UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/2006/G/9
8 March 2006

ENGLISH
Original: ENGLISH/RUSSIAN

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 11 (d) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Note verbale dated 2 March 2006 from the Permanent Mission of the Kyrgyz Republic to the United Nations Office at Geneva addressed to the Office of the High Commissioner for Human Rights

The Permanent Mission of the Kyrgyz Republic to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to request its kind assistance in circulating the comments of the Government of Kyrgyzstan* to the report submitted by the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, on his mission to Kyrgyzstan as an official document of the sixty-second session of the Commission on Human Rights.

* Reproduced in the annex as received, in the language of submission and English only.

GE.06-11829 (E) 040406 110406

Annex

REMARKS AND COMMENTS ON THE DRAFT REPORT OF THE SPECIAL RAPPORTEUR OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

Paragraph 75

We cannot agree with the assertion in the report that the judicial system in the Kyrgyz Republic is unable to fulfil its role of effectively protecting citizens' rights. Current legislation is fairly clear about the terms of reference and powers of the judicial system. The consolidation into a single system of the former courts of general jurisdiction and the commercial courts has ended jurisdictional disputes and cut red tape obstructing citizens' access to the courts. Statistics show that the number of cases tried by the Kyrgyz courts is up by almost 23 per cent. This is due mainly to the increase in civil and economic disputes, i.e. to the fact that more and more individuals and businesses are taking legal action to defend their rights. Most of these cases involve property disputes. In the past two years and nine months, 94 per cent of these cases have been resolved to the plaintiffs' satisfaction. Few cases have been appealed to higher courts - on average 20 per cent of all cases over the past three years. In our view, these facts do not support the Special Rapporteur's conclusion that the population increasingly mistrusts the judicial system.

Paragraph 76

It should be stressed that the allegation in the report of widespread corruption in the judiciary cites no convictions of judges for crimes motivated by financial gain.

Given that some Kyrgyz judges do commit acts that are unlawful and discredit their profession, while others commit violations of due process when considering cases, a mechanism for bringing disciplinary proceedings against members of the judiciary was established in 2003. Disciplinary boards made up of judges have the power, where sufficient evidence exists, to sanction wrongdoers in a variety of ways, up to and including the possibility of prematurely terminating their judiciary powers in the manner prescribed by law.

Moreover, in 1996 the Congress of Judges of the Kyrgyz Republic adopted the Judicial Code of Conduct, which stipulates that judges are obliged to act in accordance with the Constitution and laws of the Kyrgyz Republic.

Paragraph 82

We emphatically share the opinion expressed in the report that not only the Constitutional Court and the Supreme Court but all other courts as well should enjoy budgetary autonomy.

Subparagraph 3

Pursuant to Presidential Decree No. 667 of 29 December 2005 on extending the moratorium on the death penalty in the Kyrgyz Republic, the moratorium on carrying out death sentences imposed by the courts was extended with effect from 1 January 2006 pending

the complete abolition of this penalty by statute. It should also be noted that, pursuant to article 2 of this Decree, the Kyrgyz Government was given two months to prepare and submit to the President bills on:

- The accession of the Kyrgyz Republic to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty, adopted by General Assembly resolution 44/128 of 15 December 1989;

- The abolition of the death penalty and its commutation to life imprisonment or a lengthy term of imprisonment, including for persons covered by the moratorium on the death penalty.

Paragraph 83

Subparagraphs 1 and 2

Article 16, paragraph 1, of the Kyrgyz Constitution states that Kyrgyzstan "recognizes and guarantees fundamental human rights and freedoms in accordance with the generally recognized principles and norms of international law and international treaties". Article 16, paragraph 3, gives any person who has been arrested or detained the opportunity "to defend himself or herself personally and to receive legal advice from a lawyer". Article 40, paragraph 1, of the Constitution stipulates that every citizen shall be entitled to competent legal assistance and protection of his or her constitutionally guaranteed rights and freedoms. Article 85, paragraph 12, states: "Every detainee, remand prisoner or person charged with an offence has the right to receive legal advice from a lawyer (counsel) from the moment of arrest, remand in custody or the laying of formal charges" (Code of Criminal Procedure, arts. 42 and 46).

We agree with the recommendation on repealing the requirement that a lawyer should obtain permission from the investigator before gaining access to his or her client.

Subparagraph 5

Metal cages in courtrooms prevent defendants from escaping or fighting with the aggrieved party, which sometimes occurs nowadays.

When the public security situation stabilizes and people have developed better legal awareness, the use of metal cages could probably be discontinued.

Subparagraph 7

We completely agree with the recommendation that, where there is insufficient evidence to convict, defendants should be acquitted. Judicial practice in the last three years indicates that the courts have handed down acquittals in a significant number of cases. The numbers acquitted increased by 22 per cent on average during this period.

Moreover, the Kyrgyz Supreme Court has on numerous occasions argued at all levels of the judicial system for more lenient criminal penalties and wider use of alternatives to deprivation of liberty.

Subparagraph 8

In order to render Kyrgyz criminal policy more humane and make wider use of alternatives to imprisonment, the Ministry of Justice and the Office of the President have drafted bills to moderate and liberalize criminal legislation that will be submitted to the Zhogorku Kenesh (Parliament) by the Department for Legal Policy of the Office of the President. The principal innovation in the bill is the introduction of new types of penalties unconnected with deprivation of liberty, such as restriction of liberty and punitive deduction of earnings. In addition, wider use is being made of alternative penalties such as fines, "triple restitution", community service, punitive deduction of earnings and restriction of liberty for offences referred to in 95 articles of the Criminal Code, and the upper limit of prison sentences has been reduced for offences referred to in 45 articles of the Code.

Subparagraph 9

We agree that cases should be tried within a reasonable time. To this end, higher-ranking courts must have the right to hand down final judgements without referring cases back to the lower courts. To a considerable extent, this matter was addressed by the reform of the Kyrgyz Code of Civil Procedure in August 2004. Thus, the new version of the Code drops the provision that formerly allowed appeal courts to send cases back for retrial. Under the amended Code, the appeal court itself must adjudicate disputes on their merits. Meanwhile, there are now fewer grounds on which the Kyrgyz Supreme Court can set aside the judgement of a lower court and order a review of the case. There are only two grounds for such a course of action. The supreme judicial body may hand down a new judgement in civil cases where a judicial decision has been set aside. By streamlining procedures, these legal amendments have had a significant impact on the time it takes the courts to adjudicate civil disputes.

We agree that the right of prosecutors to initiate supervisory reviews should be abolished, since this procedure compromises the independence of the courts.

Subparagraph 11

In order to implement the provisions of the Convention on the Rights of the Child, the concluding observations on the periodic report of Kyrgyzstan and the goals set out in the Comprehensive Development Framework for the Kyrgyz Republic, Government Decision No. 431 of 14 August 2001 approved the "New Generation" State Programme for the Realization of Children's Rights in the period up to 2010, one component of which is the introduction of a juvenile justice system.

Paragraph 84

The Kyrgyz judiciary shares the view put forward in the report that judicial candidates must have a high level of relevant professional experience, and candidates for judicial positions in the highest-ranking courts should be required to have a prior judicial experience. Accordingly, the Kyrgyz Supreme Court has proposed amending and supplementing the Constitution to ensure that prospective appointees to the Supreme Court have 10 years' legal experience, of which at least 5 years must have been spent working in the courts.

Subparagraph 2

The Kyrgyz Supreme Court agrees that the National Judicial Council, which must be an independent body, preferably composed of judges, should administer the selection procedure for prospective judges.

Subparagraph 4

We cannot agree with the Special Rapporteur's view that, in the procedure for reappointing judges, complaints about judicial decisions made by the prosecutor should be taken into account. Under Kyrgyz law, prosecutors no longer supervise judicial decisions and their complaints and recommendations are considered, in civil cases, alongside those of the other parties to proceedings. This provision ensures the adversarial principle in judicial proceedings and abolishes the prosecutor's oversight powers with regard to the court.

The Kyrgyz Supreme Court also agrees with the views in the report regarding a significant increase in judges' salaries, the provision of sufficient facilities and computers to the judicial system, adequate judicial access to legislative databases, and measures to increase the security of judges and court personnel in the courtroom.

Paragraph 85

Subparagraphs 2, 3, 4 and 5

In order to fulfil its international commitments to protect human rights, the Government has drafted a national strategy document entitled "Comprehensive Development Framework for the Kyrgyz Republic in the period up to 2010". In addition, Presidential Decree No. 1 of 2 January 2002 ratified the National Human Rights Programme for the period 2002-2010. These documents set out the principal objectives for protecting human rights and tackling poverty. A key objective is effective access to justice.

The bar, as an institution of civil society with a key role in administering justice and protecting the rights of individuals and corporate bodies, is currently disorganized in Kyrgyzstan. In practice, following the adoption of the Legal Practitioners Act in 1999, the abolition of the Bar Association has proved ineffective because the Government failed to propose a suitable replacement for the old system. The reform should not be limited to reorganizing lawyers' procedural status, because the bar is not just a component of the judicial system but also a professional organization that society expects to maintain high standards of professional ethics, while ensuring career development and protecting and representing lawyers' interests vis-à-vis the State and civil society and within the legal community.

The Government has taken action to address these issues, for example Decision No. 54 of 4 February 2004, which established the Council for Coordinating Efforts to Improve the Provision of Professional Legal Assistance and set up working groups to prepare draft policy frameworks for reforming the Kyrgyz bar and State-guaranteed legal aid, whose members include parliamentary deputies, representatives of the President's Office, the Prime Minister's Office, the Ministry of Justice, private attorneys, lawyers representing voluntary associations and the Kyrgyz Lawyers' Union, the Soros-Kyrgyzstan Foundation, the ARD/Checci Commercial

Law Project, and the American Bar Association. The aim of the project is to formulate specific proposals to ensure effective access to justice and further develop the institution of the bar in the Kyrgyz Republic.

The policy framework for the reform of the Kyrgyz bar, which has been developed with direct input from practising legal experts, was ratified by Government Decision No. 163 of 21 April 2005.

The policy framework is a set of viewpoints on the present state of the legal profession and its future development.

The Kyrgyz Parliament adopted the bill on legal practitioners and the Kyrgyz bar at its first reading in June 2005.

Pursuant to these enactments, and with a view to providing competent legal assistance to members of the public, lawyers' organizations are organizing a system of continuing education for lawyers that envisages the successful completion of bar examinations.

Work experience and involvement in self-governing professional bodies should not absolve lawyers from the responsibility of upgrading their skills. A system of mandatory advanced training will be introduced in stages through the establishment of an appropriate regulatory framework.

Tests are being introduced that confer attorney status.

Paragraph 86

The efficient application of the law by judges lies at the heart of an independent court system. Given that society has radically changed its ideas about the law and the relationship between the State and the individual, and that existing legislation has been reformed accordingly, the training and re-education of the judiciary is a matter of great importance. To meet this challenge, a training centre for the judiciary was opened in January 1998. The centre organizes refresher training and skills development for judges and court personnel.
