

KYRGYZSTAN SITUATION REPORT (March 2003)

A. CONSTITUTIONAL REFORM

The FIDH is extremely concerned about the constitutional reform adopted by referendum on 2 February 2003. According to information from the Kyrgyz Committee for Human Rights (KCHR), a member organisation of the FIDH, we note several restrictions in content and numerous procedural irregularities. The reform amounts to a concentration of power in the hands of the President of the Republic.

A highly restrictive constitutional reform

Strengthening the executive

The reform gives the President a virtually absolute right of veto over legislative activity.

Bills proposed and approved by Parliament can be disclaimed by the President. He can amend a bill and send it back to the Assembly to be passed into law. The Parliament can still pass the original bill, but the procedural conditions for doing so are extremely restrictive.

The former Article 66 of the Constitution required the President to sign a law if it was adopted by Parliament on second reading by a majority vote of more than two-thirds. Under the new Article 66, the President only has to sign laws approved by a four-fifths majority. Furthermore, Parliament must wait six months before revoting a bill on second reading. Lastly even if a law is adopted by Parliament after this procedure, under the new Article 59-2 the President has the power, in the last resort, to refuse to sign it. In practice, this provision is a legal artifice to void Article 66 of its substance and make it a pure formality.

The President's scope to dissolve Parliament has been increased. Before the reform, pursuant to Article 71 of the Constitution, Parliament could be dissolved if it refused three times to appoint a prime minister from among the candidates presented by the President and if it passed, with more than a two-thirds majority, two votes of no-confidence in the prime minister within the space of three months. The new Article 72 enables the President to dissolve Parliament after two no-confidence votes in the government within the space of three months. The Constitution thus introduces a new possibility of dissolution if Parliament contests government policy as a whole.

Article 54 of the former Constitution provided for a Parliament consisting of two chambers, the Legislative Assembly, with 35 members, and the Assembly of the People's Representatives, with 70 members. Both chambers were to be elected for five years by the citizens of Kyrgyzstan. Now the amended Article 54 of the new Constitution provides for only a single chamber of 75 members.

Limitations on the exercise of citizens' rights and fundamental freedoms.

The amended Article 16 requires prior permission from the local authorities for the organisation of demonstrations. The fact that this limitation is enshrined in the Constitution, the supreme law, constitutes a serious threat to civil society, particularly as it comes in a context where demonstrations are already systematically suppressed in practice. This provision legitimises the

discretionary power of the local authorities linked to the government.

Paragraph 9 stipulates that "everyone has the right to freedom of conscience and freedom to express his opinions and beliefs". However, Paragraph 3 prohibits "propaganda or agitation that incites social, racial, international or religious hatred or antagonism". The wording of the text is so general that it can lead to arbitrary application in a context where the judiciary is not independent.

Reinforcement of presidential immunity

Lastly, Article 53§2 sets forth that the "ex-President" of Kyrgyzstan enjoys immunity from prosecution for criminal offences committed during his term as President and that he cannot be arrested, searched or questioned. This immunity extends to the whole of his family. This immunity did not exist under the former Constitution.

Procedural irregularities

The draft constitutional reform that was put to the vote differs from the one submitted to the Council of Europe and on which the Council expressed certain criticisms. In 2002 Kyrgyzstan invited legal experts from the Council of Europe (from the Venice Commission) to give their opinion. In mid-December the experts concluded that the reform could lead to excessive concentration of power in the hands of the President. They were particularly concerned by the President's almost discretionary power to dissolve Parliament. The Kyrgyz authorities did not take any notice of this opinion, however. On the contrary, they tightened some of the provisions already contested by the Venice Commission.

Regarding more specifically the referendum process on 2 February 2003, the authorities used various tactics to influence — and even force — citizens to vote in favour of the government's draft constitution.

We can cite the following examples:

- "fictitious" meetings between parents and teachers held in schools to encourage parents to vote in the government's favour,
- "fictitious" voters,
- students forced to vote twice, once at the university and again at home, under pressure from university professors who threatened them with expulsion if they disobeyed,
- pressure on businessmen, merchants and lawyers, who were threatened with losing their licences to practise or operate a business,
- pressure on newspapers to support the pro-government campaign.

Lastly, the referendum was held virtually "behind closed doors". Attempts at independent observation were impeded. The date of the referendum was set only one month in advance and the OSCE was not able to organise observation missions. NGOs financed by international organisations or foreign governments were also prohibited by the electoral code from monitoring the ballot. Observers from Coalition for Democracy and Civil Society, an NGO, were prevented from carrying out their mandate. Some were assaulted, such as Januzak Abdrasulov, who was beaten by strangers on his way home after monitoring the voting in Sokuluk district, west of Bishkek.

Members of observation missions organised by the Bishkek City public referendum monitoring staff, an association consisting of members of political parties, were prevented from observing the ballot and some were arbitrarily arrested and detained. On 3 February, some 20 observers were

arrested in an ambush staged by the authorities, as they attempted to verify the voting in a polling station in Bishkek. Several were members of opposition political parties: Balalinov and T. Dulatov from Ar-Narmy (Dignity Party); O. Tekebaev and D. Chotonov from Ata Meken; and B. Asanov from Erkin Kyrgyzstan. These people were accused of having kidnapped a voter. On the same day, Manas Sharshenaliev from Jash-Ordo, an NGO, A. Abdurasulova from the Youth Party of Kyrgyzstan and Z. Israilov from Coalition for Democracy and Civil Society were also arrested for allegedly abducting an employee of the Pervomay polling station and influencing the voting. The Ar-Narmy observers' office was blockaded by the Special Forces from the national security service. The leader of Ar-Narmy, Emil Aliev, was arrested on 3 February. All those arrested were released after several hours.

B. MEDIA

The FIDH is extremely concerned about the situation of the media, which continued to be the target of harassment and arbitrary prosecution.

At the EU-Kyrgyzstan interparliamentary meeting held on 12 February 2003, a European parliamentary working paper quoted President Akaev as having said in January 2003 that the opposition and the independent media were using free speech to divide the nation and aggravate conflicts in the country.

The daily newspaper *Moya Stolitsa* stands accused of spreading separatist ideas, disseminating false information and insulting citizens' sense of patriotism. Seventeen complaints have been lodged against the newspaper by members of the Kyrgyz government, threats that raise fears of imminent closure.

Kyrgyz Ordo was closed down on 10 January 2003 by court order, after a complaint lodged by Aydarbek Duyshaliev, a civil servant. The newspaper contested the validity of Mr Duyshaliev's qualifications. The paper was initially sentenced to a fine of \$7,800, but the judge subsequently decided to order its closure.

The newspaper *Batken Tany* was sentenced on 17 February 2003 to a heavy fine (\$1,000) by the Batken Court for publishing an article that accused Dastan Berdiev of abuse of power when he headed the Batken district administration.

Journalists are also targeted directly and prosecuted for articles critical of the government's actions. Journalists from *Moya Stolitsa* have been sentenced on several occasions for denouncing the activities of certain officials. On 17 February 2003, two journalists from *Batken Tany*, Igor Dodosyan and Mashrap Tullaev, were fined 30,000 soms for publishing an article entitled "Privatization of Dastan", which reported cases of abuse of power by Dastan Berdiev during his term as head of the administration. Two journalists from *Akyikat*, A. Bekilov and K. Toktobaev, are currently under investigation.

In addition to closures of newspapers and financial penalties, there are reports of physical violence against journalists. For example, a journalist from *Moya Stolitsa*, Alexandra Chernyh, was assaulted on 20 January 2003 by masked strangers. According to the information received, the weapons used by her assailants were the same as those used by the local police.

C. REPRESSION AGAINST CIVIL SOCIETY

Several types of repression are used to neutralise any form of opposition: arrests of opponents on

false charges, threats and acts of violence.

An egregious example is the detainment of Felix Kulov, former vice-President, former interior minister, former national security minister and former mayor of Bishkek, who was arrested on 22 March 2000 after announcing his intention to run in the presidential elections.

Mr Kulov was charged with abuse of power, with having ordered the placement of bugging devices in Parliament and using bugging equipment for private purposes. The trial took place before a military court, closed to international observers and journalists. Mr Kulov was acquitted in early August 2000. Immediately afterwards, the judge in charge of the case was accused of corruption by the government, and the President of the Supreme Court, accused of having put pressure on the judge, was forced to resign. The military prosecutor filed an appeal. On 11 September 2000, the Court of Appeal overruled the decision of the Bishkek Military Court. On 8 May 2002, the Pervomay District Court sentenced Mr Kulov to 10 years' imprisonment, a sentence upheld on 10 October 2002 by the Bishkek Court of Appeal.

Azimbek Beknazarov, a member of parliament and the leader of the Asaba Party, was arrested in January 2002 after publicly criticising government policy. He was released on 19 March as a result of national and international pressure, then convicted of abuse of power and sentenced on 24 May to one year's imprisonment. Without ordering his custody, the judge closed the case.

Other arrests have taken place, particularly of opponents, on charges of illegal possession of arms or narcotics. The evidence was in fact placed by the authorities at the time of the arrests. We can cite the example of Toktorbay Tohtakulov, a 51-year-old member of the banned Hizb-ut-Tahrir party, sentenced on 2 January 2003 to two-and-a-half years' imprisonment for illegal possession of weapons and explosives.

Human rights activists are routinely threatened. The FIDH, through its joint programme with the Observatory for the Protection of Human Rights Defenders (OMCT), regularly denounces this situation¹. New facts have been reported. Since December 2002 Kachkyn Bulatov, KCHR coordinator in Naryn oblast, has been threatened by KGB agents with torture and arrest if he fails to cooperate by becoming an agent for the KGB and supplying information on KCHR members. His family has also been targeted and his daughter has lost her job at the National University of Kyrgyzstan.

On 28 February 2003, Edil Baisalov, President of Coalition for Democracy and Civil Society, was arrested and detained in a military hospital, shortly before he was to participate in a conference organised by representatives from Freedom House (USA) at which he was to speak on human rights violations in Kyrgyzstan. The authorities ordered him to undergo a medical examination to ascertain his aptitude to perform military service, even though he had already undergone a medical examination one month previously that had deemed him ineligible for military service because of eye problems. He was released on 4 March.

According to the information received, the Special Forces continue to perpetrate physical attacks on opponents and activists. On 19 February, Ajieva Saikal, a member of Coalition for Democracy and Civil Society opposed to the referendum of 2 February, was allegedly raped by four policemen in Bishkek. The police are apparently trying to prevent an investigation into the incident.

¹ See the Observatory's Annual Report 2002 (to be published on 26th march 2003)

A characteristic of all these incidents is impunity. The FIDH recalls that the perpetrators of the violent repression of a peaceful demonstration in Aksy, organised to request the release of Azimbek Beknazarov, a member of parliament, in March 2002, when six people were killed and some ten others wounded, were sentenced on 28 December 2002 by the Osh Military Court to prison terms, but were immediately pardoned by decree.

D. DEATH PENALTY

Article 18§4 of the former Constitution stipulated that the death penalty was reserved for exceptional cases and that the convicted could be granted a presidential pardon. The new penal code, which came into force in January 1998, reduced the number of capital offences, by replacing the death penalty for several crimes by a maximum prison term of 30 years. In 1998, the President ordered a two-year moratorium on executions, which was extended for a further two years in December 2000 and for another year on 3 January 2003. However, the moratorium has not prevented the judicial authorities from continuing to pass death sentences. Since 1998, however, no sentence has been carried out. According to the information received, in December 2002, 160 people are detained on death row.

The new Constitution introduces no change here since it maintains the death penalty.

Furthermore, according to the information received, the detainees awaiting execution are held in conditions of poor hygiene, overcrowding and lack of medical care. Many inmates suffer from tuberculosis and some have died from the disease.

E. RECOMMENDATIONS

The FIDH calls on the Kyrgyz authorities to :

1 - respect, in all circumstances, the principles and provisions set forth in international human rights instruments, which are relevant for the Kyrgyz Republic, in particular the International Covenant on Civil and Political Rights, which upholds freedom of expression, freedom of opinion, the right of peaceful assembly and access, on general terms of equality, to public service in one's country.

2 – The FIDH calls on the Kyrgyz government to respect, in all circumstances, the freedom and independence of the media, enshrined in particular in the Charter of Paris and the documents adopted under the OSCE's Human Dimension and the International Covenant on Civil and Political Rights.

3 – Deeply concerned by the instrumentalisation of the judiciary for political ends, the FIDH urges the government to ensure the genuine independence of the judiciary, so that an end be put to politically-motivated proceedings or proceedings with an aim to sanction freedom of opinion or expression.

4 – Concerned by police violence, including torture, and particularly the repression of the demonstration in Aksy, the FIDH calls on the government to take disciplinary and penal measures against the perpetrators of this violence and to allow citizens to report incidents without having their cases closed without further investigation.

5 – To comply in all circumstances with Articles 1 and 12 of the Declaration on Human Rights

Defenders adopted by the General Assembly of the United Nations in December 1998, Article 1 setting forth that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels" and Article 12 referring to the obligation of States to protect defenders.

6 – The FIDH calls for the abolition of the death penalty in Kyrgyzstan.

7 – Concerned by the deplorable conditions of detention in Kyrgyzstan, the FIDH calls on the government to take all the necessary measures to improve the conditions of inmates and to guarantee respect for their right to life and physical and psychological integrity.

The FIDH calls on the international community:

During multilateral and bilateral meetings within the UN, the OSCE and the EU, to exert diplomatic and political pressure on Kyrgyzstan so that it complies with the international and regional human rights standards.