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U.S. Department of State

Kyrgyz Republic Report on Human Rights Practices for 1997

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1998.

KYRGYZ REPUBLIC

The Kyrgyz Republic became an independent state in 1991. Although the 1993 Constitution defines the form of government as a democratic republic with substantial civil rights for its citizens, the President, Askar Akayev, dominates the government. Akayev was reelected in December 1995 in an open, multicandidate presidential election, which was marred, however, by deregistration of three rival candidates immediately prior to the vote. Also in 1995, a new, two-chamber Parliament was elected for a 5-year term. The Constitution was amended by referendum in February 1996 to strengthen substantially the presidency and define the role of Parliament. However, the referendum was marred by serious irregularities. In 1995 a Constitutional Court was sworn in, and a reform program was implemented to improve the quality of the judiciary in 1996. While Parliament has become increasingly active, the balance of power resides in the office of the President. The judiciary is dominated by the executive branch.

Law enforcement responsibilities are divided between the Ministry of Internal Affairs (MVD) for general crime, the Ministry of National Security (MNB) for state-level crime, and the procurator's office for both types of crime. Both the MVD and the MNB deal with corruption and organized crime. These ministries inherited their personnel and infrastructure from their Soviet predecessors. Both appear to be under the full control of the Government and usually conform their actions to the law. Kyrgyzstani borders are manned by Russian border troops under an agreement with the Russian Federation. The Government has little authority over these troops, who sometimes enforce their own rules rather than Kyrgyzstani law.

The Kyrgyz Republic is a poor, mountainous country with a predominantly agricultural economy. Cotton, wool, and meat are the main agricultural products and exports. Other exports include gold, mercury, antimony, uranium, and hydroelectricity. The Government has carried out progressive market reforms. The moderate growth apparent in most sectors has increased, and economic reform is now accepted by the general public. However, the level of hardship for pensioners, unemployed workers, and government workers with salary arrearages continues to be very high. Foreign assistance plays a significant role in the country's budget.

The Government generally respected the human rights of its citizens in many areas, but there were problems with citizens' limited ability to change their government, freedom of speech and the press, due process for the accused, religious freedom, and ethnic discrimination. Prison conditions remained poor. As in the past, but with increasing frequency, journalists were tried, arrested, and convicted under criminal rather than civil statutes for libeling government officials or other prominent citizens. However, in a number of cases journalists received reduced sentences on appeal or by pardon. At year's end, a journalist who previously was serving a sentence under criminal libel had been amnestied, but eight other cases were announced by the President's press secretary as pending. In a number of cases, the accused were held for months without bail before their trials. The Constitution was amended illegally in a 1996 referendum marred by irregularities. In general executive domination of the judiciary made assurances of due process problematic. Local "village elders' courts" levied harsh sentences beyond their mandate, but abuses such as torture and death sentences by stoning apparently have abated. Although sanctioned by the Government, elders' courts are not part of the regular judicial structure, and the Government has made efforts to curtail their activities. The Government does not fully protect freedom of religion. Concerns about ethnic discrimination remain, but in general, the situation of minorities has improved and emigration rates have stabilized at a low level. Violence against women is a problem that authorities often ignore. There is a growing number of street children.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices. There were credible reports of police brutality but these could not be substantiated. There are credible reports of police violence against detained suspects, a holdover from the Soviet era.

Prison conditions (including food shortages and lack of heat and other necessities) are poor, but not so bad as to constitute cruelty. Those detained by the MNB, rather than the MVD are kept in an MNB facility; after conviction, they go to a regular prison.

Procedures for prison visits are not well established. In principle visitors are seldom permitted. However, some citizens, including local human rights activists, claim that they usually can obtain

official permission for a visit through personal connections with the MVD. The Criminal Procedure Code of 1994 is based on the Soviet-era Criminal Procedure Code and established the right for attorney-client visits of unlimited number and duration. In practice, however, an attorney must obtain official permission for every visit.

d. Arbitrary Arrest, Detention, or Exile

The judicial system continues to operate, in many cases, under Soviet laws and procedures, and authorities generally respect these provisions in practice. The prosecutor's office determines who may be detained, arrested, and prosecuted. The Interior Ministry, the MNB, and the General Procurator carry out investigations. Since 1990 persons arrested or charged with crimes have the right to defense counsel. The prosecutor's office responsible for the investigation often nominates the defense counsel, who is required to visit the accused within the first 3 days of incarceration. However, sometimes the accused first sees defense counsel only at the trial.

The Criminal Code permits the procurator to detain suspects for 72 hours before releasing them or accusing them of a crime. The procurator must issue an arrest warrant before a person can be detained. If a suspect is charged, the procurator must advise defense counsel immediately. The accused usually remains in detention while the prosecutor investigates and prepares the case for presentation in court. The prosecutor has discretion to keep the accused in pretrial detention for up to 1 year, but there are conditions for provisional release before trial. After 1 year, the procurator must release the accused or ask Parliament to extend the period of detention. Since independence, there have been no known instances in which Parliament has been asked to extend a detention.

Two days before the 1995 presidential elections, the campaign chairman of an opposition candidate, as well as a campaign worker, were arrested while campaigning. The two were charged with libeling the President by handing out leaflets saying that President Akayev was ethnically Kazakh. The accused and their colleagues denied having any leaflets. The two men were detained without bail (even though bail is usually available in cases of non-violent crimes) for 4 months and were allowed no visitors other than spouses or attorneys. In April 1996, they were convicted of libel and sentenced to 1-year suspended sentences. A third person was arrested in February 1996 on similar charges and held without bail until his conviction in July 1996, at which time he was also given a 1-year suspended sentence.

The government does not employ forced exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, the court system remains largely unreformed, and the executive branch dominates the judiciary.

Cases originate in local courts; they may move to appeals courts on the district or regional level, and finally to the Supreme Court. Separate courts of arbitration handle civil disputes, and traditional elders' courts handle low-level crime in rural areas.

The procurator brings the case to court and tries it before a judge and two people's assessors (pensioners or citizens chosen from labor collectives). The accused and defense counsel have access to all evidence gathered by the prosecutor. They attend all proceedings, which are generally public, and are allowed to question witnesses and present evidence. In fact nearly anyone in the courtroom may be allowed to question witnesses. Witnesses do not always recapitulate their evidence in court; instead they affirm or deny their statements in the prosecutor's files. Defendants in criminal cases are sometimes treated in a

demeaning manner by being kept in cages in the courtroom.

The court may render one of three decisions: innocent, guilty, or indeterminate, i.e., the case is returned to the procurator for further investigation. In May 1996, the Constitutional Court ruled that only the defense has the right of appeal. The decision of a court to return a case to the procurator for further investigation may not be appealed, and the accused are returned to the procurator's custody, where they may remain under detention.

The procurator, not the judge, is in charge of criminal proceedings. Thus, the courts are widely perceived as a rubber stamp for the prosecutor and for high-ranking government officials, and not as protectors of citizens' rights. In addition very low judges' salaries have led to a well-grounded view among lawyers and citizens that all but a very few scrupulously honest judges are open to bribes.

In the past, local elders' courts have exceeded their authority by trying major crimes, using torture to extract confessions, or even levying capital punishment. While there were no reports of abuses this year, many of the elders' courts are located in remote regions, making monitoring and supervision by prosecutors' offices extremely difficult. It is unlikely that these courts receive proper oversight.

The Government has begun to reform the judicial system. Generally accepted international practices, including the presumption of the innocence of the accused, have been introduced. Judges do not hold positions for life. As provided in the Constitution, terms for judges range from 15 years for Constitutional Court judges to 3 years for first term local judges. A new system of court administration is being instituted, and sitting judges are being tested on their knowledge of the law and new civil codes. If they fail these tests, they are removed from office. The process appears to have increased judicial professionalism and a number of judges have been removed due to poor performance on the exams. Some dismissals, however, appear to have been subjective, but most lawyers and judges consider the system to be a fair measure of competence. In what may be an indication of growing judicial independence, the Constitutional Court ruled in November 1996 that the speaker of the legislative lower house had been unconstitutionally elected, since mandated parliamentary procedure had not been followed. The legislature accepted the Court's ruling and elected a new speaker.

The appointment of ethnic Kyrgyz to key positions in the judicial system has led to charges by non-Kyrgyz that the system is arbitrary and unfair, and that the courts treat Kyrgyz more leniently than members of other groups. Although systematic discrimination is not clearly evident, it is credible in some cases. There are also complaints, by Uzbeks and even by ethnic Kyrgyz, that the south is underrepresented in the judiciary.

Economic crimes such as tax evasion, embezzlement, or theft of government property are common. Prosecution for these crimes, however, is relatively rare, and sometimes appears to be directed at opponents of the Government. Legislators have used their parliamentary immunity to avoid being brought to court.

Many observers consider opposition activist Topchubek Turgunaliyev to be a political prisoner. On January 8, Turgunaliyev was convicted of embezzlement, fraud, and abuse of position, stemming from his service as a university rector in 1994. (Turgunaliyev was also convicted in April 1996 of defaming President Akayev and received a 1-year suspended sentence.) He was arrested in December 1996 after organizing a demonstration in Bishkek to protest high unemployment and nonpayment of pensions. The charges on which he was convicted had been brought previously, but dismissed for lack of evidence. The timing of the case, the lack of new evidence, and the disproportionately severe sentence (for alleged embezzlement of \$10,000) suggested that the prosecution was politically motivated. Turgunaliyev was

serving his 4-year (reduced from 10-year) sentence in internal exile at a penal colony in a remote region of Jalalabad oblast, but was released in November and is now residing at his home in Bishkek on parole, required to report to government authorities once a month.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution prohibits unlawful entry into a home against the wishes of the occupant and states that a person's private life, privacy of correspondence, and telephonic and telegraphic communications are protected. The law and procedures require the General Procurator's approval for wiretaps, searches of homes, interception of mail, and similar acts. A change in the law in 1995 weakened these protections by allowing the procurator to give approval for searches over the telephone; thus no written proof exists to verify that the search was approved. Furthermore, in certain cases, law enforcement officers may first carry out a search and then get approval within 24 hours. If approval is not given, any evidence seized is inadmissible in court.

Personnel and organizations responsible for violations during the Soviet period have remained largely in place; however, no widespread or systematic violations of the privacy of citizens were reported. There were concerns by citizens active in politics or human rights issues that the privacy of their communications was violated, but evidence is not available.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

On December 6, President Akayev vetoed a new draft media law, which would have further restricted journalistic freedom. His action leaves in effect a 1992 law which calls for freedom of the press and mass media but also provides guidelines proscribing publication of certain information. The law supports the right of journalists to obtain information, to publish without prior restraint, and to protect sources. However, it also contains provisions that the Government used to restrict press freedom. For example the law prohibits publication of material that advocates war, violence, or intolerance toward ethnic or religious groups; desecration of national norms, ethics, and symbols, such as the national seal, anthem, or flag; publication of pornography; and publication of "false information." The law also states that the press should not violate the privacy, honor, or dignity of individuals. It requires all media to register with the Ministry of Justice and to await the Ministry's approval before beginning to operate. The Ministry has ruled that foreign entities are not entitled to register. An amendment to the Constitution makes the dignity of presidents or former presidents inviolable.

Criminal libel is not a private action. As a criminal charge, such an action must have, at the least, the consent of a prosecutor's office. At times other government agencies appear to have been involved in specific cases of criminal libel.

There are approximately 40 to 50 independent newspapers and magazines, including some with local, not national, standing. There are also a few hours daily of independent television broadcasting and some independent radio stations. However, state television and radio and government newspapers receive government subsidies, which permit the Government to influence media coverage. Additionally, the state printing house, Uchlan, is the only place to print newspapers. Thus, the Government could be in a position to control or pressure even the independent newspapers.

Two print journalists were barred from practicing their profession in 1995 libel convictions. One has returned to journalism (although the conviction for criminal libel has not been overturned), but the other

has not. The conviction of two campaign workers and one journalist for criminal defamation of the President during the election campaign of 1995 emphasized the limits to freedom of speech. These persons were given 1-year suspended sentences in 1996, then released (see Section I.d.). On September 29, the journalist Yrysbek Omurzakov was sentenced to 30 months in a penal colony for criminal libel against a prominent industrialist. At year's end, this case remained under appeal. Also on September 29, the President's press secretary announced eight new cases of criminal libel against an opposition newspaper Asaba. An Osh newspaper was also threatened with court action in late September for "insulting the honor and dignity" of the police in alleged cases of drug corruption.

A vaguely worded new Criminal Code was passed by Parliament and signed by President Akayev in June. It will take effect on January 1, 1998 and could potentially be used to prosecute journalists for criticizing government officials. The existing code was used this year to convict journalists of criminal libel. In November President Akayev publicly requested his legal department to draft an amendment to the Criminal Code transferring libel and slander to the Civil Code.

The editor of an opposition newspaper has arranged on five separate occasions to rent space in Bishkek to reestablish his newspaper, which had been suspended by government action. On each occasion, the deal fell through after potential landlords received warnings by telephone from government officials.

Officials from the MNB (the KGB successor organization) have repeatedly contacted editors to discourage "unacceptable