

The October 5 events have caused turmoil in political and social life of Kyrgyzstan and have left their mark: the new interim government has come, deputies of the 6th convocation could not abandon their mandates, and now the amendments to the basic law of the country - the Constitution - are coming up.

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On November 17, the [draft](#) law «On the constitution», which was initiated by 80 members of this parliament, was submitted for public discussion. The referendum on the new draft was proposed by the parliamentarians to be held on January 10, 2021.

By the date of adoption of the Constitution of independent Kyrgyzstan - back in 1993 - the document contained 8 chapters and 97 articles. However, it was amended very often afterwards.

The basic law of Kyrgyzstan has been amended 10 times within 27 years of independence. Current amendment is the attempt number 11.

Let's see how the structure of the proposed Constitution will change and whether the country will be parliamentary or will get back to the presidential government with **Kairat Osmonaliev**, doctor of juridical science, and **Edil Eraliev**, lawyer of Precedent law firm.

Why the Constitution was amended 10 times?

Most often, the amendments were made during the regime of the first president Askar Akayev - in 1994, 1996, 1998, 2001 and 2003. Back in 1994, the Constitution was again amended seriously - laws were put to referenda, and the parliament became bicameral.

In 2006, the new Constitution was adopted as the 1993 version was found invalid. But in September 2007, the Constitutional Court reversed the decision and the basic law of 2003 came into force again.

In 2007, the new version of the Constitution read that the parliament became a single-

party, and one person could not be elected as president for two consecutive terms.

In 2010, the new version was adopted again and vetoed any amendments until 2020, and Kyrgyzstan had the parliamentary system of government.

In 2016, the referendum allowed amendments to the basic law, and restricted presidential rights and, vice versa, expanded the rights of the head of the government. At that time, Almazbek Atambaev was the head of state. 1.2 million people voted for these amendments.

Have you lost the Constitution?

Yes, in October 2016, the government office claimed they did not have the original version of the Constitution, but they only had the decree of the Interim Government and the text of the law.

Later on, the then head of the presidential administration, Farid Niyazov, reported that the copy signed by the president was deemed original and was kept in the archives. The 2010 Constitution, in turn, did not require the president's signature.

As it was found out later, Erkin Too newspaper published the text of the original Constitution, while the publication was made after the referendum.

Why does the Constitution need new amendments?

According to the initiators of amendments, they do it at the request of the masses in order to fight corruption in government agencies and to take into account the opinions of the wider population when drafting trends of the national development.

«The need for the constitutional reform is based on numerous factors, including existing discrepancies and gaps in provisions of the existing Constitution, inefficiency of the existing system of government, and lack of mechanisms to hold it liable. These circumstances did not become legal instruments for real promotions in economic and social spheres, which causes fair criticism of the authorities by the society and citizens of the Kyrgyz Republic,» according to the explanatory notes to the draft.

In fact, they do not see either the need for the new Constitution, or the advantages of this version. The current version of the basic law provides for checks and balances between the branches of government, which is missing in the new draft.

Fine, what will change then?

The new version of the Constitution is close to the 1993 version and contains not 9 chapters as the existing one, but 5 - chapters 3 to 7 about the president, government, parliament and judicial authorities have been reduced.

In brief, the main amendments refer to:

- the rights and liberties of citizens,
- the introduction of the People's Kurultai,
- the expansion of presidential powers and holding him/her liable for the formation and performance of the government,
- the reduction of the number of parliamentarians and reduction of their powers.

The proposed version of the basic law changes fundamentally the vertical power structure, and the form of government shifts from parliamentary back to the presidential as was during the rule of Askar Akayev and Kurmanbek Bakiev.

Will the president have more powers?

Yes, he will. According to new amendments, the head of state can be elected for two terms. The term of office is 5 years. However, the president elected in January 2021 will exercise their powers for 6 years and control the executive branch.

The role and powers of the head of state will expand significantly. For example, the president will also exercise executive powers - he may appoint prime minister and form the structure of the government with consent of the parliament. In fact, prime minister will be subordinate to the president and may cancel acts adopted by the cabinet of ministers, whereas the activities of the government will be controlled by the presidential administration (part 2 article 80).

The same refers to the representatives of the executive branch, heads of state administrations and chairs of state committees. He may dismiss them from office at his

discretion or as suggested by the People's Kurultai.

The powers of the president also include the right to initiate draft laws and set a date of referendum at the initiative of at least 300 thousand voters, the majority of the total number of members of the parliament.

Besides, the president will not only head the Security Council, but also form it, as well as the State Security Guard Service and National Guard. If he fails to exercise his powers, the functions of the president will be delegated to the prime minister, not the speaker of the parliament, as it is now.

People's Kurultai? What is it?

According to article 7 of the new draft of the Constitution, People's Kurultai is proposed to make the supreme advisory, consultative and coordinating body of popular rule. Moreover, it will have the right to make decisions regarding development of the state and society, rights and liberties of citizens, as well as to report inaptitude to the position held by representatives of state agencies and local governments.

In fact, the idea of the People's Kurultai is not new. It was suggested 10 years ago, but the law was never adopted. The system of people's kurultai was [set](#) forth in law at the level of local community only.

Kurultai is one of the forms of popular rule, which can raise the question straightforward and issue a yellow or red card to the speaker of parliament or president. The tricky part is the draft Constitution, which reads that Kurultai may convene at the president's initiative, not people's.

It's unknown who will be its members and the principle of their selection. Its efficiency also raises doubts - the decisions made by this body will be of advisory nature, whereas the People's Kurultai won't be able to convene on its own.

Will there be fewer deputies?

Yes, there will. Initiators suggest to cut down the number of parliamentarians from 120 to 90, and their authorities will be reduced, too.

By the way, the decision that the parliament should consist of 90 members had been already made earlier. The constitutional reform of 2003 established that in 2005 the unicameral parliament would be formed - the new composition of Zhogorku Kenesh should have been elected from party lists in the total number of 90 deputies.

The public demanded the reduction in the number of parliamentarians long ago, but in this situation there are concerns that 90 deputies will not be able to stand against the head of state, who can initiate laws, select the composition of the government, etc.

In the new version of the Constitution, the parliament will have to agree many decisions with the president and the People's Kurultai. Now, Zhogorku Kenesh has the right to fix the date of referendum; if the new Constitution is adopted, the president will have the decisive word.

Also, the clause reading that a deputy may be appointed as prime minister or first vice prime minister and retain the deputy's mandate and the voting right at plenary sessions of the parliament is removed now.

Will the government change, too?

In terms of its structure, it won't, but it's not exact. The role of the president will strengthen in the performance of the cabinet of ministers. According to the new draft of the Constitution, he will be in control of the activities of the executive branch, give orders to the government and subordinate agencies, control the implementation of his orders, cancel acts of the government and subordinate bodies, suspend ministers and chairs of state committees from office.

Now, the head of state may attend sessions of the government. The president will also decide the structure of the cabinet of ministers.

Constitutional chamber will not be a part of the Supreme Court?

That's right. According to the new version of the basic law, the Constitutional Court will again become an independent body, as before.

After the April 2010 events, the Constitutional Court was dissolved by decree of the Interim Government, and the Constitutional Chamber of the Supreme Court appeared in 2013.

Constitutional Court, according to the new draft law, will perform the following functions:

- interpret the Constitution officially;
- give opinions to the draft law regarding any amendments and modifications to the Constitution;
- issue opinions about compliance with the procedure of bringing charges against the president;
- solve disputes regarding the competence between the branches of the state power;
- determine cases regarding compliance of laws and regulations with the Constitution;
- issue opinions regarding the validity of international treaties, to which Kyrgyzstan is a member, that wait to come into force.

The decision made by the Constitutional Court shall be final and may not be appealed.

What are the changes in the judicial system?

There are no significant changes in the judicial system. The new version suggests to elect the judges of the Constitutional and Supreme courts before they reach the age limit, 70 years old.

The president, upon consent of the parliament, may appoint the presiding judge and deputies thereof for 5 years. This practice was available before 2010, but many thought the independence of the judicial system was allegedly violated this way. However, according to lawyer **Irina Letova**, the practice showed it discouraged judges, while the chair should be the manager to exercise such control.

According to the new version, a judge of the Constitutional Court may be a citizen of Kyrgyzstan not younger than 40 and not older than 70 years old, with a degree in law and experience in legal profession for at least 15 years.

A judge of the Supreme Court may be a citizen of Kyrgyzstan not younger than 40 and not older than 70 years old, with a degree in law and experience in legal profession for at least 15 years, including at least 5 years as a judge.

A judge of a local court may be a citizen of Kyrgyzstan not younger than 30 and not older than 65 years old, with a degree in law and experience in legal profession for at least 5 years.

They say there will be more censorship?

Yes, article 23 of the new version of the Constitution implies that the authorities will be using it to restrict the activities of undesirable media.

Current version	New version
Article 31	Article 23
1. Everyone has a right to the freedom of thought and opinion.	1. Print media, including electronic media, shows and public events, that contradict the generally accepted moral values, traditions of the peoples of Kyrgyzstan, as well as international standards, are prohibited in the Kyrgyz Republic.
2. Everyone has a right to the freedom of expression, freedom of speech and freedom of the press.	2. Distribution of information, whose content can be harmful to the morals and culture of the people of Kyrgyzstan, in the media shall be restricted or prohibited by law.
3. No one shall be forced to express or reject their opinion.	
4. The propaganda of national, ethnic, racial, religious hatred, gender or other social supremacy calling for discrimination, animosity or violence is prohibited.	

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The clauses about moral values, traditions and culture of Kyrgyzstan are very vague and unspecified. It is also unclear who and how will determine them.

The new version also has no clauses regarding the right of every citizen to receive information about the activities of state agencies, local governments and state enterprises, and the right of every Kyrgyzstan to freely seek, get, retain, use information and distribute it verbally, in writing and in any other way. If the new Constitution is adopted, it's only the media that will have this right.

Can the new Constitution be amended?

Yes, only the referendum fixed by the president at the initiative of the majority of parliamentarians may decide to amend the Constitution. The parliament, at the initiative of the president, may also make such a decision by the majority of deputies or at the initiative of at least 300 thousand voters.

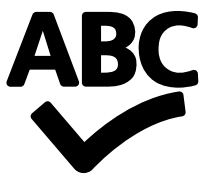
If now the Constitution does not allow to amend the chapters regarding the fundamentals of the constitutional system and the human and citizen's rights and liberties, the new version has no such restrictions.

When the amended Constitution will become effective?

The draft law was published on November 17, 2020 and just over a month is provided for public discussion thereof.

Taking into account the limited budget, the initiators of the draft law propose to hold both the referendum and the presidential election on the same day - January 10, 2021.

If the new Constitution is adopted, all previous versions will become invalid, as is written in the draft law. The parliament and the government will have to bring all existing laws into line with the new Constitution within 6 months.



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