Strasbourg, 16 October 2015

CDL(2015)043*
Engl. only

Opinion No. 821 / 2015

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION

ON

THE RULES OF PROCEDURE

OF THE CONSTITUTIONAL CHAMBER OF THE SUPREME COURT

OF THE KYRGYZ REPUBLIC

on the basis of comments by

Ms Slavica BANIĆ (Former Substitute Member, Croatia)
Mr Vladimir GROSU (Substitute Member, Moldova)
Mr Zlatko KNEŽEVIĊ (Member, Bosnia and Herzegovina)
Mr Konstantine VARDZELASHVILI (Substitute Member, Georgia)

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Table of Contents

I. INTRODUCTION

1. By letter of 3 September 2015, the Chairperson of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Mr Mukambet Kasymaliev, requested an opinion from the Venice Commission on the Rules of Procedure of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-REF(2015)039).

2. The Venice Commission has invited Ms Slavica Banić and Messrs Vladimir Grosu, Zlatko Knežević and Konstantine Vardzelashvili to act as rapporteurs for this opinion.

3. On 8-9 October 2015, a delegation of the Venice Commission composed of Mr Grosu and Mr Knežević accompanied by Ms Svetlana Anisimova from the Secretariat visited Bishkek and had meetings with the representatives of the Constitutional Chamber of the Kyrgyz Republic.

4. This opinion is based on the comments written by the rapporteurs and takes into account the information obtained during the above-mentioned visit.

5. The Constitutional Chamber has submitted the existing and currently applicable Rules of Procedure for an opinion in order to receive guidance on future amendments it intends to make to this text. These Rules of Procedure were adopted by a resolution of the Constitutional Chamber "*on approval of the Rules of Procedure of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, the structure and the number of staff of the Secretariat of the Constitutional Chamber and the regulation on the Secretariat of the Constitutional Chamber*" of 9 July 2013 (with additions from 23 January 2014).

6. This opinion was adopted by the Venice Commission at its … Plenary Session (Venice, …).

II. BACKGROUND

7. The Venice Commission has dealt with questions pertaining to the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic in several opinions since 2010. In the first opinion, the Venice Commission had strongly criticised the abolition of the Constitutional Court by the new Constitution of 2010.[1] It nevertheless welcomed the Kyrgyz authorities' intention of establishing a Constitutional Chamber, even if it was to be a part of the Supreme Court,[2] because, according to the Constitutional Law on the Constitutional Chamber, the latter *"enjoys the necessary degree of independence and autonomy and has a wide enough jurisdiction to function as an effective organ of judicial constitutional review."*[3]

8. The draft Constitutional Law on the Constitutional Chamber (hereinafter, the "Chamber"), on which the Venice Commission adopted two opinions,[4] was adopted on 12 May 2011 and entered into force on 13 June 2011. The Chamber, however, was unable to start its work until the summer of 2013 due to two unfilled vacancies that prevented the Chamber from reaching a

[1] Opinion on the draft Constitution of the Kyrgyz Republic (version published on 21 May 2010) (CDL-AD(2010)015).
[2] Opinion on the draft Constitutional Law on the Constitutional Chamber of the Supreme Court of Kyrgyzstan was adopted (CDL-AD(2011)018).
[3] CDL-AD(2011)018, paragraph 58.
[4] Opinion on the draft Constitutional Law on the Constitutional Chamber of the Supreme Court of Kyrgyzstan was adopted (CDL-AD(2011)018); Opinion on the draft Constitutional Law on introducing amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-AD(2014)020).

quorum. This problem was overcome with the introduction of an amendment to the Law on the Constitutional Chamber, reducing the quorum.[5]

9. In 2014, the Venice Commission adopted an Opinion on amendments and additions made to the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic[6] (hereinafter, the "Constitutional Law"). These amendments were meant to improve the work of the Chamber, but introduced a problematic procedure that gave the Chamber the possibility of providing explanations after rendering a decision. This was criticised by the Venice Commission in its opinion. The amendments are still pending before Parliament.

10. The Joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft amendments to the Kyrgyz Constitution adopted by the Venice Commission in 2015[7] was the last opinion to date that is relevant to the Chamber. These amendments were strongly criticised, because they were going to seriously affect the role of the Chamber by aiming to delete Article 97 of the Constitution that sets out its role. This would have resulted in the Constitution no longer stipulating that the Chamber is a judicial oversight body that reviews the constitutionality of laws, drafts laws and treaties, and annuls them if they are unconstitutional. It would effectively deprive the Chamber's work of a constitutional basis. It also aimed to redraft Article 93.2 of the Constitution that would lead to the Chamber losing its right to exercise judicial functions. This would have represented an enormous step backwards from a system of true constitutional supervision. The Commission welcomed that these amendments were abandoned following the Joint Opinion adopted by the Venice Commission and the OSCE/ODIHR.[8]

11. For the present opinion, the Venice Commission has been requested to assess whether or not the currently applicable Rules of Procedure of the Constitutional Chamber of the Kyrgyz Republic are in line with international standards. It should be noted that the Rules seem to include some of the amendments made to the Constitutional Law, which have not been adopted yet. This means that the Rules depart, to a certain extent, from the current Constitutional Law.

III. COMMENTS

A. General

12. Rules of Procedure, more commonly known as Rules of Court or Court Rules, set out the procedures that govern the proceedings for one or several courts, which must be followed by the parties and their lawyers on matters that come within the jurisdiction of that court or those courts. In other words, these rules provide the practical details for the daily judicial activities of courts.

13. The main objective of such rules is to ensure that access to the courts is secured, that it is fair and efficient.[9] These rules should ideally be drafted by the court itself, which should enjoy a

[5] The amendment was adopted on 26 June 2013 by the Constitutional Law on amendments to the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic".
[6] CDL-AD(2014)020.
[7] Joint Opinion on the draft Law "On Introduction of changes and amendments to the Constitution" of the Kyrgyz Republic (CDL-AD(2015)014) .
[8] Ibid.
[9] See for instance, The Supreme Court Rules 2009 (2009 No. 1603 (L.17) Supreme Court of the United Kingdom), section 2(1)-(3). See also Opinion on the Rules of Procedure of the Constitutional Court of Azerbaijan (CDL-AD(2004)023) paragraphs 5 and 6: *"5. The legal basis of the activity of each constitutional court is usually formed by three kinds of legal regulations having different positions in the hierarchy of norms of the domestic legal order of the state. They play different roles in the process of the complete and coherent legal regulation of the constitutional body. 6. On the "top" of this triad is usually the constitution establishing the jurisdiction of the court, the parties entitled to appeal as well as the constitutional principles on which the activity of the constitutional court*

certain amount of autonomy, within the limits of the constitution and the law on that court and give the court the possibility of modifying the rules without the intervention of the legislator.[10]

14. The Rules of Procedure of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (hereinafter, the "Rules") lack solutions on many issues that commonly relate to the activities of a court, for instance: the possibility of holding sessions outside the Chamber's seat; access of journalists to sessions and follow up of its work; designation of cases in relation to the Chamber's jurisdiction; the rules on establishing the agenda for the session; management of confidential material; archiving documents; documentation centre; library; international co-operation; court working dress for judges (e.g. robes) etc.).

15. Overall, the Rules contain repetitions of the relevant Constitutional Law provisions, often without providing further details. They lack the necessary procedural aspects, which would contribute to legal certainty in their implementation. For example, in several places there are provisions that provide for the submission of an act for the approval by the Chamber, but there are no procedural solutions for cases in which approval is declined. On the other hand, some parts seem to be too detailed, e.g. the election of the chairperson, deputy chairperson and secretary judge or procedures and etiquette during the session of Chamber, which could perhaps be simplified.

16. The Rules also lack administrative provisions. Although the Constitutional Law provides that the chairperson of the Chamber presents the Regulation on administration to the Chamber on approval, which implies a separate act of the Chamber in this regard, it should be noted that administrative activities in constitutional proceedings are intertwined on a daily basis with the activities of the judges and *vice versa*. The Rules are rather poor on provisions that deal with the position of the administration in constitutional proceedings and their relationship with the judges. For example, points 114 and 119 suddenly mention the secretary of the session with a specific role in the session, while his or her position is not defined at all.

17. The order and structure of the provisions could be revised in some places. For example, it would contribute to the clarity of the text if the issue of sessions was brought together in one place and refer to issues of convocation, when sessions may be convened upon initiative, general rules on public sessions and exceptions for closed sessions, which issues are decided by sessions and/or by meetings of judges, postponement of sessions, etc. The same applies to the minutes of the meetings of judges and sessions. These issues are unnecessarily dispersed throughout the Rules. The content of the minutes of the session is a rule (foreseen by the Constitutional Law) from which the minutes of the meeting of judges may differ. The same applies to the minutes of the panel of judges or the judge rapporteur when collecting material during the preparation of a case. All of them could be brought together in one place and, depending on the kind of minutes, have provisions on the possibility of their publication and access. The concentration of related issues in the Rules would greatly contribute to their easy access and to the transparency of the Chamber's activities.

18. The text of the Rules refers to the provisions of the Chamber's acts after the provisions on constitutional proceedings. The former should appear before the latter. Also, there is a repetition of what appears in the Constitutional Law without providing further details, notably for the most frequent acts of the Chamber, which are resolutions and rulings. Although "ruling" is clearly set out, the Rules also refer to special rulings, separate rulings and protocol rulings. The most common term throughout the text is, however, "ruling", which may be enacted by the

---

is to be based. Laws on constitutional courts usually transform these constitutional principles into more concrete norms. Finally, the rules of procedure constitute the next and last level of this triad. They fill in practical details of the everyday judicial activity. The Rules of Procedure should be drafted by the constitutional court itself."

[10] See Opinion on the Rules of Procedure of the Constitutional Court of Azerbaijan (CDL-AD(2004)023), paragraph 9.

Chamber, panel of judges and judge rapporteur, but with different legal effects. It is recommended that this be clarified.

19. Also, the Constitutional Law provides the content of the Chamber's acts (see Article 48), depending on the character of the matter under consideration. It is normal for the content of decisions to differ from the content of resolutions or rulings. Therefore, on the basis of Article 48, the content of each different act should be known in advance and possibly placed before the provisions on constitutional proceedings in the Rules. This would help clarify the rules that foresee the issuance of different acts.

20. The regulation of participants' rights in constitutional legal proceedings, foreseen in Chapter 10 and those provided in Chapter 11, Section 3, both deal with the consideration of the case on the merits during the session (but from a different angle). In order to avoid misunderstandings and misinterpretation, it is recommended that these be harmonised to reduce unnecessary repetitions.

21. The Rules set out very demanding responsibilities for the judge rapporteur. With respect to judges, the Rules took over the current Constitutional Law provisions, which regulate the judges' position during the consideration of a case. The position of a judge rapporteur is almost identical to that in a civil procedure.[11] He or she is obliged to carry out a very thorough consideration of the case - which is then re-examined at the session. It should be noted that the Constitutional Law and the Rules use different language. For example, the Constitutional Law uses the term "*makes a decision*" for certain responsibilities of a judge; while the Rules say that a judge "*issues a ruling*". The language should be harmonised, unless this is a translation problem.

B. Specific

22. The Rules are divided into three sections. Section I entitled "General Provisions" contains chapters 1 to 6 and deals with the organisation and activities of the Constitutional Chamber; the election, replacement and dismissal of the chairperson, the deputy and the secretary judge; their competences; official statements; the establishment of a panel of judges and list of cases and hearings. Section II entitled "Constitutional legal proceedings" contains chapters 7 to 13 that deal with the appeal's procedure, the preparation and assignment of cases, the disqualification and recusal of judges, defining the "participants" to the proceedings, formal procedures, the adoption of decisions and the calculation of deadlines. Section III entitled "Final provisions" contains chapter 14, which deals with the procedure for the adoption of these Rules.

1. Section I, Chapter 1

23. Point 3 of the Rules provides that the Chamber's sessions are convened by and at the initiative of the chairperson, the deputy and the secretary judge. Since the chairperson submits the schedule of the sessions on approval by the Chamber (see point 34. 1-11 of the Rules), it may be concluded that the respective judges that are convoked are bound by it as an ordinary way of holding sessions. But, the initiatives should be referring to exceptional situations.

24. Point 4 of the Rules sets out that the meetings on the organisation of the Chamber's activities, may be attended by the Chamber's administrative staff. Even if transparency should be sought and is useful, it should be possible to exclude staff from some meetings, notably those relating to human resources.

[11] Article 28.2, Article 30, Article 34.1, Article 35.2 and Article 42.3.1 of the Constitutional Law.

2. Section I, Chapter 2

25. Point 7 of the Rules regarding the meeting of judges of the Chamber to elect the chairperson, the deputy and the secretary judge, should provide for a minimum deadline between the convocation of this meeting and the actual meeting itself, so as to allow enough time for judges to plan and prepare for the meeting. This would also exclude any *'ad hoc'* or surprise meetings called on purpose, in the absence of some judges.

26. Point 9 of the Rules covers the candidacies to the positions in the Chamber of chairperson, deputy and secretary judge. The proposal for judges to be elected should not only be made by the presiding judge. All judges should be able to make a proposal, including self-nomination. This is essential to ensure fair elections. This is also covered by Article 6.2, Section 1, Chapter 2 of the Constitutional Law and should be reflected in the Rules.[12]

27. The Special Counting Board (points 11 to 20 of the Rules):

- Points 11 to 20 set out the procedure for the establishment of a special counting board.
- Point 14.3 provides that "*The counting board shall ensure the printing of ballot papers corresponding to the number of judges of the Constitutional Chamber*". This is to ensure that the number of ballots match the number of judges. The Rules provide that the elections take place in one day. It is therefore clear how many judges will be attending the meeting (minimum of seven to have a quorum). To avoid uncertainty as concerns the fate of the unused ballot papers if there should be less than 11 judges in attendance, the following words might be added at the end of the sentence: "*attending the meeting*". This would render point 14.6 redundant.
- Point 14.7 to "*solve conflicts and disputes emerging during the voting*" should not be within the competence of such a board.
- Point 15, it is recommended to add to "*The names of candidates shall be printed in the ballot paper in alphabetical order*" the following: "*for each position separately*", in order to clarify that there will be separate ballot papers for the position of chairperson, deputy and secretary judge.
- In the second paragraph of point 16, after the words "*the judge of the Constitutional Chamber*", the words "*attending the meeting*" should be added.
- According to point 17, "*The results of voting…shall be approved at the meeting of judges*". This formulation is too broad, because approval of the voting results is not a mere formality, but the meeting of judges seems to have the power not to approve it. Moreover, what will happen if the meeting of judges does not approve it? Will there be new elections? What are the grounds for not approving the results of the vote? This needs clarification. Alternatively, the meeting of the judges could just "*take note*" of the results of the voting and not approve them.

However, on the whole, this procedure seems overly complicated and could even lead to conflict. To avoid this, the bulletins could simply be counted in the presence of all judges and the result announced by the oldest 'non-candidate'.

28. Point 24 of the Rules provides that new elections shall take place ten working days prior to the expiration of the term of office of the chairperson, the deputy and the secretary judge. Taking into account that there is a possibility for repeated elections (see point 21 of the Rules), the period of ten working days might be too short. A period of one month prior to the expiration

[12] "*The candidates to the position of the Chairman, the deputy chairman and the secretary judge of the Constitutional Chamber shall be nominated by the judges of the Constitutional Chamber or by self-nomination*".

of the term of office would be more reasonable. Another solution could be to change the wording to - "*no later* than ten working days prior to the expiration".

29. Points 27, 36 and 117 (Chapter 11) of the Rules refer to the "*absence*" of the chairperson. This term should be clearly defined. With the modern means of communication that are available to Courts in this day and age, it might be possible for the chairperson to lead the Chamber even if he or she is not physically present. In particular, the chairperson's function in representing the Court might often have to be exercised in the "*absence*" of the chairperson from the seat of the Chamber.

30. It is unclear in point 29 of the Rules, who makes the "*decision*" for the chairperson, the deputy chairperson or the secretary judge to resign. Is this merely a reference to the expression of their intention to resign? This should be clarified or it might merely be a problem in the translation.

31. Points 29-33 define the rule of resignation of the chairperson, the deputy chairperson and the secretary of state, whereby request for resignation is subject to the approval of the Chamber. If the Chamber denies such a request, the respective person has the obligation to continue performing his or her duties. It does not seem either fair or effective to ask a judge to discharge his or her functions that he or she is no longer willing to undertake. It would, in all likelihood, result in practical problems and may harm the administration of constitutional justice. Accordingly, it is advised to allow resignation from major elective positions on the basis of a personal request without approval.

32. It should be ensured, nevertheless, that the person asking to resign stay in office *ad interim* until their successor is elected. This is important to ensure continuity in the Chamber's work. The same applies to point 32 of the Rules, which sets out that the mandate of the chairperson, the deputy or the secretary judge would end with the acceptance of their resignation.

3. Section I, Chapter 3

33. The list of competencies of the Chamber's chairperson (points 34-35 of the Rules):

- The wording *"manage the preparation of cases and other issues"* in point 34.2 is too vague and needs to be reworded, providing more detail.
- Point 34.4 sets out that the distribution of petitions among judges is a discretionary competence of the chairperson. It does not provide details on how this process is carried out. The Venice Commission strongly recommends that the Rules clearly define the distribution of cases. For instance, the introduction of an automated case-distribution system that takes each judge's workload into account to ensure equal distribution.
- The chairperson approves the staff list of the administration of the Chamber. This competence is not expressly foreseen by the Constitutional Law. If this is meant to be a prerogative of the chairperson on the basis of the regulation on administration, which is approved by the Chamber, it should be clearly prescribed. Otherwise, this responsibility touches upon both the issue of regulation of the administration and its structure, which is approved by the Chamber as a whole.
- Point 34.12 provides that the draft budget (which is probably only a proposal to Parliament) is "*considered*" by the Chamber. However, the Chamber should also have the task of approving the draft budget.
- Point 34.13: As concerns the issue of the chairperson's power to decide whether or not to send a judge on a business trip. In its Opinion on the Rules of Procedure of the

Constitutional Court of Azerbaijan,[13] the Venice Commission considered how such an approach "*might endanger the independence of the judges who would be dependent on the President*". It is recommended, therefore, that this provision be reconsidered and that the chairperson should only be able to object for specific reasons, such as the Chamber's heavy caseload.

- According to point 34.14, the chairperson presents the information on the activity of the Chamber at the end of the year. It is not clear to whom the information is presented and what the purpose of such a presentation is.
- Under point 34.16, the chairperson shall have the right to *"get acquainted with the cases handled by the other judges"*. However, the chairperson is a *primus inter pares* and, except for discussions during sessions of the Chamber, he or she should not be allowed to influence the other judges' decision-making process. In addition, once a case is distributed to a judge, the competence of the chairperson to reassign it to another judge for further consideration or preparation endangers the independence of judges during the established constitutional proceedings. It also endangers the right to a fair trial and therefore should be excluded. The reassignment of a case to another judge should only be envisaged if the judge is ill or the judge, for other objective reasons, is unable to prepare and present the case.
- The use of the term "necessity" in the last paragraph of point 34.16 enables the chairperson to exercise his or her discretion to interfere in the course of constitutional proceedings should the preparation of the case or the views expressed not be convenient.
- In point 35, the issuance of orders in personal situations is not clear. Does it refer to judges or the administration or to both?

34. The competencies of the secretary judge (point 37 of the Rules):

- Point 37.2 needs to clearly list the measures to be used to guarantee the implementation of a decision. It should not be the task of the secretary judge to "guarantee" such implementation.
- Access to updated information on the execution of former judgments under point 37.9, should be made permanently available on the site of the Court, not only once a year.
- It is unclear what is meant by "*information support*" under point 37.10. This may be a problem in the translation.
- The last paragraph of point 37 deals with the drafting of the schedule and should be merged with point 37.4 that also deals with this issue.

35. On the whole, point 37 of the Rules partly overlaps with the competencies of the chairperson (see point 34) and these functions are largely administrative in nature (e.g. points 37-1), 3), 4), 6), 9), 10)). The secretary of the Chamber or the head of administration or other senior lawyer within the secretariat of the Chamber should be attributed with these competencies. The Rules do not provide for the competencies of the head of administration of the Chamber, which would allow for a clear distribution of tasks that distinguishes between each position's responsibilities more clearly.

4. Section I, Chapter 4

36. Point 38 deals with the approval of official statements by the Chamber through the meeting of judges. This is not entirely consonant with the competency of the chairperson to represent the Chamber and to act on its behalf. Moreover, it is not clear what the authors mean by "*official statement"*. Every declaration of the chairperson in public, on television etc. could be

[13] CDL-AD(2004)023, p.12.

considered official. But, in practice it will be difficult or rarely possible to meet this condition. This point therefore needs some adjustment.

37. In Croatia, for example, the chairperson of the Constitutional Court decides on the need to release official announcements (which correlate to statements) regarding individual decisions, rulings or reports or regarding the course of Constitutional Court proceedings not yet concluded or on specific events in the Constitutional Court or on matters pertaining to the position of the Constitutional Court or Constitutional Court judges of greater interest to the public. In the case of announcements pertaining to specific Constitutional Court cases, the announcement may be signed by the judge rapporteur, subject to the prior consent of the chairperson of the Constitutional Court.

38. If the Croatian solution is of help and coincides with the purpose of the official statement in the Rules, then the Venice Commission recommends that this provision be reconsidered in two aspects: one is to supplement the relevant provision with situations in which the official statement may be made and the other pertains to the procedure: should it remain a collective act of the meeting of judges or should it be an independent prerogative of the chairperson?

39. Points 39-40 of the Rules should be reconsidered in light of the comments on point 38 above.

5. Section I, Chapter 5

40. Point 41, second paragraph of the Rules provides for panels of the Chamber, composed of three judges, which are established to consider the petition submitted to them. It is not clear whether a panel of three judges will only consider the issue of acceptance for consideration or also the merits during the appeal procedure. Additional clarification would be helpful and necessary.

41. The respective provision in the Constitutional Law is Article 12.1 part two, which provides that the composition and procedure of panel formation shall be defined in the Rules. The latter's approach to this issue is for the panel of judges to be constituted for each case separately. The chairperson is in charge of such a formation and is only limited by the workload of the judges of the Chamber. This means that every case that arrives at the Court is handled by a different "group" of judges, composed by the chairperson.

42. In this respect, the Venice Commission strongly advocates the principle that the composition of the chambers (in this case, panels) be predetermined by a certain period of time in order to exclude the possibility of influencing the case through an *ad hoc* composition.[14]

43. Such an approach gives raise to another danger, notably the development of diverging interpretations on the issues of admissibility. The Venice Commission's Opinion on the draft Constitutional Law, pointed out that appeals may be beneficial for establishing a common approach with respect to the admissibility criteria.[15] However, they also could lead to an overburdening of the Chamber. The latter might be the consequence of the different positions taken by *ad hoc* panels. This danger could reasonably be reduced by establishing panels that would operate for a certain period of time in the same composition.

[14] See CDL-AD(2011)040; CDL-PI(2015)002, paragraph 30.
[15] See CDL-AD(2014)020, paragraph15.

44. According to point 122 of the Rules, the admissibility of questions asked during the session is decided by the presiding judge of the Chamber.[16] This power apparently allows the chairperson to declare inadmissible questions asked by other judges. This provision should also be revised to make it compatible with the general nature of the Chamber. If the Rules allow for questions asked by judges to be declared inadmissible, such a decision should only be made by the majority of the judges considering the case. At the same time, under point 125 of the Rules, with the permission of the presiding judge, the judges shall ask questions to experts or witnesses at any time. In this respect, it should be noted that the term "*permission*" ought to be interpreted in a strictly formal manner, for the purpose of ensuring the sequence of questions.

45. Point 44 of the Rules sets out, among others that, "*a judge responsible for the consideration of a petition can be replaced being in a business trip*", could lead to abuse. The words "*being on a business trip*" should therefore be deleted. The judge is aware of the scheduled hearings in advance, and it is the chairperson who decides to send judges on business trips (see point 34.13 of the Rules), in line with the provisions that guarantee the presence of judges at scheduled hearings and the normal activity of the Chamber. In addition, the replacement of a judge should be conducted only in very exceptional circumstances. Therefore, the conditions defined in point 44 of the Rules must be exhaustive and in order to avoid any misinterpretation in the practice of the Chamber, point 36.14 should make reference to point 44 of the Rules.

46. In addition, the difference between the judge "*responsible for consideration*" and "*any other judge*" on the panel should be explained. Under other points (e.g. points 66, 67, and 68), the Rules also refer to the judge rapporteur. Is there a difference between the judge responsible for the consideration of the case and the judge rapporteur? This should be clarified.

6. Section I, Chapter 6

47. In point 48 of the Rules, it is not clear if the information on petitions scheduled for hearing will be posted in advance on the official web site of the Chamber. If not, to post the information at least three days in advance will meet the principle of publicity and the public's right to be informed about issues of interest for the entire society.

7. Section II, Chapter 7

48. The wording of point 52 of the Rules should be simplified, because some aspects are identical to point 42. In order to avoid possible confusion, it is recommended to clearly accentuate the essence of point 42, which is the formation or composition of panels of judges and point 52 is the procedure and time limits on receipt of petitions.

49. Point 54 of the Rules deals with the acceptance and rejection of petitions. In order to be able to deal with a high number of inadmissible cases, the system used at the Federal Constitutional Court of Germany could be introduced, in which the head of administration first sends a letter to the applicant of a "*manifestly inadmissible case*" to inform him or her about this fact. It is only when the applicant insists on submitting the application that admissibility is decided by the judges.

50. According to point 57 of the Rules, rulings are adopted by a majority vote of the judges. However, it would be better if they were adopted unanimously, given the three-member panels and the cases' high profile, once they reach the Chamber. The same should apply to point 59 of

[16] According to article 42.1 of the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic Chamber shall consider the cases at its sittings under the chairmanship of the Chairman.

the Rules. For instance, the Rules of the Constitutional Court of Bosnia and Herzegovina provide that an application regarding the adoption of provisional measures must be decided unanimously by a panel of three judges. If unanimity cannot be reached, then the decision is made by the plenary session or the Grand Chamber by a majority of the judges.

51. Point 58 of the Rules touches upon the issue of the applicant's withdrawal of the application upon his or her written request. The Chamber then returns the petition and terminates the case. It would be in the spirit of the Constitution itself, if the Chamber were to resume the case only after being satisfied that there was a breach of the respect for human rights or another outstanding public interest, which imposes the continuation of the case, despite the applicant's withdrawal.

52. Point 60 of the Rules provides for an appeal against an inadmissibility decision by the panel. This is unnecessary because this type of appeal is provided in Article 28.5 of the Constitutional Law. It is not recommended to have provisions in the Rules that duplicate those in the law. Here, the Rules should merely provide technical details, relevant to case management.

53. The wording in point 63 of the Rules is misleading, because it may be understood that both rejection and acceptance of the appeal are expressed by resolution, while point 65 makes a difference between the acts: rejection by special ruling and acceptance by resolution.

54. Point 66 of the Rules is confusing, which may be due to the translation. This provision regulates several situations. For instance: (…) the issue of merging (cases) is solved by the chairperson, pursuant to what procedure?

55. The position of the judge rapporteur in the process of merging cases is a matter for concern. It follows that he or she has the individual power to evaluate whether a certain issue is "multiplied" and may decide on merging it with other cases. It is understood that this power of a judge rapporteur follows from Article 30 (point 1-6) of the Constitutional Law, which provides for the "*obligation of a judge to decide upon the combination within one legal proceeding the interlinked petitions of various persons"* and point 68 (part 1-6) of the Rules, which foresees that a judge rapporteur, in the preparation of a case for consideration "*solves the issue of merging the claims of various persons into one proceeding ...*".

56. The merging of cases should already be dealt with during the admissibility proceedings, when the accurate management of the cases by the administration and panel of judges might contribute to an effective direction of the petitions to a judge rapporteur, who is already dealing with a similar case.

57. The power of a judge rapporteur (during the course of the preparation of a case for consideration) to issue a ruling on separating request, which are beyond the competence of the Chamber, refers to Article 30.1-6 of Constitutional Law by which a judge, *inter alia*, decides on the "...*segregation of requests outside of the jurisdiction which are included in one petition"* and point 68.6 of the Rules, which foresees the "*separation of demands stated in one petition, which are beyond the competence of the Chamber*."

58. Nevertheless, Article 28.3-4 of the Constitutional Law provides that a panel of judges shall refuse to accept a petition should the claim of the petition not fall within the jurisdiction of the Chamber. Unlike the situation in point 66 of the Rules, the Constitutional Law provides for a solution to the problem of petitions that go beyond the jurisdiction of the Chamber.

59. In this regard, the responsibility of a judge rapporteur in connection to such petitions should be reconsidered in the light of Article 28.3-4 of the Constitutional Law. Namely, the actions of a

judge to separate petitions that do not come within the jurisdiction of the Chamber, should be directed to a panel of judges for further consideration and decision.

8. Section II, Chapter 8

60. Point 68 of the Rules defines the powers of the judge rapporteur in the preparation of cases for consideration. This issue was already assessed by the Venice Commission in a previous opinion, where it noted that some of these powers appear excessive.[17] For instance, the judge rapporteur may "*question relevant official and other persons*" and "*decide upon the combination within one legal proceeding the interlinked petitions of various persons or segregation of requests outside of the jurisdiction which are included in one petition*". It would be advisable to allow the panel to decide on the issue of joining different petitions (or at least provide the panel with the possibility of approving or rejecting such a proposal).

61. The Rules may largely define internal procedures and norms applicable to judges or staff of the Chamber. However, the powers such as the right to call and question witnesses should be regulated by law only.

62. It should also be clarified that the Chamber or the judge may have the right to request officials to testify, however, this should be done though a clearly drafted procedure and as part of the hearing (either on admissibility or merits) in a manner similar to that in point 68.5 of the Rules, which states that "*In the event of necessity define the witnesses, experts and other persons to be invited and summoned to the session*".

63. In the third paragraph of point 71 of the Rules: If there is more than one judge rapporteur, rules are needed on how the draft judgment is to be prepared in case of disagreement between them.

64. The words at the end of this paragraph "*and the list of issues to be handled by each judge*"- are instructions given by the chairperson when a case is prepared by several judges rapporteur that leaves room for broad interpretation i.e. the chairperson could influence the judges with these instructions, and in general, influence the way a case assigned to other judges is handled. In order to guarantee the impartiality of judges and not harm public perception, it is recommended that the words "*and the list of issues to be handled by each judge*" be taken out.

65. Points 72 – 75 of the Rules deal with the gathering of evidence. For many constitutional courts, expert analysis is the exception. Constitutional proceedings usually do not relate to the establishment of facts, but to the abstract comparison of a legal norm with a constitutional norm (see also remarks relating to points 68 etc. above).

66. A judge rapporteur is entitled to ask for expert analysis, either from the individual expert, or expert agencies. However, expert opinions of scientific institutions shall be subject to the approval of the Academic Council and are signed by its head. This request is quite unusual. Scientific institutions probably possess a licence or a type of permission for their work and in that regard should be independent, high profile organisations within their field of research. If their analysis is subsumed to the approval of the Academic Council, they might be deprived of their "own view" on certain issues. The approach to this issue is especially important in connection to the power of the Chamber to question the experts on their opinions during the session.

[17] See paragraph 58, Opinion on the draft Constitutional Law on introducing amendments and additions to the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-AD(2014)020.

67. Point 75 of the Rules sets out that "*Experts and specialists shall have the right to refuse from producing the conclusion or opinion only in case of disease which hinders the implementation of their duties or in case they are not experts or specialists the issue in question*". This provision establishes the right for experts and specialists to refuse this duty if they consider themselves to not be experts on the issue concerned. It is noted that this right is not defined in the Constitutional Law, which is problematic in terms of its legitimacy. Hence, it would be fitting to either take this provision out or amend the Constitutional Law accordingly.

9. Section II, Chapter 9

68. Point 78 of the Rules could be supplemented by another ground for recusing a judge, notably *in the event the judge publicly expressed his or her opinion about the legal character of a contested act*.

10. Section II, Chapter 10

69. Point 85 of the Rules concerns parties to the proceedings. It would be more appropriate to have, as a respondent party, not individual officials who sign the legal act, but the institutional/ authors of the contested legal acts e.g. the President, the Government or Parliament. In specific cases, an agency or a particular official will be delegated by these institutions to represent them before the Chamber, but not to act as an individual respondent. Moreover, this would facilitate the enforcement process of the Chamber's decision when a legal act is declared unconstitutional.

70. Although the Rules are very detailed, only point 86 refers to civil procedural law. Other issues could be regulated by such a reference, e.g. points 165 and 166 on the calculation of time frames, for instance.

71. Part three of point 86 of the Rules, foresees the possibility of the Chamber to request the parties to nominate representatives among them with the capacity to define their final position concerning the case under review. Moreover, a very similar situation is provided by point 123, which sets out that during a session, the presiding judge "*will give the floor to all representatives in the case there is a difference in issues which they represent. This rule shall apply to the procedure of granting the right to the closing speech*."

72. In addition, point 88 second paragraph of the Rules mixes the general rights of the parties with specific rights during a session / hearing. These should be separated.

73. According to point 90 of the Rules, the appealing party shall have the right to change the grounds or subject of claims, reduce or decrease the volume of claims or abandon its claims. The term "decrease" seems to be a problem of translation. In the Russian version, the applicant is entitled to either decrease or increase (*увеличить*) the volume of claims. This provision should be more detailed, in particular in what stages of the proceedings the applicant has this right and what the legal consequences are, when it is invoked. For instance, if the applicant increases the volume of the claim after the admissibility proceedings, how is its admissibility considered? The same concerns arise if the applicant changes the grounds or subject of claims. There must be specific provisions in this regard. Also, this provision should include the possibility for the Court to deal with an application on the basis of a public interest, even if the appellant wants to abandon the claim. However, these issues should really be settled by the Constitutional Law and not by the Rules.

74. Point 94 of the Rules regarding witnesses should oblige them to reply to specific questions, but not to inform the Chamber on "all the circumstances". This can lead to lengthy and irrelevant statements.

75. Point 95 of the Rules refers to experts. The position of an expert or a person possessing special knowledge in the stage of a session of the Chamber is unclear. The Constitutional Law foresees that the aspects on which the experts should provide the opinion shall be defined by a judge rapporteur (which is included in the Rules) or by the Chamber. The Rules do not expressively regulate the latter possibility. Does that mean that this provision includes an invitation of an expert who has already provided an opinion and direct invitation by the Chamber of an expert who up to the session has no information about the case?

76. If a file for consideration at the session (point 76 of the Rules) includes the opinions of experts and conclusions of specialists, it is assumed that the expert who has provided the opinion will be invited to the session. In case an expert is invited directly, the aspects for the opinion may be defined only in the session. It should not be necessary to hear an expert who gave his or her expertise in writing, which is not contested by the parties. The expert should be obliged to answer questions, but not to ask questions him or herself. This right of the experts should be removed from the Law.

77. The Constitutional Law (Article 34) allows the expert to get acquainted with the case, ask parties and witnesses questions as well as request the provision of additional material. The extent of these possibilities is problematic.

78. A clear distinction needs to be made between “experts” and “specialists”. The Venice Commission has recommended in its previous Opinion to make the proper changes in the Constitutional Law.[18] The Rules repeat the content of the Constitutional Law in this regard. A clear distinction between experts and specialist should first be made in the Constitutional Law and then in the Rules.[19]

79. It is to be welcomed that the Rules, under point 96, enable private persons and legal entities, state agencies, public associations and international organisations to provide explanations, arguments and assumptions. Such contributions are usually referred to as *amicus curiae* briefs. Towards that end, it should be noted that the Venice Commission may provide such expertise, but can act upon request only. It might be useful to add a provision to the effect that the Chamber, when it is of the opinion that this would be useful, could also actively request an *amicus curiae* brief from international organisations, which are ready to do so.

80. Although there is a cross reference to the Constitutional Law in point 97 with respect to requirements pertaining to interpreters, the reason for this unclear as the Law merely refers to access to an interpreter (Article 15.2) and liability for deliberately false interpretation (Article 42.3.4). There are no other provisions that impose either requirements or a procedure for the appointment of interpreters.

11. Section II, Chapter 11

81. Point 103.3 and 103.4 of the Rules could be merged, as they deal with the same topic, notably of not disturbing the order in the courtroom during a hearing. Point 103.5 should provide some criteria that would allow the chairperson to refuse audio and video recordings. This should not be at the full discretion of the chairperson.

[18] See paragraphs 27-29, Opinion on the draft Constitutional Law on introducing amendments and additions to the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-AD(2014)020).

[19] Legislation regulating the work of Constitutional Court of Georgia also refers to witnesses and specialist and frequently creates confusion.

82. According to point 104 of the Rules, although there should be an effective mechanism to prevent and respond to the misconduct in court, imposition of a fine may only be imposed by law. The law and not the Rules should define the amount and the grounds for a fine.

83. Point 106 of the Rules further sets out that order during the Chamber's sessions shall be maintained by law-enforcement officers. The Venice Commission recommends that the Chamber avoid using police or security officers as a permanent presence in the courtroom. It should introduce a system of court marshals instead, who are part of the Chamber and under its authority.

84. According to point 105 of the Rules, parties and their representatives shall not have the right to use their speeches during the session for political statements and declarations of "*whatsoever nature*". This provision needs clarification. It is not unusual for constitutional proceedings to relate to political discourse to some extent, since it involves examining the constitutionality of legal acts adopted in the course of a political process. Therefore, in specific cases, legal and political arguments may be intertwined. Consequently, a strict application of this provision could have a "chilling effect" on the parties to effectively express their arguments and views before the Chamber.

85. In this regard, it should be mentioned that under point 124 of the Rules, the presiding judge shall have the right to terminate the speech of a party or its representative as well as of other participants in the proceedings where the speaker goes beyond the issue under consideration or uses statements that are improper in form or in content, violating the established rules of behaviour in the courtroom or demonstrates disrespect to the Chamber. This general provision appears quite sufficient to ensure the adequacy of the parties' speeches. Hence, a special provision to restrict "political speech" seems unnecessary and excessive.

86. On the other hand, it may be judicious to impose time limits on the oral arguments presented by the parties' representatives. Such time limits could be indicative and could be extended by the chairperson.

87. Point 110.3 of the Rules provides that a case can be postponed if the Chamber considers that it was not adequately prepared. This provision is too general and too vague: what is meant by "adequate"? In addition, if a case was not adequately prepared, it should perhaps not have been placed on the schedule and considered in a hearing.

88. According to point 113 of the Rules, before the issuance of the final act, the constitutional legal proceedings are subject to termination at any stage on the grounds envisaged in Article 41 of the Constitutional Law, which stipulates that the Chamber shall terminate proceedings on a case when *inter alia* the applicant waives his or her claim. Thus, the ruling of the Constitutional Chamber regarding the termination of proceedings on the case shall deprive the parties of the right to file a repeated petition to the Constitutional Chamber with the same claim and on the same grounds.

89. The grounds for termination of the proceedings as well as depriving the parties of the right to submit a new petition, should only be defined by law. Thus, it would be recommended to delete this provision from the Rules. However, in any case, the decision to terminate the proceedings, should not automatically amount to the deprivation of the right to file a new petition.

90. On this issue, the Venice Commission stated[20] that it cannot be excluded that the submitted petition is revoked as a result of a threat or other form of illegal influence or pressure. The Constitutional Law should provide that the proceedings will be terminated only when the Chamber is satisfied that this was not the reason to revoke the petition. The Constitutional Law could provide that in exceptional circumstances, if there is a compelling public interest, the Chamber has discretion to continue considering the case especially at a later stage in the proceedings. The Venice Commission also recommended that the Chamber be provided with discretion to consider an appeal, even if the challenged act is no longer in force due to exceptional circumstances (in case of a strong public interest).[21]

91. Points 114 and 119.3 of the Rules refer to the *"secretary of the session*". This function should be defined in the Rules.

92. As regards point 116 of the Rules, it is Article 44.2 of the Constitutional Law that regulates the minutes of the session and it is precise in content and as regards its execution. It is understood as an obligatory part of each session. In that regard, there is no place for the clause in the parenthesis which suggests the possibility that they were not kept at the session (i.e. "*in the event that it was kept at the session"*). On the other hand, the functioning of the Chamber is public and sessions are, as a rule, public. The minutes of the session fall under the scope of Article 33 of the Constitution and access to them should not depend on permission of the chairperson.

93. Point 120 of the Rules refers to "*appeals*". It is unclear, however, what type of appeals they are. They cannot be appeals against the final and binding decisions of the Chamber. This might be a problem of translation. Also, this point states that "*usually*" appeals are decided by the majority of judges. What are the exceptions? This needs to be clarified.

94. Point 122 of the Rules refers to the term "*hearing*", whereas points 98 seq. refer to "session". Coherent terminology should be used throughout the Rules, but this may be an issue of translation.

95. Point 126 of the Rules states that a "*document with doubtful authenticity shall not be read or examined*". How will the parties know whether a document is doubtful?

96. According to point 128 of the Rules, in the event that after the closing speeches of the parties the Chamber deems it necessary to ascertain additional circumstances of relevance to the solution of a case or examine new evidence, it shall issue a ruling on the resumption of consideration of the case. This is an unnecessary and cumbersome procedure. In case the judges realise that there are circumstances that should be analysed or witnesses/experts heard, the decision should be made to suspend consideration of the case before the closing remarks are made. After the closing speeches, judges should have the right to clarify the issues raised during the closing remarks. However, it is wrong to reopen the case.

97. Point 131 of the Rules stipulates that the closed sessions of the Chamber shall be attended by the judges of the Chamber, the parties to the process and their representatives. This issue should be and indeed is regulated by the Constitutional Law. Article 13 of the Constitutional Law states that closed sittings are only allowed in cases set out in the present constitutional law. Article 38 stipulates that the Chamber shall announce a closed sitting if necessary for the protection of state secrets, to ensure the security of

[20] See paragraph 22, Opinion on the draft Constitutional Law on introducing amendments and additions to the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-AD(2014)020).
[21] Ibid.

citizens, the secrecy of their private life and safeguarding public morale. Thus, the purpose of repeating these legal provisions in the Rules is unclear.

12. Section II, Chapter 12

98. According to point 140 of the Rules, judges participating in the consideration of the case can propose amendments or present their own draft final act. The amendments proposed orally shall be included in the minutes of the session, or can be submitted in writing, upon request. However, these amendments are a part of the deliberation process and should not be included in the minutes or provided in writing. This would defeat the secret character of the deliberations. The judge who disagrees with the judgment/decision's reasoning should have the right to a separate/concurring opinion. The last two sentences of this point should therefore be taken out.

99. In the third paragraph of point 146 of the Rules, only judges can participate in the deliberation. It might be useful to also admit the law clerk, who assisted the judge rapporteur in the preparation of the draft judgment. This law clerk has detailed knowledge of the case and could provide useful clarifications, when required (this is also relevant for point 133 of the Rules).

100. According to the second sentence of the second paragraph of point 150 of the Rules, "*in the event of a tie vote during the adoption of other acts the act voted for by the chairperson shall be deemed adopted*". The issue of a tie vote should not be dealt with in the Rules, but in the Constitutional Law.

101. Point 152 of the Rules provides for the separation of the pronouncement of the operative part and the reasoning part is problematic. Until the publication of the reasoning part, the state authorities, but also the media and the public, can only guess why a particular provision was found constitutional or unconstitutional. This leads to rumours, which can influence the Court while the reasoning is being prepared. In addition, it can be very difficult to find common ground on the reasoning between the judges after the voting is done. This could lead to serious conflict between the judges. The judges should only vote on the full text of the judgment when it is available in writing. Then, the judgment should be announced and published immediately. If required, dissenting opinions could be published with a delay of a few days, when they are not yet available at the time the judgment is rendered.

102. Point 154 of the Rules only provides for the right of judges to formulate dissenting opinions. It would be welcome and in the interest of justice to supplement the provision with the right of judges to formulate concurring opinions (this is also not provided for in the Constitutional Law).

103. The second paragraph of point 155 of the Rules needs to be supplemented with the obligation of the Chamber to inform the parties about a decision to correct inaccuracies. That decision should be placed on the web site of the Constitutional Chamber for a certain period of time, for instance for three days starting from the session of the Chamber during which that decision to correct formal errors was adopted.

104. In point 155.1 of the Rules, the "*additional decision*" is quite similar to the "*explanations*", which the Venice Commission criticised in its 2014 Opinion on the draft Constitutional Law on the Constitutional Chamber[22] (see paragraph 9 above). Undue pressure can be exercised on the Chamber and on the judges to adopt such an "*additional decision*". It should be noted,

[22] See paragraphs 42-48, Opinion on the draft Constitutional Law on introducing amendments and additions to the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (CDL-AD(2014)020.

however, that the power of the Chamber to enact additional decisions does not derive from the Constitutional Law. The Rules should therefore be amended.

105. According to point 156 of the Rules, the acts of the Chamber shall be final and are not subject to appeal. Decisions and conclusions of the Chamber shall enter into force after their announcement, other acts shall enter into force after their signature. Similarly to the provision above (point 155-1), it is not clear why the grounds for the appeal are regulated by the Rules. It should also be noted that this provision largely repeats Article 51 of the Constitutional Law.

106. Point 159 of the Rules provides for a right to revise judicial acts after they have been declared unconstitutional. This is a matter for civil and criminal procedure laws and should not be included in the Rules.

107. Point 160 of the Rules on the compatibility of international agreements with the Constitution should provide that international agreements that are found to be unconstitutional shall not be "ratified".

108. As regards point 161 of the Rules on the decisions and conclusions of the Chamber, it is in the public interest that these be placed on the official website of the Chamber. The Venice Commission therefore recommends that the provision be amended accordingly.

109. Points 162 to 164 of the Rules provide that institutions that admitted a violation of laws shall report on measures undertaken and can be brought to liability. The Rules should not be used as a source for the grounds of liability.

13. Additional remarks

110. Points 60 (Chapter 7), 70 and 75 (Chapter 8) and 157 (Chapter 12) create rights and obligations for individuals. These issues are regulated by Article 28.5 (for point 60), Article 32.4 (~for point 70), Articles 34 and 42.3 (4) (for point 75) and Articles 48.13 and 51.2 (for point 157) of the Constitutional Law adopted on 12 May 2011 on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic. Hence, they are regulated by the Law and the Rules of Procedure should refer to the relevant provision of this Law. Alternatively, the Constitutional Law could be amended.

111. Points 68 (Chapter 8), 83 and 84 (Chapter 10) and 99 (Chapter 11) presume that there is an oral hearing/session in each case. Constitutional proceedings are very different from civil or criminal proceedings. Many constitutional courts decide most cases in a written procedure only. Hearings could be the exception rather than the rule. The Chamber should be able to decide when to hold a public hearing.

IV. CONCLUSION

112. The Venice Commission welcomes the approach taken by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic in requesting an opinion from the Venice Commission on its Rules of Procedure, before formulating amendments to them.

113. In this respect, the Venice Commission recommends that the Rules of Procedure be revised to avoid any potential duplication and contradiction with the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic. Amendments to the Constitutional Law are currently pending and the Rules should be aligned with these amendments, once adopted.

114. In this respect, the Venice Commission hopes that the previous recommendations in its Opinion on the draft Constitutional Law on introducing amendments and additions to the

Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, adopted in 2014,[23] will be taken into account by the Kyrgyz Parliament.

115. The main issues of concern in the Rules are the following:

- the lack of solutions on many issues that are commonly related to the activities of the Chamber (e.g. the possibility of holding sessions outside the Chamber's seat; access of journalists to sessions and follow up of its work; designation of cases in relation to the Chamber's jurisdiction; the rules on establishing the agenda for the session; management of confidential material; archiving documents; documentation centre; library; international co-operation; court working dress for judges (robes) etc.);
- the status of the chairperson of the Chamber should be modified to balance his or her influence over the other judges of the Chamber;
- the Rules set out very demanding responsibilities for the judge rapporteur that should be revised.

116. The Rules also lack provisions on the necessary procedural aspects that would contribute to legal certainty in their implementation (e.g. there are provisions on the submission of an act for the approval by the Chamber, but there are no procedural solutions when the approval is declined). Yet other parts seem to be too detailed, e.g. the election of the chairperson, deputy chairperson and secretary judge or procedures and etiquette during the session of Chamber could perhaps be simplified.

117. The order and structure of the provisions in the Rules would benefit from a revision in some places e.g. the provisions on sessions should be brought together in one place and refer to issues of convocation; when sessions may be convened upon initiative; general rules on public sessions and exceptions for closed sessions; which issues are decided by sessions and/or by meetings of judges; postponement of sessions, etc.

118. It is also important that the Rules lay down the provisions required to implement and/or supplement the Constitutional Law, simplifying or clarifying its general provisions as well as defining internal procedures regulating the work of the Chamber.

119. The Venice Commission remains at the disposal of the Kyrgyz authorities, and notably the Constitutional Chamber, for any further assistance in this matter.

[23] CDL-AD(2014)020.