



Round table

Constitutional Reform in Kyrgyzstan as of May 2007

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Participants:

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Bakyt Beshimov: We often compare our Constitution with the U.S. Constitution and say that the U.S. one was written 200 years ago and there have only been 5-6 amendments introduced since. I think it is not constructive. Constitutional reform is influenced by the following things: (1) historical experience in the creation of systems that have regulated society; (2) experience of political struggle that means the presence of opposition and the construction of certain development models and (3) the existing political culture. It cannot be measured by some kind of meter, it has own peculiarities and there are various fluctuations. That is the basis of constitutional reform.

What is the meaning of constitutional reform? It is to give an opportunity to regulate relations in society among such components as person, state, and society. Secondly, it is necessary to define the power relations in society. In what way should they exist? Should society be free or regulated? And thirdly, which rights the citizens will have. And all other things, such as parties etc., come from these notions.

Let us examine a typical Kyrgyz voter. What is he thinking? He is asking: when there will be elections? Our peculiarity is that ordinary people have become interested by constitutional reform. People have started reading, and in normal conversations are

talking about, how power should be distributed, who should have what powers and how elections should be conducted and it makes me optimistic.

Under the majority system all election processes have turned corrupt. We have to admit that the voter sold his vote in conditions without trust; people did not believe that they could change things and decided that it is better to take money from candidates where they would at least receive some benefit. Pay attention when people are asked on television which parties they know, they say: "What have those parties done for us?" In other words, the majority system certainly promoted the situation where people perceive parties as some kind of charity that render aid to people: builds roads, bridges and etc. That is why without appropriate work in the process of transition from a majority system to a proportional one, only the subject will change – people will still demand material aid from parties, the scale will not change and the essence will remain the same.

There are two reasons for founding parties: either to oppose authority because people are afraid of opposing personally and they start to search like-minded people, or in order to support authority. Earlier there was the "Alga Kyrgyzstan!" party, and now there is the "Labour and union" party. But there is no transition to the situation in society whereby people unite not to oppose authority but for ideas. But signs of it have appeared already.

It is expected that with the transition to a proportional system, voting on regional features will disappear. However, after the April rallies there is such a situation that people will again vote for parties based on regional features, candidates from the north will not get votes in the south and vice-versa. People in the regions say: "We will vote for our guy." The idea of "Lithuanian" voting has been raised already, where the electorate vote not for a party but for separate candidates (from a party) by name.

The issue is different: who will amend the code of elections and play the main role; The Central Election Committee, the president's administration or parliament? The Central Election Committee will act in favor of the strongest. I think it was so, is presently and will continue to be so, and the public should influence the process of the adoption of a more or less real and fair code of elections.

As for parliament, one part benefits those people who vote on party lists, but this part is itself divided into those who prefer the "Lithuanian" variant and those who insist on common voting for the party. Someone benefits from voting on party lists but wants to preserve single mandate constituencies at the same time. Parliament members who "privatized" their constituencies want such a variant. I think that we have to transfer or otherwise not transfer at all, since intermediate variants will yield nothing.

The mission of the president's administration is to strengthen positions of authority. Does it need a parliament with strong leaders? They are competitors prior to

presidential elections. That is why, as it was in the past, the administration will try to regulate it somehow.

In conclusion I want to say that it is good that our society and citizens started to approach constitutional reform consciously and wisely; it is a big step forward.

With time contradictions will grow between the main players who deal with constitutional reform and the expectations of the people. If a thinking society gathers a public majority and plays its role in implementing constitutional reform, Kyrgyzstan will make big steps forward. But I do not think it will happen, most likely there would be parity and everything will be the same.

Valentin Bogatyrev: The problem is that we do not know why we are conducting reform. Of course, if the country has ideas about its future and concrete objectives, the Constitution would serve as a tool to achieve those objectives. If those objectives required dictatorship, we would have adopted the relevant constitution quickly. In other words, we at least would have known how to do it. The same applies for values. The Constitution is born of values. Unfortunately, we are weak on ideals and values; old values have failed, and we do not have new ones yet. As a result, for the time being we still do not have any philosophy of the Constitution, and if we do not have one then we only have a mixture of Soviet and Western models of the Constitution. We just see a political struggle between politicians around the issue of the Constitution.

And the main point is that specialists are out of the process; for the last six months no specialist has taken part in the process. In other words, politicians are conducting constitutional reforms, and their desire is to get access to resources. That is why we can observe a struggle for the executive branch of power, who will control and form it. It is evident in the latest editions of the Constitution that there is no article on how parliament is dismissed. This is because nobody is interested in parliament, and everybody is interested in control over the government. That is why when excellent specialists come to our country I am really sorry for their efforts. They propose perfect variants and models, systems and what and how to do certain things but our society is totally indifferent to this. And right now mental changes are more important for us than constitutional mechanisms.

About the status of law in society... In general, we never acknowledged laws either during Russian nor Soviet times or since; we lived not according to laws, but according to other rules. The status of law in our society is very low.

Regarding the status of central authority... To be honest, we never had it and we do not want to know it. We do not realize what we should do with it because our people pose the question why the authority belongs to one person and not them. That is an issue of all Kyrgyz people wanting to be president.

In fact the content of the Constitution is not as important as the process because during the process all mental changes happen. Indeed, people actively participate in the process; they turn their minds toward law, the state and the idea of who we are. And here a very important role belongs to parties as rule keepers, and in the first place to the state. But in this country nobody can take the controlling role because we do not have such a party, even the authorities do not have one. And the role of parties is important in an educational aspect as well. As Beshimov said, we would deal with partial and endless amendments and I think that we will suffer for 5-10 years as additions are introduced to the Constitution. Somebody even proposed that we transfer to the English system and live without a Constitution...

Zainidin Kurmanov: I want to say that a sense of law of Kyrgyz people existed before Russians but they did not have actual laws. Relations between tribes were established according to common law; it was an oral one. And even today custom has more power than law. Everyone breaks laws but if someone breaks tradition, it is considered to be bad form and it is punished.

And as for central authority, Kyrgyz people had conventions, kurultais, before Russians but what were the priorities for participants' selection? High morality. A person who committed bad deeds and admitted the impoverishment of their own tribe could not be a ruler. Kyrgyz people were obedient to law and we have to admit this, and even in those days Kyrgyz people delegated functions and responsibilities between tribes.

Right now morality is not a criterion for our parliament members; we elect those who are richer, who will paint a fence and build a bridge. It seems to me that the basic conditions for a mental revolution are a return to traditions and values. We do not have to return to our archaic past but to incorporate Western democracy values into our national values.

Bakyt Beshimov: I agree with you, Zainidin, but before moving ahead we have to look back into our real past because excessive romantacising of the past can lead to a dead end. It is better to acknowledge that we failed at some point. If people were really law abiding, why were the Kyrgyz tribes always torn apart from the inside? Why there were so many wars among tribes? There were plenty of unworthy types among certain rulers. When the Russians came and elected volostnois (bolushs), each tribe promoted their own representative. If now there are bribes, then in the past sheep were killed; that was how it was. The Kyrgyz people quickly developed skills in the class fight and robbed their own people during collectivization. One always wants to look better than one really is.

Tamerlan Ibraimov: I agree that constitutional reform is not an end-point in itself. The Constitution is the ontology of our fears and is an attempt to avoid certain negative aspects in order not to repeat them in the future. I think the current project for the Constitution is to allay those fears that society and the political elite have. I think that

the struggle for resources that has emerged in the country is part of a normal process that happens in many countries.

The main question is which form of government shall there be? To whom will the government be accountable? Right now the Constitutional Court examines Atambaev's variant of the Constitution. The main issue is who appoints the cabinet and dismisses it. That is why it seems to me that previous constitutions did not introduce real and effective mechanisms to resolve issues. And situations where it is not clear whether the president or parliament is responsible for the government give rise to conflict and become ineffective.

According to the December Constitution, a minister can be dismissed both by the president and parliament meaning the cabinet is in a doubly sensitive situation. As we continue working under this constitution that might become a reason for conflict.

One further point is the appointment of the prime minister on party lists; it is a very complicated system. If we admit that our society has a consensus solution on basic issues, and the president and parliament work in a constructive way, then in general such model is suitable.

If we proceed from the assumption that our political situation is in conflict and it is too hard for president and parliament to work in constructive ways (unfortunately, it is so), in this case the president can influence the process of the election of the prime minister in negative way. That is why I agree that constitutional reform is still far from completion, there are a lot of things still to do.

Today one important issue was raised- the electoral system and political parties. Of course, electoral systems will not eradicate the corruption issue and of course, political parties have been subject to corrupt tendencies. The issue of open and closed lists is being discussed right now. Certainly, if there are open lists, a voter will have an opportunity to influence how representatives of political parties will participate and this will increase the responsibility of parties' leadership and the work of parties assuming democratic principles.

There is a lot of discussion about multiple mandate constituencies. Our politicians are conservative enough and they most likely select the system that they consider more accessible.

In my opinion, a multiple mandate system will promote the creation of a good party system because in this way voters will have more information about the party representatives and the party will orient itself on voters' preferences when compiling party lists.

In conclusion I would like to say that constitutional reform is a very important issue and during recent years society has begun to understand more about reform and the political culture has developed. The process here works on a kind of dilettante level; there is a lot of talk and many projects. One might say that we have to turn to our past but we have to find solutions for modern issues. The issue as to what extent it is possible to conduct effective constitutional reform will depend on political forces. And I want the words of the experts to be heard.

We have to mention that one issue is certainly solved– the issue of the concentration of power in the hands of one person. Now society knows that it cannot be allowed. Furthermore, we have to proceed to an understanding of a good and effective mechanism of management.

Zainidin Kurmanov: I think that the issue of the necessity for constitutional reform has been discussed and we now have to conduct it. The issue of a proportional system is solved too, and society has concluded that no less than half of a future parliament should be elected on party lists. The issue of government and parliament formation is also most likely solved. It is another issue where political struggle becomes senseless if the government is formed by a party, according to article 69, which did not even enter the parliament.

Bakyt Beshimov: The problem is the following: During elections everyone from electioneers to candidates practices corruption but the worst part is that nobody is responsible for this. Until people are punished, until the guilty are imprisoned for corruption and not just fined, all educational work will fail and we will have to wait indefinitely for the mentality to change. Everything should be solved according to law.

David Usupashvili: The formation mechanism of the government is like this: it is formed by parliament members from a party that received over 50 per cent votes at elections, they propose a candidacy to the president and if over half of the members sign it, the candidacy will be approved. But it is only a half-formal process because there is no decision of all parliament members, and the parliament is not all required. It is important how that decision is taken: where and how the majority gathers- in a restaurant or within parliament. Those nuances are not understandable to everyone.

Valentin Bogatyrev: At least one side understands it perfectly- central authority; and those traps that are put in all drafts of the Constitution in both the November and December variants, are well designed. Lawyers in the president's team cope well with the objective of creating visible changes but to leave powerful tools. And people who work in opposition just miss those points. The opposition prepared the way for the November Constitution but not the president's administration. In my opinion, it is more important for them to force the adoption of several amendments, and it is not strictly important what exactly is adopted. Probably, they simply lack the normal intellectual potential needed to track the situation.

Tamerlan Ibraimov: I agree that the authorities have an understanding of what they are doing. It is important to reinforce the mechanism in which they work. And I agree about the opposition: they absolutely did not understand what the result would be. One does not need many abilities to destroy something, 2-3 amendments are enough to spoil a good project. And that is why I think it is necessary and important to work with both parliament members and opposition leaders.

Valentin Bogatyrev: I want to add that these are the birth pains of our opposition. They are together but they have nothing in common. That is why all documents that they work out together can be easily manipulated later.

David Usupashvili: If there is a 5 per cent barrier in one mandate republican proportional constituency, and if elections are held in one month, how many parties will overcome this 5 percent barrier?

Valentin Bogatyrev: There will be about five parties, mostly oppositional. If we elect parliament in autumn but with such positions as it is now, it will be a 70 per cent opposition parliament, and pro-presidential parties will get no more than 30 per cent.

David Usupashvili: What is the reason that administrative resources will not be used? Is it possible that a pro-governmental party or parties will not manage to get a majority in parliament?

Valentin Bogatyrev: I would cite two reasons. The first one is that those people who came to power after March 24, 2005 do not represent a strong unified force and that is why we will not have a situation like that of Georgia; there, there were strong groups that united but we do not have such strong groups. The "Labor and union" party is a party of Bakiev election campaign offices and no more. Since the authority does not have a principal, ideological political unity, the authority's party doesn't either.

And the second reason: in 2005 the prestige of authority was destroyed and today a person in authority is not a respected person but a person to be beaten, criticized etc. That is why it is theoretically possible to found a party of authority but it is very hard to implement it in practice such that it would win at least 30-40 per cent of votes.

David Usupashvili: Proportional elections will bring a parliament of many parties and maybe in opposition to the president. But there is the president, elected by directed nationwide voting and he can cancel any decision of the ministries, or dismiss ministers. In other words, he has enough tools not to let the government become oppositional. What will the result be? Will the president become more obedient to parliament? Or will there be constant conflict between the branches of power?

Valentin Bogatyrev: When I am in bad mood, I say that we have to await a situation of permanent conflict. Indeed, we will have a strong oppositional parliament, political bloc, and civic society. There will be permanent conflicts and it means that the government will constantly change. But when I am in good mood I call it consensus democracy. It is a special kind of Kyrgyz democracy where there is a president, the prime minister is oppositional, and in its turn parliament is against both of them. And there is nothing left except to negotiate, often in the public domain. The result is that it all comes to consensus, and the process goes.

But those agreements are of a temporary character rather than permanent. It is good if negotiation results are cancelled after two months, but for Kyrgyz politicians the process itself is more important than the result.

David Usupashvili: According to which factors will voters define their preferences? According to parties' slogans, for example: "Free education" or "Freedom for business?" Or by regional south-north alignment?

Valentin Bogatyrev: We do not have regional parties. Many parties were founded as regional ones. Their trend is to cover the whole country. Ata-Meken was born in the south – right now they are actively working in the north, Ar-Namyz was born in the north –right now they work in the south. Parties realize that if they do not cover the whole country, they will fail. And parties based on ethnic principles are prohibited in the country.

Zainidin Kurmanov: Parties based on ethnic principles are being founded, they are just masked.

Valentin Bogatyrev: One interesting process has started here: there were factions in parliament based on regional lines, professional features, and this year factions based on belonging to a party started to form. There are two official factions based on party lines and one more announced, so there are three factions in total. Those groups have about 30-40 people, in other words half of parliament and another half does not associate itself on any party feature. Today many decisions are not taken because of the factions' lack of power and majority, and those who are not in factions, by lack of unity. Thus, parliament will destroy itself from the inside out because the factions are interested in participating in elections and increasing their representation. Two factions – Ata-Meken and Ak Shumkar declared their alliance by the end of April and they have the objective of dismissing parliament, as the factions' representatives declared publicly. The only question is how quick it will be. It seems to me that parliament will be destroyed from the inside out because we do not have other ways to dismiss parliament.

Tamerlan Ibraimov: From one side, these are only words. In reality parliament members firmly keep their positions. In other words there is no such confidence yet.

Valentin Bogatyrev: There is no confidence because there are no rules of play, no amendments to bill parties with. If amendments are adopted, the process will be faster.

David Usupashvili: The mechanism of self-dismissal is as doubtful a mechanism as the recall of members of parliament. Parliament's dismissal should be linked to something: budget not approved, etc. The issue of political parties seems to be a tool with which one can achieve something. But there is the question of what is better: to ban election unions or permit them? There is the danger that with such a barrier many political players will be thrown overboard. A five per cent barrier is not an easy one.

Valentin Bogatyrev: I think it is better to ban election unions in the interests of preserving political diversity. Right now nobody unites with Kulov, Baibolov or Tekebaev. An election union is always understood as working for someone.

Tamerlan Ibraimov: In my opinion, it is hard to say that even the strong parties know what they want. I think by permitting unions it is easier to answer the question: "With whom do you side?"

Zainidin Kurmanov: The idea is totally unpopular. Election unions are not popular among parliament members and they will hardly support it. Because there was such a norm, there were elections in 2000 and everyone saw how it worked. Many members who remained from the last parliament convocation would not agree with the norm. Moreover, we have to think about the voters because those unions appear to deceive voters. People realize that as soon as they come to parliament, they will all break up.