

THE EXPERT REVIEW
of the draft law of the Kyrgyz Republic
«On Amendments and Supplements to Some Legal Acts of the Kyrgyz Republic»,
initiated by the Government Decree of the Kyrgyz Republic as of 13 June 2013 # 351
(in the version of the Government Decree of the Kyrgyz Republic
as of 6 November 2013 # 595)

Initially, the Government of the Kyrgyz Republic approved the draft Law "On Amendments and Supplements to Some Legal Acts of the Kyrgyz Republic" (hereinafter – the draft law) for consideration by the Parliament of the Kyrgyz Republic in June 2013. The draft has passed consideration in the three standing committees of the Parliament: *the Committee on Agricultural Policy, Water Resources, Environment and Regional Development* (approved) *the Committee on Budget and Finance* (sent for revision) and *the Committee on Human Rights, Constitutional Law and State System* (sent for revision). In result the draft law was not submitted to the Parliament for consideration and was sent to the Government of the Kyrgyz Republic for revision.

On 23 August 2013 the conference was held to discuss the issues of improving the efficiency of public administration with participation of the Prime Minister, members of the Parliament, and representatives of various state bodies, bodies of local self-government, non-governmental organizations and experts. The main issue of the event's agenda was the discussion of the draft law that aimed at strengthening the "vertical" of the executive power. Most of the conference participants provided numerous comments and did not support this initiative of the Government.

However, on 6 November 2013 the Government adopted the decree #595 which, in fact, approved again the original draft law that contained just a few changes and any of the key points that caused the greatest concerns were not reviewed in the draft law. In this regard, our comments and recommendations to the original version of the draft law remain in force. Moreover there are additional comments and recommendations that appeared on the changes that were made to this draft law.

So, the draft law provides amendments and supplements to the laws of the KR "On Local Public Administration", "On Local Self-Government", "On Elections of Deputies to Local Councils", "On Main Principles of Budgetary Law", "On Civil Service", "On Financial-Economic Principles of Local Self-Government" and the Land Code of the Kyrgyz Republic.

The aim of the draft law initiated by the Government is strengthening the vertical of power, ensuring unity of state power in all rayon territorial levels, creating conditions for a unified state policy on socio-economic development of territories, implementation of national and state programs, as well as achieving sensible combination of centralized public administration and decentralized local self-government.

The Government indicates reasons for development of this draft law:

- weakening governability of the territories;

- lack of integrity and coherence of the public administration system;
- lack of effective mechanisms of interaction with the bodies of local self-government and the local community;
- imbalance of the responsibilities and powers of the territorial administration units (especially management of the local public administration does not allow to address the issues of socio-economic development of the territories).

After examining the content of the draft law the Development Policy Institute experts express concerns about the measures proposed by the Government are unlikely to overcome these negative factors in the social and economic situation in the country. Furthermore, these measures may lead to even more disastrous consequences, exacerbate the problems, and increase social tensions. In general, the document forms the governing system that was created by the administration of K.Bakiev in 2008-2009 in the Kyrgyz Republic, which was based on the total centralization, concentration of resources in the center, building of a rigid vertical of power and weakening of communication with the population. We believe it is necessary to turn the attention of the President, the Parliament, the Government and society to the following possible consequences in the country that may result from adoption of this draft law.

I. Disbalance of the constitutional system of governing in the country

- ***Through establishment of rayon councils***

The Constitution of the Kyrgyz Republic unambiguously states that the local self-government is executed by local communities only in the territory of *villages and cities* **directly or through bodies of local self-government - local councils, aiyi okmotu and mayor's office** (Articles 2, 110, 111). Governing in the territory of rayon is carried out by the state bodies – local public administrations that are included in the system of executive state bodies and report to the Government of the Kyrgyz Republic (Articles 83 and 91). At the rayon level the governing is based on the principles of public administration. There is no local self-government at the rayon level. It is inadmissible to create rayon councils, as the Constitution of the Kyrgyz Republic stipulates the types of bodies of power (government bodies and local self-government) and sets their system. *The rayon councils* as a government institution are not specified in the Constitution of the Kyrgyz Republic at all. For these reasons, the rayon councils were abolished in the process of harmonizing legislation with the Constitution of the Kyrgyz Republic. Therefore, **any actions on their establishment/creation and resuscitation are currently non-constitutional and aimed at creating not constitutional "artificial" bodies of power (!).**

- ***Through creation of rayon budgets***

Fundamental principles of the power organization in the Kyrgyz Republic, the system and the types of government bodies and local self-government bodies, their main functions and authorities, the structure of the budget system of the republic, including the two-level system of budget are defined by the Constitution of the Kyrgyz Republic. While the issues of organization of governing and budget system are inextricably interlinked and must be coordinated inter se.

The Constitution determines two types of government bodies: state bodies and local self-government bodies (Article 2). Functions and authorities, i.e. the sphere of responsibility of these authorities should be clearly defined and differentiated (Article 3).

In order to perform the designated functions of the mentioned bodies the Constitution defines two types of the budget: republican and local (Article 13). The republican budget is adopted by the Parliament and the local budgets by the local councils (Articles 13, 112). Each of these budgets has its own sources of income and are assigned for different purposes, namely to finance the functions of the state bodies or bodies of LSG, i.e. in order to perform the tasks which are assigned to the responsibility of each of these bodies.

The Government initiative to designate the rayon budget as local budget does not correspond with the mentioned regulations of the Constitution, as the local budget is the budget of local communities in villages and cities - local self-government. As stated above there is not local self-government at the rayon territory, thus such local budget cannot and should not be under the Constitution of the Kyrgyz Republic accordingly.

The power structure and the budget system provided in the Constitution were identified by the people of the Kyrgyz Republic as the only source of power, directly exercising their power in referendum on adopting the current edition of the Constitution in 2010. Before introduction of amendments to the Constitution in the prescribed manner any actions that do not conform to the people's will guaranteed by the Constitution must be considered as UNCONSTITUTIONAL.

Furthermore, **it will lead to a major breach of the Constitution and an imbalance of government system in the Kyrgyz Republic, inability of these authorities to perform the functions and powers entrusted to them by the legislation and the illegal use of budget funds.** Ultimately, this will lead to a deterioration of the situation in the country and regions i.e. decline in the lives of people in the country.

II. Weakening of political stability in the country

- ***Through contradictions to the focus areas defined in the National Sustainable Development Strategy of the Kyrgyz Republic for the period of 2013-2017.***

Given the Government's proposals contradict the section 7 of the National Sustainable Development Strategy approved by the Decree of the President of the Kyrgyz Republic as of 21 January 2013 UP N 11 "On the National Sustainable Development Strategy of the Kyrgyz Republic for the period of 2013-2017". The National Sustainable Development Strategy of the Kyrgyz Republic for the period of 2013-2017 identifies a priority for sustainable development through development of local self-government. At the same time the measures proposed in the draft law by the Government aim at rollback in the development of local self-government and **DIRECTLY CONTRADICTS** the above-mentioned provision of the National Sustainable Development Strategy of the Kyrgyz Republic for the period of 2013-2017.

III. Strengthening of population exclusion from the decision making process

- ***Through interference of LPA in appointment of heads of the executive bodies of LSG – heads of aiyl okmotu and inducing inequality between residents of cities and villages***

The Government proposes to strengthen the role of the akims in the process of election of heads of aiyl okmotu, i.e. the head of aiyl okmotu shall be elected by the deputies of aiyl council from the candidatures suggested by the head of local public administration of the rayon.

This proposal divests the right of the aiyl council deputies to nominate candidates for the position of the head of aiyl okmotu. Thus, the right to determine the head of the executive body of local self-government goes to the state represented by the akim. Citizens can only select the head of aiyl okmotu among three candidates proposed by the akim through the local council deputies. Thus discrimination between cities and villages is induced, since the Government proposes to retain the right to city councils deputies to nominate candidates for mayor's position.

Meanwhile this draft law does not provide a mechanism for selection candidates from among those wishing to be a candidate for the post of the aiyl okmotu head. Consequently, the akim granted full right *in sole discretion* to determine the candidates for the position of the aiyl okmotu head.

These provisions of the draft law create the conditions for legal collision, violate the constitutional rights of citizens to vote and to be elected, increase the risk of corruption component in personnel policies of local self-government bodies.

Also such provisions reduce accountability of the head of aiyl okmotu to the population, as he/she will be primarily accountable to akim, since without being nominated by akim, he/she cannot get this position.

- ***Through violation of the principle of participatory decision-making by local council***

The Government entitles the local council to make a decision on early dismissal of the chairman of the local council by **a majority vote of the total number of deputies present** at the session. The same right to make decision (by a majority vote of the total number of deputies present at the session) is given to aiyl councils on consent for early dismissal of the head of aiyl okmotu for failure or improper execution of laws, legal acts established by the prosecutor's office.

It should be noted that these provisions of the draft law contradict the principles of participatory decision-making by the collegial body – local council.

First, it appears that the developer of the draft law lacks knowledge of the performance principles of the representative bodies of local self-government, obligatoriness of participatory decision-making process - by a majority vote of the total number of elected deputies on issues requiring adoption of normative legal act. Since such legal acts adopted by a majority vote of deputies present may not be valid, due to the disapproval or non-participation of the majority of elected deputies in consideration of the issues.

Second, the developer studied the provision of current legislation in a perfunctory manner. Thus according to the proposed draft law the provision on early dismissal of the chairman of the local council by *a majority of votes of the deputies present at the session* is required, while Article 38 of the Law of the Kyrgyz Republic "On Local Self-Government" the decision on early dismissal of the chairman of the local council requires *a majority vote of the total number elected deputies*. Such proposals on amendments to legislation might result in a **legal nonsense** in legislation.

- ***Through direct interference of akims to the work of LSG***

The draft law proposes that the heads of the rayon state administrations have a right to suspend decisions of the executive body of local self-government in accordance with the procedure established by the Government of the Kyrgyz Republic. Previously proposed draft law permitted not only to suspend, and even to abandon the decisions. Nevertheless, despite the exclusion of "abandonment", this provision still contradict the Constitution of the Kyrgyz Republic, as it implies an unjustified interference of the akims in the activities of local self-government. **This contradicts Articles 3 and 113 of the Constitution, which ensure the**

principle of separation of functions and powers between the state bodies and LSG and non-interference of the state bodies in the authority of local self-government.

Moreover, Article 104 of the Constitution determines the public authority - the prosecutor's office that within its competencies conducts oversight of rigorous and unitary execution of laws by the bodies of local self-government and their officials. Prosecutor's office has the right to bring the protests to legal acts that contradict the normative legal acts of higher legal force. By this draft law the Government, in fact, proposes to create *the second oversight body*, which will operate in parallel with the prosecutor's office.

IV. Weakening of local self-government's capability to finance addressing of local issues and manage own resources

• ***Through transfer of local budgets' revenues to the rayon administrations***

As mentioned above, the initiative of the Government to identify the rayon budget as the local budget does not comply with Article 2-3, 13 and 110-113 of the Constitution of the Kyrgyz Republic, as the concept of local means the budget of local communities in villages and towns, where the management is based on the principles of local self-government. There is no local self-government in the territory of the rayon, thereafter the local budget cannot and should not be under the Constitution of the Kyrgyz Republic.

1) The following are amongst the revenue sources of the rayon budgets:

a) Deductions from national taxes. In this interpretation there is a threat that the percentage of deductions from national taxes in favor of the rayon budgets will be financed by share splitting of these taxes paid to the local budgets of aiyl aimaks and cities. Such interpretation existed in the Law "On Main Principles of Budget Law" in 2007, which led to a decline in the share of sales tax in the local budgets of aiyl aimaks from 100% to 25%.

b) Rental payments for the land of the State Fund of Agriculture Lands that are excluded from the revenue sources of the budget of aiyl aimaks and cities of the rayon status and transferred to the rayon budget.

c) Charges for use of pastures. This revenue resource is eliminated from the list of revenue resources of the pasture users association, which would require a complete revision of the reforms in management of the pastures.

2) The local public administration receives the authority to manage and administer the rayon budget as the local one by violating Article 113 of the Constitution, as well as Article 1 of the Law "On Main Principles of Budget Law", which refer to the ban on government intervention in issues of local self-government, including the formation and execution of local budgets.

3) Financing public authorities such as local public administration and territorial state bodies that are placed directly under the authority of the local public administration at the expense of the rayon (local) budget contradicts Article 37 of the Law "On Main Principles of Budget Law", which regulates expenditure commitments of the national and local budgets. Such provision is unfair as it shifts the responsibility of the state to support

own activities on the local community. To the detriment of the interests of the population the financial resources that are intended to address priority issues of local significance will be aimed at ensuring the activities of the state bodies.

- ***Through weakening of transparency of local budgets and arranging conditions for corruption***

New equalizing system of the budget insufficiency – distribution of subsidies (grants) raises serious concerns. Reform of the distribution of equalization grants which was introduced in 2007 is still valid today and is the basis of all budgetary reform. The level of impartiality and transparency in distribution of the equalization grants has been raised. The intermediate mediatory rayon level was eliminated which demonstrated its ineffectiveness in distribution of the equalization grants. The Government in this draft law proposes to return to the old scheme, to abandon subsidies calculations for each LSG body, to delegate the rayon state authorities the right to distribute money among aiyl aimaks.

Proposed amendment presented in the draft law of the Government of the Kyrgyz Republic to the equalizing system of the budget insufficiency will completely change the budgetary policy at the local level and in the whole system of interbudgetary relations. Refusal to calculate and distribute based on volume indicators of the equalization grants restores the regulation scheme of the budget insufficiency at the rayon level, which took place before the introduction of reforms in 2007. The draft law determines that the Ministry of Finance brings the amount of equalization grants to the rayon level financial management, which singly distributes equalization grants to local self-governments.

This approach allows a significant risk of corruption, the prevalence of the "human factor", low efficiency in distribution of the equalization grants.

The provision which provides the head of the local public administration the right to monitor the use of funds of local budgets raises greater concern. This approach is contrary to Article 113 of the Constitution and Article 1 of the Law "On Main Principles of Budget Law of the Kyrgyz Republic" on inadmissibility of intervention of public authorities in the powers of local self-government, in particular the process of execution of local budgets by local self-government. Currently, supervision is conducted by the Treasury, the deputies of the local council and the rayon department of the Ministry of Finance (indirectly).

Conclusion:

- 1. Abovementioned draft law contains multiple contradictions to the Constitution of the Kyrgyz Republic (Articles 2, 3, 13, 110 – 113).**
- 2. The draft law contradicts the focus areas defined by the National Sustainable Development Strategy of the Kyrgyz Republic for the period 2013-2017 approved by the Decree of the President of the Kyrgyz Republic as of 21 January 2013 UP N 11 "On the National Sustainable Development Strategy of the Kyrgyz Republic for the period 2013-2017".**
- 3. Generally adoption of this draft law will have a negative impact on the development of local self-government and will affect the decline in living standards of citizens, especially in rural areas.**