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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON COURT JURIES
OF KYRGYZSTAN

draft

The present Law establishes the legal bases of participation of citizens in the dispensing of justice in the Kyrgyz Republic in the capacity of jurors.

Chapter I. General provisions

Article 1. Right of citizens of the Kyrgyz Republic to participate in the dispensing of justice

1. In accordance with Article 82 of the Constitution of the Kyrgyz Republic citizens of the Kyrgyz Republic shall be entitled, in circumstances provided for in law, to participate in the dispensing of justice.

2. Restriction of the right of citizens to participate in the dispensing of justice in the capacity of jurors in connection with sex, race, ethnic affiliation, social origin, property ownership, beliefs, attitudes to religion or membership of public associations shall not be permitted. Any restriction of that right may be established only by the present Law.

3. Participation in the exercise of justice in the capacity of jurors by citizens included on lists of candidates for jury service shall be a civil duty.

Article 2. Status of jurors

The legal situation of jurors shall be determined by the present Law. Jurors shall be vested with powers in the dispensing of justice under the procedure established by the Constitution of the Kyrgyz Republic, the Code of Criminal Procedure of the Kyrgyz Republic and the present Law.

Article 3. Legislation on jurors

1. Legislation on jurors shall be based on the Constitution of the Kyrgyz Republic and shall consist of the Code of Criminal Procedure of the Kyrgyz Republic, the present Law and other legal and regulatory acts of the Kyrgyz Republic.

2. If other rules than those set forth in the present Law are established by an international agreement ratified by the Kyrgyz Republic, the rules of the international agreement shall apply.

Chapter 2

Participation of citizens of the Kyrgyz Republic in the dispensing of justice in the capacity of jurors

Article 4. Jurors

1. Jurors shall be citizens of the Kyrgyz Republic vested with powers of dispensing justice under the procedure established by the present Law in the examination by courts of the Kyrgyz Republic of criminal cases regarding particularly serious crimes within their jurisdiction.

2. Jurors shall be involved in the examination of cases at the request of a party admissible under the procedure established by the Code of Criminal Procedure of the Kyrgyz Republic.

3. The composition of a court for the examination of a given case with the participation of a jury shall be formed under a procedure precluding any influence on that process by persons with an interest in the outcome of the case and shall comprise one judge and 12 jurors.

4. The procedure for examining a criminal case with the participation of a jury shall be established by the Code of Criminal Procedure of the Kyrgyz Republic. Jurors participating in the exercise of justice shall be independent and shall be subordinate only to the Constitution of the Kyrgyz Republic and the law.

Article 5. Requirements imposed on jurors

1. Citizens included on lists of candidates for jury service and called under the procedure established by the Code of Criminal Procedure of the Kyrgyz Republic to participate in the court examination of a criminal case may be jurors.

2. The following persons may not be jurors or candidates for jury service:

- 1) persons who have not reached the age of 25 years at the time when lists of candidates for jury service are compiled;
- 2) persons who have an outstanding or unquashed conviction;
- 3) persons who have been declared legally incapable by a court or had their legal capability restricted by a court;
- 4) persons who appear on the register of a clinic treating drug addiction or psycho-neurological conditions in connection with treatment for alcoholism, drug addiction, substance abuse, and chronic and prolonged mental disorders.

3. The following persons shall also not be permitted to participate in the court examination of a given criminal case in the capacity of jurors:

- 1) persons suspected or accused of committing a crime;
- 2) persons not speaking the language in which the proceedings will take place;
- 3) persons presenting physical or mental disability preventing full participation in the court examination of the criminal case.

Article 6. General and reserve lists of candidates for jury service

1. The Supreme Court of the Kyrgyz Republic shall determine the necessary quantity of jurors on a general list and reserve list of candidates for jury service every two years, incorporating the number of citizens permanently resident on the territory of the Kyrgyz Republic required for the work of a corresponding court.

2. The number of citizens to be included in the general list of candidates for jury service of the Kyrgyz Republic shall be determined on the basis of a calculation of no fewer than five jurors for one judge.

3. The number of citizens to be included in the reserve list of candidates for jury service shall be no less than one quarter of the number of jury service candidates to be included in the general list of candidates for jury service.

Article 7. Procedure and deadline for compiling lists of candidates for jury service

1. The President of the Supreme Court of the Kyrgyz Republic shall, no later than three months before expiry of the term of validity of candidates for jury service previously included on the general and reserve lists of candidates for jury service, file a request with the heads of state administrations of the *oblasti* [provinces], the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance on the selection of the necessary number of candidates for jury service.

2. The heads of state administrations of the *oblasti*, the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance shall, in accordance with Article 7 paragraph 1 of the present Law, establish the procedure and deadline for compiling lists of candidates for jury service and notify the district/municipal authorities of the number of citizens required for inclusion in the lists of candidates for jury service from the corresponding territorial administrative unit. In the compiling of lists of candidates for jury service, the number of citizens assigned may be increased by no more than 10 per cent.

3. Lists of candidates for jury service shall be compiled by district/municipal administrations on the basis of personal data on voters contained in the information resources of the state system of the Kyrgyz Republic pertaining to elections, by means of random selection of the established number of citizens. In that process, the individuals ineligible for jury service under Article 5 paragraph 2 of the present Law shall be excluded from the sample of citizens selected.

4. District/municipal administrations shall inform citizens of the corresponding territorial administrative unit of the compiling of lists of candidates for jury service and also notify the citizens included on the lists of candidates for jury service and, within a period of two weeks, shall enable them to examine the aforementioned lists and shall consider any written notifications received from them concerning the exclusion of citizens from lists of candidates for jury service and rectifications of inaccurate information on candidates for jury service.

5. The amended lists of candidates for jury service, signed by the heads of district/municipal administrations shall be submitted to the corresponding state administrations of *oblasti*, the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance.

6. On the basis of the lists of candidates for jury service submitted by district/municipal administrations, the administrations of the *oblasti*, the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance shall compile a general list of candidates for jury service of the Kyrgyz Republic, which shall be signed by the President of the Supreme Court of the Kyrgyz Republic and authenticated by an official stamp.

7. Concurrently with the compiling of the general list of candidates for jury service, the administrations of the *oblasti*, the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance shall compile a reserve list of candidates for jury service. This list shall include only citizens permanently resident in the locality of the permanent site of the corresponding court.

8. The reserve list of candidates for jury service shall be signed by the head of state administration of the *oblast* or the mayors of the cities of Bishkek and Osh or mayors of towns of *oblast* significance and authenticated by an official stamp.

9. The general and reserve lists of candidates for jury service shall be published in the corresponding local media, giving only surnames, first names and patronymics.

10. Citizens shall be entitled to submit written notifications to the administrations of *oblasti*, the mayors of the cities of Bishkek and Osh or the mayors of towns of *oblast*

significance concerning the unfounded inclusion of candidates on lists for jury service, their exclusion from lists or rectification of inaccurate information on candidates for jury service in these lists.

11. The administrations of *oblasti*, the mayors of the cities of Bishkek and Osh or the mayors of towns of oblast significance shall consider the submitted written notifications within five days and take decisions, which may be appealed against in court under the procedure established by civil procedural legislation.

12. Amendments and additions made to the general and reserve lists of candidates for jury service shall be published in the corresponding local media.

13. *Oblast* and district administrations, the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance shall be under obligation, on an annual basis (or within a shorter period at the request of the president of a court), to check and, where necessary, amend and supplement lists of candidates for jury service in accordance with the present article, excluding from them citizens having lost the right to be jurors and including in them additionally selected individuals.

14. The financial provision for the powers assigned to district/municipal administrations to compile lists of candidates for jury service shall be drawn from the state budget under the procedure and in the proportions defined by the Government of the Kyrgyz Republic.

Article 8. Obligations of officials and leaders of organisations to submit information for the compiling of lists of candidates for jury service

1. Officials and leaders of organisations, of whatever organisational/legal form, shall be under obligation to submit information necessary to the compiling of lists of candidates for jury service at the request of district/municipal, *oblast* and district administrations, the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance.

2. For any failure to submit information necessary to the compiling of lists of candidates for jury service and also for the submitting of information known to be false, the individuals referred to paragraph 1 of the present article shall bear liability as established by the Code of the Kyrgyz Republic governing administrative liability.

Article 9. Exclusion of citizens from the general and reserve lists of candidates for jury service

Citizens included in the general and reserve lists of candidates for jury service shall be excluded from those lists by *oblast* administrations, the mayors of the cities of Bishkek and Osh and the mayors of towns of *oblast* significance in the event of:

- 1) discovery of circumstances referred to Article 5 paragraph 2 of the present Law;
- 2) submission by the citizen of written notification of circumstances preventing them from fulfilling jury service obligations, as they are:
 - a) an individual not speaking the language in which the proceedings will take place;
 - b) an individual unable to fulfil the duties of a juror owing to their state of health, attested to by medical certificates;
 - c) an individual having attained the age of 65 years;
 - d) an individual occupying official or elective office in local authorities;
 - e) a military serviceman;
 - f) a judge, prosecutor, preliminary criminal investigator, preliminary investigator, lawyer, notary or commissioned officer of the internal affairs agencies, narcotics control agencies, court

bailiff services, customs authorities, authorities and establishments of the criminal sentence enforcement system or an individual carrying out private detective work on the basis of a special permit/licence;

g) a member of the clergy.

Article 10. Sending to the court of general and reserve lists of candidates for jury service

1. The general and reserve lists of candidates for jury service compiled by *oblast* administrations, mayors of the cities of Bishkek and Osh or mayors of towns of *oblast* significance shall be sent to the corresponding court no later than one month before expiry of the validity of candidates for jury service included in the previously submitted general and reserve lists of candidates for jury service.

2. Amendments made to the general and reserve lists of candidates for jury service in accordance with Article 7 paragraph 13 of the present Law shall be sent to the corresponding court within one week.

3. In the event of discovery in the general and reserve lists of candidates for jury service received by a court of any individuals referred to in Article 5 paragraph 2 of the present Law or individuals having made written application for exclusion from lists of candidates for jury service in accordance with Article 9 paragraph 2 of the present Law and also in the event of those lists having to be supplemented, the President of the Supreme Court of the Kyrgyz Republic shall file a request stating the necessity of supplementing the general and reserve lists of candidates for jury service with *oblast* administrations, mayors of the cities of Bishkek and Osh or mayors of towns of *oblast* significance.

Article 11. Procedure and durations governing a citizen's performance of jury service

1. Citizens shall be called to perform jury service in a court once a year for ten working days or, where the examination of a criminal case has commenced with the participation of jurors and not been completed by the expiry of that period, for the entire duration of the examination of that case.

2. Candidates for jury service called to the court but not selected as members of the jury and not released from jury service on the grounds provided for in Articles 5 and 9 of the present Law may be required to participate as jurors in another court session.

Chapter 3

Legal and material guarantees of the status of court assessors and jurors and final provisions

Article 12. Material guarantees for jurors

1. During the performance of jury service by a juror in the exercise of justice, the corresponding court shall pay them compensation drawn from the state budget amounting to half of the official rate of pay of a judge of that court in proportion to the number of days of the juror's participation in the exercise of justice, but no less than the average wage of a juror in the place of their main work for that period.

2. In the event of a juror travelling away from their permanent place of residence to perform jury service, their trip expenses shall be reimbursed under the procedure and in the proportions established for judges on official trips within the Kyrgyz Republic.

3. The amount of money necessary for the payment of jurors as provided for in paragraphs 1 and 2 of the present Article shall be supplied by the Ministry of Finance of the Kyrgyz Republic to the Supreme Court of the Kyrgyz Republic and shall be shown as a separate entry in the expenditure of the Supreme Court of the Kyrgyz Republic.

4. The guarantees and compensations provided for in labour legislation shall be maintained for the juror throughout the period in which they perform service in the exercise of justice at their main place of work, and the dismissal of the juror or their transfer to other work at the initiative of the employer in that period shall not be permitted.

5. The time spent by jurors on jury service in the exercise of justice shall be taken into account in the calculation of any periods worked.

Article 13. Guarantees of independence and immunity of a juror

1. The guarantees of independence and immunity of judges and members of their family established by the Constitutional Law "On the status of judges of the Kyrgyz Republic" shall be extended to jurors and members of their family while they are exercising justice.

2. Persons hampering a juror in the fulfilment of their duties in the exercise of justice shall bear liability under the legislation of the Kyrgyz Republic.

Article 14. Final and transitional provisions

1. The present law shall enter into force from the date of its official publication.

2. Lists of candidates for jury service for courts in which the legislation of the Kyrgyz Republic provides for examination of criminal cases with the participation of a jury shall be compiled within three months dating from the entry into force of the present Law.

3. The Government of the Kyrgyz Republic shall make provision:

- in the republic budget for expenditure linked to the implementation of the present Law;
- for bringing its legal and regulatory acts into line with the present Federal law.

Explanatory memorandum to the draft Law of the Kyrgyz Republic "On court juries in the Kyrgyz Republic"

Under Articles 15 and 82 of the Constitution of the Kyrgyz Republic of 15 January 2007, in circumstances and under the procedure provided for in law, citizens of the Kyrgyz Republic are entitled to participate in the dispensing of justice and everyone has the right to examination of their case by a court with the participation of a jury in circumstances provided for in law.

One of the fundamental aims of courts with juries is to bridge the gap between the judicial system, courts and society and therefore serve as a mechanism contributing to a healthier judicial system.

The introduction of a court with a jury is intended to strengthen the link between judicial authority and civil society and will make it possible to create a distinct base for its independence. Courts with juries offer defendants far greater possibilities to defend their rights than the usual arrangements for examination in court.

A court with a jury serves as a means of resolving non-standard situations where, owing to potentially grave consequences it is more dangerous to offend against fairness than against the dictates of an abstract legal norm.

The historical experience of Russia shows that it was possible to put an end to total corruption in the courts only after the introduction in 1864 of courts with juries, whose procedural form makes it difficult to bribe the representatives of the people, for the reason that the actual composition of a jury is ultimately determined only on the day when court examination commences, by the random drawing of individuals from general and reserve lists of jurors.

Through courts with juries in the Kyrgyz Republic there will be more merciful justice, more exacting justice where the proving of guilt of defendants is concerned and justice that is less influenced by the respective parties.

Deputy

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