the local administration and the judiciary were under the President. Power was concentrated in the hands of a single man, which empowered him with broad authority easy to use for the purpose of corruption. In the Kyrgyz society, the expanded powers of the President produce nepotism and corruption, as the head of state uses this opportunity to appoint to key positions loyal people regardless of their professional competences. It is not a secret that the main principle of personnel policy

[4] Knight, J., *Institutions and Social Conflict* (Cambridge: Cambridge University Press, 1992); Krasner, S., "Structural causes and regime consequences: regimes as intervening variables," *International Organization* 36:2 (Spring 1982): 185-205.

was loyalty to the president. The protégés of the President in turn hired "their" people who could be controlled by informal mechanisms (common relatives, elders, etc.). This practice strengthened the power of the President, giving him informal mechanisms of control over state institutions – scientists called this phenomenon "state capture."[5]

Thus, while power was being concentrated in the hands of one man and his entourage, important elite groups were left out of the political process, without access to important political and economic resources. The lack of opportunity to protect their interests under the constitutional order forced opposition leaders to exploit the potential of street protests. Moreover, the political persecution of dissidents from the elite undermined the legitimacy of the current government and radicalized the opposition-minded part of the population.

Under these circumstances, the presidential governance with clearly pronounced features of authoritarianism and nepotism was fraught with tension and division of society, especially in times of elections.[6] After the re-election of the president for his second term in office, a radical opposition appeared outside the system. This system did not generate stability since the antagonism of elites provoked a chronic change of government, as was the case on 24 March 2005 and 7 April 2010. According to well-known sociologist Juan Linz, "The danger of a zero-sum game as a result of the presidential elections is due to the fixed tenure of the President. Winners and losers are clearly defined for the duration of the presidential mandate. The losers have to wait for four or five years without access to executive power and patronage. A zero-sum game in presidential regimes raises the stakes of the presidential elections and inevitably enhances their tension and polarization."[7]

For example, after the elections in March 2005, a coercive change of power took place in the Kyrgyz Parliament with the help of mass mobilization of the country's population. President Akayev and his family were forced to flee the country. Kyrgyzstan plunged into chaos and political instability; nevertheless, major episodes of escalation of conflicts were avoided. Opposition came to power headed by Kurmanbek Bakiyev, who became the country's next president. However, after coming to power Bakiyev refused to reform the country's political structure. Moreover, he began strengthening the presidential power to create a "vest-pocket" parliament. Authoritarianism, family governance and corruption thrived in the governing bodies of the country.[8]

This situation led to the "Tulip Revolution" of April 7, 2010, when once again with the help of the masses the Establishment was ousted not only from the political top, but also from the country. The three hundred participants who started the protest in the morning

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5 Fighting Corruption in Transition. Contribution to the discussion of the strategy, the World Bank, Washington, DC, 2000.

6 What has been proven two times in the events of 2005 and 2010.

7 Juan Linz, "The Perils of Presidentialism," *Journal of Democracy* (Winter 1990), p. 56. According to research by Juan Linz, the experience of other countries confirms the above-mentioned defects.

8 Sally N. Cummings, ed., *Domestic and International Perspectives on Kyrgyzstan's 'Tulip Revolution': Motives, Mobilization and Meanings* (London: Routledge, 2009).

of April 7 were joined by a few thousand more after the police began shooting at civilians. 86 people were killed in clashes with the police.[9] By the evening of April 7, Bakiyev regime had unexpectedly collapsed, plunging the country into chaos and turmoil.

Taking into account the experience from the previous change of government in 2005, the opposition leaders decided to break the continuity of the legal authorities and dissolve the Parliament, the Constitutional Court, the Government and form a new ruling unconstitutional legal entity – the Interim Government. Because the state had lost its monopoly on violence (twice in five years), organized crime and various interest groups took advantage of the weakness of the government and began mobilization to achieve their economic as well as political goals. The latent local conflicts in Chui and Fergana valleys deepened and reached their culmination in the ethnic clash in the southern cities of Osh and Jalal-Abad on June 11-14, 2010. In the course of events, 442 people lost their lives. In addition, collisions occurred around Bishkek between internal migrants looking for land to settle and local suburban residents. Thus, the forceful change of power and the loss of the state monopoly on violence happened to be the cause for activation of internal conflicts.

During this chaotic period there was no constitutional authority and the only ruling entity was the unconstitutional Interim Government. The process of nation-building, which began in 1991, was de facto and de jure interrupted.

Impact of parliamentarism on the security in the Kyrgyz Republic

On June 27, 2010, the Provisional Government organized a national referendum on two items: 1) adoption of a new Constitution, and 2) balloting for Roza Otunbayeva as the President during the transitional period until 31 December 2011. More than 90 percent of the voters supported the new constitution and the interim presidency of Roza Otunbayeva.[10] The new Constitution came into force on July 2, 2010. Thus, Kyrgyzstan had a new Constitution and entered the Transition period, which lasted for one year and eight months until 31 December 2011.

The new Constitution gives more power to the Parliament, which is elected by proportional representation. All parties are to include in their lists representatives of the minorities and women: women – 33.5 percent and 15 percent – national minorities.[11] In addition, to enter the Parliament a party shall receive at least 0.5 percent of the votes in

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9 K-News, www.knews.kg/ru/society/14021.

10 Central Election Committee of the Kyrgyz Republic, www.shailoo.gov.kg/index.php?module=content&page=Postanovlenie_Centralnoy_komissii_po_vyboram_i_provedeniyu_referendumov_Kyrgyzskoy_Respubliki_O_rezultatah_referenduma_vsenarodnogo_golosovaniya_Kyrgyzskoy_Respubliki_27_iyunya_2010_goda__Postanovlenie_Centralnoy_komissii_po_vyboram_i_provedeniyu_referendumov_Kyrgyzskoy_Respubliki_O_rezultatah_referenduma_vsenarodnogo_golosovaniya_Kyrgyzskoy_Respubliki_27_iyunya_2010_goda&pagelang=ru.

11 Constitutional Law "On Elections of the President of the Kyrgyz Republic and members of Parliament," Chapter 11, Article 60.

each area.[12] It is assumed that this principle will make it possible to avoid the formation of regionally affiliated parties.

The Government is formed by political parties which create a parliamentary majority coalition. The government is accountable to the Parliament (Article 85). The President may dissolve the Parliament only if the political parties fail to form a government three times in a row (Article 84). Therefore, experts consider the new political system in Kyrgyzstan as parliamentary-presidential.[13]

On October 10, 2010, the first parliamentary elections were held under the new Constitution. 29 political parties participated in the elections. The political parties of Kyrgyzstan support different ideologies. However, during the transition period, the most important factor of differentiation was the attitude to political reforms in Kyrgyzstan. The following parties entered Parliament: Social Democratic Party, Ata-Meken and The Republic who were ardent defenders of the parliamentary form of governance and the engine of the current political reforms, and Ar-Namys and Ata-Jurt who supported the presidential governance. International and local observers recognized the elections as transparent and fair.[14] Thus, in the first political institution rebuilt after the collapse of the Bakiyev regime parliamentary political parties could be divided into two camps: conservatives and reformists. Then the question was about the relationship between the parliamentary parties and their willingness to find a compromise.

The new Parliament started its first working session on 10 November 2010. The first attempt to create a coalition was made by the Social Democratic Party, The Republic and Ata-Meken.[15] The first parliamentary coalition in Kyrgyzstan's history was going to be formed out of loyalty to parliamentarism and reforms. The two conservative parties – Ata-Jurt and Ar-Namys remained outside the coalition. The formation of this coalition was facilitated by the intentions of the reformists for quick and effective reforms. The coalition of reformists could promote reform initiatives, while the conservatives were supposed to be able to block them.

However, this attempt was not successful, as the majority of MPs did not support the candidacy of Omurbek Tekebayev, leader of Ata-Meken, as spokesman of Parliament. A second attempt to form a coalition was made under the leadership of The Republic party, supported by the Social Democratic Party and Ata-Jurt. In contrast to previous attempts, the current coalition was formed both by reformists and conservative parties. This could be explained with the risk of dissolution of Parliament in case of three failed

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[12] Constitutional Law "On Elections of the President of the Kyrgyz Republic and members of Parliament," Chapter 11, Article 64.

[13] The Parliament, www.kenesh.kg/Articles/1565-Parlamentarizm_v_Kyrgyzskoj_Respublike__put_k_postroeniyu_novogo_procvetayushhego_i_razvitogo_demokraticheskogo_gosudarstva_.aspx.

[14] Dilbegim, M., "The elections in Kyrgyzstan were free and unpredictable," Radio Azattyk, October 13, 2010, http://rus.azattyq.org/content/Kyrgyzstan_parliament_/2188322.

[15] Kyrgyzstan: the Social Democratic Party of Kyrgyzstan is to form a parliamentary coalition, *Ferghana News Agency*, November 11, 2010, http://enews.fergananews.com/news.php?id=1911&print=1.

attempts to form a coalition.[16] The prolonged absence of a functioning parliament and eventually new elections in the context of instability could lead to a new round of chaos. Thus, a compromise between the parties could be explained, first of all, with their rational decision to survive as deputies, but also as citizens. This compromise helped the deputies to establish a government and share the posts. The second attempt allowed for the formation of a parliamentary coalition and government by parties with different ideological background, but also controversial in their immediate political goals.

September 25, 2011 was the beginning of the presidential campaign. Under the new Constitution, the President appoints the heads of the security services, the Attorney General and has the power to dissolve Parliament after three failed attempts to form a coalition. Although the functions of the President have been significantly reduced, this post is still attractive. Therefore, 86 applications were submitted, however only 16 candidates were admitted to the polls.

On November 12, 2011, the Central Election Commission announced the Prime Minister Almazbek Atambayev as winner with 62.52 percent of the votes.[17] For the second time in the history of Kyrgyzstan international and local observers concluded that the elections were fair and transparent. The few and passive protests of the supporters of the defeated candidates did not last long.

As President Atambayev resigned from his post of Prime Minister, the parliamentary coalition fell apart. A new coalition was formed by the four parliamentary parties: the Social Democratic Party, The Republic, Ata-Meken, and Ar-Namys (which joined the reformist camp after several internal conflicts). Ata-Jurt, now the only conservative party in Parliament, remained in opposition. Atambayev was inaugurated as President of the Kyrgyz Republic on December 1, 2011, thus filling in the last missing constitutional institution and ending the transitional period.

The political elite in Parliament became relatively prone to dialogue, negotiations and compromises. Thus, adverse political enemies, who were hard to imagine having a constructive dialogue, were able to find common ground for negotiations and compromises and this became particularly evident during the formation of the ruling coalition. Despite all contradictions, political parties were able to successfully form a coalition of the majority three times and create a coalition government.

Today, the Parliament is a place where the political forces in Kyrgyzstan have the opportunity not only to compete openly, but also to negotiate and agree on issues like the distribution of seats in the executive branch. It facilitates political dialogue and compromise. Today, all the major political forces are represented in Parliament. Patronage networks are embodied in the form of political parties to compete in the institutional framework, limiting and balancing each other in an open institutionally regulated compe-

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16 Constitution of the Kyrgyz Republic, Article 84, 1.

17 CEC of the KR "On the election results for the President of the Kyrgyz Republic dated 30 October 2011," http://www.shailoo.gov.kg/index.php?module=content&page=Ob_opredelenii_rezultatov_vyborov_Prezidenta_Kyrgyzskoy_Respubliki_30_oktyabrya_2011_goda_2011jyldyn_30oktyabrynda_Kyrgyz_Respublikasynyn_Prezidentin_shayloonun_jyyyntyktaryn_anyktoo_jonyndo&pagelang=ru.

tition. For example, after the adoption of the new Constitution it was necessary to form a new Parliament, Government and Presidency. This involved hidden risks. Losing political parties and presidential candidates could mobilize their supporters and try to destabilize the country. Almost all important political forces in the country (both reformists and conservatives) were represented in the parliament, and this fact created a political debate between the walls of this institution. Thus, the coercive change of power is not in the interest of the political forces in power.

In the new Parliament, the opposition holds the posts of Vice-spokesman and the Chairpersons of the Law enforcement and the Budget Commissions.[18] Opposition members constitute one-third of the Court of Auditors, the Central Election Commission and the Judge Selection Board.[19] This is a good opportunity to protect its interest and positions. Moreover, representation of the opposition in the local governments is also guaranteed.

The representation of the opposition forces in the country's political system is ensured through open and fair elections. The opposition participates in constituting the Central Election Commission and appoints its representatives. This allows it to protect its interests in the election period and prevent the abuse of administrative resources. Thus, the participation of the opposition in the Central Election Commission allows for fair and open elections, which are a guarantee for representation of the opposition in Parliament and Government. The latest parliamentary elections in October 2010, the Presidential elections in November 2011, and the elections for local authorities in November 2012 were recognized by independent observers as open and honest.[20]

With the positions held by the opposition, it is unlikely that the ruling elite will start political persecutions. Political repressions which were the normal form of interaction between the previous government and the opposition undermined the legitimacy of the government in the eyes of the people and mobilized masses of people. In the current parliamentary form of governance, political repressions are possible, but quite difficult. The presence of opposition supporters in Parliament and in the Government is a reliable guarantee against political repression.

For example, during President Askar Akayev's tenure opposition-oriented politicians were persecuted: F. Kulov and A. Beknazarov were sent to prison. During President Bakiyev's tenure opposition leaders were not only repressed but also physically eliminated: B. Erkinbaev and M. Sadyrkulov were killed, and A. Atambayev, T. Sariev and O. Tekebayev were detained on the eve of the revolution of April 7, 2010. At the same time, today's opposition leaders A. Keldibekov and M. Abdyldaev are in parliament and continue their political activities. Other opposition leaders K. Tashiev, S. Zhaparov and

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18 *Evening Bishkek*, http://test.vb.kg/doc/173543_oppoziciia_v_piatnicy_predstavit_kandidatyry_v_zakreplennye_za_ney_komitety/.

19 The Parliament, www.kenesh.kg/Articles/1565-Parlamentarizm_v_Kyrgyzskoj_Respublike__put_k_postroeniyu_novogo_procvetayushhego_i_razvitogo_demokraticheskogo_gosudarstva.aspx.

20 Luke Harding, Kyrgyzstan wins praise for peaceful democratic elections, *The Guardian*, 11 October 2010, www.guardian.co.uk/world/2010/oct/11/kyrgyzstan-elections-central-asia-osce.

T. Mamytov have been in jail for three months for a ridiculous attempt to seize power, but their supporters are not in a hurry to organize demonstrations and pro-tests, which shows agreement with their legal detention and no engagement of law enforcement agencies.

Moreover, a comparative analysis of the number of protests during the Presidential and the new parliamentary-presidential form of governance proves the viability of the hypothesis. The number of protests and actions of disobedience during the presidential form of governance was significantly higher than during the parliamentary-presidential form of governance. For example, in 2012 in Bishkek (capital of Kyrgyzstan) there were 720 protests; half of them for political reasons.[21] These protests were neither massive, nor aggressive, while during the presidential form of governance most rallies were massive, demanded the resignation of the country's leadership and were accompanied by disobedience.

The stability of the country depends not only on the authorities, the success of their reforms, and ability to compromise. There are other problems of internal security. Today, law enforcement agencies and security services are in better shape than in 2010 and are capable of reacting to a possible escalation more efficiently. Still, it is difficult to speak about stability and security in Kyrgyzstan in the context of regional issues, such as the authoritarian regimes in Central Asia, the lack of demarcated borders, disputed territories, water disputes, as well as the inability of regional security organizations to respond effectively to threats.

Conclusion

Kyrgyzstan's security problems have historical roots in the period of Soviet power. Cross-border issues, disputed territories, international water distribution – this is just a short list of problems that for one reason or another are a legacy from the Soviet Union. Socio-economic problems have exacerbated the situation and created new risks and challenges such as extremism and drug trafficking.

The most critical problem remains the conflict between different political groups. The results of these conflicts were the two forced changes of government, followed by periods of instability and chaos in the country. Thus, the political rivalry between different groups is now the main threat to stability in Kyrgyzstan.

After the change of elites in 2010, the reform of the state system and the establishment of a parliamentary-presidential form of governance started. Nowadays, this form of governance has established an institutional framework for resolution of conflicts between the various political groups and thereby ensures continuous stability.

This conclusion is confirmed by the fact that today, as opposed to the earlier presidential form of governance, all political rivals are represented in the national political system and have the legal means to protect their interests and political positions. The integration of the opposition in the formal political system helps to avoid street protests and mass mobilization that could undermine the stability in the country.

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21 AKIpress, http://kg.akipress.org/news:567768.

In addition, the viability of this statement demonstrates the quality and quantity of the protests against the central power in 2012. Compared to the period of the two authoritarian presidents, today the number of protests against the central power has significantly declined. Moreover, the protests are not widespread and are limited in time. Virtually there are no acts of mass disobedience. This confirms the conclusion that the parliamentary-presidential form of governance allows to avoid open conflicts between different political groups and thus has a positive effect on the overall security in the country.

This trend is characteristic of the present situation. The future development of the security situation will depend on many other factors. First, the reform and the establishment of parliamentarism in Kyrgyzstan have not finished yet and security will depend on the further development of the parliamentary-presidential form of governance. Second, the stability of the Kyrgyz Republic is not just a matter of public institutions and the political regime – there are many other factors of instability in the country: the ethnic conflict in the south, the growth of extremism, cross-border issues.

In addition, all these internal problems deteriorate from regional factors, such as the instability of the situation in Afghanistan, drug trafficking and terrorism. Therefore, there are still serious risks for the stability of Kyrgyzstan.

The development of parliamentarism could be an important stabilizing factor. Work on the establishment and development of parliamentarism is still in its initial phase and far from completion. Kyrgyz politicians need to do much more to ensure that this model works successfully and begins to give fruit. This is even more important in the context of Kyrgyzstan's unique experience in parliamentary development in the former Soviet Union. Today, neighbouring countries such as Uzbekistan and Kazakhstan are looking at the political system of Kyrgyzstan considering the possibility of learning from its experience.[22] Academics and experts can provide substantial support to parliamentary development and enhance its positive impact on the security not only of their country but also of the region as a whole.

[22] *CA-News*, www.ca-news.org/news:1055570.

Chapter 6
Torture and Law Enforcement Agencies in the Kyrgyz Republic

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International treaties pertaining to human rights absolutely prohibit torture, which means that no exceptional circumstances can justify the use of torture. This prohibition imposes on member-states the responsibility to take all steps to ensure that their representatives were not involved in the torture or any other ill-treatment under any circumstances, to bring the perpetrators under accountability, to ensure compensation to victims, and not to expose individuals to the risk of torture in another country.

In spite of the ban, torture is used all over the world. Insufficient information and lack of due attention to the problem have long been the cause for incorrect assessment of the real situation regarding torture in the world. If in the past torture used to be attributed to the poor and "uncivilized" countries where violations of human rights were considered to be the norm, then over time, due to greater awareness of the problem, the point of view has changed. Today we know that torture is used in almost all countries, including developed and industrial ones. The only difference is in the method and extent of its use and to what degree government agencies are aware of their key role in the eradication of this harmful practice.

During the years of its independence, the Kyrgyz Republic became a party in many treaties, establishing the prohibition of torture, including the UN Convention against torture and other cruel, inhuman or degrading types of treatment or punishment. All these treaties are an integral part of the legal system of the Kyrgyz Republic and are directly applicable.[1]

The prohibition on torture is included in the provisions of the Constitution, laws and other normative legal acts of the Kyrgyz Republic, including those defining the procedures in criminal cases and cases on administrative offences, terms and conditions of detention of persons suspected or accused of crimes, subject to administrative detention, the order and conditions of access to specialized institutions of education, health and social security.

[1] Constitution of the Kyrgyz Republic, Article 6, part 3.

Regardless of this, in practice it is not always possible to comply with anti-torture standards. Torture in Kyrgyzstan is still in use. Furthermore, UN Special Rapporteur on Torture, Juan Mendez, following a visit to the Kyrgyz Republic in December 2011 noted that torture in Kyrgyzstan was "a widespread phenomenon...."[2]

Statistics, owned by governmental bodies and non-governmental organizations in Kyrgyzstan, fully confirm the correctness of the findings of the Special Rapporteur. According to official data by the General Prosecutor of the Kyrgyz Republic, 371 cases of torture were registered in 2012, which is by 73 more than in 2011.[3]

Information data from non-governmental organizations is collected and updated in the course of their project work, in particular in the course of monitoring closed institutions, at the reception and counselling of victims of torture or their relatives. In 2011, a team of observers from the representatives of non-governmental organizations, the Office of the Ombudsman and the Public Oversight Council at the Ministry of Internal Affairs of the Kyrgyz Republic[4] carried out monitoring visits to all cells of the Ministry of Interior [5] and 193 individuals were interviewed. Almost every third person or 31.1 percent of those interviewed declared they had been victims of torture.[6]

In the course of similar monitoring visits to detention centres in 2012, 39.4 percent of their residents stated that torture has been used.[7]

Monitoring visits to detention facilities of the State Penitentiary Service of the Kyrgyz Republic[8] and reception centres in 2012 also involved a survey among detainees. Totally, 157 respondents were interviewed in temporary detention facilities and 139 – in the reception centres.[9] 64.9 percent of the respondents in temporary detention con-

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2 http://news.mail.ru/inworld/kyrgyzstan/society/7584703.

3 The official response of the General Prosecutor's Office no. 8/1-3 P of 12 February 2013, ref. # 8/1-2-36-12 from 08.06.2012.

4 Advisory and oversight body established in compliance with Decree of the President KR on September 29, 2010, no. 212 in order to ensure the participation of citizens in public control on the Ministry of Internal Affairs, to establish effective interaction between MIA with the public, taking into account public opinion in the formation and implementation of state policy.

5 Places of detention (cells), intended for the detention of persons suspected of committing crimes. The cells can hold defendants temporarily transferred from prison to carry out investigative action outside the settlements where the detention centre at the time of performing the actions and litigation is. The total number of such cells in Kyrgyzstan is 47.

6 Azimov, U., D. Sayakova, E. Esenamanova, "Preventing Torture in police detention cells under the Ministry of Interior of the Kyrgyz Republic: monitoring, response, rehabilitation," Bishkek, 2011. - 106 pp., p. 71.

7 Respect for the right to freedom from torture in closed institutions of the Kyrgyz Republic: monitoring, response, rehabilitation, Bishkek, 2012, p. 58.

8 Places of detention of the accused in crimes, as well as a place for serving a sentence of imprisonment for the convicts left in jail for household activities. In total, the Kyrgyz Republic has six places of this type.

9 Special institutions of the Ministry of Interior for those subjected to administrative detention and those who do not have a fixed residence or documents. There are two reception centres in the Kyrgyz Republic.

fessed about the use of torture. Only 5.7 percent of them said torture was used in cells. In all other 59.2 percent of the cases, torture was used at the initial stage of the investigation prior to placement in a detention centre. 6.3 percent of the respondents in reception centres complained of torture prior to placement in the centre.[10]

During the period 2009-2012, according to non-governmental organizations, out of 32 boarding schools in 28 of them there was physical violence against inmates, and in 24 – the needs of children were neglected. "Most of the children are tortured to extract confessions in the detention centre, to exploit and receive financial benefits in boarding schools, as well as for punishment."[11] According to human rights activists, "virtually in every budget institution dealing with the health of mentally unbalanced people the patients are subjected to torture or else are given as slaves."[12]

This information is far from sufficient with regard to applied torture. The real magnitude of torture is difficult to determine, since most of the cases are not registered. This is due to the public assumption that making a complaint about torture is useless and even dangerous.

Even the information officially spread by the prosecution authorities is enough to make unfavourable conclusions. The main idea is that in Kyrgyzstan no one is completely safe from torture and every person can become a victim of torture at any time: a man or a woman, an adolescent or elderly person, regardless of his belonging to ethnic, social, cultural or other groups. This is a serious concern for ordinary citizens.

In April 2012, a local research organization conducted a survey among the residents of Bishkek and Osh. Each respondent was asked to choose five rights and freedoms from a list of twenty that concerned him most. Traditionally, social and economic rights were at the top. However, this time, 30 percent of the respondents in the capital and 25 percent in the city of Osh claimed that "torture and ill-treatment" were an issue that concerned them most.[13]

Ironically, in most cases the source of citizens' concerns about the violation of human rights were the authorities intended to protect these rights and, above all, the police. Human rights groups declared that law enforcement bodies account for more than 80 percent of the cases of torture and ill-treatment.[14]

This opinion is shared by the Attorney General of Kyrgyzstan, A. Salyanova, who claimed, "There is no sphere of public life with so many violations of human rights, as in the activities of law enforcement agencies"[15] and "torture has almost become part of the professional work of law enforcement agencies."[16] UN Special Rapporteur on Torture

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10 Respect for the right to freedom from torture in closed institutions of the Kyrgyz Republic: monitoring, response, rehabilitation, Bishkek, 2012, pp. 58-60.

11 http://kloop.kg/blog/2012/12/17/pravozashhitniki-deti-v-spetsuchrezhdeniyah-podvergayutsya-pytkam.

12 www.news-asia.ru/view/1740.

13 http://inkg.info/news/pravozashchitniki/2220-fridom-khaus-boretsya-s-pytkami-v-kyrgyzstane.

14 www.knews.kg/ru/society/16283.

15 www.knews.kg/ru/society/17098.

16 http://24kg.org/community/130408-aida-salyanova-v-kyrgyzstane-primenenie-pytok.html.

noted that torture "is usually used by the employees of the Ministry of Interior in the first hours after the detention and interrogation to obtain evidence."[17]

During the monitoring of closed institutions in 2011, 83.3 percent of the prisoners who reported torture specified that they had been tortured in order to confess a crime. In 2012, 89.5 percent of the prisoners declared torture with the purpose to extract confessions.[18] The cruelty, used by the police only to gain evidence, could be demonstrated by one example of the monitoring report. On July 29, 2011, the suspect was beaten by officers of the Criminal Investigation Department of the Chui region to be compelled to give testimony. He was hit with a rubber truncheon, punched, and kicked in the back, in the head, with heels, in the ribs, while two other officers were holding his legs. After the beating, he lost consciousness several times and vomited twice. They beat him on the cheeks to bring him to life. Then they put bags over his head and tried to suffocate him before losing consciousness. He was beaten in the kidneys and scrotum. One man sat on his stomach and hit him in the stomach with a rubber truncheon. Then, they handcuffed him to a chair and left him in that position until the morning. From time to time officers approached and punched him in the ears and neck. The next morning, the police took the rubber truncheon, wrapped it in a plastic bag and threatened him that if he did not confess a crime, they would rape him. According to information of the prosecutor's office of Chui district, the police officers were prosecuted under the Criminal Code Art. 305 (exceeding official power).[19]

Since revealing crimes and identifying criminals are within the functional responsibilities of operational officers,[20] a large part of the criminal investigation units are in the police and they are the main defendants in the statements and reports of torture.

Thus, in the context of monitoring in 2011, in 81.7 percent of the cases operational officers were identified by respondents as torturers.[21] In 2012, 71.4 percent of the respondents indicated that they were tortured by operational officers. The circle of torturers included also police inspectors[22] – 5.2 percent, and assistants to the town and village police offices – 3.2 percent, who were in charge of revealing crimes.

The Ministry of Internal Affairs is not the only institution whose co-workers are charged with torture. Human rights activists argue that such practices occurred in the Defence Ministry, the State Committee for National Security, SSES and the Border

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17 http://news.mail.ru/inworld/kyrgyzstan/society/7584703.

18 Azimov, U., D. Sayakova, E. Esenamanova, Prevention of torture in police detention centres under the Ministry of internal affairs of the Kyrgyz Republic: monitoring, response, rehabilitation. Bishkek, 2011, p. 71.; Observance of the right to freedom from torture in closed institutions of the Kyrgyz Republic: monitoring, response, rehabilitation, Bishkek, 2012, p. 53.

19 Ibid., p. 73.

20 Operational officer – the official authorized for operative and search operations within the operational-search activity in accordance with the Law "On operative-search activities."

21 Ibid., p. 72.

22 District police officer – an official in an internal affairs agency with official duties to seek to protect the rights of citizens in an administrative area, as well as citizens affected by crime in this territory.

Troops.[23] However, due to a number of factors associated with the specifics of work, the scope of the use of torture there is much smaller.

The causes and effects of the current vicious practice of using torture are not questioned by the leadership of the Ministry of the Interior. Ex-Interior Minister Sh. Atahanov acknowledged that the "investigating organs compensate the lack of evidence with testimonies. And they are easier to take by means of torture."[24] The current Minister of the Interior A. Suranchiev, realizing all serious problems, plans to resume the operational work training in the hope that "in the near future it will be possible in practice to show younger employees how to investigate and reveal crimes."[25] The hope remains that in the "near future" this will really happen.

The National Strategy for Sustainable Development of the Kyrgyz Republic for 2013-2017 states that the establishment of the rule of law based on the principles of respect, protection and promotion of human rights in all spheres of social, political and economic life of the country is a major factor for stability and successful development of Kyrgyzstan. The lack of legitimacy and disregard of citizens' legal interests have led twice to a revolutionary change of power in Kyrgyzstan.

Today, the scale of human rights violations by law enforcement agencies imposes an even greater threat to national security than domestic crimes, which constitute the majority of criminal acts. When a government official commits a crime against an individual and it goes unpunished, this person loses all faith in the rule of law and legal protection.

It is perfectly right to assume that people who have experienced torture cease to respect the law and the authorities of the country where they were tortured. Often they believe others to be guilty for what happened to them. In effect, the major barriers that restrain them from committing crime are destroyed. With regard to maintaining order, the society gradually loses its authentic interests.

Research in the field of torture prevention has been going on for a long time. The results from the study indicate the main reasons for the use of torture by the police. Obviously, the main reason remains the lack of professionalism and competence of the employees. Kyrgyzstan's Attorney General A. Salyanova claimed that in most cases officers use torture and interrogations "with prejudice" because they lack the experience and knowledge.[26] This opinion is shared by representatives of the civil society. 23.5 percent of the respondents believe that police officers have insufficient professional skills, 5.2 percent – that these are very weak, and 38.9 percent of respondents pointed the level of education as the main problem hindering the normal functioning of the internal security services.[27] According to the interviewed police officers, their level of education

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23 www.24.kg/149066-kak-ukrotit-pytlivyx-operov.html.

24 www.24kg.org/community/141293.

25 www.24.kg/148970-abdylda-suranchiev-ne-tolko-reformu-mvd-dovedem.html.

26 www.knews.kg/ru/society/7677.

27 The study of SIAR research & consulting, "The reform of the Interior of the Kyrgyz Republic. Public opinion," Bishkek, 2012, p. 16.

is one of the three major issues hindering their normal work along with the low wages and poor technical infrastructure.[28]

"Torture is a problem of police incompetence, therefore – a threat to the entire society," says human rights activist N. Toktakunov. "Torture helps to reveal minor crimes, but this increases the percentage of disclosures, including major ones. This is the reason the police "hunt" mostly for petty crimes. When it comes to organized crime and fight against terrorism, there is no utility for these methods. There, the level of organization, the morale and literacy of criminals are at much higher level and they have the resources to hire the best lawyers. To fight them, we need brains, professionalism, experience, dedication, etc. So, it turns out that when the system shows tolerance to torture, professionals who can work with the help of the brain face unfavourable environment and they go away. Many have left so far, a whole army."[29]

Another reason for the ongoing practice of torture in the police are the outdated methods of assessment, where the main focus is on the quantity rather than on the quality of the work. Unfortunately, the race for crime detection continues. The well-being of operative officers and their career depends on the percentage of revealed crimes within a certain period, and whether this percentage is higher compared to the same period the year before. Thus, the operative worker who "does not have enough experience and knowledge" and who in any way has to reveal a number of crimes resorts to power and threats to force suspects to confess to a crime, falsification of documents and other abuses.

Reformers in the security organs have promised to develop and implement new criteria for evaluating the performance of services, units and individuals, combining an elaborate system of internal evaluation and external control on behalf of the society, including a survey of the level of public confidence in the police.

The impunity of illegal methods of investigation, including torture, is another important reason for its application. UN Special Rapporteur on Torture highlights the deficit of impartial and thorough investigations on allegations of ill-treatment of detainees by law enforcement bodies.[30] The absence of rapid, impartial and full investigations of allegations of torture and ill-treatment means that these criminal acts remain unpunished. Impunity, in turn, increases the tendency to rely on confessions in criminal justice.[31]

According to official data of the General Prosecutor's Office of the Kyrgyz Republic, in 2012, out of 371 allegations of torture in 340 (91.6 percent) of the cases the initiation of criminal proceedings was refused.

In his report from the mission in Kyrgyzstan in December 2011, the UN Special Rapporteur on Torture evaluated the work of the prosecutor's office as "unsatisfactory" because "prosecutors did not take all feasible measures to verify allegations of torture. In

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28 The study of SIAR research & consulting, "The reform of the Interior of the Kyrgyz Republic. Public opinion," Bishkek, 2012, p. 23.

29 www.fergananews.com/news.php?id=17767.

30 http://news.mail.ru/inworld/kyrgyzstan/society/7584703.

31 Report of the Special Rapporteur on Torture, par. 77.

some cases, prosecutors relied on the controversial findings of forensic medical expertise, taking a decision not to conduct an investigation; in other cases, prosecutors did not question the victims about their statements, neither did they take any action to interview witnesses and medical personnel."[32]

Human rights activists believe that the work of the prosecutor's office one year after the visit of the Special Rapporteur on Torture has not improved and 91.6 percent "rejections" speak for themselves. Of course, a good reason is needed to start a criminal case. Still, there are a sufficient number of examples of illegal and unjustified refusals to institute criminal proceedings when a higher prosecutor or court cancelled a decision.

Twenty criminal cases were sent to court for trial. However, to date, not even a single court sentence has come into legal force when a person who has been accused was found guilty for torture and suffered the punishment for it. This state of affairs undermines people's confidence in the judiciary, justice and the predictability of their decisions.

The Regional Representative of the UN High Commissioner for Human Rights for Central Asia, Armen Harutyunyan, correctly noted, "The inevitability of punishment and zero tolerance for torture, in addition to their official proclamation, should occur in legal practice. The effectiveness of the fight against torture can be assessed by the number of criminal cases in response to allegations of torture and the number of sentences imposed by the courts with regard to persons who commit torture."[33] Based on this position, the struggle against torture carried out by law enforcement agencies in Kyrgyzstan shall not be assessed as effective.

The lack of effective protection safeguards in the law enforcement agencies and courts in Kyrgyzstan increasingly forces torture victims to apply to international human rights institutions. Out of the 14 decisions of the UN Committee on Human Rights on violation of human rights in the Kyrgyz Republic, six decisions stated violation of Article 7 of the International Covenant on Civil and Political Rights that no one shall be subjected to torture or to cruel, inhuman or humiliating treatment or punishment.

In accordance with the Constitution, in the event that international human rights bodies recognize violations of human rights and freedoms, the Kyrgyz Republic takes action for their rehabilitation and/or compensation.[34] Nevertheless, steps to comply with the six decisions of the UN Committee on Human Rights have not been taken yet.

The situation with regard to the use of torture and its effect in the Kyrgyz Republic remains complicated. At the same time, due to cooperation between civil and international organizations, it is possible to achieve some progress towards improvement. First, it was possible to systematize information on the facts of torture. Law enforcement organizations have created and update databases that allow to show and prove to the same law enforcement agencies the real scale of torture, the vulnerable points and needed focus. Secondly, it was possible to remove certain taboo topics on the coverage

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32 Report of the Special Rapporteur on Torture, par. 56.

33 www.open.kg/ru/tele/?id=404.

34 Constitution of the Kyrgyz Republic, Article 41, part 2.

of torture. Currently, a website is operating and media regularly publish articles about torture. Third, there is real progress in terms of promoting effective criminalization of torture and an effective mechanism for its investigation.

A significant achievement was the adoption of a new version of Article 305-1 of the Criminal Code, which establishes criminal liability for torture. The definition of torture in national legislation is in line with the Convention's definition. Toughening penalties for torture, establishing barriers that prevent discontinuation of criminal cases on torture based on reconciliation between the parties, and applying amnesty for perpetrators of torture, as required by the UN Convention against Torture shall guarantee punishment to anyone who is guilty of torture.

A large package of proposals has been developed by experts to change legislation in order to create an effective mechanism to investigate torture. It is under consideration by the working group of the Interim Parliament commission of the country. In July 2012, the Parliament passed the Law "On the National Centre on prevention of torture and other cruel, inhuman or degrading treatment or punishment." This National Centre shall be actively involved in the overall campaign for the prevention of torture in prisons under the authority of law enforcement agencies.

Fourth, work with government institutions has started, including law enforcement agencies, for cooperation between state bodies and non-governmental organizations. For three years, there has been partnership between the Ombudsman, international organizations and local non-governmental organizations under the Memorandum of Understanding on Human Rights and Fundamental Freedoms. In June 2012, the third memorandum was signed by the Ombudsman, the General Prosecutor's office, the Ministries of Justice, the Interior and Health, the State Service for the Execution of Sentences, the OSCE Centre in Bishkek, Freedom House, "Soros Foundation-Kyrgyzstan" and representatives of twelve civil society organizations.

Governmental and non-governmental organizations cooperate in monitoring, provision of access to places of detention and restricted freedom, and response to cases of torture and ill-treatment. Providing information and training to the minimum standards of human rights and freedoms is an important area of joint efforts. In 2012, training sessions were led by the chiefs of health units, doctors and paramedics in prisons and penitentiary facilities who clarified the documentation of evidence of torture in accordance with the provisions of the Istanbul Protocol. The heads of all 47 police departments and officers discussed the Convention's definition of "torture," the difference between torture and other ill-treatment, the provisions in the new bill "On the National Centre for the prevention of torture and other cruel, inhuman or degrading treatment or punishment." The structure and prerogatives of the newly established National Centre and the procedure for preventive visits to closed institutions by its employees provoked interest.

Fifth, the existing problem of torture drew the attention of the audience and was included in the programme for development of the state and the law enforcement services. The relevant provisions were included in the National Strategy for Sustainable Development of the Kyrgyz Republic for 2013-2017, the Strategy for the Development of

the Prosecutor's Office of the Kyrgyz Republic until 2015, and the Concept of reforming the Interior Ministry.

Conclusions

Human rights and freedoms are the main criteria for assessing statehood, the level of democracy, adherence to legal principles, morals, and universal values. The dynamic development of the political, social, economic and cultural spheres of society, the movement for democracy and the rule of law are feasible only in a country where guarantees of human and civil rights exist not only as legal norms, but also at law enforcement level.

With regard to torture, we cannot talk about compliance with the law or the law enforcement practices in Kyrgyzstan today because:

- torture is "a widespread phenomenon…";
- torture "is usually used by the members of the Ministry of Interior in the first hours after the detention and interrogation in order to obtain evidence";
- the use of torture became "almost part of the professional work of law enforcement officers";
- torture is used due to lack of professionalism and incompetence of employees, using outdated methods to effectively assess police, in which the main focus is on quantitative indicators and not the quality of the work, and impunity;
- no one is completely protected from torture and anyone can become a victim at any moment, which is a great concern for the common people;
- the amount of human rights violations performed by law enforcement agencies, including the violation of the right to freedom from torture, creates perhaps an even greater threat to national security than domestic crime, which forms the bulk of the criminal acts.

Recommendations

Based on these findings, it is possible to formulate some general guidelines:

1) Development of a national strategy for the prevention of torture and ill-treatment, including in places of detention, and improvement of conditions of detention. Coordination and tracking of its implementation, with clear definition of the role of law enforcement agencies.
2) Logical completion of the process of improving the legislation of the Kyrgyz Republic with the following purpose:
    - Maximum criminalization of torture;
    - Building an effective mechanism for investigation of torture;
    - Enhancing guarantees for the right to freedom from torture under detention, and subsequent detention in closed institutions under the jurisdiction of law enforcement bodies;

- Developing a legal framework for the effective legal assistance to victims of torture and effective counselling during the lawsuit;
- Adoption of the bill "On institutions for civilian control over human rights in the police structures."

3) Facilitating further reform of law enforcement agencies in the light of the National Strategy for Sustainable Development of the Kyrgyz Republic for 2013-2017, with particular emphasis on:
    - Increased transparency of law enforcement bodies, their accessibility to external governmental and public control;
    - Focusing the efforts to ensure protection of citizens and society from criminal attacks;
    - Overcoming the negative factors in personnel work, selection of competent experts with regard to their moral and ethical qualities;
    - Review and continuous improvement of the system of legal education and training of employees, including employees of the operational-search services, investigative units and services that ensure conditions of detention. Paying particular attention to their moral and professional qualities;
    - Including a special course on human rights in the training programme for law enforcement personnel;
    - Changing the evaluation criteria for the work of police officers so that the militia focuses not on the percentage of detection but rather on public trust and security.
4) Review of the effectiveness of existing methods of departmental control and prosecutor's supervision over the observance of human rights by law enforcement bodies.
5) Strengthening and developing cooperation between law enforcement and international and local non-governmental organizations for the protection of human rights and freedoms in the framework of the Memorandum of Cooperation in the field of human rights and freedoms.
6) Active participation of law enforcement agencies in the establishment and work of the interagency body of coordination and implementation of the international obligations of the Kyrgyz Republic in the field of human rights, including the implementation of decisions of international bodies for human rights and compensation for damages.
7) Promoting the establishment of the National Centre for the Prevention of torture and other cruel, inhuman or degrading treatment or punishment.

See in the section of Appendices at the end of this volume:

- Appendix 3. The Law of the Kyrgyz Republic "On the National Centre of the Kyrgyz Republic for the Prevention of torture and other cruel, inhuman or degrading treatment or punishment."

Link:

- Memorandum on cooperation in the sphere of human rights: http://vof.kg/wp-content/uploads/2013/01/PDF_-27122012-MoU-2013-RUS_FINAL.pdf.

Chapter 7
Civil Control in the Kyrgyzstan's Security Sector: Status and Prospects

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Introduction

The topic of civil control in Kyrgyzstan's security sector is relatively new. It is relevant in the context of the efforts for a comprehensive reform of the security sector in Kyrgyzstan in recent years.

The main objective of the reform in the security sector is, first, to improve the effectiveness of the institutions which by virtue of their functions are designed to ensure the security of the country and its citizens. An equally important and simultaneous goal of reforming the security sector is to achieve accountability of these institutions to the citizens and to take into account their needs in the field of security, their views and opinions in the development and implementation of the policy in the field of public safety. These objectives are directly related to the principles of good governance and the success of their achievement determines the confidence of the citizens in law enforcement agencies, and to a large extent – the legitimacy of public institutions in general.

Over the years, Kyrgyzstan continued to declare its commitment to the principles of good governance. Some of the most important universally recognized principles of good governance are the principles of legitimacy, the rule of law, the effectiveness of government institutions in accordance with the needs of citizens, the principles of transparency and accountability of public officials, including law enforcement agencies. The Kyrgyz Republic has ratified all major UN conventions on human rights; the country has established an extensive regulatory framework, which allows promoting the principles of good governance. Nevertheless, the implementation of international commitments is still far from reality.

The topic of accountability and transparency of security sector agencies in Kyrgyzstan at this stage is still a sensitive area and the level of understanding the importance of this topic for the realization of the principles of good governance leaves much to be desired both within the government and in society. Civilian control in the security

sector, in contrast to other sectors, has encountered the greatest institutional resistance to any type of public involvement. The state is traditionally unwilling to disclose to the citizens many aspects of its work. The volume of information, which the state does not wish to disclose, the methods for protection of this information, and the legal mechanisms for the removal of restrictions on access to classified information depend on the political regime of the state, forms of government, and the degree of openness of the political system of the country as a whole.

Undoubtedly, in every country there are certain limitations to the transparency of the security sector for reasons of national security. However, the maximum openness of power structures taking into account these limitations and the available feedback from citizens contribute to enhancing the effectiveness of the security sector and the level of public confidence in the state institutions. Excessive secrecy, in fact, is counter-productive and facilitates various violations and the spread of corruption in security sector agencies.

The concept of civilian control can be extended, suggesting different forms of democratic control of the security forces, including by parliament, the judiciary, and specialized oversight bodies. In this article, civilian control is regarded primarily as control over power structures by civil society.

Security structures in Kyrgyzstan

The Armed Forces (AF) of sovereign Kyrgyzstan do not have a long history. The legal formation of the Armed Forces of the country took place in 1992 as a result of two decrees signed by the President, Askar Akayev, "On the formation of the Republican State Committee for the Republic of Kyrgyzstan on defence" (January 13, 1992) and "On the adoption under the jurisdiction of the military formations, units and institutions of the former Soviet Union deployed on the territory of Kyrgyzstan" (May 29, 1992). The Ministry of Defence of Kyrgyzstan was established in 1993 and is the central body of state administration of the armed forces.

Currently, the regulatory framework for the operation of power structures in the Kyrgyz Republic (KR) includes a number of bills, including the laws "On defence," "On the Status of Servicemen," "On National Security," "On general conscription of citizens of the Kyrgyz Republic," and a number of others. The power structures consist of bodies of administrative, political and military control, compounds, units and institutions of the Ministry of Defence, the Ministry of Emergency Situations, the Ministry of Interior, the National Guard, the State Committee for National Security, Border Patrol, and the organs of military justice.

According to the Constitution (2010) (Article 14), the Kyrgyz Republic has no intents for expansion, aggression and territorial claims resolved by military force, and rejects the militarization of public life and the subordination of the state to the purposes of war. The armed forces of Kyrgyzstan are built in accordance with the principle of self-defence and the adequacy of defence. The use of the armed forces for internal political purposes is banned.

The Supreme Commander of the Armed Forces under the Constitution (Article 64-8) is the President of the Kyrgyz Republic. He nominates, appoints and dismisses the senior command of the Armed Forces of the Kyrgyz Republic. The President of the country, according to the Constitution, also chairs the Defence Council constituted in accordance with the law (Art. 64-9).

Civil control over the security agencies in the Kyrgyz Republic

A number of factors affect the possibility of civil society to influence decision-making processes in the security sector and to make the power structures accountable to the society. First, it is the degree of openness of the political system of the country as a whole, the attitude of state bodies to NGOs and other civil society organizations, and the political will to cooperate with the public. On the other hand, it is the availability of adequate capacity within the civil society for cooperation and dialogue with governmental authorities, for aggregation and public articulation of the views and aspirations of broad social circles, as well as for the implementation of monitoring and control of the activities of government agencies.

Due to the historical experience of living in a totalitarian and authoritarian regimes characterized by overall or substantial domination of the state in all spheres of life, until recently Kyrgyzstan practically lacked the experience of civilian control over the security sector.

It is important to note that the establishment of civil control in the security agencies was significantly facilitated in recent years by a number of public human rights organizations that monitored the penitentiary system, fought against the use of torture, provided legal assistance to victims of law enforcement. A number of 'legal clinics' provided legal assistance to vulnerable populations.

Despite the rather repressive political environment during the tenure of President K. Bakiyev (2005-2010), civilian control developed thanks to the assistance of donor organizations supporting local NGOs, the media and the expert community. However, in general, during this period the efforts of civil organizations to apply their democratic rights for the implementation of control over government agencies encountered difficulties. The permanent problem of non-compliance with the laws, the actual lack of responsibilities in officials found guilty for corruption or malpractice, corruption in law enforcement agencies and courts reduced the effectiveness of civilian control. The period 2007-2010 was characterized by growing authoritarian tendencies, deterioration of the freedom of speech, and political repression, which affected not only politicians, but also NGO activists and journalists.

As for the civilian control over security agencies, the civil sector faced the greatest obstacles coming from the authorities. President Bakiyev appointed people to senior positions in the security services based on personal loyalty rather than on professional qualifications. This caused negative deformations in the power structures of the country and the citizens began to perceive the security sector not as supporting national security, but rather as a structure that served the President's personal interests against his political opponents. The President's brother Zhanysh Bakiyev became the head of the

National Security Service under whose control in fact were all power structures. Due to changes in the normative acts, the armed forces could take part in domestic political conflicts. In addition, the Drug Control Agency was liquidated.

The political events of 2010 in Kyrgyzstan,[1] as a result of which the parliamentary-presidential form of governance was established in the country and a new version of the Constitution was adopted, created a kind of "a window of opportunities" for the pro- motion of the principles and practices of good governance. In the first days after the events of 7 April 2010, a number of NGOs united in the "Committee for civil control." In the face of a political crisis, when existing state institutions responsible for law and order and security could not cope with the situation, this group of civil society activists made tremendous efforts to provide all possible support to the new government institutions. In this way, a civil forum was convened which adopted a number of recommendations on the stabilization of the political situation in the country. Human rights organizations and NGOs actively mobilized and provided legal humanitarian aid to those who suffered during the events of April and the inter-ethnic conflict in June 2010. NGOs initiated the establishment of working groups at the national level for the purpose of public consultations and the development of policy papers on the legal reform, on the reform of the Interior Ministry and enhancing the transparency of state bodies. In 2010, the level of solidarity in NGOs in Kyrgyzstan was unprecedentedly high, which showed the capabilities of the civil sector to be mobilized under difficult conditions.

In turn, the new leadership of the country stated its intention to improve the government's effectiveness, to increase transparency and accountability of public bodies, to focus efforts on the fight against systemic corruption, and to enhance the role of civil society in the political decision-making process. In September 2010, the President of the transition period, Roza Otunbayeva, signed decree no. 212 "On the improvement of interaction between government bodies and civil society." The "Regulations on Public Supervisory Councils" were also approved. This initiative was justified by the President as a step to "the introduction of long-term stable mechanisms for cooperation between authorities and civil society in the processes of decision making and implementation, as well as to create conditions for the realization of civil initiatives."

Under this initiative, 41 public oversight boards were formed at the national level, as well as in the power structures. These boards began working very actively, producing not only criticism, but also suggestions to improve the efficiency of the departmental work. In 2011, members of these boards actively formed joint teams to work in various government offices, to address and resolve common issues, including monitoring of paid services in different departments, monitoring of personnel policy and external assistance.

[1] In April 2010, in Kyrgyzstan there was a violent change of government. During the mass uprisings April 7-8, 85 people were killed and about 1,500 people received injuries of varying severity. In June 2010, in the south of the country there were interethnic collisions entailing significant casualties (400 killed and thousands wounded), and enormous material damage.

The creation of the Public Oversight Councils was largely an experimental project, so there were difficulties and problems. These problems were related to the lack of previous experience of community councils, different understanding of their purpose among the members of the boards and the state bodies. There were also problems in establishing constructive interaction between the Councils and the state agencies, problems related to the unwillingness of some government agencies to seek feedback from the people through public consultation mechanisms, as well as to the closed nature of the management of some agencies, especially in the security sector.

During the tenure of the Transition period President, an attempt was made to institutionalize these Councils by legal means. A number of new laws were worked out by activist groups, as well as by the President's staff. Bills were repeatedly discussed at consultation meetings and roundtables with the support of international donors and an agreed version was elaborated. Despite these efforts, the law on the Public Oversight Council was not accepted and after electing the new president, Almazbek Atambayev, the initiative faded away. The Councils were criticized as being inefficient institutions. The progress of the Public Oversight Councils stalled due to changes in the government structure in 2011; nevertheless, some councils continue to operate to date.

Main aspects of the civil control in security agencies at the current stage

The budget of security institutions and the issue of information security

One of the key areas that attract the attention of civil society is the *budget of security agencies*. Currently, it is not possible to receive from open sources the precise figures of the armed forces budget. According to indirect data, in particular from the documents of the Ministry of Finance of the Kyrgyz Republic, the state budget expenditures on defence, public order and security in 2012 accounted for 10.1 percent of the total budget for the current year, which is about 11 billion soms (about $ 24 million).[2]

The issue of the state budget approval often involves a difficult choice between equally important needs of the society. The budget for defence and security is an even more politically sensitive question. On the one hand, the budget of security sector agencies shall reflect the government policy to address the challenges and threats to internal and external security. On the other hand, the poor state of the national economy and the limited public resources increase the severity and urgency of the effective use of available resources in accordance with the priorities of domestic and foreign policy.

Obviously, security is a public good of fundamental importance for society and without it other goods, such as education or health care, are neither real, nor effective. Security "costs" a certain amount of money to taxpayers. But in contrast to the services provided to citizens by the state in other areas, such as education, it is rather difficult to

[2] The analytical report "Problems of conscription and military service in Kyrgyzstan," June 2012. Network "Women – peacekeepers of Kyrgyzstan"/ UN Women / Foundation for International tolerance.

"measure" and "assess" the results and quality of the work of state bodies in the security sector. Certainly, this factor hampers transparency and openness of the budget of security agencies. The budget is usually allocated without disclosing details on the purpose of funding. In addition, the need to protect classified information complicates the disclosure of the budget in the security sector.

Information security is an important component of national security and national interests in the information sphere must be determined by a balanced combination of the interests of individuals, society and the state. Access to public information is an instrument for the real participation of citizens in the governance and control over the state agencies. The state shall create reasonable mechanisms to protect various types of information and establish limits to the use of secrets. The institute of 'state secret' shall serve as a mechanism to ensure the security of the country and the citizens in conjunction with the principles of democracy, accountability and responsibility to the people, and not a mechanism of alienation of society from security agencies and a means of manipulation.

In the Kyrgyz Republic, the issue of state secrets is regulated by the Law "On the Protection of State Secrets in the Kyrgyz Republic" dated April 14, 1994, no. 1476 -XII. This law defines the legal basis for the functioning of the system of protection of state secrets in the work of all state bodies, enterprises, associations and organizations regardless of ownership, military units and citizens of the Kyrgyz Republic on the entire territory of the country and its institutions abroad. In accordance with this law, there are three types of secrets in our country: state secrets, military secrets and service secrets. This division makes it difficult to distinguish between the concepts of a "state secret" and "governmental secrets."

Under the current legislation of the Kyrgyz Republic, all information that is classified as a state secret, affecting the political interests of the country, is a formulation that allows broad interpretation. With this formulation, any information could be actually considered as classified information when it is related to the domestic or foreign policy. There is also the problem of the lack of legal liability of officials for withholding or denying to deliver information, not subject to classification.

The public circles in Kyrgyzstan witnessed the case when the well-known human rights activist Nurbek Toktakunov proved that security forces label information as classified without any reason. In particular, N. Toktakunov showed examples of secrecy on not only the budget of the State Penitentiary Service, but also information on the cost of food, material, medical and sanitary care of the prisoners. During the trial on the claim of this information, the Department of Justice failed to explain how the disclosure of information on the cost of food, soap and medicine for prisoners might threaten the interests of public security.[3] As the human rights activist suggested, classification of information in Kyrgyzstan is based on obsolete legal acts from the days of the Soviet Union.

[3] Source: http://www.time.kg/novoe-vremya/2657-gknb-boretsya-s-mificheskimi-ugrozami.html, 29 November 2011.

In December 2012, at a meeting of the Parliamentary Committee on Defence and Security, the Chairman of the State Committee for National Security, Beyshenbay Zhunusov, invited parliamentarians to adopt amendments to the Law "On the Protection of State Secrets." Zhunusov proposed to enhance the protection of secrets and make adjustments, according to which the government shall approve a list of people to receive access to classified information. The proposed measures additionally limit the number of persons with access to secret information and complicate the procedure for obtaining such rights.

The goal of the civil society in Kyrgyzstan is to achieve an acceptable level of disclosure of information for the purpose of accountability of security forces and to fight against the excessive and unjustified classification of information. With regard to this, the civil organizations in Kyrgyzstan have to do a lot of work. The current excessive normative regulation on access to information on the work of law enforcement agencies is a major obstacle to a more active involvement of the civil society in the monitoring of the use of budget funds by these agencies. The civil society has not demonstrated yet sufficient perseverance, solidarity and combined efforts to achieve greater transparency and accountability from the security services. The efforts of individual human rights activists are important, however of little efficiency since they do not allow for achieving a critical mass of efforts to change the regulatory framework and behavioural practices of security agencies.

The situation in the Armed Forces, violations of the rights of servicemen

On 29 May 2012, at a ceremony on the occasion of the 20th anniversary of the Armed Forces of Kyrgyzstan, President Almazbek Atambayev declared:

> The state is obliged to take all necessary measures to raise the levels of living and social protection of servicemen. This applies to increasing salaries and financial resources allocated for the maintenance and development of military infrastructure, purchase of modern armament, technology and equipment, provision of new apartments and land for the construction of housing for servicemen. We shall not forget that those who do not feed their army will feed a foreign one![4]

This statement of the President outlined the major problems within the Armed Forces of Kyrgyzstan. It is not a secret that the level of combat capabilities of Kyrgyzstan's army is very low, which has been confirmed not only by studies and expert estimates, but also by the country's leadership.

The total strength of the Armed Forces, including all structures and units, is about 15 thousand people. The inadequate logistics, insufficient number of military personnel and corruption in the system affect the deplorable state of army capabilities that according to most military experts do not allow performing tasks related to self-defence and national security.

Conscription and alternative service are important issues. Annually, out of 140,000 young men fit for military service in the country, only about 6 thousand men serve in the

4 Source: www.knews.kg/ru/society/16825, 29 May 2012.

army, while 40,000 choose the alternative service. The rest of the recruits receive a postponement in connection with their studies at university or are recognized as unfit for service. Until recently, part of the conscripts served in the recruiting mobilization reserve.[5] The public called the service in the mobilizable reserve a legal redemption from the service because it allowed recruits to pay around $ 300, undergo a month's military training and get a military ticket. This type of service was revoked by the decisions of Parliament and the President on June 13, 2012, that received a positive response from the public as a step to reduce corruption in the Armed Forces.

The system of recruitment is opaque, inequitable and is subject to corruption. Military recruitment offices are agencies responsible for the recruitment and they determine the form of service. It is well known that these offices are the place where corruption thrives due to "sale" of military tickets, registration of illegal draft postponement, finding false reasons for replacing the active military service with alternative. Medical check-ups for recruits are a formal procedure as a result of which many sick men are dismissed from the army on medical grounds. The children of the privileged can afford not to serve in the army and the army in general is a place for the children of poor families.

Youngsters are not willing to fulfil their civic duty. This is partially due to the decline in the prestige of military service; however, in most of the cases young boys are worried about their own physical safety and health. In the Kyrgyz army there are unregulated relations and widespread practice of off-duty exploitation of soldiers by military commanders who force the young men to do construction work in private households.

The topic of the so-called "bullying" and unregulated relations among military servicemen is significant and sensitive in terms of civilian control. Violation of conscripts' rights and the impunity of military officers for violation of the law are serious problems of the Kyrgyz army affecting its overall poor condition and capabilities. In particular, despite the fact that the statistics of suicides during military service due to bullying is a serious concern in society, in reality reports on punishment of perpetrators in the military, including crimes against individuals, are almost absent. In 2011, 13 suicides were registered in the Kyrgyz Army, and in 2012, according to experts, this number was over 20. The shooting of five fellow soldiers and the wife of one of them in Karakol border unit at checkpoint "Echkilitash" in 2012 was a shock for the nation. Because of the incident, the Chief of the Border Guard Service handed in his resignation though at the time it was not accepted.

The control over the protection of military personnel rights is performed, as a rule, by human rights organizations that publicly respond to the violation of the rights of conscripts, provide legal assistance to the families of servicemen and submit reports about existing problems in the military.

A public association "Committee of Soldiers' Mothers" was established. This organization proposes different initiatives in protecting the rights of military personnel and in

[5] The data in this paragraph are taken from: Analytical Report "Problems of conscription and military service in Kyrgyzstan," June 2012. Network "Women – peacekeepers of Kyrgyzstan" / UN Women / Foundation for International Tolerance.

some cases holds its own investigation into the murders or suicides during military service. They are very active within the project "Institutional development of army women's councils as an effective tool for promoting peace and tolerance in conflict border areas, enclaves and the disputed territories in the southern region of Kyrgyzstan." In particular, training sessions were conducted for deputy commanders for education and members of the women's councils.[6] In 2012, the organization of soldiers' mothers promoted a declaration on the necessity of establishing psychological services in the army units for prevention of escapes of soldiers, leaving the unit with their weapons, murder and suicide. In early 2013, a number of community organizations proposed the appointment of Muslim clerics in military units.

NGO network "Women Peacemakers of Kyrgyzstan" with the support of the Foundation "For International Tolerance" and "UN Women" conducted monitoring of the military service in the southern regions of Kyrgyzstan. In the end, a document was elaborated and sent to the Prosecutor General of the country.[7] Based on empirical data, this report analyzed and summarized many of the problems cited above.

In June 2012, a public council for the protection of the rights of military personnel, law enforcement officers, members of their families, persons discharged from military service and civilian personnel from the Armed Forces and the Ministry of Interior was established with the office of the Ombudsman as a consultative body, set up to inform the Ombudsman about the problems in the military. The council consisted of representatives from the Ministry of Interior, the State Committee for National Security and the Border Guards, as well as the Ministry of Defence and the Ministry of Emergency Situations.

Later, in January 2013, the First National Congress of veterans of security agencies of the Kyrgyz Republic took place, which discussed issues of social and legal protection of the military, established the public organization "Institute of the Military Ombudsman 'Karabay Asanaliev'," approved the charter and elected the governing body.[8] Anvar Sartayev, who was elected the military ombudsman, immediately declared his critical position in relation to the Institute of the Ombudsman of the Kyrgyz Republic claiming that the latter did not perform its functions to protect the rights of military personnel.

In many countries with significant military capabilities, the armed forces are regarded as a potential threat to society. Military structures have combat capabilities and they are often destructive because of the possession of guns. In Kyrgyzstan, this topic has hardly been raised except for certain NGOs which put forward questions about the fate of weapons that were lost during the political and ethnic conflicts in 2010 and are "rambling" among the population.

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6 Source: www.ca-news.org/news:1055297, 25 January 2013.

7 The analytical report "Problems of conscription and military service in Kyrgyzstan," June 2012. Network "Women – peacekeepers of Kyrgyzstan" / UN Women / Foundation for International tolerance.

8 Department of Information, Ministry of Defence. Source: www.mil.kg.

To date, representatives of the civil society often come up with arguments about the need to increase the combat potential of the Armed Forces to perform the tasks of national security. The low level of capability of the Kyrgyz army currently does not suggest that the military can take part in mass riots or governmental coups. However, there are other potential threats. In recent years, there have been more cases of runaway soldiers from military units with their weapons. Thus, on 3rd February 2013 the media informed about the group escape of 39 servicemen from interior troops (unit 702) who later returned to the unit. Following the incident, the Board of the Interior Ministry and the secretary of the Council of Defence released from their positions a few commanders from the troops of the Ministry of Interior. It was announced that "the runaways will not remain unpunished,"[9] however no criminal case was instituted. Similar incidents hold a potential threat to public safety as no one can predict the consequences of such escapes, especially given the presence of weapons with the soldiers leaving the military unit without permission.

In summary, there are many problems in the Kyrgyz army. The following issues are of major concern to society: violation of the rights of servicemen while on duty, inadequate material and technical support to the Armed Forces which does not allow them to perform their security-related functions, corruption in the armed forces and the lack of transparency in the use of budget funds, as well as the problem of responsibility for committing military offences and crimes.

A number of NGOs have voiced existing army problems in the media in their appeals to leaders of security agencies, the Parliament and the President. Public organizations conduct studies on specific aspects of the rights of military personnel, advocacy campaigns to mobilize public opinion on corruption and the use of budget funds by security forces. However, law enforcement agencies often take up a defensive position and are rarely willing to discuss openly the problems. Veteran associations tend to come out with a narrow agenda, limited to their claims to receive, fix or restore lost social benefits for veterans.

Civic society and the reforms in the police ('militia')

The reform in the law enforcement system of the Kyrgyz Republic has been among the most pressing topics for the past two years. In the period 2010-2012, there were many discussions on the problem of corruption in the police and other security agencies, the very low level of public trust in the police structures and the lack of capacity of law enforcement agencies to ensure order and security for the citizens.

Within a period of two years, a lot of working groups at the national level were created as well as interagency commissions, dialogue platforms involving various branches of government, the civil society, experts, and representatives of the international community to develop the concepts of legal policy, the reform in the judicial system, the reform of the Ministry of Interior and other documents related to the reform in law enforcement.

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[9] Source: www.24.kg/community/146807-voennosluzhashhie-minoborony-kyrgyzstana.html, 8 February 2013.

The public demand for reforms in the law enforcement agencies significantly increased; the police, under the pressure of society, started more openly to discuss and acknowledge the presence of different types of corruption and problems in the personnel policy and logistics. The Public Oversight Council in the Interior Ministry was founded in 2010 by the initiative of the President of the transitional period, Roza Otunbayeva. In May 2012, the Council developed and approved regulations and the Code of Ethics of the Public Oversight Council in the Ministry of Internal Affairs of Kyrgyzstan.

The civil society demonstrated significant initiative. The Georgian experience in reforming the police gained popularity in the civilian sector, as a result of which a lot of materials were published in the media. In the period 2010-2012, civil organizations actively participated in public discussions on the reform of the Ministry of Interior. NGO activists, united by the platform Civil Union "For reform and results," in January 2012 started developing a document that was known later as Alternative concept of reforming the Ministry of Interior. For six months, the group held public hearings in different regions of the country, its representatives were in the media, and the discussions spread in the social networks. The concept was submitted to the Interagency Commission for the reform of the Ministry of Interior. In July 2012, the final public hearing of the concept took place in Bishkek and at the end of 2012, the revised paper of the Alternative concept of reforming the Ministry of Interior appeared.

The Alternative concept proposed a number of radical steps in the personnel policy of the police, paid more attention to the need to develop a system for assessing the quality of work in the Ministry of Interior and civilian control. It was suggested to introduce a confidence index of the population measured by independent social surveys. The authors of the concept proposed a ban on the classification of the internal regulations of the Ministry, except for this information the disclosure of which could harm operative and search activities, investigation, or cause a threat to the personal safety of officers. It was assumed that the information on the number of personnel, the organizational structure and funding would be made public.

The Ministry of Interior on their side tried for two years to develop their own concept of reforms. In the period 2011-2013, the Ministry of Interior informed publicly at least three times about their work on a draft concept of reforms. The latest concept on police reforms in 2013-2017 was presented by Minister Shamil Atakhanov in January 2013 at a working meeting with the Prime Minister.

In general, despite their cooperation with the public, the Ministry of Interior had always had a hidden position of institutional resistance to the "interference" of the public. Opinions were heard on the ineffectiveness of the Public Oversight Councils and the need to take into account the specifics of work when it comes to societal control. The Ministry even developed the bill "On the civilian control over human rights in the work of the Ministry of Interior in the Kyrgyz Republic" (September 2012). This law proposed that the office of the Commissioner for Human Rights and public human rights commissions be established in the Ministry of Internal Affairs of the Kyrgyz Republic.

The continuous changes in the Council of Ministers due to the multiple collapses of the ruling parliamentary coalition in the course of the past years and frequent changes

in the leadership of the Ministry of Internal Affairs became a significant inhibiting factor for the reform in the police and reduced the effect of the participation of civil society in the reform processes.

Over the last two years, the process of developing a strategic paper on the reform of the police in Kyrgyzstan was quite confusing and inconsistent. During this period, the Ministry of Internal Affairs developed several versions of the concept on reforms, and civil organizations, in turn, developed and actively discussed an alternative concept. To date, the fate of the concept is unclear and a public consensus on what reforms should be made in the system of law enforcement bodies did not appear. The representatives of the Ministry of Interior often voice criticism on the Public Oversight Councils as ineffective tools for civic participation. This said, it is still not clear whether the leadership of the country and the Ministry of Interior have the will for openness, transparency and accountability to citizens.

Prevention of torture

Another major issue is the role of civil society in the implementation of the principles of the rule of law and respect for human rights. The work of public organizations in the prevention of torture has become an important contribution in terms of civilian control of the security structures.

Kyrgyzstan is a party to the International Covenant on Civil and Political Rights (1966) and the UN Convention against Torture (1984), ratified by Kyrgyzstan in 1997. Since 1999, when Kyrgyzstan submitted its first national report to the UN, the country has failed to comply with reporting procedures, skipping the provision of the second and third reporting periods. In 2008, Kyrgyzstan ratified the Optional Protocol to the Convention against Torture, which calls for regular monitoring of penitentiary institutions by international experts and the establishment of national mechanism to prevent and fight against torture and other ill -treatment. The Optional Protocol was signed thanks to the efforts of civic organizations.

Despite the fact that the Constitution of the Kyrgyz Republic and the criminal law prohibit torture, torture and ill-treatment still remain a serious problem in Kyrgyzstan. Torture and ill-treatment in Kyrgyzstan are used by the police, in military units, prisons and even in psychiatric hospitals, children's homes and boarding schools. Monitoring by human rights organizations shows that in most cases torture is used by employees of the Ministry of Internal Affairs at the time of detention, interrogation and investigation. The importance of the "disclosure of crimes" index for promotion in the militia is a prerequisite for the use of torture. In the period between 2005 and 2009, in nearly 90 percent of the allegations of torture, the initiation of criminal proceedings was refused.

After 2010, civil society representatives became the main factor in lobbying for the law "On the Kyrgyz National Centre for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

After the ethnic conflict in the southern part of the country in 2010, the problem of using torture and ill-treatment by law enforcement officials aggravated and, according to human rights activists, torture was applied on a large scale. In 2011, NGOs revealed

more than 200 cases of torture in Kyrgyzstan, of which 87 percent happened to be in the police departments. The General Prosecutor's Office responded inadequately to allegations.[10] With the arrival of the new Prosecutor General, Aida Salyanova, in April 2011, the prosecutors were instructed to respond immediately to every allegation of torture or similar violations and to bring all perpetrators to court.

In the framework of the project "Combating torture in Kyrgyzstan with the help of national human rights protection mechanisms," funded by the OSCE Centre in Bishkek, on June 7, 2011, a Memorandum of Cooperation was signed between the Office of the Ombudsman of Kyrgyzstan, the OSCE Centre in Bishkek and human rights organizations. According to this memorandum, human rights activists gained access to closed institutions, detention centres and temporary isolators. This was a progressive step in the campaign against torture. Thus, access to closed institutions after 2010 was made possible in two ways: by virtue of the above-mentioned memorandum and through the activities of the Public Oversight Council to the Ministry of Interior.

Due to the efforts of human rights organizations and following a long process of lobbying, the Parliament passed and later, in July 2012, the President signed the Law "On the Kyrgyz National Centre for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." By law, the supreme body of the National Centre is the Coordinating Council, consisting of 11 members. It includes the Ombudsman of the Republic (by appointment), one Member of Parliament from the majority and one from the opposition, and 8 representatives of human rights NGOs. According to the law, human rights defenders are authorized to access regime and special institutions for direct monitoring.

In conclusion, the adoption of the law on the national preventive centre was a successful outcome of the civil sector continuous efforts for the prevention of torture. It still remains to see how the National preventive centre will perform its duties and how effective the work of the representatives of human rights organizations in the Coordinating Council will be.

Special services and civilian control

Typically, special services in all countries pose the greatest challenge to civilian control. In addition, this is the area that creates the best conditions for violations of civil rights and freedoms. This sphere lacks the widespread traditions of public consultations and external control – a fairly recent phenomenon even in mature democracies.

The challenges to civilian control over the work of security services are the result of the principle of secrecy and restrictions on the access to information about the activities of such agencies. In addition, due to the specific working conditions of special services, they are endowed with discretionary powers, which additionally restrict public access to information about their work. All these factors are a precondition for the security services to remain the least open in the security sector in Kyrgyzstan.

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[10] Materials by Sardar Bagishbekov. Source: EU - Kyrgyz Republic. Civil Society Seminar on Human Rights, "The Role of NGOs in the implementation of the rule of law and respect for human rights," 8-9 February 2012, Ak-Keme hotel in Bishkek.

In Kyrgyzstan, there are few people with expertise in this area. These include mostly former security officers, as well as human rights activists and lawyers specializing in the field of security, a small number of NGOs, for example, specializing in the protection of Internet users' rights or protecting the right to privacy. The media do not yet have the potential to be an instrument for civilian control over special services. The media can cover individual episodes or scandals, but there are virtually no journalists yet who could professionally shed light on problems in the defence and security sector.

After 2010, the Public Oversight Council in the State Committee for National Security was established. The members of the Council managed during the time of their existence to initiate discussions on a number of important issues, in particular the issue of reforming the security system, methods of work and the way ahead. Traditionally, since the time of the Soviet era, secret services in the country have been regarded as the successor of the Soviet KGB. The members of the public council in the State Committee for National Security have repeatedly raised the issue that the security system is not a state structure on its own; moreover, it shall include a set of institutions and corresponding activities. The security system can be considered only in conjunction with law enforcement agencies, the judicial system, the political and social organizations and the media.

Discussions on new challenges, external and internal threats, and the talks in the context of capacity-building to prevent threats and respond effectively to national security issues have become in recent years very active in the information space. Topics like information security, ethnic conflicts and the problems of external security are being raised more and more often.

Representatives of the civil society have criticized the State Committee for National Security of being a state structure unable to cope with providing national security. This criticism was strongly provoked by losing the so-called "Information war" during the June ethnic conflict in 2010. Then the foreign media accused the Kyrgyz Republic of one-sided coverage of the events. The criticism of civil society was also addressed to the ineffective work of the SCNS in the fight against terrorism and extremism. Public organizations are constantly claiming that SCNS, as well as other security agencies, is highly politicized and in many cases does not serve the law, but the current regime.

On the other hand, the position of the State Committee for National Security and members of the public council responded to the criticism coming from the non-governmental sector with counter-criticism. For example, in his arguments for the need for tracking political and social processes in the country by security forces in order to prevent mass unrests, the member of the SCNS Public Oversight Council, Arkady Gladilov, declared at a meeting of the public oversight boards of the Ministry of Interior and the State Committee for National Security in November 2011 that among the 20 thousand non-governmental organizations in the country there were many NGOs that "carry out purely intelligence functions, and others that incite protests and unrest, undermining the governmental institutions and provoking ethnic hatred. The SCNS should not become an instrument of total control over social processes, but for the sake of national security

this structure should possess democratic mechanisms for the protection of the public processes from dangerous tendencies."[11]

In recent years, the topic of operative investigation measures has been actively discussed in Kyrgyzstan, which in colloquial speech received the name "wiretapping." This is a very sensitive issue as it relates to possible violations of the legitimate rights and freedoms as a result of actions taken by security agencies for collecting information in the interests of national security and defence.

This topic became urgent after the famous events of April 2010, when in the Internet appeared secretly recorded conversations between members of the family and entourage of the runaway President Bakiyev, as well as talks between representatives of the Provisional Government, perceived in the society as an illustration of corruption schemes. For most citizens then it was not clear how these recordings came in the network and who was engaged in tapping telephone conversations. Talks started that the uncontrolled use of "wiretapping" puts under question the human right to privacy, confidentiality of correspondence, negotiations, and creates a potential threat from using the operative investigation measures to deal with political opponents.

In 2011, this topic was under intensive discussion by the public. A group of deputies from the Kyrgyz Parliament headed by MP Dastan Bekeshev initiated the clarification of this issue in order to pass normative acts that would put the use of such measures under the tight control of the law only for the purpose of fighting crime, terrorism and extremism. Initiated by Bekeshev, who headed the Committee on Human Rights, Equal Opportunities and Public Associations, a working group was established in April 2011 to explore the system of technical devices used for the purpose of search operations. This group included representatives of the Supreme Court, the General Prosecutor's Office, the State Committee for National Security, the State Communications Agency, the Association of operators, "Civil Initiative on Internet Policy," "Kyrgyztelekom" and "Vinline." In May 2011, at a meeting of the working group, Dastan Bekeshev declared that although the Parliament had earlier in April 2011 adopted a Decree "On the disclosure of the system of mobile operators to ensure the functions of investigative operations in the Kyrgyz Republic," the Decree was not practically implemented. A decision was made to work out a bill to regulate the use of operative and investigative measures in Kyrgyzstan and to hold a public hearing.[12] Later, in 2011, public hearings were held on the matter.

On the request of the Parliamentary Committee on human rights, equal opportunities and public unification, as well as the Temporary Parliamentary Commission for the study and development of regulations on the use of operative and investigative measures, the Public Foundation "Civil Initiative for Information Policy" along with the legal office "Adilet" analyzed the legislation of the Kyrgyz Republic for compliance with the

[11] Kyrgyzstan has seriously attended to the problem of elimination of torture, and, in general of state security, www.polit.kg/conference/4/69, 15 September 2011.

[12] Source: www.kenesh.kg.

implementation of hardware and software complex for operational-investigative events (hereinafter – HSC) in the Kyrgyz Republic.[13]

According to the report of "Civil Initiative for Information Policy," the concept of "System of operational-investigative measures" (SOIM) is not present in the legislation of the Kyrgyz Republic, the term was taken from the Russian practice where this system involves a set of technical means and measures designed to conduct search operations in telephone networks, portable and wireless communications, and radio communications. There are systems for telephone tapping ("SOIM-1") and systems for logging Internet communications ("SORM-2"). In addition, the "Civil Initiative for Information Policy" noted in its report that eleven state agencies in Kyrgyzstan had the legal right to monitor the telephone and Internet communications of Kyrgyz residents. These agencies, according to a study of "Civil Initiative for Information Policy," are authorized to monitor and record all Internet traffic in Kyrgyzstan, as well as all the telephone connections of mobile and fixed phones. The citizens assume there is little likelihood of mass "wiretapping" and screening of such information because the government of Kyrgyzstan has no adequate financial resources. Activists' concerns were raised by the fact that the relevant ministries and agencies of Kyrgyzstan with access to SOIM use monitoring equipment of Russian origin, which poses certain threats to the security of the country. An additional problem was the blurring of the normative base regulating the responsibility for using SOIM.

One of the recommendations in the report was to empower just one structure with the right to use SOIM only under the strict control of the law. Recognizing the importance of using the system to prevent and combat crime, terrorism and extremism, the group "Civil Initiative for Information Policy" noted in its report that the use of the hardware-software complex contains not only the threat of capturing and tracking information in traditional fixed-line and mobile communications services and Internet, but does not guarantee that SOIM will be used only by permission.

In 2012, the Parliament and the Government worked to develop the bill "On the amendments and additions to some legislative acts of the Kyrgyz Republic" (Code of Criminal Procedure, the laws "On the operatively-investigative work" and "On the electric and postal service"). The bill considered reducing the number of law enforcement agencies authorized to use tapping devices. On January 30, 2013, members of the Parliament considered the amendments to the above-mentioned laws and approved them in first reading. The bill allows for the restriction of the constitutional rights to privacy of telephone and other conversations, electronic or other communications solely based on a court decision. As one of the initiators of the bill, Kurmanbek Osmonov stated that the current law "On operative-investigative work" authorized the following institutions to use SOIM: the State Committee for National Security, the Ministry of Internal Affairs, the Ministry of Defence, SDCS, SSFEC and SSEP. The bill proposes that one body is nominated for operative-investigative work – the State Committee for National Security. The authors of the bill believe that illegal "tapping" creates the possibility of giving infor-

[13] Source: www.gipi.kg/archives/1743.

mation to countries manufacturers of HSC, therefore tight control over the use of SOIM is needed. There were also proposals to introduce strict control over the import, development, installation and removal of special equipment, as well as for the introduction of mandatory registration of subscribers and users of services and communications.[14] However, a number of issues of concern to civil society have remained unanswered. In particular, they refer to the control on the use of SOIM by the State Committee for National Security, the lack of independence of the judiciary from the executive power and warnings on information leakage.

Conclusion

There is no country in the world where the security sector has absolute immunity to illegal or unfair practices. Therefore, the question of independent external monitoring is always important. This article discusses the main aspects of control of the civil organizations over security agencies. Given the fact that the Parliament, the executive and judicial power in Kyrgyzstan exert weak democratic control over the security sector, that is the institutions with legislative mandate of monitoring, the control of civil society is of crucial importance. The power structures must be subject to civilian control in order to ensure compliance of their work with international norms in the sphere of human rights and public interests.

Civilian control over the security agencies of the Kyrgyz Republic is a relatively new phenomenon and the organization is still under construction. They reflect the specific national context. Campaign groups are dominated by human rights groups, whose scope of work includes topic areas like the protection of the rights of soldiers, prevention of torture, corruption, the rule of law, protection of state borders. There are veterans' organizations that raise issues relating to the interests of veterans of law enforcement agencies; however, few of them put forward problems of public interest.

The Kyrgyz Republic has virtually no independent research and analytical centres conducting research in the field of security. Consequently, there are practically no entities capable of providing decision-makers with expertise on security policy, offering reasonable recommendations, or making well-argumented public statements. Undoubtedly, there are experts on specific issues relating to the activities of law enforcement agencies. They are specialists with access to information, politicians and officials in the security sector due to their contacts from their previous place of work. In general, there is no institutional framework in this aspect; there is no sufficient analytical capacity to bring in plain language the socially significant problems in security and defence to the majority of citizens. Unfortunately, the potential of the local media is not sufficient to perform civilian control over the security agencies either. There are no professional groups like associations of journalists or an academic community to carry out journalistic investigations or research in the security sector on a regular basis.

Public oversight councils, present also in the power ministries, became a special form of civilian control in Kyrgyzstan after 2010. Based on the experience with the Pub-

[14] Source: www.knews.kg/ru/parlament_chro/27183/, 30 January 2013.

lic Oversight Councils, human rights activists assume that the Ministry of Interior has become more open compared to the State Committee for National Security. However, in general, in the current political context, the work of the various public advisory and consultative mechanisms in the power ministries is still impeded. The development of the concept of reforming the Ministry of Interior and the concept of reforming the judiciary system, the criticism and attacks against non-governmental organizations by the heads of security agencies are an illustration of these difficulties. The security agencies give institutional and political resistance to various innovations of civilian control. A number of competing or alternative conceptual documents were developed in a situation lacking real dialogue and the desire to achieve optimal solutions between the security agencies and the civil society organizations.

Trends towards tightening legislation on access to classified information, the widespread use of discretionary powers of officials in law enforcement agencies on matters of classification of information, the inconsistent steps in the establishment and institutionalization of mechanisms of civilian control associated with frequent changes of the government and the leadership of power bodies – this is an incomplete set of problem areas from the perspective of the development of civilian control in the security system.

A key problem is the lack of clearly defined strategic objectives in the field of defence and security. Existing official documents relating to this sector, including the newly adopted 2012 national security concept, do not reflect the clear focus and targets in the area of national security. In addition to sporadically heard opinions about the need to increase the strength of the army, improve the financial situation in the army and military personnel, training and procurement of modern weapons, there has been no evidence of any systemic changes in the security sector so far.

The potential of civil society for effective control is limited. The first factor is the traditionally closed nature of the power block and the legislation that restricts access to information on the work of security agencies. Secondly, the civil society does not possess enough experience and level of expertise for effective control of budgeting, procurement or specific technical issues related to the work of security agencies. Unfortunately, international donor organizations provide technical assistance to the security sector, bypassing the issue of building the capacity of civil society organizations for monitoring. In addition, the fragmentation of civil society reduces the possibilities for enhancing the power of advocacy campaigns and the multiplication effect of the collective action of public organizations.

Undoubtedly, in the two years following the events of April 2010, the civil society made some progress in building and strengthening civil control over the security forces. A significant outcome is the adoption in July 2012 of the Law "On the National Centre of the Kyrgyz Republic for the prevention of torture and other cruel, inhuman or degrading treatment or punishment" and the set up of the Coordinating Council, which included human rights NGOs. An important step is the attempt of human rights activists to draw attention to the ungrounded classification of information in security agencies. The initiatives of public organizations to develop the concepts of reforming the Ministry of Interior, legal policy, the judicial system, the work of civil society in consultation, dialogue and

advisory bodies in security institutions, studies on specific aspects of national security and state of the Armed Forces, public statements about corruption or requests for budget transparency are essential steps for the further development of civilian control in the security sector.

In the future, the civil society is facing the task of practical implementation of the principles of good governance through active participation in monitoring the activities of government agencies, including the defence and security sectors. A lot of work is to be done in terms of achieving an acceptable level of access to information in law enforcement agencies and declassification of information which has been classified unreasonably or arbitrarily.

Practically, emergency management and information security in an era of globalization have not been subject to civilian control, while participation of citizens in the campaign against corruption in the security sector is still in its early stage.

Recommendations

To government authorities, including security agencies:

- Strictly comply with the international obligations of the Kyrgyz Republic and the national laws, including respect to human rights and implementation of the principles of good governance in the security agencies;
- Give priority to professional training and personnel policy in the security sector. It is very important that the requirements to officers in security agencies include not only knowledge of laws and specific professional skills, but also competences to work with the public;
- Establish research and analytical structures to study and analyze the decision making process in security;
- Create information mechanisms and channels for receiving feedback from the public on crucial issues in national security, including consultations with public organizations, collaboration with citizens, forums, special publications on the work of security agencies, written in clear language, on important issues related to public security;
- Demonstrate openness and readiness to cooperate with the civil society;
- Develop mechanisms for independent assessment of the quality and effectiveness of work in the security agencies with the participation of public organizations.

To civil organizations:

- Continue monitoring the violations of citizens' right of access to information, inform widely on monitoring results government authorities, the general public, the media and donor community;
- Mobilization and coordination of efforts in the civil sector to enhance the effect of civilian control in the field of security agencies' activities;

- Take advantage of all available legal mechanisms for public consultations, the entire arsenal of available strategies for civilian control over security agencies, including the strategies of advocacy, monitoring, research and analyses;
- Strengthen the capacity to improve civilian control, including the analytical capacity, understanding the specifics of the processes of formation, implementation and monitoring of budgets of security structures;
- Active participation in the practical implementation of the Law on the establishment of the National centre for prevention of torture;
- Proactive attitude in providing information to the public, raising the legal literacy and awareness on problems in the security sector.

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Chapter 8
Weapon Safety in Kyrgyzstan: Current Status and Challenges

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Introduction

The complex socio-economic and political situation in the last years caused hubs of tension and conflicts in the Kyrgyz society. Phenomena of mass character, such as rallies, pickets, marches, demonstrations and strikes became popular. These circumstances provoke the spread of protests of illegal nature causing damage to the population, public order and security: group and mass disorders, occupation of government buildings, blockade of strategic roads, the seizure of hostages, and capture of weapons.

In 2005,[1] there was a negative precedent when during the so-called March Revolution people seized the weapons that were at the disposal of security forces. Unfortunately, these illegal actions were repeated on a larger scale during the April events,[2] as well as in the ethnic conflict in June 2010.[3] During these events, about 400 people were shot and more than a thousand were injured.

A major problem in the country was the unlawful seizure of weapons from specialized state institutions and the transfer of weapons to civilians who did not bear any responsibility for it. This situation threatened the internal security of the country.

This review includes the results of studies on ensuring firearm weapon safety (hereinafter – the weapon) during mass riots. It is a continuation of the work that started in 2011, when a working group was set up to discuss the situation in the country related to seizure of weapons and the development of recommendations for the safety of weapons during riots.

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1 On March 24, 2005 in Kyrgyzstan the so-called "Tulip Revolution" resulted in a change of power.

2 On 7-8 April 2010 in Kyrgyzstan there was another change of government, this time using arms (on April 6 revolutionary unrest began in the town of Talas, and on April 7 in the building "The Forum" in Bishkek).

3 In the night between 10 and 11 June, the ethnic conflict between the Kyrgyz and Uzbeks began in Osh and then spread to Osh and Jalal-Abad regions.

Number of firearms seized during riots

According to official data, during the riots in March 2005 civilians seized 52 pieces of weapon, four of them were confiscated by the Ministry of Interior services, and respectively 48 were not returned. Neither the government, nor the public paid due attention to this serious fact.

Following the events of 2010, the issue of gun safety became important as never before after about 90 people were killed in April and another 300 during the events of June 2010, whereas over a thousand were injured.

According to official data, 1,033 weapons and more than 43,045 rounds of ammunition were seized during the riots in April and June 2010. Of these, only 465 weapons were returned which constitutes only 45 percent of the total number, and 16,701 rounds of ammunition, which makes only 38 percent. It is clear that more than half of the seized amount of weapons and ammunition has not been returned yet.[4]

In April and June 2010, the weapons were seized from services or troops of the Ministry of Interior and from the Ministry of Defence – from army troops and border units.

Crowds of people of the Kyrgyz nationality, amounting from 200 to 3,000 people, often under the leadership of certain individuals, which suggests planned seizure, used to surround the security units and demand their weapon. During the events in June 2010, there were 25 cases of weapon seizures by the population, in seven of which the weapon was handed over voluntarily, and in one case the soldier deserted the place with his machine gun. In some cases, the commanders of military units started negotiations and gave out some of the weapons in order to keep the rest. During the attack, the crowd used physical violence as a result of which people were killed and wounded.[5]

Weapons safety: challenges and the need for collective efforts

On 25 August 2011, the Human Rights Centre "Kylym Shamy" (Bishkek) initiated the formation of a working group to discuss and develop recommendations on the safety of firearms, military equipment and ammunition at times of mass riots.

The working group included representatives of the government, the Ministry of Internal Affairs, the State Committee for National Security (SCNS), the military prosecutor's office, as well as members of the Public Oversight Councils under the Ministry of Defence, the State Drug Control Service, and the expert community.[6]

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4 Official data from the border troops, the Ministry of Defence, Ministry of Interior, the National Security Committee on the status on November 1, 2012.

5 Official data of the Military Prosecutor's Office and the inspectors for the Jalal-Abad region.

6 The working group includes: department of security, public order and defence capacity of the Governmental administration, the military prosecutor's office, the arms service of the engineering, chemical and special means of Interior Ministry troops, the State Service for Drug Control, the State Committee for National Security, General Directorate for Security at the Ministry of Interior, border troops, the department of financial and economic management of the Interior Ministry, 9th General Directorate of National Security, Academy of Ministry of

The working group organized three round tables in the capital, as well as in two regional centres (Osh and Talas), where there had been a seizure of weapons during the riots. At the round tables, the following issues were put forward:

- gaps and contradictions in the legislation of the Kyrgyz Republic on the use of weapons;
- the legal definition of *mass riots* in the laws regulating the use of weapons, as well as in the Criminal Code of the Kyrgyz Republic;
- defining the differences between participants in peaceful demonstrations, the crowd and violence;
- the need for detailed regulation of the actions of officials, police officers and paramilitary units during the riots;
- regulation of institutional orders on the safety when dealing with weapons, operation, storage of weapons and ammunition, inventory, storage, use and order of the issuance of weapons and ammunition;
- responsibility of commanders, police officers and the military in the event of loss, seizure and voluntary transfer of weapons. Organization of proving guilt/ innocence of a person;
- prosecution of a person who has allowed weapons' seizure and the person who has seized weapons;
- conducting internal investigations in case of loss, seizure and voluntary transfer of weapons; regulating procedures set in statutes and institutional orders with limited access;
- technical requirements for weapons storage sites;
- interaction with state institutions and organizations of local self governance in the case of mass riots, order of managing riots;
- developing training programmes on "Riots and actions of police officers" and conducting practical training sessions on the actions of police officers during riots;
- facilitating the return of seized firearms.

In the course of the work of the group, as well as during the discussions with the participation of representatives of the security sector, law enforcement agencies, local authorities and the public, the following major problems were identified that affected the work of law enforcement officers and military personnel to allow seizure of weapons during mass riots:

- Weak protection of law enforcement officers: in April 2010, on the one hand, law enforcement officers were following the orders to protect the Government

Internal Affairs, Public Oversight Councils in the Ministry of Defence, the State Committee for National Security, and the Drug Control service, "Kylym Shamy" centre, experts.

House and other strategic sites;[7] on the other hand, they used weapons against protesters. As a result, police officers were sent to court;

- The demoralization of law enforcement institutions after the change of government; Lack of a unified plan to coordinate law enforcement units during the riots;
- Lack of a clear strategy for the actions of soldiers during mass riots since they are preparing to defend the homeland from the enemy, and not to wage war on their people;
- Weak technical protection of armouries in military units. The lack of proper funding from the state;
- Placement of border posts and military units within settlements, especially in densely populated areas;
- Presence of women and elderly people in the crowd; difficulties to separate them from the total mass;
- Insufficient equipment of the police with effective tools that could replace the weapons without being harmful for the health and threatening human life;
- Impunity for the individuals who have captured weapons. Use of double standards when prosecuting those who made it possible to seize weapons (military), and not prosecuting those who seized the weapon (citizens);
- Simulation in combating crime by the authorities.

Analysis of the legislation of the Kyrgyz Republic related to arms safety

Additionally, the working group experts analyzed 15 laws relating to the problems of mass disturbances, tasks and functions of law enforcement and military personnel at times of unrest, the security of firearms and their use during the riots. According to the analysis of legislation, two key problems were identified: incompliance with laws and a large number of gaps and inaccuracies in legal formulations.

Thus, the legal analysis showed that riots were a complex offence. During the riots, the acts performed contained elements of other crimes. Mass riots included independent offences like arson, pogrom, destruction of property, assault, murder, etc. The law defined riots as a set of the above, other crimes and criminal acts, including their organization.

[7] According to the State Committee for National Security, under Articles 1.1 and 6 of the Law "On State Protection" protected sites are buildings, structures and facilities which accommodate public authorities authorized to use these buildings, structures and facilities on the territory and aquatory subject to protection in order to ensure safety, http://pda.kabar.kg/rus/society/full/ 47928.

During the riots, more than 20 types of crime could be committed which according to Article 233 of the Criminal Code qualify for liability for the riots, or under the relevant article of the Criminal Code as resistance to the authorities, or hooliganism.

Thus, riots can be defined as acts of the crowd representing a real threat to public order, personal security of citizens and public safety, expressed through violence, pogroms, arson, destruction of other people's property, use of firearms, explosives and devices, as well as armed disobedience to the authorities, which causes disruption of the normal functioning of government and public organizations, institutions, factories, and transport, the recovery of which requires urgent special measures and additional assets.

The Law on Internal Affairs defines the list of basic tasks of internal agencies. Among the main objectives are *maintenance of public order and the security of citizens and society.*[8] *The Internal Affairs agencies within their competences are obliged to ensure public order and security to the people and society.*[9]

These rules do not accurately define the responsibilities of officers but rather describe the general principles of work. It is not clear what exactly the term public order implies. What does personal safety mean? Security of the community? What measures should be taken by police officers and what are their responsibilities in order to ensure public order, safety to the person and society, especially during riots and other emergencies? Unfortunately, the Law does not provide clear and comprehensive answers to these questions, which leads to different interpretations of the duties of law enforcement officers.

Interaction between Interior agencies during riots[10]

The Interior agencies perform their tasks in cooperation with the state agencies, public associations, labour collectives, and public formations created to assist the Interior services in their work.

Government agencies, labour groups, officials and public formations are obliged to provide assistance to Interior services in the performance of their tasks.

The Interior authorities perform their duties in cooperation with the Internal Troops.

Unfortunately, the law does not specify any mechanisms of interaction during riots. Apparently, such mechanisms need to be worked out. For example, an action plan is needed for mass disorders to identify the functional responsibilities of the participants. Such mechanisms of interaction can be approved at secondary legislation level.

Responsibilities of the officials in Interior agencies [11]

Interior agencies' officials make decisions within their competences. They take responsibility for their unlawful actions or inaction according to the legislation. When the official receives an unlawful order, he shall comply with the law.

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8 Article 2.

9 Article 8.

10 Articles 4 and 5.

11 Article 11.

The Law does not specify what regulations shall guide the Interior agency officials. It is obvious that to meet this requirement (define the contradiction between the law and the commander's order) in time of mass riots is practically impossible.

The actions of Interior agency officers formally subject to unlawful acts may not be considered a violation of the law if they are performed under conditions of justified professional risk. The risk is justified if the action is the result of current circumstances, the legitimate goal could not be achieved without this action and the officer who took the risk had taken all possible steps to prevent the damage caused.

This is an extremely inappropriate formulation of the law and, consequently, it is difficult to interpret and apply this law into practice.

Use of firearms by Interior agency officers. Cases when they are authorized to apply (use) weapons [12]

Unfortunately, the Act does not define the concept of "use of weapons." At the same time, the text of the Law contains the phrase "the application and use of weapons."[13]

In scientific literature, *application* means the use of weapon according to its purpose (for example, a shot to frighten someone or imitation of a shot (explosion), a shot (explosion) for defence, etc.).

Officers from the Interior services use weapons in the following cases[14]:

- to protect citizens from attacks threatening their life or health;
- for self-defence from attacks threatening their own life or health.

What does an attack threatening the life and health mean? Unfortunately, the law does not specify the criteria for such an attack. Therefore, in practice it turns out that the officer shall assess the situation himself and take a decision on *the use* of weapons, and then substantiate the legitimacy of the use of weapons. It is obvious that during mass disorders this task becomes even more complicated.

- To repulse a group or armed attack on important and protected sites, citizens' homes, government and public buildings, factories, institutions, organizations, repulsion of attacks on Interior troops or duty officers.

The practical implementation of this provision raises a number of questions. The key term is "a repulsion of the attack." Is the violent seizure of weapons from Interior officers or the attempt for seizure qualified as an attack? What does a group attack involve? What facilities are important? Is it legal to use arms to repel an attack on the armoury of the Interior services?

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12 Articles 12 and 15.

13 For example, in article 15.

14 Interior officers have the right to use weapons in other cases: 1) to stop vehicles by damaging them, if the driver does not obey the order of law enforcement officers and endangers the lives and health of citizens, 2) to protect against animal attacks; 3) for an alarm signal, to call for help, and also for warning shots.

- To repulse a group or armed attack on officers from the Interior agencies, other individuals performing their service or public duty to ensure public order and facilitate fight against crime, as well as other life and health threatening attacks.

It is interesting to look at the wording: "life or health threatening attack." What kinds of situations could this involve? Unfortunately, this reference is not clear.

- Detention of individuals giving armed resistance at the time of committing crime or escaping from custody (except for those under administrative detention), as well as for the detention of armed men who refuse to comply with the lawful orders to give up their weapon.

It is clear that all these cases could take place during riots.

The law enacts the following procedures for the use of weapons:

- The use of weapons must be preceded by a warning of the intent to use it;
- A weapon can be used without warning in case of a sudden or armed attack, attack with combat equipment, vehicles, aircraft, and sea (river) vessels, release of hostages, and escape from custody with a weapon or means of transportation, as well as escape of individuals from custody while the vehicle is in motion.

The law does not specify the criteria for surprise attacks and armed attacks. Is it possible to use weapons without warning during mass disorders? When seizing weapons?

It is prohibited to use weapons against women and minors, except in cases when they participate in armed attacks, armed resistance, taking hostages or vehicles, or group life-threatening attacks.

How can you work as a police officer if at times of riots there are women and minors in the crowd armed with guns, knives, stones, sticks and Molotov cocktails? What is the rule for using weapons in such cases?

The Law on Defence and Armed Forces defines the organization of defence, the rights and duties of state bodies and those for local self-governance in defence; obligations of legal entities, regardless of the organization and legal forms, as well as the rights and responsibilities of citizens of the Kyrgyz Republic in the field of defence; assets for defence; composition, structure, and purpose of the Armed Forces of the Kyrgyz Republic; responsibility for violation of the legislation of the Kyrgyz Republic with regard to defence.

Article 10 in the Law is of key importance. It regulates the use of Armed Forces in the Kyrgyz Republic:

- *To protect* the sovereignty, independence and territorial integrity, the constitutional system, society and citizens of the Kyrgyz Republic from *aggression*;
- To guarantee security to the citizens, the society and the state from terrorism, in local and *other armed conflicts* infringing the national interests;
- To eliminate *illegal armed formations*;
- To eliminate the consequences from *emergencies of natural and technological nature.*

The use of the armed forces to resolve *internal political issues is prohibited.*

The law contains no clear criteria on the concepts outlined above. Therefore, it is necessary to carry out a separate analysis and answer a series of questions that arise in their interpretation. The law does not regulate issues related to mass disorders, nor the activities of the armed forces in situations related to security of weapons, ammunition and military equipment.

The Law "On Internal troops of the Ministry of Interior of the Kyrgyz Republic" specifies the following tasks:

- Protection of important government facilities and special cargo;
- Protection of penitentiary houses, escorting prisoners and persons in custody;
- Assistance to the Interior services in ensuring public order, public security and the state of emergency.

In addition to this Law, the duties assigned to the Internal troops are determined by the Statutes of internal troops and regulations of the Ministry of Internal Affairs. According to these normative acts, *the officers from the Internal troops have the right to use weapons* [15] in the following cases:

a. to protect citizens from attacks threatening their life or health;
b. to repel an attack on the military, the police department and workers, the court and the prosecutor's office when their life or health is at risk, as well as to prevent attempts to seize their weapons;
c. for the release of hostages, protected sites, facilities, cargo and military equipment;
d. to arrest persons caught while committing a crime against life, health and property of citizens and trying to escape, as well as individuals giving armed resistance;
e. to prevent the escape of persons detained on suspicion of committing a crime from custody; persons against whom the preventive measure is detention; persons sentenced to imprisonment; as well as to curb attempts for violent liberation of persons mentioned in this paragraph;
f. to stop a vehicle by damaging it, in case the driver refuses to stop in a state of emergency, despite the legal order of the militia officer or a military serviceman;
g. to repulse a group or armed attack on military facilities, military echelons and columns, protected sites; buildings and goods, the homes of citizens, government facilities, public organizations, enterprises, institutions and organizations, including through the use of vehicles;

[15] Article 27 of the Law "On the Internal Troops of the Ministry of Internal Affairs of the Kyrgyz Republic."

h. to suppress the opposition of armed groups that refuse to obey legitimate orders to stop the illegal actions and give up their weapons and combat equipment;

i. to suppress riots in detention centres and prisons, accompanied by destruction, arson, massacres and other acts when applying other measures to stop these actions is not possible.

It is clear that all of these may also occur during riots.

Next: *Without warning, a weapon could be used in a surprise attack, armed resistance, attack with combat equipment, vehicles, aircraft, escape from armed protection or by means of vehicles, aircraft, as well as escape in limited visibility, and escape from a vehicle while in motion.*

Unfortunately, the law does not define the criteria for a surprise attack or armed attack. Taking into account the riots that took place in Kyrgyzstan, a question arises whether it is possible to use weapons without warning at the time of the riots.

Weapons must not be used against women, persons with obvious disabilities, minors, when age is obvious, except in cases of armed resistance or a group attack that threatens the lives of people.

How should a soldier act if during mass riots in the crowd there are women and minors, individuals armed with guns, knives, stones, sticks or Molotov cocktails? What is the rule of use of weapons in such cases?

The findings of the working group, the analysis of the legal documents and the discussions in the regions of Kyrgyzstan were presented in the report "Ensuring security of firearms, ammunition and military equipment during mass riots by the state."

The work of government agencies

Taking into consideration the importance of these problems, "Kylym Shamy" Centre periodically sends letters to the authorities requesting information on the activities intended to ensure the safety of weapons during riots, public awareness and the return of weapons seized.

The Ministry of Defence, in response to decision of the Provisional government no. 32 of May 7, 2010 "On measures to prevent illicit trafficking in arms, ammunition, explosives and explosive devices," developed Regulations "On the organization of the reception of illegally stored weapons from citizens on a reimbursable basis." Government officials are sceptical about the system of rewarding people for giving up weapons and recognize this method as ineffective. During the campaign, for the return of weapons only 300 thousand soms were spent. For the return of a machine gun, the amount was 8,000 soms ($ 180), for a Kalashnikov – 4,500 soms ($ 100), for one cartridge – 5 soms. At the black market a gun can sell for $ 300, a machine gun – for $ 600. Naturally, with such low rates citizens were not interested to give up their weapons.[16]

[16] From the speech of Deputy Prosecutor General, Nikolai Zheenaliev, and the Head of the department for ethnic, religious politics and public affairs at the Office of the President, Ergeshov, at a round table on 16 December 2011.

An inventory of the artillery property of the Ministry of Defence checked funds and updated license registration of small arms. A procedure was launched to send cards of lost weapons to the Analytical-Information Centre of the Ministry of Interior for registration.

In order to encourage the return of lost weapons, a campaign was organized on television channels "EITR," "OTRC," radio "Kabarlar," "Europe plus," "Manas," "Kyrgyzstan Obondoru." The national and regional print media published an appeal of the Ministry of Internal Affairs to the public to give up voluntarily illegally stored weapons. Similar activities were carried out jointly with the operators of mobile companies "Beeline," "Megakom," "Katel" and "Fonex." Currently, storage rooms for weapons in the police departments are equipped with the necessary technical devices like alarms and video cameras.[17]

In order to prevent potential loss of weapons and ammunition, the State Committee for National Security conducted analysis and developed an alternate plan and revised interdepartmental instructions and orders.[18] An order was issued to summon officers from units 2024, 2028[19] to take responsibility for allowing seizure of weapons.

As stated by Deputy Military Prosecutor of the Kyrgyz Republic, based on the facts related to the seizure of weapons during the riots in June 2010, 29 criminal cases were filed, 21 of which were sent to court, 23 individuals were held responsible, 13 cases were terminated by the court on the grounds of committing a crime due to an utmost necessity.[20]

However, it was not possible to answer the questions: who were indicted (civilian or military personnel), how the investigation was conducted, who were the persons with terminated criminal proceedings. These questions remain open and need additional inquiries.

Conclusion

Based on the above information on the work of state institutions, it can be concluded that to date the government has not made sufficient efforts to enhance the security of weapons during mass protests and the return of seized weapons and ammunition. This was proved by numbers (more than half of them have not been returned) and the lack of information whether those responsible for the seizure of weapons have been charged. Typically, impunity generates new crimes and, to avoid this, Kyrgyzstan is to unite all efforts of both government authorities and public and expert communities to ensure the safety of weapons.

Security—one of the basic rights and needs of humanity—is becoming a priority issue. Its provision requires consideration of various aspects of human activities – social, economic, political, technical, military, information, environmental.

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17 Official information from the Public Security Department at the Ministry of Internal Affairs

18 Official information from the State Committee for National Security.

19 Official information from Border Troops.

20 Speech by Deputy Military Prosecutor D. Erkinbaeva at the round table on 16 December 2011.

Security is the basic precondition for human existence, a guarantee of man's free spiritual, moral and physical development. Without ensuring security, human existence is not possible. Therefore, the problems and threats related to security of weapons require new ways and methods of work.

It is necessary to develop the Public Security Concept and one of its sections is to be devoted to the aspects of weapons security.

The content and structure of security require reconsideration. It is necessary to start looking for new approaches to ensure security to people.

It must be recognized that riots are a threat to national security. Therefore, preventing future disorders should become a major focus of the national strategy of the country.

The government shall work out a national programme to guarantee security during riots, develop proposals for coordination between executive authorities and evaluate the effectiveness of their efforts to improve the national security system. For the good organization and coordination of efforts, it is recommended to establish a permanent/ provisional committee within the Council on Defence or the Council for prevention of mass disorders under the Ministry of Interior.

It is important that the budget for 2013-2014 include funding for ensuring weapon security during mass protests.

And most importantly, it is necessary that both civilians and officials obey the laws of the country, and those who fail to obey the laws shall take full responsibility. It is necessary to terminate the practice of making decisions under the pressure of the crowd and the instigators and participants in protests are to be punished according to the law regardless of their status or social position. Otherwise, every citizen will be forced to protect himself independently by all permissible and impermissible methods. That, however, could lead the country into chaos, the loss of state system and sovereignty.

Recommendations

We offer a number of recommendations aimed at creating the conditions for arms safety, greater responsibility for their return and informing the population about their liability for the capture and illegal possession of weapons:

1) strictly regulated legal concepts and actions of officers and military personnel during mass and group disorders;
2) increased state control over the arms trade;
3) taking additional measures by government agencies to ensure weapons safety;
4) improving the protection of police and military officers after the authorized use of arms, ensuring their personal safety, as well as the safety of their family members;
5) tightening sanctions for illegal possession and purchase of weapons;
6) elaborating recommendations on safety precautions, compliance with rules and standards for weapons safety by arms store owners;
7) conducting a detailed analysis, including on internal problems in legal practice;

8) consider the possibility of abandoning the practice of placing border checkpoints and military units in populated areas, especially in densely populated zones. In most cases, it is these checkpoints and units that are subject to attacks with the aim of seizing weapons;
9) exclude cases when security officers serve in their hometowns or in the place of their permanent residence;
10) analyze the problems related to the shift of checkpoints, defining borderlines, border zones, defining conflict situations in disputed areas, in enclaves;
11) analyze the problems related to issuance, storage and use of weapons given as a prize;
12) set up a database for identification of weapons on the territory of the country;
13) establish a centre for coordination of security forces during riots;
14) clarification by the Supreme Court plenum on the legal practices in cases of mass and group riots, loss, seizure and use of weapons;
15) study and develop the experience of the Academy of the Ministry of Interior "Major-General Aliyev" on training in "Inter-ethnic relations" and "Conflictology" (additional courses are possible); conduct regular roundtables and conferences on specific topics;
16) greater responsibility for the loss of arms, additional articles in the Criminal Code and subordinated documents with limited access (marked "for official use only");
17) to differentiate responsibility between a citizen detained with one bullet, and a citizen with a firearm. Currently, the same punishment is applied to both. Develop proposals for changes in Article no. 241 of the Criminal Code;
18) designate specific time periods for return of weapons and ammunition among the population throughout the country;
19) government representatives in the regions to develop and approve plans for the return of weapons and ammunition for the respective regions;
20) improving advocacy and campaigns among young people and students in cooperation with security and local services for the purpose of preventing illegal seizure, acquisition and storage of weapons;
21) using video clips to raise awareness to prevent the seizure of firearms and the need to return the captured weapons during the riots;
22) using the mass media (newspapers, TV and radio) to inform the general public about their responsibility for illegal possession of firearms;
23) greater responsibility for attacks on police and military officers during their service duty;
24) development and implementation of state policies aimed at building confidence and respect towards security agency officers.

The Human Rights Centre "Kylym Shamy" is thankful to the members of the working groups, experts and participants in the round tables for their contribution to this report.

Chapter 9
Transparency of the State System and Public Security

Nurbek Toktakunov

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When a society does not know how power is exercised, then the authorities do not know what is going on in the society

Nurbek Toktakunov

Introduction

During the Soviet period, Kyrgyzstan ensured societal security through the dominant ideology of the vertical power. Because of the incapacity of citizens and public structures to control power, the collapse of the Soviet system led to a sharp increase of corruption in the country and turned the state apparatus into an independent entity not associated with the needs and interests of society but rather aimed at the control and appropriation of public resources and assets. Two political coups in March 2005 and April 2010 demonstrated that when the security and law enforcement agencies serve the corruption and personal interests of those in power, the state apparatus becomes the greatest threat to public safety.

The situation after the change of the ruling elite in 2010 is not quite different from the situation after the coup of 2005. Following the events of 2010, the formal framework of a parliamentary republic was laid and a competitive environment in the political sphere was created. There is a competition between parties and politicians within parties, security agencies and factions – within the police and judiciary system. Thus, the single vertical line of the corruption and power hierarchy broke down and now any level could be perceived as part of the protection and patronage of lawlessness of higher levels of the hierarchy. Since in a competitive environment political and financial groups control each other, their resources, profitable industries and corruption streams, any illegal acts or inaction of the authorities are detected with a high degree of probability. The civil society has a great opportunity for positive changes by creating temporary alliances with political or financial groups, who for one reason or another, compete with the forces opposing positive changes.

The danger is that the system and its elements are always eager to spin around one centre of political power. This is evident from the fact that the army of corrupt officials, judges and prosecutors feel very uncomfortable and restless in a competitive environment and make every effort to restore the single corrupt and power hierarchy. Thus, the competitive environment is only a short-term opportunity, which may be irretrievably lost, if the civil society is not able to take advantage of the historical moment and establish a total control over government. A necessary prerequisite for a more competent and effective control over the government is the transparency of the state system based on reasonable restrictions of the freedom of information. A government system that ensures freedom of information has the following advantages:

1) The awareness of citizens of the activities and policies of state authorities, as well as the reasons for some decisions, expands public support for these decisions, reduces the degree of dissatisfaction and the number of related conflicts and misunderstandings;
2) Strict predetermination of promulgation of administrative decisions mobilizes the authorities to find the most justified and balanced solutions among different interests and opinions and raises the credibility of the government;
3) In a transparent system, any member of the public authority knows how difficult it is to hide a violation from the public and this keeps him from committing it, and if he does not refrain, the tools for information access help to identify more effectively the facts of abuse and corruption;
4) The free flow of information does not allow hiding any problems and produces in the public system flexibility and mobility, the ability to find new ways and reflect new threats, which encourages the public system to seek perfection.

Global campaign for transparency

The campaign for transparency is a growing phenomenon in the modern world. The right of access to information was initially regarded as an integral component of the right to freedom of expression,[1] and was used mainly to protect journalists from sanctions for the dissemination of official information of public interest, received unofficially. With the development of this right, the positive obligations of the state to provide access to information became more distinct, not only to journalists, but also to citizens. The first violation of Article 19 of the International Covenant on Civil and Political Rights pertaining to the right of access to information of ordinary citizens, not journalists, was the decision by the UN HRC on the complaint of a citizen of the Kyrgyz Republic on the violation of his right of access to information.[2] To date, the right of access to information has virtually gained importance, although formally remains part of the right to freedom of expression.

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[1] In 1966, the International Covenant on Civil and Political Rights was adopted, Article 19 of which protects the right to freedom of expression.

[2] Memo 1470/2006 of the UN Committee on Human Rights, adopted on 28 March 2001.

In December 2004, the UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media and the Special Rapporteur of the Organization of American States issued a joint declaration, which included the following statement:

> The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.[3]

The right to freedom of information is recognized in all three regional systems of human rights protection.[4] The Committee of Ministers of the Council of Europe adopted in 2002 a Recommendation on access to official documents.[5] There is a growing global movement for budget transparency, accountability, and citizen participation. The Global movement for budget transparency, accountability and civil participation (BTAP) [6] was created specifically to promote the idea of opening the budgetary process. BTAP is an active movement which presents a wide range of active people and organizations working in the area of public finance and fiscal accountability throughout the world. More than 100 civil society organizations from more than 50 countries and 12 international organizations have joined the Movement by accepting the points made in the Dar Es Salaam Declaration "On budget transparency, accountability and citizen participation" adopted on 18 November 2010.[7]

The international organization "International Budget Partnership" [8] has developed a methodology for calculating the level (index) of budget transparency and is currently conducting research in 100 countries, both developed and developing, on budget accessibility for the citizens of the country in accordance with the rating given.[9] The index methodology is developed on the basis of recommendations in the document "Best Practices for OECD member states to ensure transparency of the state budget."[10]

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3 See www.cidh.org/Relatoria/showarticle.asp?artID=319&lID=1.

4 The European Court of Human Rights in Strasbourg considers cases in accordance with the European Convention on Human Rights; the UN Committee on Human Rights in Geneva considers complaints under the International Covenant on Civil and Political Rights; the Inter-American Court of Human Rights in San José considers cases in accordance with the American Convention on Human Rights.

5 Recommendation no. R(2002)2, approved on February 21, 2002

6 To disseminate information about its activities, events and campaigns, BTAP recently opened its own website. The website www.globalbtap.org aims to make the Movement more familiar and understandable to its members and all interested parties.

7 www.globalbtap.org/declaration-russian.

8 http://internationalbudget.org.

9 www.openbudgetindex.org.

10 http://talap.kg/optimalnye-podxody-gosudarstv-chlenov-oesr-k-obespecheniyu-prozrachnosti-gosudarstvennogo-byudzheta.

Since 2008, Kyrgyzstan has participated in this study and is an active participant in the Global movement for budget transparency (BTAP). It should be noted that among post-Soviet countries Kyrgyzstan was the first to introduce the Law on access to information. Since 2008, Kyrgyzstan has raised the rating of fiscal transparency from 8 to 20 percent, but although there is some dynamics, the process is still quite slow.

Transparency as a prerequisite for security

It is generally assumed both by ordinary people and by officials with authority that transparency in the state system, as a rule, is contradictory to the interests of security. It is a legacy from the Soviet empire when the country lived behind the Iron Curtain and ensured national integrity and ideology through total control over the movement of any thought and information. Now, however, there are ongoing global processes over which boundaries and bans have no power; the development of technologies and means of communication make it impossible to keep a large part of the secrets, while global threats force any country to cooperate and exchange information.

If society does not know how power is exercised, then the authorities do not know what is happening in society. Under these circumstances, the bureaucratic state apparatus is capable of forming attitudes and preferences of the supreme power, not presenting objective information but rather information that is expected. In an emergency, authorities that have insufficient or wrong information act inadequately, while a society that lacks information or is misguided is a favourable place for the spread of ideas for the benefit of corporate interests. The effectiveness and security of the existing national decision-making system depend largely on how it can provide information to the authorities on what is really going on in society and inform society on how power is exercised in reality.

In the context of increasing threats in the security sector, the issue of transparency is gaining particular importance. The lack of transparency of the system contributes to the uncontrolled budget spending by power structures and concealing from the public the real reason for security problems which tend to grow to catastrophic proportions. Therefore, it is of crucial importance to maintain a balance between the need to meet the public interest and the need to keep secret information, the disclosure of which is a threat to public safety, and other, considered by law as secret.

Article 19 of the ICCPR provides a recognized international standard for restricting the freedom of information. It encourages states to restrict the dissemination of information on the *grounds of the law and when needed to "respect the rights and reputation of others" and "to protect the public security, public order, health or morality of the population."* The implementation of these requirements was deciphered by the international organization "ARTICLE-19," which has formulated three principles ("legality," "damage assessment," "priority of public interest"), under which the dissemination of information may be limited:[11]

[11] These three criteria are set out in the document "Analysis on the draft Law on Access to information," by the organization "Article 19" in October 2006 and directed on 23 October 2006

1. *Principle of the rule of law* – disclosure of information threatens the interests protected by law. The implication is that we shall not restrict the dissemination of information in interests that are not covered by the law;
2. *Principle of damage assessment* – the disclosure of information would cause substantial harm to legally protected interests. The implication is that there is a causal link between disclosure of information and possible harmful impact to protected interests;
3. *Principle of priority of public interest* – the harm from disclosure of information is more dangerous to society than the harm from not satisfying the public interest. The implication is that one must weigh the harm from disclosure and the harm from dissatisfying public interest and make a decision based on what is more dangerous to society – to keep information or disclose secrets.

Compliance with these principles allows public authorities to satisfy the public interest without creating threats to public security.

Legislation

The Constitution of Kyrgyzstan guarantees the access of "every person" to information, possessed by the state (Article 33), and further stipulates access to budgetary information (Article 52). Moreover, the Constitution gives the general principle of applying restrictions on constitutional rights and freedoms, including the right of access to information – only in the interest of security, health, morality of the population, the rights and freedoms of others, but the restrictions must be proportionate to the purpose (Part 2, Art. 30).

The Law "On access to information held by public authorities and local self-governance bodies"[12] provides for access to information by oral or written request, through access to the meetings of state or local self-governance bodies, through official funds of information and obliges public authorities on their own initiative to provide the citizens with a certain amount of information. However, paragraph 3 of Article 2 of the Act (*"This law does not apply to the provision of information the access to which is restricted in accordance with the legislation of the Kyrgyz Republic"*) brings up issues related to restrictions on the right to access information outside the scope of this Act, even though this law is intended to settle down disputes associated with the *provision of information the access to which is restricted.* Further on, Article 5 of the Act provides definitions of restrictions; however, their wording is so confusing and incorrect that it could be used to justify any refusal to provide information. For example, here is a definition of one of the features of confidential information – *"information reflecting the concrete content of closed hearings and meetings."* This formulation allows announcing a meeting secret and classifying the information by conducting the meeting behind closed doors. The ap-

to MPs. Memorandum on the draft Law of the Kyrgyz Republic on Access to Information, Article-19, 2006, Index: LAW/2006/10/26.

12 No. 213 of December 28, 2006.

proach should be quite the contrary – a meeting is held behind closed doors if the information discussed is with restricted access.

In spite of the fact that this law provides no information on requested justification for hiding information, Article 3 of the Law "On the Protection of State Secrets"[13] stipulates the principle of reasonable classification which defines the need *"to determine the advisability of classification of information by expert review in the interests of the state and citizens*." This principle allows requesting an expert evaluation of the appropriateness of classification in case the state authorities refuse to grant information.

In addition, on June 27, 2010 the Constitution of the Kyrgyz Republic extended the list of entities bound to report to citizens, including legal entities – state and local self-governance bodies and organizations funded by the national and local budget. So far, this requirement of the Constitution has not been detailed in laws.

The practice of government agencies in providing information

The practice of classifying information in the Kyrgyz Republic is in contradiction with the requirements of the law. A significant obstacle to the implementation of the law in practice is that the regulations governing the internal operations of state and local self-governance bodies are obsolete and do not meet the requirements of the law. In accordance with Article 3 of the Law "On the Protection of State Secrets," a principle of classification is the "principle of validity – determining the appropriateness of classification of information by expert evaluation in the interest of the state and its citizens." Article 5 of the Act defines various categories of secrets – state secrets, military secrets and service secrets. Thus, the expert review helps to clarify whether the dissemination of information threatens the interests of defence capabilities, security, economic and political interests, or may cause harm to the armed forces. Such an assessment is required by the principle of proportionality in restricting the rights and freedoms set forth in paragraph 2 of Article 20 of the Constitution (*"The rights and freedoms may be restricted in order to protect national security, public order, public health or morality. The restrictions imposed shall be proportionate to the purposes"*). The right of access to information is a fundamental human right and any restrictions must be justified and necessary.

The Law "On the Protection of State Secrets" establishes the principle of expediency of classification but does not regulate the procedure of expert assessment. Accordingly, it must be adjusted by regulations governing the classification of information in government institutions. Such a document is the "Regulation on determining the category of classification of information contained in the papers, documents and products" approved by Governmental Decree no. 267/9 on July 7, 1995 (hereinafter Regulation). However, it does not regulate the procedure, and the absence of mandatory expert assessment leads to the fact that information which is not harmful to the interests quoted in Article 5 of the Law "On the Protection of State Secrets" is being classified. The absence of mandatory expert assessment leads to the fact that the information is classified not so

[13] No. 1477-XII of April 14, 1994.

much in the interests, protected by the law, as in the interests of corrupt circles or just for consolation of the bureaucratic apparatus.

The above conclusions are confirmed by various studies. The research group with Public Foundation "Voice of Freedom" spent seven months in 2011-2012 tracking how the state system responded to questions on information access.[14] It was revealed that the state system did not meet the requirements of the Constitution and the laws for wise, expedient and proportionate restrictions in access to information. In this way, 39 requests (47 percent) were simply ignored. 4 percent of the requests were refused due to protected interests with no estimates of harm, e.g., without any justification for restrictions on access to information. 9.6 percent of the requests were given a formal response, i.e. the response was not related to the request. 12.8 percent of the requests received an incomplete answer, i.e., part of the issues were ignored. In 5.6 percent of the cases, the reply was received after the deadline set by law. Only 34.13 percent of the requests received timely and complete response.

On December 23, 2013, the organization International Budget Partnership announced the Index of budget transparency of 20 percent for the Kyrgyz Republic. This means that the Government of the Kyrgyz Republic provides the public with little information on the budget and finances during the fiscal year and virtually is not accountable to it. Because of the lack of access to detailed information on the budget, the society poorly understands the acts of the authorities in setting priorities and allocation of resources.

Jurisprudence

Litigation between the author of this article and the State Committee for National Security which refused to provide the latest estimate of its own expenses demonstrates the current incapacity of the judicial system. The State Committee for National Security refused to grant its cost estimates referring to a government decree[15] that classifies budget information about security agencies. The author deliberately created the precedent against this institution, whose activities are generally perceived as shrouded in mystery. The goal was not to facilitate access to state secrets, but rather to receive from SCNS an expert assessment on the feasibility of classification of cost estimates in accordance with Article 3 of the Law "On the Protection of State Secrets." Cost estimates of the State Committee for National Security contain standard names of costs presented in aggregate form, such as "salaries," "transport," "purchases," "repairs," etc., the disclosure of which does not threaten the interests of security. It is easy for sophisticated intelligence to understand how the generalized cost data could threaten our security but in a highly corrupt judicial system keeping this information secret threatens us to a much

[14] www.inkg.info/dokumenty/otchety/1598-obobshchenie-praktiki-dostupa-k-informatsii-nakhodyashchejsya-v-vedenii-gosudarstvennykh-organov.

[15] "Regulations on the procedure for establishing secrecy categories of information contained in the papers, documents and products," approved by Governmental Decree no. 267/9 of 7 July 1995.

greater degree because it helps the enrichment of senior security officials and the disproportionate strengthening of the police power. It is good to have strong and well equipped law enforcement agencies when the laws work, when punishment is irreversible, otherwise this might turn against the citizens, and in the future – against the supreme power.

In accordance with the applicable in administrative jurisprudence[16] principle of "presumption of guilt,"[17] the State Committee for National Security is to prove that the dissemination of information about their cost estimates threatens the interests of society. Unfortunately, the SCNS officers did not provide any expert estimates, nor did the court require this kind of explanation from them. The court was content with the fact that their expenditures were classified by a Governmental act, completely ignoring the fact that the government decision was in contradiction to the provisions of the law. It is a shame that the courts do not take into account the principle of hierarchy of normative legal acts, stipulated in Article 6 of the Law "On normative legal acts." In case a legal act contradicts the law, the court must observe the law. However, courts, as a rule, when a regulation on classification of information contradicts legislation, are guided by the regulations and refuse to meet the requirements on access to information.

The most shocking is the fact that the author demonstrated to the court the cost estimates for the State Committee for National Security that he had obtained through official channels[18] and which had always been freely accessible. According to the logic of the security services, this fact was to become the basis for initiating a criminal case under "Disclosure of information constituting a state secret" but oddly enough, a criminal case was not opened.[19]

At times, the government spends resources to conceal facts that are impossible to hide. For example, the party "For life without barriers" requested information on the distinction between municipal, private and state property in Bishkek. The mayor refused to provide information, referring to a list of data to be classified according to the system of

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16 Legal proceedings on disputes between non-state actors on the one hand and public entities on the other on the infringement of rights and freedoms of citizens, the legitimate interests of other non-state actors. It should be differentiated from the proceedings on administrative offences.

17 Paragraph 4 of Article 267 of the CPC states: "The burden to prove legality and validity of the act, actions (inaction) appealed in court, goes to the state authority, local self-government authorities or officials that committed action (or inaction)."

18 The official publication of the Committee on Budget and Finance, "Parliamentary hearings to discuss the Law 'On the National Budget of the Kyrgyz Republic for 2012 and forecast for 2013-2014'," freely accessible.

19 A decision not to institute criminal proceedings on June 4, 2012, issued by investigator Zhaambaev from the State Committee for National Security. SCNS in its efforts to ensure protection against "mythical threats" is not taking any measures against real threats. On May 17, 2012, the State Committee for National Security reported the issuance of 21 thousand non-registered passports, which was confirmed by an official inspection; however, no criminal case has been initiated so far.

the State Mapping Authority of the KR. Indeed, cartography has traditionally been one of the biggest secrets in any country. However, the capabilities of the modern Internet, in particular the publicly available programme "Google Maps," has made these secrets meaningless.[20] To answer the question of the political party, it was not necessary to disclose even this secret. Finally, the court refused to recognize the violation of the right of access to information pointing out as an argument the secrets of cartography.

For several years, Partner Group "Precedent" has received from the State Penitentiary Service official data concerning the expenditures on food, housing and medical services of prisoners. It became clear that the budget of the Service had been classified by a special order. The Service representatives have not presented to the court expert assessment on the feasibility of classification and the court refused to meet the requirements of the applicants referring to the order for classification. It is worth noting that during the prison riots of 2011-2012, the prisoners and their relatives protested against the intolerable conditions of detention and police authorities stated that the cause of the riot was the fact that the authorities have declared war on organized crime. In fact, the truth is somewhere in the middle because "where the ice is thin, it breaks." Secret costs of humane conditions of detention help corruption, theft and embezzlement in this sphere; therefore, they encourage organized crime, as inhumane conditions give them the ground to control the contingent.

The role of international donors in providing budget transparency

Countries and donor agencies are also responsible for the level of transparency in the countries where they implement their programmes. All donors and international financial institutions have, or are supposed to have, strategies for public consultations. Only public consultations can help to determine real needs and then track if real changes have occurred or not. Unfortunately, the needs assessment is very often made in a narrow circle of donors and recipients of donor aid. For example, the militia (police) reform in Kyrgyzstan has been funded for more than ten years by USAID and the Organization for Security and Co-operation in Europe. The result of the secretive way of assessing the needs and changes along these programmes was that the police terminated its functions in protecting public order two times after the fall of the governing authorities. When asked officially about the total amount of aid given by the two donors, the Interior Ministry referred to the fact that there was an agreement with the donors on restricted access to this information and advised going to the donors themselves. OSCE refused to provide information, while USAID ignored the request. At the same time, both donors continue their activities on the police reform. On June 6, 2012, the U.S. Government and the Government of the Kyrgyz Republic signed an agreement[21] on additional financing

[20] http://maps.google.ru.

[21] "Amendment 12 in the agreement on the control of narcotic drugs and on assistance in law enforcement between the U.S. and the Government of the Kyrgyz Republic, signed on December 21, 2001," dated June 6, 2012. Signed by the U.S. Ambassador to Kyrgyzstan

for a total of 4,699,158 U.S. dollars without holding any public consultations. This situation gives grounds for suspicion of corruption or incompetence among international officials. If donors avoid public consultation and hide important public information, their activities are perceived as destructive, reinforcing corruption and threatening national security interests.

Conclusions and recommendations

The vicious practice of classifying information by approving lists of classified data and the lack of procedure for expert assessment on the expediency of classification threaten public security. To improve security, it is necessary to make some adjustments in legislation and changes in the practice of government agencies, especially in jurisprudence, in other words the possibilities for positive change depend on all three branches of government. In the field of jurisprudence, it is necessary to make some fundamental changes to the Law "On access to information held by public bodies and bodies of local self-governance":

1. Delete paragraph 3 of item 3 of article 2 ("*This law does not apply to relations connected with the provision of information, access to which is restricted in accordance with the legislation of the Kyrgyz Republic*"), as this norm brings questions on law restrictions on access to information beyond the limits of the law. This makes the law invalid, as it should provide the conditions under which access to information may be restricted.
2. Restrictions on the right of access to information must be determined by the law itself, without reference to other laws on the different types of secrets. Instead of the provisions of Article 5 of the Act, it is necessary to set three conditions under which access to information may be limited:
    - restrictions must be justified by legally protected interests (the rule of law);
    - the consequences of disclosure of information are a threat to these interests (assessment of harm);
    - damage caused to these interests as a result of disclosure of information is more dangerous than the harm caused by not satisfying public interests (the priority of public interest).
3. In order to bring the law into conformity with paragraph 3 of Article 33 of the Constitution, it is advised to include legal entities to participate—state and local self-governance bodies and organizations financed from the national and local budgets—in the list of organizations recognized as public authorities or bodies of local self-governance.

In order to change the practice of state bodies, the Kyrgyz Government shall:

Pamela Spartlen and Deputy Head of the Government Office, head of the Department of defence, law enforcement and emergency, Kolbai Musaev.

1. Add to the Regulation "On the procedure for establishing secrecy categories to information in the papers, documents, and products," approved by Decree of the Government no. 267/9 from July 7, 1995, the following new items:
    - Establish a requirement for mandatory expert assessment on the expediency of classification of information;
    - Establish the procedure of conducting expert assessment;
    - Establish that the expert assessment on the expediency of classification cannot be secret and is to be open to the public.
2. After the introduction of the aforementioned amendments, review all normative legal acts of the government agencies that restrict access to information (checklists, instructions, etc.) with regard to the appropriateness of classification in the interests of the state and citizens.

It is recommended that the Supreme Court review jurisprudence in the sphere of the right of access to information and issue guiding explanations on the following:

1. Apply the principle of "presumption of guilt" through making court decisions in favour of the applicant in cases where the defendant has not fulfilled their obligations of proving the legality of decision or regulatory act.
2. Comply with the principle of hierarchy of normative and legal acts provided by the legislation of the Kyrgyz Republic.

It is recommended that the donor organizations functioning in the Kyrgyz Republic:

1. Make use of public consultations to assess the real needs in the field where financing is needed and to assess changes as a result of implementation of donor programmes.
2. Cancel restrictions on the access to information with regard to the budget of donor programmes.

Chapter 10
Human Rights in the Activity of Internal Affairs Agencies of the Kyrgyz Republic

Sardar Bagishbekov

Director of public foundation "The Voice of Freedom"

Authorities are allowed only what is provided by law, a man is allowed all that is not forbidden by law.

Marek Nowicki

Introduction

Talks about the human rights situation in Kyrgyzstan increasingly involve the Internal affairs bodies (militia). The militia is the first link in the system of criminal justice and much of its activity is an indication for performance or failure of the state within its jurisdiction, the international obligations in the field of protection of human rights and freedoms of individuals and groups.

The Constitution of the Kyrgyz Republic, along with the norms of international treaties, enshrines the fundamental rights and freedoms. Public authorities must also ensure their implementation and protection under the law. The militia, as one of the state law enforcement agencies, is authorized to protect the law, which is its primary role defining all other key functions, such as appointment of units, general and specific objectives to minimize the negative effects of crime, as well as the establishment and maintenance of a secure social environment in society.

As in many other countries, there is a system of double standards on human rights in Kyrgyzstan. Loud statements about compliance with democratic principles and the priority and importance of human rights sound more like initiatives of individual officials and politicians than a clearly articulated state concept. The existence of laws, formal legal procedures and mechanisms, as well as government institutions to defend human rights and freedoms does not change the situation much. A person is usually left alone to the condescension of someone endowed with power. Under the conditions of imperfect and corrupt judicial system, law enforcement agencies have turned into punitive

authorities. Moreover, the legal outrage is directed not only to the representatives of political opposition or ethnic and vulnerable groups, but also to any member of the society.

A particular danger to the welfare of society is the situation when the outrages of militia bodies, bribery, abuse of power and violence by militia officers become a routine norm. At the same time, the society gives little thought to the fact that in the absence of social disapproval of such phenomena the problem grows and will not disappear by the will of the officials.

The causes for abuse and human rights violations by the police are quite multifaceted. These are, above all, the corruption of law enforcement agencies, the low professional level of the staff, and the lack of some basic moral principles. It is often the case that militia officers manifest hatred, violence and cruelty. All this creates a climate of fear and hopelessness in society. The principle of the presumption of innocence, as a rule, does not apply; under the present circumstances, it is more often the presumption of guilt that works when the suspect has to prove his innocence.

Since Soviet times, the militia has been engaged in providing law and order, conditionally expressing the primacy of the interests of citizens in public affairs. Multiple declarations on the commitment to human rights and democracy by independent Kyrgyzstan in the international arena have drawn foreign financial assistance to the country for the implementation of the reforms. The authorities have repeatedly claimed the presence of sufficient political will to complete the reform of law enforcement agencies, while being more concerned about the observance of political control than about democratic reforms. Security issues became a priority for the authorities taking into account the periodic political and economic crises in the country. All this proves that the majority of changes in the legislation that are supposed to contribute to the transformation of society remain largely declarative.

Actually, the innovations in the militia should inevitably influence the nature of work of other bodies in the system of administration of justice: prosecutors, courts, prisons and other law enforcement services. For this reason, it is expected that the reform of the militia will be accompanied by changes in the work of the courts and other criminal justice bodies, as the current practice of these structures may limit the positive effect and slow the pace of change.

In general, human rights and freedoms should become the pillar of the reform in the Ministry of Interior. This should take into account the need for correction of the national criminal policy through mitigation of the repressive approach in law enforcement, the development of alternative penalties and punishment methods, the introduction of human rights culture in the curriculum, the prioritization of crime prevention, enhancing the role of public oversight, accountability and awareness of the society.[1]

[1] Working group of human rights organizations on the strategy of interaction with the internal affairs bodies and cooperation on the reform of the Interior Ministry, Public Foundation "The Verdict."

In turn, the human rights community in the country has always welcomed positive initiatives and it would under no circumstances want to demotivate the parties that promote real reforms.

The need for police reform in the light of human rights

The existence of public demand for reform of the law enforcement system has been recognized by the authorities. Many principles of the organization and functioning of the judicial system are preserved from Soviet times, despite the fact that they no longer meet the changing social reality. Impunity and the growth of corruption in government, as well as the practice of extortion in the judicial system show that a systemic reform has not occurred in the police yet.

The period after gaining national independence is characterized by citizens' complaints against the police. The criticism towards the results from their work is largely due to a number of objective reasons extensively discussed in society. In the history of post-Soviet Kyrgyzstan, the police was often used by corrupt authorities as a means to suppress citizens' protests, for intimidation or control of the shadow economy.

Undoubtedly, one of the important criteria of effective governance and the well-being of society is that the crime and abuse were kept to a minimum, so that those who violate the law were brought to court. It is also important not to cross the border line of human rights, i.e. the goals not always justify the means. It is important to take into consideration values such as the presumption of innocence and the guarantee of the rule of law. The work of the police, in particular special operations often conducted by illegal or inhuman methods, is a total negation of the purposes and principles relating to the role of the police. Without humanity and the rule of law, the work of the police is ineffective. In addition, this behaviour ultimately leads to chronic inefficiency, because the police officers who rely on misconduct in achieving results are unable to sustain or develop best practices. Furthermore, they lose their reputation and social confidence, which are essential to social partnership.

As already noted, UN authorities most often monitor violations of basic civil and political human rights in the work of police departments. During the procedure, relevant UN Committees accuse the state as a party of international treaties. Consequently, the work of the police is an indicator for evaluating the performance of the state of Kyrgyzstan to their international obligations. Given the nature and purpose of this work, the fundamental human rights are of the greatest significance to determine the scope of the powers and functions of the police.

For example, the authority to use or not to use excessive force is regulated by the human right to life (as expressed in Article 6 of the International Covenant on Civil and Political Rights[2] (ICCPR)), while the authority to deprive a person of freedom is regulated by the right to personal liberty and the prohibition of arbitrary detention (stipulated in Article 9 of the same Covenant). In addition, the absolute prohibition of torture (Article

[2] The International Covenant on Civil and Political Rights of the United Nations was adopted on 16 December 1966, and entered into force on 23 March 1976.

7 of the ICCPR) aims to protect people from inhuman or degrading treatment or punishment by the police, regardless of conditions and the powers that can be vested in police.

With respect to police functions, such as crime prevention, crime investigation and protection of public order, one can find similar examples. Here is one of them – the protection of public order. The way in which the police must respond to public assembly of people, as well as demonstrations, is regulated by the right of people to peaceful assembly (as expressed in article 21 of the ICCPR). In this sense, the international law establishes minimum standards that are implemented mostly through the adoption of laws at the national level. It is important to take into account the hierarchy of normative acts, as it often happens that the orders of some officials or organizational instructions are above constitutional and other laws.

In this regard, it is necessary through training and re-training of employees to create an understanding that human freedom cannot be limited by the decision of an individual official or senior management of a law enforcement body; it should be stipulated by national legislation.

Maintaining public order is a fundamental function of the police. Public order is so important to the realization of human rights that the protection of human rights can be regarded as a function of the police. In addition to the protection of human rights as one of its main functions, the police must also respect human rights. In other words, when the police use their power (for example, use of force during arrests, use of special tools) they must choose legal ways and means to ensure human rights. Protection and respect for human rights are an integral part of the protection of public order and, therefore, the elimination of any tension between the rule of law and human rights, the establishment of human rights culture in the militia should become one of the most pressing challenges currently facing the leadership of the Ministry of Internal Affairs and the society.

Human rights shall be the basic content of all disciplines taught in the schools of the Ministry of Interior as promoting human rights shall be the main goal of any action of police officers. The police officers training period shall be long enough to allow for the development of necessary skills and attitudes that would enable the performance of duties without violating human rights.

Assistance in promoting human rights

The protection of human rights through maintaining public order is stipulated in Article 28 of the Universal Declaration of Human Rights: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

The provision in this article is the source which gives the international community the right to develop. However, this provision also includes the idea of public order which means quality of life at the national level.

It is clear that human rights cannot be realized without public order. A social order, characterized by a low level of crime and social tension, depends to some extent on the

efficiency of the militia. In this context, the question of public order and security can be seen as a positive factor for the implementation of human rights, that is, the state fulfils its obligations through the work of the police. For example, the right to life which shall be protected by law. This means that the state should pass such laws that oblige the police to prevent and disclose such crimes. In addition, in accordance with international and national legislation, the police is obliged to respond to crimes related to human trafficking, as well as to prevent and effectively investigate discriminatory offences including responding to specific violations of the rights of vulnerable groups of the population.

The right to life is a fundamental right and similar examples can be found also in the sphere of protection of political, economic, social and cultural rights. In cases where there are laws that prohibit discrimination on the grounds of religion or religious beliefs, or acts of religious intolerance, the effective prevention and detection of violations directly support the promotion of political rights to freedom of thought, conscience and religion, and freedom of opinion and expression.

The police can oppose, more or less effectively, criminal acts, social unrest and riots and at the same time prevent some forms of crime or even alleviate some social or economic conditions that instigate stress or unrest. When the underlying causes are not identified and eliminated, the protection of public order can help in maintaining this type of social order, which is characterized mainly by the absence of violence. However, this public order will rely only on repression and injustice, rather than on consent, respect for democratic values and social justice.

This form of social order, due to the unresolved problems of internal tensions, is not stable, and it is far from the model where the rights and freedoms of the individual are fully observed.

The possibilities of limiting human rights

The second paragraph of Article 29 of the Universal Declaration of Human Rights states: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

The above principle is important and interesting for a number of reasons. First, it is a common source for specific provisions on restrictions that could be found in the articles of the International Covenant on Civil and Political Rights, for example, in articles 18, 19 and 21 on the protection of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, and thus to freedom of peaceful assembly.

While the wording of each of these restrictive clauses is not very different, they all insist that any restrictions on the rights defended in the relevant articles were identified by the law and that such restrictions are necessary in a democratic society in the interests of public safety, for protection of public order, health or morale, or for the protection of the rights and freedoms of others. In other words, they define similar basis for the

Universal Declaration of Human Rights in order to justify the restrictions on the exercise of individual human rights and freedoms protected by these articles.[3]

Second, valid reasons for restricting the rights may also be considered as an expression of the basic functions of law enforcement agencies to ensure the recognition and respect for the rights and freedoms of others and meet the just requirements of morality, public order and general welfare. This is all an advantage for the people living in a democratic society, and this can be achieved, at least partially, through the effective work of the judicial system.

The third and final reason for giving special attention to this provision of the Universal Declaration of Human Rights is the most important. Considering the exclusive purposes for which the rights and freedoms may be restricted, the Declaration sets forth limitations on the powers. Therefore, the police cannot be given the legal authority to restrict the rights and freedoms for any other purpose, provided that the rights and freedoms may be subjected only to limitations as determined by law. The declaration formulates the basic rule of conduct in which the police cannot exceed their statutory authority, i.e. their prerogatives are within the limits of the law.

Unfortunately, even though human rights are protected by law and all restrictions are stipulated by law, law enforcement officials still violate laws designed to protect human rights when these employees apply other laws. And therein lies the paradox because by acting in such a way the police does not reduce crime and disorder but rather helps them. This paradox exists only because the police are ready to violate human rights in an environment where human rights, inalienable and set in every person, are regarded as incompatible with the process of protecting public order and the fight against crime.

There is an ongoing discussion in the society about the nature and extent of tension that exists between "order" and "freedom," on the relationship between "protection of public order" and "human rights" and that the tension between "the protection of public order" and "human rights" could be regulated by law. The law clarifies all human rights and freedoms, the limitations of these rights and freedoms are defined, as well as the police functions to reflect these limitations. The police whose legitimacy is based on the law must abide by the law to the absolute extent.

Areas where the protection of public order is not settled by the rule of law are those areas in which police officers are required to or they are able to act on their own. This problem is connected with granting bigger autonomy for the actions of police officers and this is enjoyed by many officials. Although the extent and nature of "discretion" are determined by jurisdiction, all police officials at various levels decide to some extent on their own. This is due to the fact that not all employees and not always are willing to comply with all laws consistently and rigorously. When there are questions on the availability of resources and the use of these resources, there is a choice with respect to what laws are to be obeyed in the first place and to what extent. Some officials have the opportunity to ignore violations at the bottom and make decisions about right or wrong with regard to specific cases of violations of the law.

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[3] According to materials of the Helsinki Foundation for Human Rights, Warsaw.

The realization of various powers by the police officers is related to the level of their autonomy, which is an indication that most of police work is uncontrolled and hidden from observation. Most of the oversight and control in the police occurs "after the incident." The information enters at the lowest level of the police system and therefore low-level officers are able to control the nature and quality of information. Seniors receive a 'filtered' description of the incident, which is further investigated by their subordinates compiling information on the measures taken.

Theoretically, there is no tension between human rights and the maintenance of public order. The fact that such tensions exist in practice harms not only the protection of human rights but also the effective maintenance of public order in the long term. The public, dreaming of punishment for misconduct and safe life, may approve a short-term "victory" against private manifestations of crime. However, when such a "victory" is achieved through illegal and unethical practices the public has less confidence. When the illegal and unethical actions of the police lead to unfair justice and punishment of innocent people, which inevitably happens in such cases, there is no more approval and public trust; respect to the police is lost, people are less inclined to cooperate and assist the militia, the public is reluctant to accept the testimony of police officers as witnesses. "Victory" turns into a defeat.

Given the paradox that in order to comply with law and order the police violate the law, we could consider the question "Why is this happening"?

The work of the police can be extremely difficult and demanding – emotionally, intellectually and physically. In their work, they may be experiencing personal danger and discomfort, as well as severe psychological trauma and anxiety. Police officers need to respond to the consequences of crime and often feel frustrated when they are not able to stop or reveal the crime in due time, especially under the pressure of their superiors, society and the media, as well as by certain politicians. In the case of high-profile crimes, this pressure may be such that the police officers begin to feel that they have some kind of moral right and even the need to use illegal and inhumane methods.

These are just some of the factors which taken together face certain officials with various ethical issues and dilemmas. These are the factors that create or strengthen a sub-culture that may be hostile to human rights and the rule of law, a sub-culture that can easily harmonize with the absurd notion that the law is violated for the purpose of "law enforcement."

These critical factors, especially the elements of sub-culture in the law enforcement agencies have already been identified and discussed in a number of studies[4] that assert that the work of interior agencies is characterized by broad prerogatives, low transparency and minimum oversight. Such conditions lead to a professional culture, consisting of a series of questionable values and customary practices that seek to circumvent or ignore legal rules and departmental instructions. The features of this professional culture include a sense of mission or revenge, pessimism in social justice, the position of permanent suspicion, an isolated social life, a strong code of solidarity, political conser-

4 According to materials that are available at www.manyppt.com/04/Police-Subculture.html.

vatism, ethnic prejudice, sexism, categorization of people into weak or respectable, and a willingness to hide malfeasance.

Such conditions and peculiarities of the current practices are inimical to the development of the culture of human rights and in general do not contribute to the effective administration of justice. It is necessary to realize that this creates a semblance of order and security, as well as the conditions under which the police officers will be required to comply with the law, understanding the importance of respect for human rights and freedoms while protecting public order, fight against crime, etc.

As a conclusion – the importance of compliance with the law

In a democracy, where the rule of law prevails, no person or organization can be above the law and every person and every institution is responsible before the law. This responsibility rests particularly with police officers because the police must continuously work within the law. Society through political processes and state institutions gives police authorities the prerogatives which it wishes to provide to them and restricts these powers. While the police can contribute to the debate about the degree and the nature of those powers and limitations, none of the officials has excuse to act outside of this framework.

It is unforgivable to justify violations of the laws or "deviation from the rules" in order to prevent or reveal a crime, maintain or recover social order:

1. If the police has violated the law in order to enforce the law, this does not mitigate the crime, but on the contrary – it instigates crime;
2. The point of view of the militia on the nature and extent of its powers is just one of many opinions that should be considered when making decisions on what should these powers be. In this sense, the public is interested that the reform in the police is not headed by the institution itself;
3. If individual police officers begin making decisions which laws they will ignore or what human rights they will break in each specific case, the law enforcement process becomes arbitrary and uncertain due to the huge number of private decisions made by people who put into practice their individual standards;
4. Some violations of the law by the police are serious crimes and human rights violations. For example, torture and ill-treatment, arbitrary detention and encroachment on property;
5. Violation of the law by the police may lead to dire consequences. For example, it could lead to the conviction and punishment of innocent individuals and in such cases this may mean that perpetrators remain unpunished and continue to present danger to society;
6. Violations of law and human rights violations by the police in the process of law enforcement can have extremely adverse consequences; detecting such violations may result in loss of confidence in the police, laws and the judicial system.

Many ethical issues and ethical dilemmas faced by the police can be resolved by reference to the law, applicable in a particular situation, and on the principles of respect for human rights. The police should be encouraged to comply with the law through the identification and adoption of appropriate ethical principles. When the law cannot give a clear sequence of actions, when you have to act on your own, human rights are to be the pivot for decision-making and appropriate behaviour of police officers.

It is likely that through joint efforts and promoting reform in the bodies of the Ministry of Internal Affairs within the human rights standards our government will be able to actually prove in practice its statement: "The Kyrgyz Republic strictly adheres to the policy of primacy of the individual interest over the public interest and is constantly working on the establishment of a universal legal system for the protection of human rights. Execution of the universally recognized norms of international law, including through implementation of commitments under international treaties, is an important focus in the implementation of government policy."[5]

References:

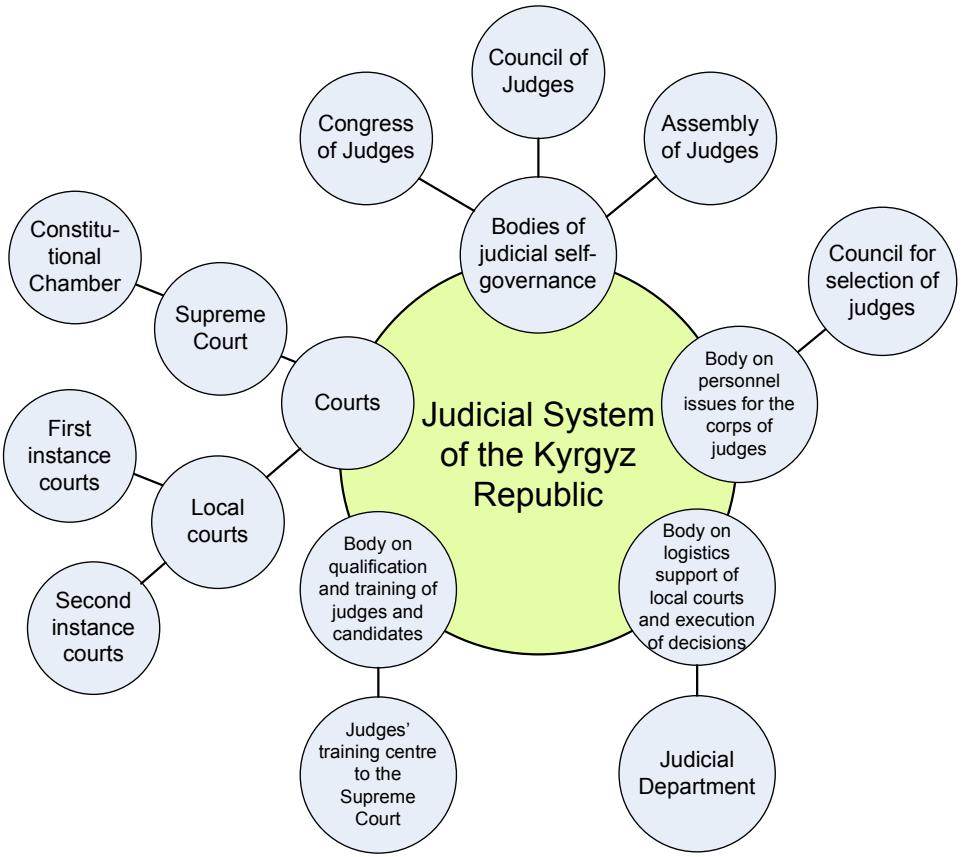
1. *The Universal Declaration of Human Rights*
   Adopted by UN General Assembly resolution 217 A (III) on 10 December 1948, www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.
2. *The International Covenant on Civil and Political Rights*
   Adopted by UN General Assembly resolution 2200 A (XXI) on 16 December 1966, www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.
3. *The Code of Conduct for Law Enforcement*
   Adopted by UN General Assembly resolution 34/169 on 17 December 1979, www.un.org/ru/documents/decl_conv/conventions/code_of_conduct.shtml.
4. *Guidebook on democratic policing*
   Compiled by the Senior Advisor to the OSCE Secretary General on policing, December 2006, http://polis.osce.org/library.
5. *Best practices in building partnerships between the police and the society*
   Compiled by the Senior Police Advisor to the OSCE Secretary General, May 2008, www.osce.org/ru.

[5] The second periodic report of the Government of the Kyrgyz Republic on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 1999 to 2011, p. 1.

APPENDICES

Appendix 1
A Brief Reference Overview of the Judicial System of the Kyrgyz Republic

At present, the structure of the judicial system of the Kyrgyz Republic can be represented like that:



Judicial self-governance

Judicial self-governance is the ability of the judicial community to address internal issues related to the work of the courts with the help of its bodies. The bodies of judicial self-governance are the Congress of Judges, the Council of Judges and the Assembly of Judges of the Kyrgyz Republic.

The highest organ of judicial self-governance is the Congress of Judges of the Kyrgyz Republic. It convenes once every three years. The decisions of the Congress of Judges are binding for the members of the judiciary.

The Council of Judges of the Kyrgyz Republic works between the sessions of the Congress of Judges. The Council is accountable to the Congress of Judges. The members of the Judicial Council are elected by the Congress of Judges for a term of three years.

From among its members, the Council of Judges establishes permanently working commissions in the basic areas of its activities, for example, budget, disciplinary, expert and training.

The commission members and their leaders are elected at the first meeting of the Council of Judges. The commissions report to the Council of Judges.

The Assembly of Judges is the basic organ of judicial self-governance in the courts. The Assembly of Judges shall meet at least once a year.

The Supreme Court of the Kyrgyz Republic. The Constitutional Chamber of the Supreme Court

The Supreme Court is the highest judicial body for civil, criminal, economic, administrative and other cases. The Constitutional chamber functions within the Supreme Court.

The Supreme Court consists of 35 judges: President, three Vice-Presidents and 31 judges of the Supreme Court. The vice-presidents are the chairpersons of the judicial boards.

Judges in the Supreme Court must be citizens of the Kyrgyz Republic not younger than 40 years and not older than 70 years of age, with a higher degree in law and experience in the legal profession not less than 10 years.

The Constitutional Chamber of the Supreme Court is the body for constitutional control.

Judges in the Constitutional Chamber of the Supreme Court must be citizens of the Republic of Kyrgyzstan not younger than 40 years and not older than 70 years of age, with a higher degree in law and experience in the legal profession not less than 15 years.

The Council for Selection of Judges of the Kyrgyz Republic opens a competition for vacancies in the Supreme Court and the Constitutional Chamber. According to the results, the Council makes a proposal to the President of the Kyrgyz Republic to make a proposal to the Parliament for judges to be elected for the Supreme Court and the Constitutional Chamber.

Local courts

The local courts system includes:

1. courts of first instance (district courts, district courts in the city, town courts, inter-district courts, military courts in garrisons) – 68 units (including 7 garrison courts);
2. courts of second instance (regional courts, Bishkek city court, the Military Court of the Kyrgyz Republic) – 9 units (including the military court).

Judges of the local courts must be citizens of the Kyrgyz Republic not younger than 30 years and not older than 65 years, with a higher degree in law and experience in the legal profession not less than five years.

Judges in the local courts are appointed by the President on the proposal of the Council for selection of judges for a term of 5 years, and further – until retirement age.

The courts of first instance employ 272 judges, while 115 judges work in the courts of second instance.

Council for selection of judges

The Judges Selection Council is a body of 24 members carrying out the selection of judges. The Council of Judges, the parliamentary majority and the parliamentary opposition each select one-third of the Council for selection of judges.

Judges are elected by the Council of Judges in the manner prescribed by the Congress of Judges with the representation of not more than seventy percent of the same sex. In this case, the judges elected to the Council should represent all instances of courts.

The civil society representatives in the Council are elected by the Parliamentary majority and the parliamentary opposition at the meetings with the representation of not more than seventy percent of the same sex. Candidates from the civil society who are members of the Council are nominated by academic and research institutions, public associations and other organizations.

Appendix 2
Average Salary of Judges in the Kyrgyz Republic Compared to Other Countries

The table below shows how low the salary of judges in the Kyrgyz Republic is compared to the salaries in other countries:

Country	*Judges of 1-st instance*	*Judges in the Supreme Court*
Albania	604 €	1,207 €
Armenia	506 €	759 €
Georgia	958 €	1,900 €
Mongolia	423 €	554 €
Poland	1,266 €	3,652 €
Estonia	2,898 €	3,985 €
Kyrgyzstan*	**289 €**	**662 €**

* Information is taken from declarations of judges posted on the Internet: www.mkk.gov.kg.

Appendix 3
The Law of the Kyrgyz Republic "On the National Centre of the Kyrgyz Republic on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" of 12 July 2012 no. 104

The present Law aims at creation of a system of prevention of torture and other cruel, inhuman or degrading treatment or punishment against persons in places of detention or restraint of liberty and specifies the procedures for organization and operation of the National Centre of the Kyrgyz Republic on prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the National Centre).

Chapter 1. General provisions

Article 1. Basic notions used in the present Law

The following basic notions are used in the present law:

cruel, inhuman or degrading treatment or punishment (hereinafter, *cruel treatment*) for the purposes of this law is treatment and punishment which humiliate a person or induce a feeling of apprehensiveness, inferiority, which could crack moral or physical resistance of such person and incur strong physical or moral suffering;

place of detention is a place which is used for detention in custody of a person subject to an administrative detention or arrest, a person detained on suspicion of having committed a crime, a person taken into custody in connection with charges, or a convict serving imprisonment term after a court sentence; including:

- preliminary detention cells, detention centres and investigative isolation wards;
- settlement colonies, penal and correctional colonies and prisons;
- placement centres of the ministry of the interior bodies;
- guardhouses;
- facilities of border service for detention of persons subject to administrative arrest;
- receiving and temporary placement centres for internally displaced persons and asylum seekers;

place of restraint of liberty is any place which by its characteristics is not referred to as a place of detention, where a person stays or may stay on the order of a government agency (official) or with the knowledge thereof and which a person cannot leave at its own will, including:

- place and facilities of the law enforcement agencies;
- centres of adaptation and rehabilitation for minors;
- military units of internal affairs agencies, defence agencies, national security agencies, penal execution system and the authorized government agency in the area of prevention of emergencies;
- psycho-neurological institutions;
- specialized institutions for compulsory medical treatment of persons with mental diseases and substance abuse;
- government and non-governmental medical and social institutions for the elderly, minors and persons with disabilities (nursing homes for the elderly, orphanages etc.);
- special institutions for children and teenagers who require special conditions of upbringing;

national preventive mechanism is a system of prevention of torture and cruel treatment in places of detention and freedom constraint of the detained individuals, operating through an authorized state body, i.e., the National Centre of the Kyrgyz Republic;

preventive visits in detention and freedom-constraint places is a free regular visiting in places of detention and restriction of liberty by the staff of the National Centre, members of the Coordinating Council and experts made at any time and without prior notice for the sake of prevention and protection of detained and liberty-constraint individuals against torture and cruel treatment as well as improvement of conditions of detention;

torture is intentionally inflicted physical or mental suffering to a person in order to extort from that person or another person some information or a confession, or punish that person for an act which that person or another person has committed or is suspected of having committed, or intimidate or coerce that person or the third person to commit some actions, or for any reason based on discrimination of any kind, when such an act is committed or incited by an official or by any other person upon a tacit consent on the part of the above official.

Article 2. Scope of the present Law

1. The present Law shall regulate relations which emerge in the course of organization and operation of the system of prevention of torture and cruel treatment in the detention places and places of liberty restraint concerning the detained persons as well as relations between the National Centre, government agencies, non-commercial and international organizations as well as other relations emerging in that area.

2. The present Law shall not restrain the right of the Akyikatchy (Ombudsman) of the Kyrgyz Republic (further, Akyikatchy/ Ombudsman), the government agencies and non-

commercial organizations to visit the places of detention and restraint of liberty provided for by the current legislation of the Kyrgyz Republic.

Article 3. Legal framework for the operation of the National Centre

1. The legal framework for the operation of the National Centre shall comprise the Constitution of the Kyrgyz Republic, the present Law, and other laws as well as other normative regulatory acts of the Kyrgyz Republic.

2. The international treaties of which the Kyrgyz Republic is a party and which came into force according to the legislation, as well as universal principles and norms of international law shall make part and parcel of the legal system of the Kyrgyz Republic.

Rules of the international human rights treaties shall have direct application and precedence over the rules of other international treaties.

Article 4. Principles of organization and operation of the National Centre

1. The National Centre shall be organized and shall operate in accordance with the principles of legality, independence, openness, impartiality, and non-discrimination on the basis of gender, race, language, ethnicity, origin, belief, age, disability, political and other convictions, education, proprietary and other status as well as other circumstances.

2. In execution of its mandate, the National Centre shall not intervene in operative crime-detection proceedings and criminal-procedural activities except for cases when such proceedings and activities are coupled with torture and cruel treatment and such intervention is necessary to eliminate the danger directly threatening that person or his/her rights.

Chapter 2. Organization and operation of the National Centre

Article 5. The National Centre

1. The National Centre is an authorized body established with the purpose to help the Kyrgyz Republic to comply with the provisions of the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

2. The National Centre is a legal entity with a separate balance and settlement and hard-currency accounts in banks of the Kyrgyz Republic and foreign banks, an official seal with the name of the organization, stamp, letterhead, own symbolic and other necessary requisites.

3. The National Centre is an independent body, which organizes and performs independent operations within its competence, provided by this Law and other regulatory legal acts of the Kyrgyz Republic. The public authorities and control agencies, as well as their officials are prohibited to interfere in any form in the solution of issues related to the activity of the National Centre.

4. The Coordinating Council and the Director shall form the management of the National Centre.

5. The structure and the staff number of the National Centre shall be approved by the Coordinating Council upon presentation of the Director of the National Centre in accordance with the requirement to have branches (representatives) of the National Centre in all oblasts (provinces) and in the cities of Bishkek and Osh, taking into account the number, geographic situation and usage of capacity of places of detention and restraint of liberty.

6. The staff of the National Centre shall be appointed to their positions by the Director of the National Centre upon presentation of the Coordinating Council on the basis of the competitive selection. The Coordinating Council shall make competitive selection of candidates to the vacant positions of employees of the National Centre in accordance with the Rules of Procedure of the Coordinating Council.

7. The employees of the National Centre shall be dismissed from their duties by the Director of the National Centre.

8. The selection of applicants to the positions of the employee of the National Centre shall observe gender balance and representation of various ethic groups and minorities.

9. Not more than 70 per cent of the staff shall be of the same gender. In case two candidates of different gender are selected to the vacant position in the National Centre, then under equal conditions the candidate of the least represented gender shall be admitted in the National Centre.

10. The remuneration of the staff of the National Centre shall be established at the rate of remuneration of the government employees in the Office of Akyikatchy (Ombudsman).

Article 6. Goals and Objective of the National Centre

1. The main goal of the National Centre is to prevent torture and cruel treatment in places of detention and restraint of liberty against detained persons as well as assistance in improvement of the conditions of detention.

2. The main objectives of the National Centre are the following:

1) develop a strategy of prevention of torture and cruel treatment in places of detention and restraint of liberty and improvement of conditions of detention, coordinate, follow and participate in the implementation;
2) ensure efficient operation of the system of regular preventive visiting in the places of detention and restraint of liberty by the employees of the National Centre, the members of the Coordinating Council and experts;
3) develop and implement awareness-raising and educational activities aimed at elimination of causes and circumstances resulting in the use of torture and cruel treatment;
4) assist in the updating of the normative and legal framework in the area of combating torture and cruel treatment;
5) interact with the government agencies to ensure effective performance of the system of prevention of torture and cruel treatment;
6) develop intolerance of torture and cruel treatment in the community and raise awareness about the importance of combating them;

7) promote the development of international cooperation in the area of combating torture and cruel treatment.

Article 7. Duties and Rights of the National Centre

1. The National Centre shall:

1) make regular preventive visits in the places of detention and restraint of liberty;
2) develop a methodology and an annual programme of preventive visits to the places of detention and restraint of liberty;
3) implement awareness-raising and educational activities aimed at elimination of the causes and conditions leading to the use of torture and cruel treatment and increase the level of public awareness about the legislation in the area of human rights and mechanisms of their protection;
4) regular review of the practice of preventive visits in the country and analysis of the situation with torture and cruel treatment in the places of detention and restraint of liberty;
5) identify systemic reasons which lead or may lead to the use of torture and cruel treatment of persons deprived of or restrained in their liberty and deliver the above findings to the notice of the government agencies and the public;
6) establish direct contacts and exchange of information with the government agencies of the Kyrgyz Republic for the purpose of practical implementation of the recommendations concerning the elimination of causes and conditions leading to the use of torture and cruel treatment against persons deprived of or restrained in their liberty;
7) inform the prosecution agencies about the established facts of the use of torture and cruel treatment against persons deprived of or restrained in their liberty for investigation and bringing the abusers to liability;
8) promote cooperation between non-commercial organizations, administration of the places of detention and restraint of liberty, and other agencies which exercise their mandates in the area of protection of legitimate rights and freedoms of persons deprived of or restrained in their liberty in prevention and liquidation of torture and cruel treatment;
9) organize the coverage of preventive visits to the places of detention and restraint of liberty by mass media and on the website of the National Centre;
10) establish links and exchange of information with the Subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment of the UN Committee against torture (hereinafter referred to as the Subcommittee on prevention), the national preventive mechanisms of other countries and international organizations, and enter in agreements with them on cooperation and mutual assistance;
11) submit proposals and comments in respect of the acting legislation or bills pertaining to prevention of torture and cruel treatment;

12) participate in drafting and submission of reports of the Kyrgyz Republic about ensuring and protection of human rights to the international human rights bodies;

13) independently identify the size of the funds required for financing of the National Centre and dispose of such funds within the budget available.

2. The National Centre shall have the following rights:

1) submit to the relevant government agencies of the Kyrgyz Republic proposals on further development of the state policy on prevention of torture and cruel treatment of persons deprived of or restrained in liberty and improvement of conditions of detention;

2) request via set procedures any information from the government agencies and local self-governments and non-commercial organizations, except the information protected by the law; analytical, reference and statistical materials required for the implementation of the tasks and duties.

Article 8. Requirements towards the employees of the National Centre

1. Any legally able person who is a citizen of the Kyrgyz Republic with a university diploma and work record as a lawyer, teacher, doctor, psychologist, psychiatrist, or social worker and experience of working with the vulnerable population like migrants, minors, persons with disabilities, ethnic and language minorities, and also professional experience in management and control over the places of detention and restraint of liberty, or monitoring of places of detention and restraint of liberty may be elected as an employee of the National Centre.

2. The following individuals may not be employees of the National Centre: judges, law enforcement officers, staff of the penitentiary system, individuals occupied in the places with limited liberty (places with high concentration of vulnerable groups like minors, women, individuals with disabilities, migrants, mentally disabled, etc.) and individuals with previous convictions.

Article 9. The Coordinating Council

1. The Coordinating Council comprising of eleven members shall be the superior administrative body of the National Centre.

2. The following persons shall be members of the Coordinating Council:

1) Akyikatchy (Ombudsman) ex officio;

2) one Deputy of the Jogorku Kenesh of the Kyrgyz Republic (further Jogorku Kenesh) nominated by the parliamentary majority;

3) one deputy of the Jogorku Kenesh nominated by the parliamentary opposition;

4) eight representatives of non-commercial organizations registered according to the procedure established by the law and whose mandate is related to protection of the right to be free from torture, inhuman treatment and punishment.

3. The members of the Coordinating Council are elected for the term of four years. One and the same person cannot be a member of the Coordinating Council for more

than two terms in succession, apart from Akyikatchi (Ombudsman). The heads of the parliamentary committees, heads of the deputy fractions and/or political parties can be the members of the Coordinating Council without any restrictions.

4. The members of the Coordinating Council shall work on a pro bono basis. They shall be entitled to compensation of their travelling expenses in exercising their powers as members of the Coordinating Council.

5. The Coordinating Council shall be managed by the Chairperson; in the event of absence of the latter it shall be managed by the Deputy Chairperson.

6. The National Centre shall provide organizational, material and technical support to the Coordinating Council's operations.

Article 10. Procedure of formation of the Coordinating Council

1. Members of the Coordinating Council from among the deputies of the Jogorku Kenesh shall be elected by the parliamentary majority and the parliamentary opposition.

Two months prior the expiration of the membership in the Coordinating Council from among the deputies of the Jogorku Kenesh, the Chairperson of the Coordinating Council shall notify the Speaker of Jogorku Kenesh and propose new members of the Coordinating Council to be elected from the parliamentary majority and parliamentary opposition.

In the event of early termination of the powers of a member of the Coordinating Council from among the deputies of Jogorku Kenesh the Chairperson of the Coordinating Council shall notify the Speaker of Jogorku Kenesh about the election of members of the Coordinating Council from among the members of the Deputy associations or fractions not later than within 10 days.

2. The sittings of the parliamentary majority and the parliamentary opposition shall be held separately and shall be deemed eligible if at least one half of its members attend.

The candidates from the parliamentary majority and the parliamentary opposition who gained the largest number of votes of the members of the parliamentary majority and the parliamentary opposition correspondingly shall be deemed elected as a member of the Coordinating Council. The voting on candidates shall be open.

3. The members of the Coordinating Council from non-commercial organizations shall be elected by drawing of lots. The right to nominate a candidate to the members of the Coordinating Council shall be assigned to non-commercial organizations with the chartered activity related to protection of right to freedom from torture, cruel treatment and punishment. One non-commercial organization shall have the right to nominate one candidate for membership in the Coordinating Council.

The requirements towards the employees of the National Centre as per article 8 of the present law shall be applicable to the candidates for membership in the Coordinating Council from non-commercial organizations.

4. Three months prior the expiration of powers of members of the Coordinating Council from non-commercial organizations, the National Centre shall publish in official

publications of the Kyrgyz Republic as well as post on the website of the National Centre an invitation for non-commercial organizations to nominate candidates for membership in the Coordinating Council.

5. No later than thirty days since the date of publication by the National Centre of an invitation to nominate candidates, non-commercial organizations shall submit to the National Centre their proposals on candidates for membership in the Coordinating Council.

The relevant decision adopted by a non-commercial organization and registered in accordance with its statutory documents, shall be delivered to the National Council with attached copies of the registration certificate and the Charter of the organization.

6. The National Centre shall request from the relevant government agencies the information on previous convictions of the candidates and perform pre-verification of eligibility of candidates to the requirements towards persons seeking the position of a member of the Coordinating Council from non-commercial organizations.

The proposals on candidates to the Coordinating Council from non-commercial organizations shall be reviewed by the working commission, whose members can be the Director of the National Centre, Akyikatchy (Ombudsman), representatives of the international organizations and academics who check the compliance of the activities of non-governmental organizations with the activities related to protection of rights and freedoms of individuals in places of detention and restraint of liberty and with the recommendations from other non-commercial organizations. The working commission is formed by the Jogorku Kenesh. Jogorku Kenesh has the right to determine independently the composition and number of members of the working committee. The procedure and results of the reviewed proposals on the candidates of the Coordinating Council from non-commercial organizations, nominated to participate in the drawing shall be published in the official website of the National Centre. The candidates admitted to the drawing shall be invited to the drawing procedure.

7. The National Centre shall invite to the drawing procedure one representative from each non-commercial organization nominating a candidate for membership in the Coordinating Council. Before the drawing the Director of the National Centre shall inform the representatives of non-commercial organizations about the total number of candidates, nominated for membership in the Coordinating Council, about the candidates not admitted to the drawing with the substantiation of the non-admittance and about the number of candidates admitted to the drawing.

8. The papers with the names of the candidates admitted to the drawing shall be sealed in identical envelopes without any marks and put in the ballot box and mixed.

9. A candidate for membership in the Coordinating Council shall be deemed elected in the event that the envelope with his/her name was picked by the Director of the National Centre from the ballot box.

10. In case the number of candidates from non-commercial organizations to the vacant positions of members of the Coordinating Council, after the rejection of candidates

in accordance with part 7 of the present article, shall be equal to the number of vacancies, all such candidates shall be deemed elected members of the Coordinating Council.

In case the number of candidates nominated by non-commercial organizations to vacant positions of members of the Coordinating Council, after the rejection of candidates in accordance with part 7 of the present article, shall be less than the number of vacancies, then additional competition shall be held in accordance with the procedures prescribed in parts 3-9 of the present article.

11. The operations of the National Centre, required under part 6 of this Article shall be completed within 10 days before the expiry of powers of the members of the Coordinating Council.

12. In case of early termination of powers of the members of the Coordinating Council from among the Deputies of Jogorku Kenesh and representatives of the non-commercial organizations the vacant positions of the members of the Coordinating Council shall be filled according to the procedure established by this article.

Article 11. Powers of the Coordinating Council

1. The Coordinating Council shall:

1) Identify the general strategy and priorities of development of the National Centre;
2) Regularly consider the issue of treatment of persons in places of detention and restraint of liberty for the purpose of strengthening, if needed, of protection of such persons against torture and cruel treatment;
3) Approve the methodology and the annual programme of preventive visits to places of detention and restraint of liberty developed by the National Centre;
4) Develop and submit recommendations and appeals to the relevant government agencies and officials for the improvement of treatment of persons deprived of or restrained in their liberty as well as improvement of their conditions of detention;
5) Hear at its sittings the information of heads of the state agencies about the measures undertaken in respect of recommendations and appeals of the Council;
6) Draft and approve the Rules of Procedure of the Coordinating Council, the Regulations on the National Centre, and suggest changes and amendments thereto;
7) Elect the director of the National Centre and his/her deputy, based on the outcomes of competitive selection, and terminate their powers ahead of time;
8) Select candidates to the vacant positions of the employees of the National Centre and submit the candidates to the director of the National Centre for appointment;
9) Give consent to initiation of criminal and administrative procedures at law against the members of the Coordinating Council from among the representa-

tives of non-commercial organizations as well as against the employees of the National Centre;

10) Perform public expert analysis of bills and other normative regulatory acts related to the issues of protection of persons deprived of or restrained in their liberty against torture and cruel treatment as well as the procedure and conditions of their detention;
11) Approve the draft budget of the National Centre;
12) Upon presentment of the Director of the National Centre, approve the structure and the number of staff of the National Centre;
13) Approve the size of remuneration for the Director of the National Centre within the budget available;
14) Approve the size of remuneration for the employees of the National Centre within the budget available. The size of remuneration to the employees of the National Centre may not be less than 80 per cent of the remuneration to the Director of the National Centre.

2. The Coordinating Council shall have the following rights:

1) Submit proposals and comments about the current legislation of the Kyrgyz Republic;
2) Attract independent auditors for audit of financial statements of the National Centre.

Article 12. The first and subsequent sittings of the Coordinating Council

1. The first composition of the Coordinating Council shall meet for the first time no later than 30 days since the day of its formation. The first sitting of the Coordinating Council shall be held under the chairmanship of the oldest member of the Coordinating Council.

2. The first sitting of the first Coordinating Council shall approve the Rules of Procedure and elect the chairperson and the deputy chairperson of the Coordinating Council.

3. A meeting of the Coordinating Council shall be deemed eligible if at least 7 members of the Coordinating Council are present. The decisions of the Coordinating Council shall be made by the majority vote of the total number of its members unless otherwise provided in the present law.

4. The sittings of the Coordinating Council shall be held monthly at the initiative of the chairperson of the Coordinating Council who decides on the date, time and venue of the sitting. Issues to be considered by the Coordinating Council shall be prepared by the National Centre.

5. Extraordinary sittings shall be convened at the initiative of the chairperson of the Coordinating Council, the director of the National Centre or at the initiative of 7 members of the Coordinating Council.

6. The director of the National Centre shall attend all sittings of the Coordinating Council except for the first sitting of the first composition of the Coordinating Council.

Article 13. Termination of powers of a member of the Coordinating Council

1. The powers of a member of the Coordinating Council shall be subject to termination on the following reasons:

1) expiration of his/her term of office;
2) voluntary renunciation of further execution of powers by submitting a written statement of resignation;
3) departure from the Kyrgyz Republic for permanent residence;
4) entry into legal force of a guilty verdict by a court;
5) entry into legal force of a court decision on announcing the person missing or dead;
6) death of the member;
7) entry into force of a court verdict declaring such person legally incapable or partially capable;
8) non-participation in work for three consecutive months without good reason;
9) violation of ethics and committing actions resulting in violations of the rights and freedoms of a person in detention places.

2. Early termination of powers of the member of the Coordinating Council shall take place by the decision of the Coordinating Council by the majority of votes of the total number of its members.

3. The Coordinating Council shall have the right to initiate in the Jogorku Kenesh the procedure of recall of its member elected from among the deputies of the Jogorku Kenesh on the grounds listed in paragraphs 8 and 9, Part 1 of the present Article. In such a case the Jogorku Kenesh shall decide upon early recall of a member of the Coordinating Council by the majority vote of deputies present at the sitting, provided there is an opinion of the relevant committee of the Jogorku Kenesh.

4. The powers of the Akyikatchy (Ombudsman) as a member of the Coordinating Council shall be subject to early termination in the event of expiration of his/her powers as the Akyikatchy (Ombudsman) in accordance with the procedure established by the law.

Article 14. The Director of the National Centre

1. The National Centre shall be managed by the Director of the National Centre.

2. The Director of the National Centre shall be elected for the term of two years by the Coordinating Council based on the results of the competition. One and the same person may not be elected the Director of the National Centre for more than two consecutive terms.

3. An individual who is the citizen of the Kyrgyz Republic not younger than 25 years with a university diploma and at least three years of working experience on managerial positions may be elected the Director of the National Centre. The experience in the area of protection of human rights shall be an asset in the selection of a candidate for the position of the Director of the National Centre.

4. The Director of the National Centre shall:

1) organize the operation of the National Centre;
2) represent the National Centre in its relations with the state agencies, local self-governance bodies and other organizations;
3) submit issues for consideration at the sittings of the Coordinating Council;
4) participate in the sittings of the Coordinating Council and ensure implementation of its decisions;
5) organize generalization of results of activity of the National Centre and take measures aimed at improving the organization of its operations;
6) present for approval of the Coordinating Council the structure and the number of employees of the National Centre;
7) appoint the employees of the National Centre upon presentment of the Coordinating Council and terminate their powers before expiration of their term of office;
8) present the activity report and the financial statements of the National Centre for the past year to the Jogorku Kenesh;
9) perform other powers assigned to him/her in accordance with the present law.

5. The Director of the National Centre shall be accountable to the Coordinating Council within the limits of its competence.

6. In the absence of the Director of the National Centre his/her functions shall be performed by the Deputy Director. The election procedure of the Deputy Director of the National Centre shall follow the same rules as the election of the Director.

Article 15. The reports of the National Centre

1. The National Centre shall submit to the Jogorku Kenesh the activity report for the past year prior to the 1st of March of the current year.

2. The annual report shall contain overall assessments and opinions about the situation on prevention of torture and cruel treatment and recommendations. The annual report shall indicate the government agencies (officials) which interfered with the operations of the National Centre and ignored its recommendations.

3. The annual report shall be accompanied by the financial statements of the National Centre for the past year.

4. If needed the National Centre may submit to the Jogorku Kenesh a special report (reports) about facts of severe violation of human rights revealed in places of detention and restraint of liberty, which require immediate response.

5. Annual and special reports and financial statements of the National Centre shall be subject to publication and circulation in the official printed media as well as on the website of the National Centre no later than one month since their submission to the Jogorku Kenesh.

Article 16. The recommendations of the Coordinating Council

1. Based on the general findings of the preventive visits to places of detention and restraint of liberty, the Coordinating Council shall prepare recommendations aimed at elimination of the reasons and circumstances conducive to the use of torture and cruel treatment against persons held in places of detention and restraint of liberty as well as improvement of conditions of detention.

2. The recommendations of the Coordinating Council shall be forwarded to the relevant state agencies of the Kyrgyz Republic and officials thereof for the appropriate response measures.

3. Government agencies and officials must inform the Coordinating Council about the measures taken by them within one month since the date when the recommendations were received.

When the National Centre revealed the facts of torture and other types of cruel treatment, the government bodies must immediately take measures aimed at elimination of the reasons and circumstances enabling those actions and within one day provide information about the measures taken against the official involved in the above misconduct.

Chapter 3. The guarantees of independence of the National Centre

Article 17. Organizational and operational independence of the National Centre

Organizational and operational independence of the National Centre shall be ensured by the following:

- transparent procedures and criteria of selection and appointment of the employees of the National Centre, election of the members of the Coordinating Council, their term of office and procedures of early termination of their powers;
- non-interference in the organizational and operational activity of the National Centre;
- immunity of the members of the Coordinating Council and employees of the National Centre;
- adequate financing of the operations of the National Centre.

Article 18. Inadmissibility of interference in the activities of the National Centre

1. Interference and hampering of activities of the members of the Coordinating Council and employees of the National Centre shall be prohibited and shall result in criminal and administrative liability established by the law.

2. The members of the Coordinating Council and employees of the National Centre may not be summoned and interrogated as witnesses in respect of facts of private life of persons deprived of or restrained in their liberty, which might become available to them during interviews with those persons.

Article 19. Immunity of the members of the Coordinating Council and the employees of the National Centre

1. Criminal or administrative proceedings imposed judicially may be initiated in respect of the members of the Coordinating Council and the employees of the National Centre upon consent of the Coordinating Council in accordance with the procedures established by the present law.

2. To obtain consent to initiating of the criminal proceedings against a member of the Coordinating Council or an employee of the National Centre, the prosecutor shall submit a representation to the Coordinating Council indicating the facts of the case and the qualification of an act.

3. The decision about giving consent to the initiation of proceedings against a member of the Coordinating Council or an employee of the National Centre shall be taken if at least nine members of the Coordinating Council voted for it and not later than ten days since the representation was filed.

4. During the term of office and in relation to the execution of powers, a member of the Coordinating Council or an employee of the National Centre may not be detained or arrested, subjected to search or personal examination without a consent of the Coordinating Council unless he/she was caught at the crime scene.

A member of the Coordinating Council or an employee of the National Centre who was subject to administrative detention or detained on suspicion of having committed a crime, shall be subject to immediate release after identification.

5. Personal luggage, documents and correspondence of a member of the Coordinating Council or an employee of the National Centre during their term of office may not be subject to arrest; inspection and seizure of luggage, correspondence and documents shall not be permitted.

6. The aspects of immunity of the deputies of the Jogorku Kenesh and the Akyikatchy (Ombudsman) in their capacity as members of the Coordinating Council shall be regulated by the relevant laws.

Article 20. Use of information in the operation of the National Centre

1. The members of the Coordinating Council and the employees of the National Centre participating in preventive visits, as well as experts during the exercise of their powers and upon their termination shall not have the right to disclose information if such disclosure may threaten the security of operations in places of detention and restraint of liberty, persons detained and staff thereof, as well as disclose information on private life, which became known to them in the course of their activity, otherwise than upon consent of a person to whom such information refers.

2. No one may be held liable or subject to any other type of influence or otherwise have his/her rights and freedoms infringed for providing to the members of the Coordinating Council or the employees of the National Centre information, whether true or false, and no such person or institution may have their rights and freedoms infringed otherwise.

3. Persons deprived of or restrained in their liberty may not be persecuted in any form because of their application with proposals, petitions or complaints in relation to the violation of their rights and lawful interests.

4. The National Centre shall have the right to publish general information received from personal data and any relevant information pertaining to any other issues which makes use of personal data in anonymous manner.

Article 21. Financing the operations of the National Centre

1. The operations of the National Centre shall be financed from the national budget as well as from other sources non contrary to the legislation of the Kyrgyz Republic.

2. The national budget shall annually provide for funding necessary to ensure efficient performance of the National Centre. The National Centre shall draft the budget and send it for agreement to the Government of the Kyrgyz Republic. In the event of differences the Government of the Kyrgyz Republic shall incorporate the proposal of the National Centre without changes in the draft national budget to be submitted to the Jogorku Kenesh with its opinion attached.

3. The National Centre shall autonomously dispose of its funds within the expenditure budget.

4. The financial statements shall be submitted by the Director of the National Centre in accordance with the procedures established by the law.

Chapter 4. Preventive visiting of places of detention and restraint of liberty

Article 22. Places of detention and restraint of liberty subject to preventive visits

1. The programme of preventive visits implemented by the National Centre shall cover all places of detention and restraint of liberty under the jurisdiction of the Kyrgyz Republic.

2. The National Centre shall be granted access to any information about the number of places of detention and restraint of liberty, their location and the number of persons detained there.

3. The National Centre shall compile and periodically update the list of places of detention and restraint of liberty by breakdown of relevant ministries and agencies, oblasts (provinces) and cities of Bishkek and Osh.

4. The National Centre shall independently select places of detention and restraint of liberty for its preventive visits.

Article 23. Types of preventive visits to places of detention and restraint of liberty

1. Preventive visits to places of deprivation and restraint of liberty shall have the format of periodic visits with a comprehensive inspection, intermediate or ad hoc visits on the basis of a unified methodology developed by the National Centre and approved by the Coordinating Council.

2. Preventive visits to the places of deprivation and restraint of liberty in the format of a comprehensive inspection shall be aimed at performing a comprehensive analysis and evaluation of the system of places of detention and restraint of liberty as well as identification of the main causes conducive to the use of torture and cruel treatment in respect of persons deprived of or restrained in liberty. The comprehensive inspection shall be accompanied by individual interviews with at least one third of persons held in the places of deprivation and restraint of liberty, review of information related to treatment of such persons, including medical files of individual persons upon their consent, orders and instructions of the administration on imposition of penalties, documents attesting the legality of detention of such persons in those places.

3. Intermediate preventive visits to the places of deprivation and restraint of liberty shall be conducted during irregular periods between the comprehensive inspection visits without prior notice. The purpose of intermediate visits shall be to verify the implementation of recommendations and ensure that persons deprived of or restrained in their liberty as well as staff of the places of deprivation and restraint of liberty were not subject to repressions for the cooperation with the group conducting the preventive visit.

4. Ad hoc visits shall be conducted in response to the information on the use of torture and cruel treatment, on the fact of death in places of deprivation and restraint of liberty or for studying a concrete problem.

Article 24. Periodicity of preventive visits to places of detention and restraint of liberty

1. The National Centre shall independently decide on the periodicity of visiting various places of detention and restraint of liberty depending on available financial resources provided for the operation of the National Centre.

2. The preventive visits to places of detention and restraint of liberty with the purpose to conduct a comprehensive inspection shall be implemented in accordance with the lists of places of detention and restraint of liberty and the programme of visits drafted annually by the National Centre and approved by the Coordinating Council.

3. The periodicity of intermediate preventive visits shall be defined by the Director of the National Centre and the managers of territorial representations (representatives) in view of the number, location, type of places of detention and restraint of liberty and number of persons detained. The minimal frequency of intermediate visits to any place of detention and restraint of liberty shall depend on the outcomes of previous visits, availability or absence of non-governmental sources of information on the situation with observance of the right to freedom from torture and cruel treatment in a particular place of detention and restraint of liberty.

4. In any case each place of detention and restraint of liberty shall be subject to a comprehensive inspection at least once in two years, while intermediate preventive visits shall account for at least half of the total time allotted to all types of visits.

Article 25. Procedure of preventive visits to places of detention and restraint of liberty

1. Preventive visits to places of detention and restraint of liberty shall be conducted on any day and at any time of the day without prior notice.

2. To conduct preventive visits to places of detention and restraint of liberty the Director of the National Centre or managers of the territorial representations (the representatives) shall create teams from among the employees of the National Centre and the members of the Coordinating Council. In the event of necessity experts in various fields shall be invited to participate in preventive visits to places of detention and restraint of liberty. The composition and number of the team members shall depend on the type of a preventive visit, type of place of detention or restraint of liberty and the number of persons detained. In any case the minimum number of the team members should be two persons, at least one being a member of the Coordinating Council or an employee of the National Centre.

3. In formation of the teams, gender balance as well as representation of various ethnic groups and minority groups must be observed. The team shall include persons with professional skills necessary for conducting an efficient preventive visit in view of specific features of the place of detention and restraint of liberty to be visited.

4. Experts involved in conducting preventive visits to places of detention and restraint of liberty shall possess competence and professional skills necessary to conduct an efficient preventive visit. Experts shall accompany the teams during the preventive visits to places of detention and restraint of liberty to provide their substantiated opinions on matters within their expert knowledge. The procedures of selection and involvement of experts in preventive visits shall be defined by the Coordinating Council.

5. A place of detention and restraint of liberty subject to a preventive visit shall be selected by the Director of the National Centre or the managers of the territorial representations (the representatives) of the National Centre.

6. The administration of the place of detention and restraint of liberty shall grant the team entry to the place upon the presentation of the duly issued identity documents and a duly issued written letter of referral signed by the Director of the National Centre or the manager of the territorial representation (the representative) indicating the team members conducting the preventive visit. In the event that an expert is part of such team, then a duly issued written permission by the Director of the National Centre or the manager of the territorial representation (the representative) shall be presented.

7. Upon entry and upon departure from the territory of a place of detention and restraint of liberty no examination shall be performed of the personal effects of members of the team conducting the preventive visit, including their documents and clothes.

8. The security of members of the team conducting a preventive visit to a place of detention and restraint of liberty shall be ensured by the administration of those places.

9. In the event of circumstances causing doubts about impartiality of a member of the team conducting a preventive visit he/she shall refuse from participation in the preventive visit to a place of detention or restraint of liberty.

10. The Chief Manager of a place of detention and restraint of liberty shall inform the Director of the National Centre on any unlawful actions of a member of the team conducting the preventive visit.

11. Upon completion of each preventive visit to a place of detention and restraint of liberty a written report shall be drafted in accordance with the format approved by the Coordinating Council; such report shall be signed by all members of the team, who participated in the visit. A member of the team shall have the right of having a dissenting opinion which is attached to the report. The procedure of considering of the dissenting opinion based on the result of a preventive visit shall be determined by the Coordinating Council.

12. The Reports, excluding confidential and personal information, shall be posted on the official website of the National Centre.

13. A violation by a member of the team of the provisions of the present law as well as other normative legal acts regulating the procedure of operation of places of detention and restraint of liberty shall result in legal liability, in compliance with the requirements set in Article 19 of the present law.

Article 26. Rights and responsibilities of the members of the Coordinating Council and the staff of the National Centre in conducting preventive visits

1. The members of the Coordinating Council and the employees of the National Centre shall have the following rights while conducting preventive visits in the places of detention and restraint of liberty:

1) access to the information about the number of persons in the places of detention and restraint of liberty, as well as about the number and location of such places;
2) freely select places which they deem necessary to visit as well as persons with whom they deem necessary to have an interview;
3) free access to any place of detention and restraint of liberty, facilities and units thereof without prior notice on any day and at any time of the day;
4) have unlimited interviews with persons deprived of or restrained in liberty in private as well as with attendance of any other person who may provide information necessary to achievement of the goals of the preventive visit and with the help of an interpreter when necessary;
5) request and obtain from the administration of places of detention and restraint of liberty information pertinent to treatment of persons deprived of or restrained in their liberty as well as the conditions of their detention, including medical

files of individual persons upon their consent, orders and instructions of the administration on imposition of penalties, as well as acquaint themselves with documentation attesting the lawfulness of custody of such persons;

6) make photo-, audio- and video recording as well as make copies of documents received from the administration of the places of detention and restraint of liberty. Photo- and video recording of facilities ensuring security and guarding of persons deprived of or restrained in their liberty, shall be allowed upon permission of the administration and upon consent of persons whose actions are being filmed.

2. In conducting preventive visits to places of detention and restraint of liberty the members of the Coordinating Council and the employees of the National Centre shall:

1) abide by the Constitution, the present law as well as other normative regulatory acts of the Kyrgyz Republic;
2) avoid actions which dishonour the workers in the places of detention and restraint of liberty, staff maintaining internal order as well as persons deprived of or restrained in liberty;
3) request, when necessary, provision of an urgent medical aid and medical examination of persons who were subject to violence, attend at such examinations upon consent of the victims and make relevant statements;
4) immediately inform the Director of the National Centre on established facts of the use of torture and cruel treatment against persons deprived of or restrained in their liberty for further communication to the prosecution agencies for investigation and bringing the perpetrators to account.

Chapter 5. Interaction of the National Centre with government agencies and international organizations

Article 27. Interaction of the National Centre with the Subcommittee on prevention as well as national preventive mechanisms of other countries

1. The National Centre shall maintain close contacts and share information about the issues related to the methods and strategies of prevention of torture and cruel treatment with the Subcommittee on prevention, in the event of necessity such communications shall be confidential.

2. In accordance with its mandate stated in the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, the Subcommittee on prevention shall have the following rights:

1) Provide services to the National Centre in the area of professional training and technical assistance for capacity-building purposes;
2) advise and support the National Centre during assessment of needs and measures necessary for strengthened protection of persons deprived of and

restrained in their liberty against torture and cruel treatment as well as improvement of custody conditions;

3) provide recommendations and comments for the purpose of strengthening the capacity and mandate of the National Centre for preventing torture and cruel treatment.

3. The National Centre shall establish and maintain contacts with the national bodies on prevention of torture and cruel treatment in places of detention and restraint of liberty (national preventive mechanisms) of other countries for the collective efforts on prevention of torture and cruel treatment as well as dissemination of best practices.

Article 28. Interaction between the National Centre and the Office of Akyikatchy (Ombudsman)

1. The National Centre and the Akyikatchy (Ombudsman) shall coordinate their activities in accordance with the provisions of the present law.

2. During its operations the National Centre may conduct joint activities with the Akyikatchy (Ombudsman) and its administrative personnel within the scope of its competence.

3. The National Centre and the Akyikatchy (Ombudsman) shall have the right of making joint statements in mass media on the issues of observance of the right to freedom against torture in places of detention and restraint of liberty as well as conditions of custody.

Article 29. Interaction between the National Centre and the government agencies

1. The National Centre shall operate in close and regular contact with the government agencies and officials of the Kyrgyz Republic.

2. The government agencies and officials of the Kyrgyz Republic within the scope of their competencies shall:

1) provide the required support in organizing the activities of the National Centre upon its request;
2) review the recommendations of the Coordinating Council and facilitate their implementation;
3) forward to the National Centre draft normative regulatory acts related to the rights and freedoms of persons deprived of or restrained in their liberty, the procedures and conditions of their detention as well as the issues of prevention of torture and cruel treatment;
4) publish and disseminate annual and special reports of the National Centre.

Chapter 6. Final provisions

Article 30. Regulation on formation of the first composition of the Coordinating Council

1. The first composition of the Coordinating Council shall be formed not later than three months since the date of entry into force of the present law.

2. Within ten days since the entry into force of the present law the Akyikatchy (Ombudsman) shall forward to the Toraga of the Jogorku Kenesh of the Kyrgyz Republic the proposal about the members of the Coordinating Council according to the procedure established by Part 1 and Part 2 of Article 10 of the present Law.

3. Within ten days after entry into force of this Law the Akyikatchy (Ombudsman) shall publish in official printed media of the Kyrgyz Republic as well as post on the website of the Akyikatchy (Ombudsman) an invitation to non-commercial organizations, whose chartered activity is related to protection and promotion of human rights and freedoms, to nominate candidates to the positions of members in the Coordinating Council.

The proposed candidates for the Coordinating Council from non-commercial organizations shall be reviewed by the working commission for compliance of operations of the non-governmental organizations with the activities related to protection of rights and freedom of detained individuals and with the recommendations filed by other non-commercial organizations, members of the latter can be represented by the Akyikatchy (Ombudsman), Deputies of Jogorku Kenesh, representatives of international organizations and academics. The procedure and results of the revision of the proposed candidates for the Coordinating Council from non-commercial organizations, running to participate in the ballot shall be published in the official website of the Akyikatchy Office (Ombudsman) and Jogorku Kenesh. The candidates admitted to the ballot shall be invited to balloting procedure.

4. The elected members of the Coordinating Council from non-commercial organizations shall be the first eight candidates whose names in envelopes were drawn by the Akyikatchy (Ombudsman) from the ballot box.

5. If after rejection of candidates in accordance with part 7 of Article 10 of the present law eight candidates from non-commercial organizations to the vacant positions of the members of the Coordinating Council remain, all of them are considered elected members of the Coordinating Council.

If after rejection of candidates in accordance with part 7 of Article 10 of the present law less than eight candidates from non-commercial organizations to the vacant positions of the members of the Coordinating Council remain, then additional competition is held in accordance with the rules established in Parts 3, 5-8 of Article 10 and Parts 3-5 of the present Article.

6. The term of office of four members of the Coordinating Council from non-commercial organizations, selected for the first composition of the Coordinating Council, shall expire within two years. The names of such members shall be decided upon by drawing lots at the first sitting of the first composition of the Coordinating Council.

Article 31. Entry into force of the present law

1. The present law shall enter into force on the day of its official publication.

2. Within three months since the adoption of this law the Government of the Kyrgyz Republic shall:

- submit to the Jogorku Kenesh the proposals on alignment of the current legislation of the Kyrgyz Republic with the present law;
- settle organizational and technical issues pertinent to the implementation of this law.

President of the Kyrgyz Republic **A. Atambaev**

Passed by the Jogorku Kenesh of the Kyrgyz Republic on June 7, 2012

Aida Alymbaeva, ed., *Almanac 2012: Governing and Reforming Kyrgyzstan's Security Sector* (Geneva – Bishkek: Geneva Centre of the Democratic Control of the Armed Forces, 2013).

Security and Defence Management series no. 4

Original version: Russian, Geneva – Bishkek, 2013

Translation into English: Greta Keremidchieva

English version: Geneva, 2013

Geneva Centre for the Democratic Control of Armed Forces
<www.dcaf.ch>
P.O.Box 1360, CH-1211 Geneva 1, Switzerland

Cover Design: Printhouse Ltd.

Format: 6.25 x 9

ISBN 978-92-9222-278-9

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ISBN 978-92-9222-278-9

Security and Defence Management Series no. 4