
**THE CONSTITUTIONAL REFERENDUM
IN KYRGYZSTAN ON APRIL 11, 2021,
OR THE RESTORATION OF POST-SOVIET
AUTHORITARIANISM**

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Abstract

The Article examines the form of government in Kyrgyzstan established by the constitutional referendum of April 11, 2021, identifies its most important essential features and shortcomings, and attempts to precise its scientific classification. The possible consequences of the functioning of the new form of government are indicated.

On April 11, 2021, a constitutional referendum was held in Kyrgyzstan, at which amendments to the Constitution of the state were approved. On the same day, the elections of the President of Kyrgyzstan were held, which were won by the acting President, politician Sadyr Zhaparov. This clearly indicated the role of the subjective factor in the constitutional process. The changes concerned all sections of the Constitution and marked the emergence of a virtually new Constitution of Kyrgyzstan. The most important consequence of the constitutional changes was the establishment of a new eclectic form of government with an exaggerated constitutional status of the president. In this form of government, the president combined in his person the functions of head of state and head of executive power, administratively subjugated the government and deprived it of the status of an independent authority.

Key words: *constitution, constitutional referendum, form of government, president, executive power, rule of law, separation of powers, responsibility of power.*

RELEVANCE OF THE RESEARCH TOPIC

The collapse of the Soviet Union led to the emergence of new sovereign states on its territory, which marked the beginning of a period of active constitutional rule-making in the post-Soviet space. This process continues to this day. Constitutional reform in the post-Soviet states is primarily aimed at finding the optimal form of government. The post-Soviet republics face the dilemma of needing to introduce strong presidential power while limiting the associated risks. This is particularly clear in their situation. Attempts to find a practical solution to this dilemma in the post-Soviet space have mostly been unsuccessful. In many cases, the attempt to increase the effectiveness of the executive power by giving the president more influence was carried out carelessly, resulting in the development of the phenomenon of a super-presidency.

To evaluate different variations of the republican form of government objectively, it is crucial to examine the state-building experience of Kyrgyzstan. The country has undergone significant changes in its form of government over time. Since 2007, there has been a trend towards parliamentarization, which was interrupted by the constitutional referendum of April 11, 2021. The referendum reintroduced a form of government in the country that many consider to be a presidential republic. The results of the Kyrgyzstan referendum on 11 April 2021 demonstrated that in the absence of stable democratic traditions and a developed civil society, and in the

conditions of weak influence on the state mechanism by political parties, there is a constant threat of the restoration of authoritarian presidentialism. Studying the most recent Kyrgyz experience of state building enables the identification of features and patterns of development that are common to many post-Soviet political systems.

REVIEW OF SCIENTIFIC RESEARCH ON THE TOPIC OF THE WORK

Specialized political studies have yet to focus on the evolution of the form of government in modern Kyrgyzstan. However, Russian researcher O. Zaznayev has indirectly and partially addressed this topic in works such as 'Defects of the forms of government of the CIS countries', 'Presidentialization of the semipresidential system', and 'Super-presidential systems in the post-Soviet space' (Zaznayev, 2006, 2008). This text explores the problems related to the development of the form of government in the post-Soviet space. It specifically references the works of American researcher S. Holmes, including 'The Post-Communist Institute of the President' and 'The Superpresidency and Its Problems' (Holmes, 1994, 1995, 1996), as well as the Italian-American scientist G. Sartori's 'Comparative Constitutional Engineering'. A Study of Structures, Motives and Results") (Sartori, 1987, 2001) and the Ukrainian constitutionalist V. Shapoval (Executive power in Ukraine in the context of the form of state government (experience before the adoption of the Constitution of Ukraine in 1996) (Shapoval, 2016).

OBJECT, OBJECTIVES AND RESEARCH PROBLEM

This study aims to examine the form of government in modern Kyrgyzstan. The research objectives are reflected in the following: The aim of this study is to examine the evolution of the form of government in Kyrgyzstan from the adoption of the first Constitution of sovereign Kyrgyzstan to the present day. The study will classify the form of government established by the primary edition of the Constitution of Kyrgyzstan dated May 5, 1993, the form of government established by the Constitution of Kyrgyzstan dated May 5, 1993 in the edition dated October 21, 2007, and the form of government established by the Constitution of Kyrgyzstan dated June 27, 2010. The aim of this research is also to analyse the normative features of the form of government introduced by the constitutional referendum of April 11, 2021, and identify any reactionary features. Additionally, the consequences of its functioning will be predicted. Another research problem is to provide a scientifically correct classification of the current form of government in

Kyrgyzstan and examine its influence on the development of democratic political institutions.

RESEARCH METHODS

This work employs historical, comparative, and legal dogmatic methods of scientific research. The use of the historical method was necessary due to the historical development of the form of government in modern Kyrgyzstan, which has undergone significant changes over time and under different circumstances. The historical method enables formulating conclusions about the impact of the past on the current state of the government in Kyrgyzstan and its future development.

A scientific study involves using all facts related to the object and searching for cause-and-effect relationships. This requires analysing similarities and differences between individual cases. This study employs the comparative method to identify similarities and differences between the variations of the form of government in Kyrgyzstan. The comparison includes individual parameters and aggregate features, as well as the degree of their similarities and differences. By comparing the variations, knowledge is obtained that cannot be obtained by studying only one of the Kyrgyz form of government. The comparative analysis data confirmed the theories of separation of powers, popular sovereignty, and the rule of law. We studied the evolution of the form of government in Kyrgyzstan in the context of these provisions.

The legal dogmatic method enables the verification of research results' conformity with legal doctrine. As the form of government is a legal institution, and its most significant features are always normatively expressed, analyzing the essence of the researched form of government and its elemental composition inevitably involves using the legal dogmatic method. The legal dogmatic method played a fundamental role in interpreting constitutional norms related to the form of government, particularly those governing the organization of state power. This method allowed for the analysis of relevant provisions in all modern Kyrgyzstan constitutions (including revisions), and their explanation and interpretation using legal concepts and categories. The application of this method provided our research with a proper theoretical basis, ensuring unity, uniformity, and consistency in the legal terminology and conceptual apparatus used.

INTRODUCTION

Kyrgyzstan has undergone several constitutional revisions regarding its form of government. These changes have accompanied and legally formalised important

political events in the country's history. The first constitution of sovereign Kyrgyzstan, dated 5 May 1993, established a form of government that shared many legal features with a presidential republic, but was not identical to it. The form of government in question has undergone multiple adjustments. The constitutional changes made on 21 October 2007 resulted in a more parliamentary system of government, but did not fully eliminate its authoritarian nature. The Constitution of Kyrgyzstan, as amended on 21 October 2007, still maintains a semi-presidential system, as noted by the Venice Commission. According to the Venice Commission (2017), 'The semi-presidential system was retained, but ...but... In reality, political powers are once again concentrated in the hands of the President'. In 2010, a new Constitution of Kyrgyzstan was adopted at a referendum, resulting in a fundamental revision of the form of government. The Constitution established a parliamentary-presidential mixed republican form of government with both a parliament and president.

In October 2020, the ruling political forces of Kyrgyzstan initiated a constitutional reform with the main goal of changing the form of government. They declared their intention to establish a presidential republic. On 11 December 2020, the country's parliament (the Zhogorku Kenesh) adopted the Law 'On calling a referendum (popular vote) to determine the form of government of the Kyrgyz Republic'. The Kyrgyz Republic Law (2020) allows for the choice between a parliamentary or presidential republic. A constitutional referendum was held on January 10, 2021, to determine the form of government in Kyrgyzstan. The majority of voters approved a presidential republic. It is important to note that on the day of the referendum to determine the form of government, extraordinary presidential elections were also held. These elections were won by Sadyr Zhaparov, the main initiator of the constitutional reform and the acting head of state. This indicates the influence of subjective factors in the constitutional process. By endorsing Sadyr Zhaparov's candidacy in the presidential elections, the referendum participants simultaneously granted him the relevant powers.

On 9 February 2021, the Zhogorku Kenesh published the draft Law 'On the Constitution of the Kyrgyz Republic' as the final version of the proposed constitutional changes for public discussion. It is important to note that the draft of the constitutional law was prepared by the Constitutional Council, a body established on 20 November 2020 by order of the then acting President of Kyrgyzstan, and not by the Zhogorku Kenesh. The body responsible for the constitutional changes in Kyrgyzstan was not provided for by the current Constitution and lacked constituent

power. Its creation undermined the legitimacy of the changes it had worked out. On 11 April 2021, a constitutional referendum approved the Law 'On the Constitution of the Kyrgyz Republic'. Although the initiators of the constitutional reform stated the need for a new edition of the Constitution of the Kyrgyz Republic in the Justification Note to the draft Law 'On the Constitution of the Kyrgyz Republic' (Justification Statement, 2020), the scale of the constitutional changes that affected all sections of the Constitution indicates that the constitutional reform resulted in the adoption of a new constitution for Kyrgyzstan. Although the Law 'On the Constitution of the Kyrgyz Republic' was intended to be a new version of the current Constitution with amendments (Law of the Kyrgyz Republic (Draft), 2020), it has effectively replaced the existing Constitution of Kyrgyzstan. The Venice Commission correctly noted in its Opinion on the Draft Constitution of the Kyrgyz Republic dated March 19-20, 2021, that the title is misleading (Venice Commission. 2021). The enactment of the 'Constitution of the Kyrgyz Republic' halted the trend towards a parliamentary form of government in Kyrgyzstan, which had been ongoing since 2007.

THE FORM OF GOVERNMENT ESTABLISHED BY PRIMARY VERSION OF THE CONSTITUTION OF KYRGYZSTAN ON MAY 5, 1993.

The May 5, 1993 version of the Kyrgyzstan Constitution established a form of government that was mainly associated with a presidential republic. This form of government was also established in most post-Soviet states during their initial stage of sovereignty. According to Ukrainian constitutionalist Volodymyr Shapoval, this form of government has a distinctive feature: According to Shapoval (2016, p. 72), the president holds a concentration of power and dominates the sphere of state power, with a certain convention of separation of powers.

The form of government established by the Constitution of Kyrgyzstan on May 5, 1993 cannot be classified as a presidential republic, even with significant reservations. However, it would also be incorrect to classify this form of government as a mixed republican one. The government form combines features of both presidential and mixed republics, with a noticeable predominance of presidentialism. It aims to maintain a balanced approach and avoid bias in its evaluation of the two forms of government.

The Constitution of Kyrgyzstan, dated May 5, 1993, defines the President of Kyrgyzstan as the guarantor of the unity of state power. Chapter three, titled 'The President', regulates the status of the Head of State. Article 46 states that 'The

President of the Kyrgyz Republic ensures the unity and continuity of state power, and the coordinated functioning and interaction of state bodies' (Constitution of the Kyrgyz Republic, 1993). Article 46 states that 'The President of the Kyrgyz Republic ensures the unity and continuity of state power, and the coordinated functioning and interaction of state bodies' (Constitution of the Kyrgyz Republic, 1993). Article 46 states that 'The President of the Kyrgyz Republic ensures the unity and continuity of state power, and the coordinated functioning and interaction of state bodies' (Constitution of the Kyrgyz Republic, 1993). The status of the president is a constitutional feature of a mixed republic. According to the revised version of the Constitution, the President is the highest official of the state and the real head of the executive branch. The Constitution outlines the process for determining the structure of the Government (paragraph 1 of Part 1 of Article 46). The appointment of the Prime Minister requires the consent of the upper house of the Parliament (paragraph 8 of Part 3 of Article 58, Part 1 of Article 71). Other members of the Government are appointed after consultations with the Prime Minister. According to paragraph 3 of Part 1 of Article 46 of the Constitution, the President had the power to dismiss officials from office. Additionally, according to paragraph 4 of Part 1 of Article 46 of the Constitution, the President had the right to terminate the powers of the Prime Minister or the Government, as well as the right to suspend or terminate government acts as stated in paragraph 4 of Part 5 of Article 46 of the Constitution. It is worth noting that acts of the President did not require a countersign from the Prime Minister or Ministers of the Government. The newly elected President's assumption of office resulted in the resignation of the Government, as stated in Part 3 of Article 70 of the Constitution. According to Part 1 of Article 69 of the Constitution, the President has control over the Government's activities and may chair its sittings.

In a presidential republic, the president holds full executive power and embodies it. Therefore, the constitutional definition of the president as the head of the executive branch is one of the distinguishing features of a presidential republic. However, the Constitution of Kyrgyzstan, dated May 5, 1993, does not include any provisions regarding the leading role of the President in relation to the system of executive authorities. According to the Constitution of the Kyrgyz Republic in 1993, the President was not considered a subject of executive power. The exercise of executive power was assigned to the Government of the Kyrgyz Republic, subordinate ministries, state committees, administrative departments, and local state administration (Article 69). The Kyrgyz Republic's Constitution defines the

Government as the highest body of executive state power (Part 1 of Article 70). While the President can control the Government's activities and chair its meetings, they do not formally lead the Government or hold membership within it.

The separation of powers in the presidential form of government is rigid, and as such, the president does not have the right to dissolve the parliament ahead of schedule. However, in accordance with the Constitution, the President of Kyrgyzstan had the right to prematurely terminate the powers of the Legislative Assembly (lower house of Parliament), the Assembly of People's Representatives (upper house of Parliament), or both houses of Parliament simultaneously (Part 2 of Article 63 of the Constitution). Another indication that there is no strict separation of powers is that the President and the Government are permitted to propose legislation (as stated in Article 64 of the Constitution). The Constitution also allows for a vote of no confidence in the Prime Minister by the Assembly of People's Representatives (as stated in paragraph 18 of Part 3 of Article 58 and Part 1 of Article 71 of the Constitution). Although the upper house of Parliament can express no confidence in the Prime Minister, as outlined in Part 5 of Article 71 of the Constitution, this does not meet the criteria of a presidential republic. The resignation of the Prime Minister is only required if the President decides to dismiss them. Simultaneously, the administrative subordination of the Government to the President and the transformation of the Head of State into the actual head of the executive branch demonstrate that there is no dualism in the form of the executive branch of power. However, this circumstance alone does not allow us to determine the form of government as a mixed republic (Sartori, 2001, p. 115).

THE FORM OF GOVERNMENT ESTABLISHED BY THE CONSTITUTION OF KYRGYZSTAN DATED MAY 5, 1993, AS AMENDED ON OCTOBER 21, 2007

The most recent edition of the Constitution of Kyrgyzstan, dated May 5, 1993 and updated on October 21, 2007, indicates a shift towards a parliamentary form of government. This edition further moved away from a presidential republic. The Constitution of Kyrgyzstan underwent changes from its initial version dated 5 May 1993 to the version dated 21 October 2007. The former established a government that gravitated mainly towards a presidential republic, while the latter fixed a form of government that imitated a mixed republic. The Venice Commission, in its opinion 'The Constitutional Situation in the Kyrgyz Republic' dated December 14–15, 2007, commented on this change. According to the Venice Commission (2007), although the Constitution establishes a semi-presidential system, in practice, the President has practically unlimited powers and there are few checks and balances.

The Constitution of Kyrgyzstan, dated May 5, 1993, and amended on October 21, 2007, designates the President as the head of state rather than the head of the executive branch. Part 3 of Article 42 of the Constitution preserves the provision that the President is responsible for ensuring the unity of state power and the coordinated functioning and interaction of its bodies.

The Constitution of Kyrgyzstan, amended on October 21, 2007, includes the right of the President to dissolve the Parliament early (paragraph 3 of Part 6 of Article 46, Part 2 of Article 63). According to the Kyrgyzstan Constitution, the President has the power to initiate legislation (paragraph 1 of Part 5 of Article 46, Article 64), convene a session of the Zhogorku Kenesh (Parliament) before the scheduled time, and decide on the issues to be discussed (paragraph 1 of Part 6 of Article 46). Additionally, the Government has the right of legislative initiative (Article 64). Furthermore, the Parliament was required to give special consideration to draft laws designated as urgent by the President or the Government, as stated in Part 2 of Article 65 of the Constitution.

The Constitution of Kyrgyzstan stipulates that executive power in the Kyrgyz Republic is exercised by the Kyrgyz Republic, subordinate ministries, state committees, administrative departments, other executive authorities, and local state administration, as outlined in Article 68. According to the Constitution of the Kyrgyz Republic (2007), the Government of the Kyrgyz Republic is the highest body of executive state power and its activities are headed by the Prime Minister of the Kyrgyz Republic. As per the Constitution, the executive power comprised of the Prime Minister, Deputy Prime Ministers, ministers, and chairmen of state committees (Part 2 of Article 69). Therefore, the President was not a structural component of the executive power and did not hold a leading role in relation to its bodies.

The Constitution of Kyrgyzstan, dated May 5, 1993 and amended on October 21, 2007, established a partially parliamentary system for forming the government. As per Part 3 of Article 69 of the Constitution, the government is formed by the political party that wins more than 50 % of the number of deputies in the Parliament elected under the proportional system during the Zhogorku Kenesh elections. The Prime Minister was appointed by the President, but their candidacy was presented by the mentioned party for approval. Once in office, the Prime Minister determined the structure and personnel of the Government, submitting them for approval to the Zhogorku Kenesh. According to Part 3 of Article 69 of the Constitution, it was the Zhogorku Kenesh, and not the President, who approved the structure of the Government and its personnel.

However, the government established by the Constitution of Kyrgyzstan dated 5 May 1993, as amended on October 21, 2007, cannot be classified as a mixed republic. The level of presidentialization is high, and the President's degree of influence on the executive power does not meet the criteria of a mixed republic. The Constitution of Kyrgyzstan, dated May 5, 1993 and amended on October 21, 2007, does not include the parliamentary investiture of the government, which is a fundamental feature of a mixed republic. The approval of the program of activities of the Government of Kyrgyzstan by the Zhogorku Kenesh was not a requirement for its authority. This circumstance significantly distorted the parliamentary process of forming the government and increased the President of Kyrgyzstan's influence on the executive branch. Additionally, the lack of parliamentary investiture of the Government, with an appropriate alignment of political forces in the Zhogorku Kenesh, made the President of Kyrgyzstan the sole head of executive power, thereby eliminating its dualism.

Although the Constitution includes a provision stating that the Government is responsible and accountable to the Zhogorku Kenesh (Part 1 of Article 71), a vote of no confidence by the Parliament does not automatically result in the Government's resignation. Ultimately, the decision to resign lies with the President (Part 7 of Article 71 of the Constitution). According to the Constitution, the President of the Kyrgyz Republic has the right to decide on the resignation of the Government of the Kyrgyz Republic or disagree with the decision of the Zhogorku Kenesh of the Kyrgyz Republic after expressing no confidence in the government. If the Zhogorku Kenesh of the Kyrgyz Republic passes a vote of no confidence in the Government of the Kyrgyz Republic within three months, or if the President of the Kyrgyz Republic dissolves the Zhogorku Kenesh of the Kyrgyz Republic, the Government of the Kyrgyz Republic must resign. This is stated in Parts 6 and 7 of Article 71 of the Constitution of the Kyrgyz Republic (2007). However, in situations where the government's existence is dependent on the political will of the President, the government can only be held accountable to parliament if it aligns with the President's interests. This is particularly true when the President seeks to avoid responsibility for the failure of the government's political agenda. Furthermore, the Parliament's repeated expression of a vote of no confidence in the 'presidential' Government inevitably led to the early dissolution of the Parliament.

The President's acts did not require countersignature from the Government. However, the Government was constitutionally obligated to ensure the execution of the President's acts (paragraph 1 of Part 2 of Article 72 of the Constitution). This

combination of circumstances allowed the President to impose his political agenda on the Government in areas of their shared responsibility.

In its conclusion on 'The Constitutional Situation in the Kyrgyz Republic' dated December 14–15, 2007, the Venice Commission (2007) identified the excessive concentration of powers in the hands of the President and the absence of a system of checks and balances as essential features of the form of government. According to the Venice Commission's assessment of the form of government, the new version of the Constitution aims to establish the undeniable supremacy of the President over other state authorities through legal means (Venice Commission, 2007).

THE FORM OF GOVERNMENT ESTABLISHED BY THE CONSTITUTION OF KYRGYZSTAN DATED JUNE 27, 2010

The constitution of Kyrgyzstan, which was adopted by referendum on June 27, 2010, established a form of government that is commonly referred to as a parliamentary republic. This determination was made by the Venice Commission in its Conclusion of June 4, 2010, on the draft version of the Constitution of the Kyrgyz Republic, which was published on May 21, 2010. However, it is important to note that the Venice Commission made an important reservation in this document: According to the Venice Commission (2007), the powers of the President of Kyrgyzstan appear to exceed those assigned to the president under the proposed system of separation of powers. Therefore, the form of government established by the Constitution of Kyrgyzstan on 27 June 2010 can be more accurately classified as a mixed parliamentary republic. The primary distinctions between this form of government and a parliamentary republic are the enhanced constitutional status of the President, specifically the discretionary authority of the Head of State to dissolve the powers of the Parliament if it refuses to trust the Government (Part 1 of Article 86 of the Constitution), and the dualistic organization of executive power.

The Constitution of Kyrgyzstan manifests a dualism of executive power, requiring the President to coordinate with the Prime Minister on personnel powers related to foreign policy representation of the state. This dualism is unique in its own way. The President appoints and dismisses a separate group of Government members, including heads of defence and national security bodies, as well as their deputies. The circumstance enhances the President's influence on government activity in relevant areas, but also poses a risk of reduced diversity. The Kyrgyz form of government differs from the classical mixed republic in that it lacks constitutional provisions requiring members of the Government to countersign acts of the President.

The President of Kyrgyzstan holds discretionary power to terminate the powers of the Parliament, as well as the right to appoint and dismiss individual members of the Government. Additionally, the Government lacks control over the rule-making activities of the President, as his acts do not require countersigning by members of the Government. These factors indicate that the status of the President of Kyrgyzstan cannot be equated with that of the president of parliamentary republics. The election of the President of Kyrgyzstan through popular vote cannot be considered a definitive indication of a parliamentary republic.

The Constitution of Kyrgyzstan, dated June 27, 2010, establishes a parliamentary form of government with joint and several parliamentary responsibilities of the Government. The President has the discretionary right to accept the resignation of the Prime Minister, the Government, or its individual members. The President has the discretionary right to terminate the powers of the Prime Minister (Government), but only if an appropriate initiative is taken by the Prime Minister. This feature is characteristic of a balanced-mixed republic.

The Constitution of the Kyrgyz Republic (2010) confirms in paragraph 3 of Article 81 that the Parliament can override the President's veto with a two-thirds majority vote of its constitutional composition. This provision is a characteristic of a mixed republic.

THE FORM OF GOVERNMENT ESTABLISHED BY THE CONSTITUTION OF KYRGYZSTAN DATED MAY 5, 1993, AS AMENDED ON OCTOBER 21, 2007

The last edition of the Constitution of Kyrgyzstan of May 5, 1993, dated October 21, 2007, testified to a tangible “drift” of the form of government in the direction of parliamentarism. The form of government established by this edition further distanced itself from the presidential republic. If the initial version of the Constitution of Kyrgyzstan dated May 5, 1993 established a form of government that, in essence, gravitated mainly to a presidential republic, then the version dated October 21, 2007 fixed a form of government imitating a mixed republic. In its Opinion “The Constitutional Situation in the Kyrgyz Republic” dated December 14–15, 2007, the Venice Commission stated: “Formally, the Constitution establishes a semi-presidential system, but in reality the powers of the President are practically unlimited, and there are practically no checks and balances” (Venice Commission, 2007).

In the Constitution of Kyrgyzstan dated May 5, 1993, as amended on October 21, 2007, the President was determined as the head of state, and not as the head of the

executive branch. The provision on the President as the guarantor of the unity of state power, the coordinated functioning and interaction of its bodies was preserved (Part 3 of Article 42 of the Constitution).

The Constitution of Kyrgyzstan, as amended on October 21, 2007, also fixed such a distinctive feature of a mixed republic as the right of the President to carry out early dissolution of the Parliament (paragraph 3 of Part 6 of Article 46, Part 2 of Article 63). The President of Kyrgyzstan also had the right to initiate legislation (paragraph 1 of Part 5 of Article 46, Article 64 of the Constitution), could convene a session of the Zhogorku Kenesh (Parliament) ahead of schedule, and determine the issues to be considered (paragraph 1 of Part 6 of Article 46 of the Constitution). The Government was also subject to the right of legislative initiative (Article 64 of the Constitution). Moreover, the Parliament was obliged to consider in an extraordinary manner the draft laws defined by the President or the Government as urgent (Part 2 of Article 65 of the Constitution).

The Constitution of Kyrgyzstan contained provisions *that “executive power in the Kyrgyz Republic is exercised by the Government of the Kyrgyz Republic, subordinate ministries, state committees, administrative departments, other executive authorities and local state administration”* (Article 68), that *“the Government of the Kyrgyz Republic is the highest body of executive state power* (highlighted by us) *of the Kyrgyz Republic”* (Part 1 of Article 69) and that *“the activities of the Government of the Kyrgyz Republic are headed by the Prime Minister of the Kyrgyz Republic”* (Part 2 of Article 69) (Constitution of the Kyrgyz Republic, 2007). According to the Constitution, the Government consisted of the Prime Minister, Deputy Prime Ministers, ministers and chairmen of state committees (Part 2 of Article 69). Thus, the President was not a structural component of the executive power and, within the meaning of the Constitution, did not exercise a leading role in relation to the system of its bodies.

The Constitution of Kyrgyzstan dated May 5, 1993, as amended on October 21, 2007, established a partially parliamentary way of forming the government. In accordance with Part 3 of Article 69 of the Constitution, the Government was formed by a political party that won more than 50 percent of the number of deputies of the Parliament elected under the proportional system in the elections to the Zhogorku Kenesh. And although the Prime Minister was appointed by the President, the candidacy of the Prime Minister for approval by the President was presented by the mentioned party. It was the Prime Minister, after being approved in office, who determined the structure of the Government and its personal

composition, submitted them for approval to the Zhogorku Kenesh. The Zhogorku Kenesh, and not the President, approved the structure of the Government and its personnel (Part 3 of Article 69 of the Constitution).

Nevertheless, the form of government established by the Constitution of Kyrgyzstan dated May 5, 1993, as amended on October 21, 2007, cannot be considered a mixed republic. The level of presidentialization of this form of government is high and the degree of influence of the President on the executive power clearly does not meet the criteria of a mixed republic. The Constitution of Kyrgyzstan dated May 5, 1993, as amended on October 21, 2007, does not reflect such a fundamental feature of a mixed republic as parliamentary investiture of the government. The approval by the Zhogorku Kenesh of the program of activities of the Government of Kyrgyzstan was not a condition for its authority. This fundamentally important circumstance distorted the nature of the parliamentary way of forming the government and significantly increased the influence of the President of Kyrgyzstan on the executive branch. Moreover, the absence of a parliamentary investiture of the Government, with an appropriate alignment of political forces in the Zhogorku Kenesh, turned the President of Kyrgyzstan into a real head of executive power, thereby eliminating its dualism.

Although the Constitution contained a provision that the Government in its activities was responsible and accountable to the Zhogorku Kenesh (Part 1 of Article 71), the expression of no confidence in the Government by the Parliament did not entail its automatic resignation and, ultimately, the decision to resign the Government was made by the President (Part 7 of Article 71 of the Constitution). The Constitution stipulated that “after expressing no confidence in the Government of the Kyrgyz Republic, the President of the Kyrgyz Republic has the right to decide on the resignation of the Government of the Kyrgyz Republic or disagree with the decision of the Zhogorku Kenesh of the Kyrgyz Republic. In the event that the Zhogorku Kenesh of the Kyrgyz Republic within three months repeatedly decides on a vote of no confidence in the Government of the Kyrgyz Republic, the President of the Kyrgyz Republic announces the resignation of the Government of the Kyrgyz Republic or dissolves the Zhogorku Kenesh of the Kyrgyz Republic” (Parts 6, 7 of Article 71 of the Constitution) (Constitution of the Kyrgyz Republic, 2007). But in conditions when the existence of the Government depended to a certain extent on the political will of the President, the parliamentary responsibility of the Government was possible only when it met the interests of the President, for example, in a situation where the President sought to avoid responsibility for the

failure of the political course of “his” Government. Moreover, the repeated expression by the Parliament of a vote of no confidence in the “presidential” Government inevitably entailed the early dissolution of the Parliament itself.

Acts of the President did not need countersignature from the Government. At the same time, the Government was constitutionally charged with the obligation to ensure the execution of the acts of the President (paragraph 1 of Part 2 of Article 72 of the Constitution). The combination of these circumstances gave the President the opportunity to impose his political course on the Government in the areas of their joint competence.

In its Conclusion “The Constitutional Situation in the Kyrgyz Republic” dated December 14–15, 2007, the Venice Commission (2007) noted such essential features of the form of government as “excessive concentration of powers in the hands of the President and the absence of a system of checks and balances”. Summarizing its assessment of the form of government, the Commission pointed out that “the main thrust of the new version of the Constitution is to establish by all possible legal means the undeniable supremacy of the President in relation to other state authorities” (Venice Commission, 2007).

THE FORM OF GOVERNMENT ESTABLISHED BY THE CONSTITUTION OF KYRGYZSTAN DATED JUNE 27, 2010

The constitution of Kyrgyzstan, adopted by referendum on June 27, 2010, established a form of government that is often defined as a parliamentary republic. In this manner it was determined, in particular, by the Venice Commission in its Conclusion of June 4, 2010 on the draft version of the Constitution of the Kyrgyz Republic, published on May 21, 2010. At the same time, in this document, the Venice Commission made an important reservation: “It seems that these powers (the powers of the President of Kyrgyzstan. – *R. M., O. D.*) exceed the rights assigned to the president under the proposed system of separation of powers” (Venice Commission, 2007). Obviously, the form of government established by the Constitution of Kyrgyzstan of June 27, 2010 can be more correctly classified as a parliamentary mixed republic. The main differences between this form of government and a parliamentary republic are the strengthened constitutional status of the President, in particular, the discretionary right of the Head of State to terminate the powers of the Parliament in case of its refusal to trust the Government (Part 1 of Article 86 of the Constitution), and the dualistic organization of executive power.

A manifestation of the dualism of executive power in the Constitution of Kyrgyzstan is the requirement for the President to coordinate with the Prime Minister the exercise of personnel powers in the field of foreign policy representation of the state. The dualism of executive power at the same time shows some originality. A separate group of members of the Government – heads of bodies in charge of defense, national security, as well as their deputies are appointed and dismissed by the President. This circumstance enhances the influence of the President on government activity in the relevant areas, while causing a certain risk of its diversity. The difference between the Kyrgyz form of government and the classical mixed republic also reflects the absence of constitutional provisions on the countersigning of acts of the President by members of the Government.

The discretionary right of the President to terminate the powers of the Parliament, the right of the Head of State to appoint and dismiss individual members of the Government, the lack of control over the rule-making activities of the President by the Government through the countersigning of his acts by members of the Government – all these signs indicate that the status of the President of Kyrgyzstan cannot be identified with the status of the president of the parliamentary republics. The election of the President of Kyrgyzstan by popular elections cannot be considered a natural sign of a parliamentary republic.

The elements of the form of government established by the Constitution of Kyrgyzstan dated June 27, 2010 are the parliamentary investment of the Government and its parliamentary responsibility. At the same time, the form of government combines the joint and several parliamentary responsibilities of the Government with the discretionary right of the President to accept the resignation of the Prime Minister, the Government or its individual member. The discretionary right of the President to terminate the powers of the Prime Minister (Government), burdened with the requirement of an appropriate initiative on the Part of the Prime Minister, is a feature of a balanced-mixed republic.

The provision of paragraph 3 of Article 81 of the Constitution confirming that the Parliament can override the President's veto by two-thirds of the votes of its constitutional composition (Constitution of the Kyrgyz Republic, 2010) is also a feature of a mixed republic.

FORM OF GOVERNMENT ESTABLISHED BY A CONSTITUTIONAL REFERENDUM ON APRIL 11, 2021

The constitutional referendum held on April 11, 2021, brought about a significant revision of the form of government. The new form of government closely resembles

the one established by the original version of the Constitution of Kyrgyzstan on May 5, 1993. The Constitution of Kyrgyzstan of May 5, 1993 concealed the dominant position of the President of Kyrgyzstan in the state mechanism and the administrative subordination of the Government to the President through formal provisions on the independent status of the latter. The main difference between these forms of government lies in this fact. The Constitution of Kyrgyzstan demonstrates the drafters' intention to avoid the dualism of executive power found in a mixed republic. As such, the President is constitutionally designated as the head of the executive power, and the principle of their personal responsibility for the activities of the executive power bodies is proclaimed. Thus, the potential authoritarianism of the government established by the April 11, 2021 referendum is high, similar to that of a traditional presidential republic.

The Venice Commission's Opinion on the draft Constitution of the Kyrgyz Republic, dated March 19–20, 2021, states that “the system proposed in the draft Constitution represents a return to a strong presidential model” (Venice Commission, 2021). The form of government established by the Constitution of Kyrgyzstan on April 11, 2021, is classified as presidential by the Venice Commission. However, this classification appears to be conditional. The main differences between a parliamentary republic and a presidential republic are the lack of a strict separation of powers and the presence of elements that are not typical of a presidential republic. The Constitution, specifically paragraph 2 of Article 66, enshrines the provision that the President of Kyrgyzstan ensures the unity of state power (Constitution of the Kyrgyz Republic, 2021). The president is constitutionally defined as the guarantor of the unity of state power and the coordinated functioning of its bodies. This is a distinctive legal feature of a mixed republican form of government. Article 70 of the Constitution states that the President of Kyrgyzstan appoints the Chairman of the Cabinet of Ministers, his deputies, and other members of the Cabinet of Ministers with the consent of the Zhogorku Kenesh. However, this provision contradicts the logic of the organization of state power in a presidential republic. Based on the content of this article, it is clear that the consent of the Zhogorku Kenesh is founded not only on formal legal but also on political grounds.

The presence of the right of legislative initiative by the President of Kyrgyzstan and the Chairman of the Cabinet of Ministers (paragraphs 2 and 4 of Article 85 of the Constitution) and the obligation of the Cabinet of Ministers to report to the Zhogorku Kenesh on the execution of the republican budget (Article 89 of the Constitution) does not align with the characteristics of a presidential republic.

According to the current Constitution of Kyrgyzstan, the President holds executive power (Article 89, Part 1), decides on the structure and composition of the Cabinet of Ministers (Article 89, Part 2), oversees its activities, issues instructions to the Cabinet of Ministers and subordinate bodies, and monitors the implementation of these instructions. The President has the power to cancel acts of the Cabinet of Ministers and subordinate bodies (Part 3 of Article 89), preside over sittings of the Cabinet of Ministers (Part 4 of Article 89), dismiss members of the Cabinet of Ministers on their own initiative (paragraph 4 of Part 1 of Article 70), and appoint or dismiss the heads of local state administrations (paragraph 6 of Part 1 of Article 70). According to the Constitution of the Kyrgyz Republic (2021), “the President is personally responsible for the results of the activities of the Cabinet of Ministers and the executive branch”. However, it is worth noting that the status of the President and the Cabinet of Ministers is defined in different sections of the Constitution, specifically in Chapter I and Chapter III of Section Three. The regulation of executive authorities cannot be explained solely by the principles of organizing state power in a presidential republic.

The referendum held on April 11, 2021 established an eclectic form of government, which is reinforced by the provisions on the status of a special body named the People's Kurultai. In the Constitution, this body is referred to as the 'public representative assembly' (Article 7), while the Zhogorku Kenesh is referred to as the 'highest representative body' (Article 76). This raises the question of how the representative nature of the Zhogorku Kenesh and the People's Kurultai are correlated. The establishment of the People's Kurultai challenges the legitimacy of the Zhogorku Kenesh, particularly in situations where the decisions of the Zhogorku Kenesh conflict with the recommendations of the People's Kurultai or when the Zhogorku Kenesh rejects a bill proposed by the People's Kurultai. Additionally, the People's Kurultai can be exploited by the dominant ruling entity, namely the President, to justify their own decisions that contradict those of the Zhogorku Kenesh.

Part 2 of Article 7 of the Constitution states that “the organization and procedure for the activities of the People’s Kurultai are determined by the Constitution and the constitutional law”. However, the Constitution does not provide any provisions on the organization and operation of the People's Kurultai, which means that there are no guarantees of its representative nature. The constitutional provisions on the status of the People's Kurultai are fragmentary, which makes it possible for its nature as a body of popular representation to be distorted at the legislative level.

The Constitution of Kyrgyzstan has several defects in the legal regulation of the President's status, particularly in hypertrophying their power. According to Part 1 of Article 66, "The President is... the highest official" (Constitution of the Kyrgyz Republic, 2021).

According to the theory of separation of powers, the president is one of the highest organs of the state, alongside the parliament, the government, the highest judicial body of general jurisdiction, and the body of constitutional jurisdiction. The power of the president would have been supreme, leading to the subordination of all other higher organs of the state to the presidency. The implementation of the principle of separation of powers involves a system of checks and balances. The highest bodies of the state, including the president, are subject to these checks and balances, indicating their equal status. Thus, the definition of the president as the highest official of the state may lead to a distorted understanding of the relationship between the president and other high-ranking bodies of the state.

Paragraph 1 of Part 2 of Article 70 of the Constitution states that the President of Kyrgyzstan "can initiate a referendum or it can be initiated by at least 300,000 voters or the majority of the total number of deputies of the Zhogorku Kenesh" (Constitution of the Kyrgyz Republic, 2021). Based on the constitutional provision cited, it is important to note that the appointment of a referendum is at the discretion of the President and not a constitutional duty. It is possible for the President to block a referendum initiated by voters or the Zhogorku Kenesh for personal or political reasons.

The Statement of Justification for the Draft Law 'On the Constitution of the Kyrgyz Republic' proposes that "the Presidential Administration should be responsible for ensuring the activities of the Government, in order to optimize the number of state employees" (Statement of Justification, 2021).

In situations where the president holds full executive power and heads the government, but the constitution also establishes the cabinet of ministers as a collective governing body of executive power, the latter also assumes the functions of the presidential administration. Therefore, having the Administration of the President of Kyrgyzstan as a structurally separate body of state power, in addition to the Cabinet of Ministers, appears to be unnecessary. The constitutional provision in Part 2 of Article 89 states that "the Chairman of the Cabinet of Ministers is the head of the Presidential Administration", indicating that the Cabinet of Ministers performs the functions of the Presidential Administration. Chapter III of Section Three "Executive Power of the Kyrgyz Republic" does not establish any norms regarding the powers of the Chairman of the Cabinet of Ministers, which reflects

their role as the head of the Presidential Administration. The constitutional regulation of the Chairman of the Cabinet of Ministers' status includes provisions that the President “can give instructions to the Cabinet of Ministers” and chair its sittings. This indicates that the Chairman of the Cabinet of Ministers is responsible for ensuring the execution of the President's powers.

Article 70, Part 11 of the Constitution establishes that “the President exercises additional powers as provided by the Constitution and laws of the Kyrgyz Republic” (Constitution of the Kyrgyz Republic, 2021). This grants the President broad authority. As the President holds a dominant position in the state mechanism, legislative expansion of the President's constitutional competence could lead to an uncontrolled increase in their power. The political situation in Kyrgyzstan is characterised by a significant issue of abuse of presidential power, as noted by the Venice Commission in 2021.

The Constitution of Kyrgyzstan, adopted on April 11, 2021, grants the President the power to halt the legislative process during the promulgation stage of a law. According to Article 87 of the Constitution, 'The law passed by the Zhogorku Kenesh is sent to the President for signature within 14 working days. The President signs it or returns it with objections to the Zhogorku Kenesh for reconsideration within one month of receiving the law.' If, after reconsideration, the law is approved in the previously adopted version by a two-thirds majority of all Zhogorku Kenesh deputies, it must be signed by the President within 14 working days of receipt (Venice Commission, 2021).

The act of refusing to sign a law that has been approved by a two-thirds majority of the Zhogorku Kenesh, despite the President's veto being overcome, is not a criminal offence. Therefore, the President is not obligated to sign the law passed as prescribed in Part 3 of Article 87 of the Constitution “The President may choose not to sign a law that has been approved in the previously adopted version by a majority of at least two-thirds of the total number of deputies of the Zhogorku Kenesh, even though it is prescribed in Part 3 of Article 87 of the Constitution”. One possible solution to this issue would be to include a provision in the Constitution stating that if the President fails to sign a law within the designated timeframe, which the Zhogorku Kenesh has overridden the President's veto on, the law will be considered signed and put into effect.

The Constitution of Kyrgyzstan, adopted on April 11, 2021, includes provisions regarding the constitutional status of the President that are considered reactionary. According to Part 6 of Article 116 of the Constitution, “the President signs the law

on the adoption of the Constitution, amendments, and additions to the Constitution” (Venice Commission, 2021).

According to the concept of constituent power, the people's constituent power is primary in relation to derivatives from it. This includes established authorities such as legislative, executive, and judicial bodies of the state. Constitutional laws that introduce new norms into the act of constituent power, the constitution, are also acts of constituent power. The President, as a representative of one of the established powers derived from the founding power, is not entitled to exercise the right of veto or the right to promulgate constitutional laws. Granting the President the power to sign constitutional laws provides an opportunity, contrary to the corresponding provision of the constitution, to impede the implementation of decisions made by the constituent power of the people by not signing the constitutional law.

The constitutional referendum of April 11, 2021 established a form of government with several fundamental shortcomings. The President of Kyrgyzstan holds a dominant position in the state mechanism, rather than a balance of 'separated powers'. The Venice Commission explicitly states that “in the case of the draft Constitution under consideration ... the principle of separation of powers is not implemented” (Venice Commission. On The Draft Constitution...). The separation of powers in such an asymmetric system creates a risk of the degradation of statehood to a state of political monocentrism (Krasnov and Shablinskij, 2008, pp. 11–12).

As there is no stable party system in Kyrgyzstan, unlike the party systems of developed democracies, the Kyrgyz government should establish the necessary conditions for the development of political parties. However, the form of government established by the constitutional referendum of April 11, 2021 does not provide political parties with the necessary incentives to develop. The form of government weakens the influence of political parties on the state mechanism as it does not establish means for their direct participation in the process of forming the government. The method of forming the Cabinet of Ministers is non-parliamentary, and the parties represented in the Zhogorku Kenesh cannot determine the political course of the government, make daily adjustments to it, exercise effective control over its activities, or hold it accountable.

The Constitution of Kyrgyzstan, established on April 11, 2021, does not provide any constitutional mechanisms for resolving conflicts between the President and the Zhogorku Kenesh that may arise due to the unsuccessful policies of the President-led government. These conflicts are almost inevitable when the parliamentary

majority and the President represent opposing political forces. However, the conflict between the President and the Zhogorku Kenesh cannot be resolved through either the parliamentary responsibility of the Cabinet of Ministers or the dissolution and early elections to the Zhogorku Kenesh. This is because these institutions are not recognized by the form of government established by the Constitution. The lack of constitutional mechanisms to resolve conflicts between the President and the Zhogorku Kenesh may lead to their resolution through political or forceful means.

Combining the roles of Head of State and Head of Executive Power in the President of Kyrgyzstan has an obvious consequence: the inability to ensure unity of state power. The provision in the Constitution that the President of Kyrgyzstan is responsible for the security of state power is merely a legal fiction. The president's role as head of the executive powers precludes him from performing coordination and arbitration functions. As a coordinator-arbitrator, the president must not interfere with the competence of other state authorities, violate their independence, or replace them functionally. This status requires the president to be equally exacting, neutral, and impartial towards all public authorities and their officials. The president's ability to simultaneously act as both a coordinator-arbitrator and the head of the executive branch is hindered by the motivational pull towards the latter role, due to the combination of relevant statuses. This prevents the president from fully realizing their role as a guarantor of constitutional values, coordinator of the mechanism of interaction between authorities, and mediator in state-legal conflicts. In post-Soviet presidential republics, the president has taken on the role of head of the executive branch. However, they have been unable to effectively act as a coordinator or arbitrator within the state mechanism. In the Opinion on the Draft Constitution of the Kyrgyz Republic dated March 19–20, 2021, the Venice Commission directly states that the form of government established by the Law “On the Constitution of the Kyrgyz Republic” “implies a lack of balance between the various branches of power” and “creates a real threat to the separation of powers and the rule of law in the Kyrgyz Republic” (Venice Commission. 2021).

The constitutional structure of Kyrgyzstan acknowledges the negative outcomes of an overly powerful presidency. The government system outlined in the May 5, 1993 Constitution of Kyrgyzstan, particularly in regards to the president's excessive power and its relationship with the executive branch, bears similarities to the government system established through the April 11, 2021 referendum. It is noteworthy that the experience gained from the functioning of a presidentialized republic, established by the Constitution of May 5, 1993, did not seem to have

taught the drafters of the Law 'On the Constitution of the Kyrgyz Republic' anything.

The initiators of the constitutional reform argue in the Justification Note to the Draft Law that the existing system of power is inefficient and lacks mechanisms for accountability (Statement of Justification, 2020). The assertion appears to be unfounded. According to the Constitution of Kyrgyzstan dated June 27, 2010, the Government is formed through a parliamentary process and is held accountable to parliament. The Constitution establishes a form of government that enables voters to identify the responsible party for government policy results during the next Zhogorku Kenesh elections. It also allows for immediate accountability of the Government for the consequences of its policy. The government's form ensures the possibility of inline correction of its course, and the threat of parliamentary responsibility compels the Cabinet of Ministers to consider the demands of the parliamentary majority. However, the form of government established by the constitutional referendum of April 11, 2021, does not include an institution of parliamentary responsibility for the government. Instead, full responsibility for the results of government policy is assigned to the head of the executive branch, namely the President. According to Part 5 of Article 87 of the current Constitution of Kyrgyzstan: According to the Constitution of the Kyrgyz Republic (2021), "the President bears personal responsibility for the activities of the Cabinet of Ministers and the executive branch". However, it is unclear how the President can be held accountable for the results of these activities. It is important to note that the Constitution does not provide for the impeachment of the President based solely on the Cabinet of Ministers' unsuccessful political course. Article 87, Part 6 of the Constitution states that "if the Zhogorku Kenesh deems the report on the execution of the republican budget unsatisfactory, the President assumes responsibility for the members of the Cabinet of Ministers (highlighted by us)". The proponents of constitutional reform question the extent of the President's personal responsibility for the outcomes of the Cabinet of Ministers' activities. In a presidential government, the lack of parliamentary oversight means that society may have to endure ineffective policies until the next election.

It is important that the upcoming elections are not falsified and the incumbent authoritarian president does not secure re-election. However, even if a legitimate and talented presidential candidate is elected, there is no guarantee that they will have a worthy successor.

The fullness of executive power endowed to the president is an unsurmountable relic of monarchism. This is because the reproduction of this regressive and archaic

attribute of the monarchical organization of state power in a republican form of government entails the same consequences. The identification of the president with the executive branch should be considered a reactionary interpretation of the principle of separation of powers.

It is important to note that the rule of law does not allow for the irresponsible exercise of power (Venice Commission, 2020). Therefore, any increase in the president's means of influence on the legislative and executive authorities must be accompanied by a proportional increase in their constitutional and legal responsibility. Additionally, the procedure for removing the President of Kyrgyzstan from office, as established by Article 73 of the Constitution of Kyrgyzstan dated April 11, 2021, indicates the complexity of its actual implementation.

Part 4 of Article 73 of the Constitution states that “the President may be removed from office if the Zhogorku Kenesh accuses them and the Prosecutor General confirms the presence of signs of a crime in the President's actions” (Constitution of the Kyrgyz Republic, 2021). However, according to paragraph 1 of Part 5 of the Constitution, the President appoints and dismisses the Prosecutor General. While the President exercises personnel powers “with the consent of the Zhogorku Kenesh”, the Prosecutor General's dependence on the President raises doubts about their ability to make an impartial decision in an impeachment procedure that could lead to the removal of the President from office. It is suggested that the Supreme Court should be responsible “for determining “the presence of signs of a crime in the actions of the President. Members of the Supreme Court, who are appointed by the Zhogorku Kenesh before reaching the age limit” (as stated in Part 6 of Article 95 of the Constitution), will act independently of the President.

The impeachment procedure is complex, and it is important to note that the Prosecutor General, who is appointed by the President, cannot give an opinion on the presence of signs of a crime in the President's actions (as stated in Part 5 of Article 73 of the Constitution). According to the Constitution of the Kyrgyz Republic (2021), the removal of the President from office requires a two-thirds majority vote from all Zhogorku Kenesh deputies within three months of the accusation. According to the Constitution of the Kyrgyz Republic (2021), the removal of the President from office requires a two-thirds majority vote from all Zhogorku Kenesh deputies within three months of the accusation. Failure to reach a decision within this timeframe results in the rejection of the accusation. Therefore, the President will not be removed from office if, within three months of the indictment against them, the Prosecutor General fails to take the necessary action.

There is an issue related to the impeachment of the President. According to Part 2 of Article 73 of the Constitution, “the President can be removed from office for violating the Constitution...” (Constitution of the Kyrgyz Republic, 2021). However, the President can only be dismissed from office if the Prosecutor General concludes that “there are signs of a crime in the President's actions” (highlighted by us). It is evident that not every action of the President that violates the Constitution, such as refusing to sign a law adopted by the Zhogorku Kenesh, in respect of which the President's veto was overridden, or refusing to call a referendum to approve amendments to the Constitution, entails criminal liability.

Therefore, the form of government enshrined in the Constitution of Kyrgyzstan of April 11, 2021 significantly reduces the level of accountability of the government to society.

One issue with the government structure established by the Constitution is the inadequate legal regulation of the constitutional jurisdiction body's status. Paragraph 6 of Article 95 of the Constitution states that 'Judges of the Constitutional Court and the Supreme Court are elected before reaching the age limit' (Constitution of the Kyrgyz Republic, 2021).

Unlike courts of general jurisdiction, members of the bodies of special constitutional control must be appointed and elected for a certain, relatively short period of time. Despite the theory accepted by constitutional law that the profession of a judge requires special knowledge and experience gained in the long-term practice process, but this rule does not apply to members of constitutional jurisdiction. In some countries, law limits their terms of office to a certain age, but this approach is not typical in most democratic countries. In order to ensure the political neutrality and impartiality of the constitutionally competent body, the legislation should limit, together with the establishment of a certain age limit for the term of office of its members, their term of office for a certain period. The requirement that members of the constitutional control body are appointed or elected for a single term of office corresponds to the same objective.

A major flaw in Kyrgyzstan's Constitution of 11 April 2021 is the absence of provisions on the number of members of the Constitutional Court and its procedures for formation. Article 97 of Article 7 of the Constitution states that “the composition and procedures for the establishment of the Constitutional Court and the procedures for the implementation of constitutional proceedings are determined by the Constitution” (Constitution of the Republic of Kyrgyzstan, 2021).

It is of fundamental importance to determine the size of the body of constitutional jurisdiction and regulate the procedure for its formation directly in the constitution.

Failure to do so creates the possibility of legislative changes in the number of judges of the Constitutional Court of Kyrgyzstan and the procedure for its formation, which may be influenced by political interests. Thus, individuals and political entities may attempt to influence the Constitutional Court to make decisions that align with their interests. Furthermore, if the process for establishing the Constitutional Court of Kyrgyzstan is solely regulated by legislation, there is no assurance that this process will not have a significant impact on the Court's activities by the dominant authority in the state mechanism, namely the President of Kyrgyzstan. It is no coincidence that the vast majority of constitutions in countries with a European model of constitutional control establish the size of the constitutional jurisdiction body and determine the procedure for its formation.

The determination of the number of members and the procedure for the formation of the Constitutional Court of Kyrgyzstan is not immutable in its legal status. However, the "hard" procedure of amendment of the Constitution of Kyrgyzstan suggests that the number of judges of the Constitutional Court and the procedure for its formation can be optimised in accordance with the interests of society as a whole, rather than in accordance with the interests of individuals or political forces.

CONCLUSIONS

The form of government established by the Constitution of Kyrgyzstan on April 11, 2021, is potentially harmful to democracy. The Venice Commission has pointed out that "such a form of government can easily develop into an authoritarian one" (Venice Commission, 2021).

The concentration of power in the hands of the President means that the form of government lacks effective checks and balances. Without the necessary institutional restrictions on the President's power, the form of government encourages uncontrolled functional hypertrophy.

The success of democratic reforms in Kyrgyzstan will depend to a decisive extent on the personal characteristics of the President due to the transition to this form of government. However, relying solely on the power of the president is a risky means of achieving democratic change. As demonstrated by world practice, including that of many post-Soviet states, combining the roles of head of state and head of executive power in the person of the president can lead to authoritarianism. Concentrating power in the hands of the Kyrgyzstan President will likely reinforce the authoritarian traditions already present in Kyrgyz society.

The combination of the roles of head of state and head of executive power in the person of the president is a regressive genetic trait inherited by the presidential

republic from absolute monarchy. In parliamentary and mixed republics, the democratic principles of state power organization have led to the replacement of sole leadership with collegial executive power. In the modern era of republican government, it is becoming less common for one person to hold both the position of head of state and head of executive power in a 'pure form'. This combination is unnatural for the principle of popular sovereignty. The combination of the president's roles as head of state and head of executive power can lead to authoritarianism in presidential republics. This is evident in countries where the president is the head of the executive branch, both in practice and often in law, resulting in a phenomenon known as super-presidency. The initiators of the constitutional reform in Kyrgyzstan should be reminded that the empowerment of Hitler with the powers of both Reich Chancellor and Reich President paved the way for him to absolute power and the country to totalitarianism. Can the initiators of the constitutional reform name a post-Soviet state where having the president serve as both head of state and head of executive power has led to the formation of a fully developed civil society and a democratic political direction? It is worth noting that in Western and Central European countries, adherence to the principles of democratic state building has led to the rejection of the presidential form of government and significant constitutional limitations on the power of the head of state.

The excessive presidentialization of the form of government in Kyrgyzstan may lead to the development of super-presidentialism and the erosion of democratic institutions that have not yet been strengthened. The authoritarian nature of the government may also provoke revolutionary changes in the country's political system.

To prevent the transformation of the President's power into a personal dictatorship in Kyrgyzstan, it is crucial to maintain and increase the level of influence of the Parliament on the executive branch. Additionally, creating constitutional conditions for the development of a super-presidency can provide valuable political experience for building a democratic state in the future.

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