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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT OPINION
ON THE DRAFT AMENDMENTS TO THE CONSTITUTIONAL LAW
ON THE STATUS OF JUDGES
OF KYRGYZSTAN**

on the basis of comments by

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**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.*

1. *By letter dated 6 May 2008, the Chair of the Constitutional Court of Kyrgyzstan, Ms Svetlana Sydykova, requested an opinion on: (1) the draft Law amending and supplementing the Law on constitutional proceedings in Kyrgyzstan (CDL(2008)064); (2) the draft Law amending and supplementing the Law on the Constitutional Court (CDL(2008)065); (3) the Law on the Status of Judges (CDL(2008)099); (4) the Law on Court Juries (CDL(2008)069); (5) the Law on Bodies of Judicial Self-regulation (CDL(2008)098) and (6) the Law amending and supplementing the Law on the Supreme Court and local courts (CDL(2008)097).*
2. *The Law on the Status of Judges (3) is dealt with in this opinion, laws (1) and (2) were dealt with in Opinion 481 (CDL-AD(2008)033) and laws (4) to (6) will be dealt with in separate opinions.*
3. *The present opinion was drawn up on the basis of comments by Messrs Fogelklou, and Hamilton, who were invited by the Venice Commission to act as rapporteurs. Their comments figure in documents CDL(2008)101 and CDL(2008)107 respectively.*
4. *A conference on the topic “Supremacy of law and the independence of the judiciary – guarantees for the stability of democratic institutions” was organised in Bishkek, Kyrgyzstan on 27-28 May 2008 together with the Constitutional Court (CDL-JU(2008)022 synopsis). The purpose of the conference was to inform the Venice Commission about the current judicial reform in Kyrgyzstan, in the context of the request for an opinion on the six draft laws/amendments mentioned above.*
5. *This opinion was adopted at the ... Plenary Session of the Venice Commission (Venice, ...).*

General remarks

6. The draft Law on the status of judges itself sets out three objectives, namely (1) to create a legal machinery guaranteeing the status of judges; (2) to provide judges with guarantees of independence and (3) to make provision for the election, appointment, transfer, rotation, discharge from office, liability and material and social provisions of judges.

Chapter 1 - General provisions

7. As a general rule, a number of issues should be dealt with by a law on the status of judges, notably: the implementation of the constitutional principle of the independence of the judiciary and of the judges personally and it should be instrumental in achieving a higher professional level as well as protect the judiciary from corruption.
8. In Article 1, the **draft Law enumerates the normative principles** that should govern the judiciary, such as the exclusive exercise of justice by courts, access to justice free of charge, the autonomy of courts and independence of judges, equality before the law, examination of cases in public and the binding nature of judicial acts, **which is praiseworthy**.
9. Article 2.1 enumerates **the legislation that should govern the position of judges** and ends with the expression “*other laws and normative acts of the Kyrgyz Republic*”. This enumeration **is not exhaustive and is therefore either superfluous or should at least omit the reference to other laws to ensure that the list is exhaustive**.

10. Article 3.2 mentions the possibility of providing for financial support to parties before courts, but the draft Law is vague on how that should be regulated, except in cases of mandatory remuneration of defence lawyers, which should be regulated by a separate law on legal aid.
11. **In Article 4 on the “Unity of status of judges”, the drafter’s intentions are not entirely clear. This Article should define what differences in status are intended and what the “special characteristics of the legal situation” are that would justify such distinctions.**
12. A positive step of this draft Law is the attempt, in Article 6, to define what the Law means by the Russian expression “*bezuprechnyi*” (irreproachable). It refers to several duties, such as for judges to respect the code of ethics and mentions the possible conflicts of interest that could arise. Judges are also to declare assets and income “*according to the legislation of the Kyrgyz Republic*”. **This explicit mentioning of possible effects of corrupt activities is laudable, but the problem will be its effective implementation.**
13. Article 6 sets out the prohibition for members of the judiciary to be members of political parties. This general prohibition represents a restriction on the judges' right to freedom of association. Any restriction on an individual's right to freedom of association must be in pursuit of a legitimate aim and proportionate, that is necessary in a democratic society. In the Commission's view, membership of judges in a political party can be viewed as problematic in terms of ensuring the impartiality of the judiciary. In this respect, the prohibition in question can be said to pursue the legitimate aim of protecting the rights and freedoms of others. Admittedly, such a general prohibition is quite a radical measure which does not allow for any nuances or exceptions. Arguably, however, in a country such as Kyrgyzstan where belonging to a political party may be more a question of personal alliances than an ideological choice, this might be appropriate. The question of its compatibility with the right to freedom of association guaranteed by Article 22 of the International Covenant on Civil and Political Rights would deserve further reflection.
14. Article 6 on **compatibilities** also prohibits judges from being a part of the legislature or the executive, from entrepreneurial activity or paid work, except for teaching or academic work or participation in judicial self-regulation bodies. It would be **useful to extend this exception to permit judges to participate, without being remunerated, in expert bodies, both on the national and the international level** – for example, as the draft Law stands, there might be some doubt whether a Kyrgyz judge could be appointed to a body such as the Venice Commission.
15. Under Article 8, the draft Law opens the possibilities for a judicial career in accordance with traditional continental as well as post-Soviet patterns. It divides the professional level into six different classes and the President of the Kyrgyz Republic decides on the advancement of a judge to a higher class on the basis of a proposal of the National Council of Judges. To the extent that this system is maintained, a clear regulation of **the decision-making process in the Council should be included in this draft Law. The decision should lie with the Council itself rather than with the President**, who could of course award the degree.
16. Articles 9 and 10: it seems that the deprivation of a classification category is only allowed under a judicial procedure as a type of additional sanction imposed by a court sentence in a criminal case. This seems to imply that **a judge convicted of a criminal offence – not only a disciplinary offence – may remain as a judge, albeit on a reduced salary. It needs to be clarified in what exceptional circumstances this can happen.** If an offence is so serious as to warrant punishment by a substantial diminution of salary, the person who committed it should not remain as a judge.

Chapter 2 – Guarantees for the independence of the judges

17. This Chapter deals with the guarantees for the independence of judges and represents a difficult balance. On the one hand, **a judge has to be put in a position where interference with the judge's work or person by the third parties is ruled out.** On the other hand, this should not be done in such a way as to put the corrupt or dishonest judge beyond the reach of the law.
18. Article 11 provides for **six different guarantees for judicial independence.** For instance, the provision stipulates that no one has the right to interfere in the activities of the judiciary; that judges may not be removed except in accordance with the Constitution and the draft Law and that proper material and social provisions need to be made for judges. **These provisions are appropriate.**
19. Article 13 on the irremovability of judges, says that "*Judges...shall exercise their duties and conserve their powers within the limits of the term laid down in the Constitution.*" The Constitution in Article 83.6 second paragraph stipulates that local judges should be appointed for the first time for a period of five years, but then should have tenure until they retire at age 65. It seems that judges, after a probationary period, may not be removed against their will before they retire, except if they have committed a crime and are prosecuted or through another sanction. This is in line with Article 84.1 of the Constitution, which states that judges of all courts shall retain their posts and powers as long as their conduct is irreproachable. This is indirectly shown by the introduction in Article 9.2 of "*first and top-level classification categories*" for judges. This classification is granted to a judge for life and may only be lost if the judge is given a higher classification. This is, however, not an office, the provision therefore does not regulate the actual tenure of a judge.
20. In this respect, it is important to note that the Venice Commission considers that setting **probationary periods can undermine the independence of judges**, as they may feel under pressure to decide cases in a certain manner. However, it should be noted that if probationary appointments are considered indispensable, "*refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office*".¹
21. **Even if it is written in the Constitution** that judges of the Constitutional and Supreme courts shall have tenure and keep their office until they retire at the age of 70 (Constitution, Article 83.5, third paragraph), **it is this draft Law that should regulate more clearly their tenure of office.**
22. Articles 11 and 14 read on their own appear to provide for complete immunity of judges – which goes too far. However, Article 30 provides a mechanism whereby a judge can be made criminally liable, although the relationship between Articles 14 and 30 is not clear. Article 30 might be intended as an exception to Article 14. The three Articles reflect Article 83.2 of the Constitution, which provides for immunity (except where a judge is caught at the scene of a crime), which may be waived by Parliament in the case of Constitutional Court and Supreme Court judges and by the President for local court judges.
23. It should be made clear that **a judge should only have functional immunity, but even in the exercise of their office, he or she should have no immunity from criminal**

¹ Venice Commission, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in "the Former Yugoslav Republic of Macedonia", [CDL-AD\(2005\)038](#), para. 30.

liability if he or she commits a crime. As the Venice Commission has recommended in a number of opinions in the past “[...] *immunity of judges vis-à-vis criminal prosecution [...] is [...] excessive. Such a provision goes far beyond the "Basic Principles on the Independence of the Judiciary" promulgated by the United Nations in 1985, and introduces distortions, which can be hard to justify, into the principle of the equality of citizens before the law.*”² It may be necessary to amend the Constitution in this respect.

24. It may be reasonable to take measures to prevent any arbitrary harassment of a judge under the pretext of law enforcement, but this can be achieved by such measures as providing that the consent of a person such as the President of the court or the chief prosecutor is required in order to authorise arrest, search or detention as is indeed provided for in Article 30.
25. It is **reasonable to grant immunity from civil suit to a judge acting in good faith** in the performance of his or her duty³. But, **it should not be extended to a corrupt or fraudulent act carried out by a judge.**

Chapter 3 – Procedure for the election of constitutional and supreme court judges and appointing presidents and vice-presidents of these courts

26. This Chapter deals with the procedures for electing the judges and appointing the presidents and vice-presidents of the Constitutional Court and the Supreme Court.
27. As was already pointed out in the Venice Commission’s Opinion on the draft laws amending and supplementing the Law on Constitutional Proceedings and the Law on the Constitutional Court of Kyrgyzstan (CDL(2008)029), *“It seems that these amendments intend to assimilate judges of the Constitutional Court to those of ordinary courts. Such an assimilation does not take into account the special position of a Constitutional Court, which has a specific constitutional task, notably the annulment of laws and normative acts. By its very nature, this task may create conflicts between the Constitutional Court and political powers. While the basic requirements for judicial independence are the same for both ordinary and constitutional court judges, the latter must be protected from any attempt of political influence due to their position, which is particularly exposed to criticism and pressure from other state powers. Therefore, constitutional court judges are in need of special guarantees for their independence...”*⁴. For this reason, Constitutional Court judges should be dealt with in a separate law.
28. Article 15 sets out that in order to be a judge, an individual must have absolved a higher legal education and must have a professional experience of at least ten years and not be older than seventy years of age. This is in line with the Constitution and creates no problems.
29. Judges of the Constitutional Court are elected by Parliament on the proposal of the President of the Republic (Article 83.5 of the Constitution). As already pointed out in the Opinion on the draft laws amending and supplementing the Law on Constitutional Proceedings and the Law on the Constitutional Court of Kyrgyzstan (CDL-AD(2008)033, paragraphs 7-12), the fact that the Constitutional Court’s president is elected by a political actor and not the Court itself is a widely accepted phenomenon.

² CDL(1994)011 Opinion on the Constitution of the Russian Federation adopted by popular vote on 12 December 1993, Chapter 7: Justice: Article 118 to Article 129, para.3.

³ This was also the Venice Commission’s view in CDL-AD(2003)016 Opinion on the Constitutional Amendments reforming the Judicial System in Bulgaria, para. 8: *“...magistrates should not benefit from a general immunity but [...] the immunity should be confined to protection from civil suits for actions done in good faith in the course of their functions.”*

⁴ Para.14.

However, the election of the President by the Court itself is, of course, preferable from the perspective of the independence of the court, but this would require an amendment to the Constitution.

30. Since the current Constitution gives the President vast symbolic, institutional and operational powers, it could be argued that the Constitutional Court might not be able to function as a counterbalancing force. However, the Constitution still has a progressive catalogue of human rights and defending these rights against repressive legislative measures could be seen as the primary task of the Constitutional Court.
31. The draft Law is in line with the Constitution, which stipulates that judges from the Constitutional Court are elected by Parliament at the proposal of the President.
32. An election with a qualified majority should have already been regulated by the Constitution and since this is not the case, the Commission's only recommendation is that the procedure for selecting candidates for the Constitutional Court be more transparent. **It would be desirable to have the input of a body, such as an expert committee or the Judicial Council, who would vet the suitability of candidates for election.**
33. The appointment procedure for the judges of the Supreme Court is regulated more clearly. Candidates are proposed by the President and should be elected by Parliament. The candidates proposed by the President are chosen on the basis of suggestions from the National Council of Judges (we assume that this body is the one referred to in Articles 83 and 84 of the Constitution). The election of judges by Parliament is a delicate matter because political considerations may come into play. Direct appointment by the Judicial Council or appointment by the President upon a binding proposal by the Judicial Council would be preferable (CDL-AD(2007)028 paragraphs 13-17). The Venice Commission is aware that this would require an amendment of Article 83 of the Constitution.
34. Where there is a vacancy in the Supreme Court, the National Council holds a competition in which any Kyrgyz judge of more than five years' standing as a judge, having at least ten years' experience as a judge, may apply. On the basis of these applications, the National Council prepares a list, which it submits to the President, who then selects a candidate. The President then proposes this candidate to Parliament. If Parliament rejects the proposed candidate, **the President may again propose the same or another candidate**. This creates a potential for deadlock. Also, the fact that the President could suggest, for the second time, the first candidate who did not get the necessary votes to be elected, gives the President too much power in the election of Supreme Court judges and leaves room for pressure on Parliament.
35. In deciding what candidates to submit to the President, the Council considers the judges' personnel files. **It is not clear what information is kept in these files or who compiles them.**
36. Article 15.9 second paragraph stipulates that "*In the event of no other candidate being available, the National Council shall submit to the President of the Kyrgyz Republic other candidates from among those having participated in the competition*". **This provision is unclear as to whether or not the Council, if the President and Parliament fail to appoint anyone, is to look at the application again.**
37. Article 15.10 states that among **persons disqualified from being judges** of the Constitutional or Supreme courts are "*persons who have a conviction, including a quashed...conviction*". **If a conviction is quashed, it is not a conviction and should therefore not be a bar to appointment.** This is all the more important as the conviction could have been wrongfully obtained by perjured evidence.

38. The President also appoints the presidents and vice-presidents of the two highest courts, with the consent of Parliament, for a period of five years. **There is, once again, potential for deadlock here. These courts should be allowed to elect their own Chairmen independently, which is for instance the case with the Russian Constitutional Court.**

Chapter 4 – Procedure for the appointment and transfer of judges of local courts and the appointment of the president and vice-president of a local court

39. This Chapter deals with the appointment and transfer of judges of local courts. In general, the provisions concerning qualifications, examinations and procedures for appointment of regular local court judges are in line with European standards. Candidates are required to have five years legal experience or have passed an examination set by the Council of Judges. **However, once again, persons who have a quashed conviction may not be local judges.**
40. The National Council holds a competition for local judges. The applicants must provide certain documentation, but may also supply *“other documents (references, recommendations) describing the applicant’s personal qualities”*. **Where serving judges are concerned, their documents shall contain “private opinions pronounced in respect of the judge”. This is neither desirable nor transparent.**
41. After this, there is the qualifying examination and an interview. The National Council makes recommendations and the President of the Republic makes the appointment after which the judge is assigned to a specific local court (Article 22.3).
42. Article 23 provides for transfers by the President of the Republic on the proposal of the National Council, at the judge’s wish, in the case of a reorganisation, when the judge has served more than ten years, or in circumstances beyond the judge’s and the State’s control, including the judge’s state of health.
43. **Presidents and vice-presidents of local courts** are appointed by the President of the Republic on the National Council’s proposal. **Private opinions may be taken into account.** Once again, **this is neither desirable nor transparent.**

Chapter 5 – Grounds and procedure for suspension of powers, dismissal from office and termination of powers of a judge

44. This Chapter deals with suspension, dismissal and termination of powers.
45. The manner in which judges are dismissed or suspended from their office is of special importance to the rule of law. The draft Law makes a distinction between loss of powers (*polnomochnost*) and suspension of judges (*otstranenie*).
46. In the case of loss of powers that include cases where the candidate is involved in political activities that he or she is prohibited from doing, the President makes a decision. If the circumstances that led to the loss (e.g. that the person is a member of a political party) have disappeared, the judge regains his or her powers through a decision by the President. **The Venice Commission recommends, however, that a judge should first resign before being able to contest political office, because if a judge is a candidate and fails to be elected, he or she is nonetheless identified with a political tendency to the detriment of judicial independence.**

47. Suspension is more serious. A judge may be suspended if criminal proceedings are instituted or administrative proceedings under judicial procedure or if a motion for discharge is lodged against him or her. An opening of an investigation on whether the judge should be dismissed is another ground for suspension. The President makes a decision regarding suspension, based on a proposal from the National Council of Judges.
48. **It should be made clear that the decision made by the President for either suspending or restoring the powers of a judge is not a discretionary one, but that the President is bound to make such a decision in given circumstances.**
49. Dismissal is the most serious sanction and may occur for various legitimate reasons. Article 26 sets out grounds for dismissal from office, which are: (1) reaching the age of retirement; (2) on the judge's own application; (3) health grounds (attested by a medical commission); (4) failure to report for work for more than four months (excluding reasons of pregnancy or child-care); (5) appointment to another court or position; (6) refusal to accept transfer; (7) a guilty criminal verdict; (8) a court judgment to apply compulsory medical measures; (9) a disciplinary infringement incompatible with the calling of a judge, confirmed by decisions of the National Council of Judges and (10) activity incompatible with the office of judges. **It is not clear what is meant by "activity incompatible with the office of judges", which is not otherwise covered (Article 26), and it is not set out by whom this should be determined.**
50. On the proposal of the President of the Republic, judges of the Constitutional Court and of the Supreme Court may be dismissed early on a two-thirds vote of the total membership of Parliament. **As no criteria for such an early dismissal are stated, it might be suggested that this provision be deleted. The procedure to be adopted is not set out and it is not even clear that any grounds must be stated or what rights of defence the judge has. There is also no provision for the involvement by an expert body.**
51. Judges of local courts may be dismissed by the President of the Republic on the proposal of the National Council of Judges. **There are no criteria or procedures set out in this provision.**
52. There is a special procedure for cases of dismissal on administrative grounds in which the behaviour of a judge was seen as not irreproachable. This form of dismissal must be confirmed by a decision of the Council of Judges and by a decision of the National Council of Judges prior to the final decision made by the President or by Parliament.
53. Article 27 sets out the grounds for ceasing or terminating a judge's power. Early termination is effected by the body which appoints or elects judges. **It is not clear who this is, where there is involvement of more than one body, e.g. if the consent of Parliament to an appointment is required must it also consent to early termination?**

Chapter 6 – Liability of judges

54. This Chapter deals with the disciplinary and criminal liability of judges and does so in great detail. The legal effects may be various disciplinary measures or early (*dosrochnyi*) dismissal. Unlike a simple dismissal with respect to judges of the Supreme Court and the Constitutional Court, a qualified majority in Parliament is not required. The decision of Parliament should, in any case, be based on a decision by the Council of Judges.
55. Article 28 deals with disciplinary liability of judges and has to be read in conjunction with Article 6, which sets out the duties of the judge. Two possible penalties are provided for: an observation or reprimand, and early dismissal from office.

56. Violation of the obligations contained in Article 6.1.1 and 6.1.2 are punishable by either penalty. These obligations are somewhat vague “*Anything that might besmirch the authority or dignity of a judge*” may be open to a subjective interpretation. **This provision should be rendered more precise and explain what sort of behaviour comes under “besmirching” the authority or dignity of a judge.**
57. Violation of the obligations contained in Article 6.1.3 and 6.1.7 lead to an observation for a violation, a reprimand for a second and early dismissal for a third. **It may be that some greater flexibility would be appropriate.** A first violation might be very serious, for example, a failure to deal with a serious conflict of interest or to make a correct declaration of property or income. Conversely, a second or third violation might be trivial, such as a failure to comply with the rules of working arrangements in some trivial respect. Breaches of Article 6.3 and 6.5 lead to early dismissal (these relate to taking part in a political activity or entrepreneurial activity or other work).
58. According to Article 29.1, complaints may be made by any individual or legal entity, or public authority, or the president of a court. They may also be instituted by the private opinion of a higher-ranking court. **This latter provision seems unjust because it is impossible to defend oneself against a private (secret) complaint.**
59. After complaint, the Council of Judges establishes a committee to investigate. This committee has extensive powers to question the judge, the complainant and witnesses. The judge against whom the complaint is made is to be given “*sufficient time to familiarise themselves with the case materials.*” **The draft Law does not indicate that the judge has the right to confront and question witnesses or make submissions. There is no reference to a right to legal representation.**
60. After examining the investigation committee’s report, the Council of Judges makes a decision. **There is no provision for an appeal to a court of law and this omission should be rectified** (see also CDL-AD(2007)028, paragraph 25, Judicial Appointments). The ultimate decision to dismiss the judge is then taken by Parliament at the proposal of the President, based on the Council of Judges’ decision. **It is not clear whether the President and Parliament have a discretion in the matter and if so, by what criteria it is to be exercised.**
61. Article 30 concerns the bringing of criminal proceedings against a judge. The decision to do so must be taken by the Prosecutor General and he must have the consent of the National Council. Likewise, administrative proceedings require the National Council’s consent. The National Council must refuse consent if the proceedings were “*prompted by the statute adopted by the judge in the exercise of their judicial powers.*” It is not clear whether this is the only basis on which consent can be refused. It is not clear how exactly these provisions relate to those concerning the judge’s immunity, but presumably they are intended as an exception.

Chapter 7 – Social guarantees of the status of judges

62. The draft Law provides for guarantees for salaries, official accommodation, paid leave, pregnancy and childbirth leave, medical insurance, compensation for work related injury, life insurance, death benefit, pensions, lump sums and protection where there is a threat to the judge. **The provisions seem appropriate.**

CONCLUSION

63. In a constitutional situation where the presidential powers are too wide (see CDL-AD(2007)045, paragraph 35, Opinion on the Constitutional Situation in the Kyrgyz Republic), a strengthening of judicial independence is highly welcome. The draft Law is therefore necessary and deserves praise.
64. Its general principles are excellent, in particular the manner in which judges (with the exception of the Constitutional Court judges) are elected or appointed and the regulations on dismissal are in line with standards.
65. Nevertheless, the following modifications are recommended:
 - (1) Article 2.1: its enumeration of the legislation is not exhaustive and therefore might be taken out.
 - (2) Article 4: might be redrafted to define the type of distinctions that exist in the status of judges and the justification for such distinctions.
 - (3) Article 6: sets out the type of work that judges are prohibited from doing while in office and provides for exceptions. These exceptions might be extended to include a judge's participation in expert bodies (national and international).
 - (4) Article 6.1.2: the obligations in this provision should be rendered more precise, as they may be open to a subjective interpretation.
 - (5) Article 8: with respect to advancement, a proposal is made by the National Council of Judges to the President for the advancement of a judge – the Venice Commission recommends that the decision-making process in this Council be included in this draft Law.
 - (6) Articles 9 and 10: need some clarification with respect to judges convicted of a criminal offence – as it stands, it seems that such a judge may remain in office, albeit on a reduced salary – however, if an offence is so serious as to warrant punishment by a substantial diminution of salary, the person who committed it should not remain as a judge.
 - (7) Article 13: should regulate more clearly the tenure of office of judges.
 - (8) Articles 11 and 14: seem to go too far in providing for complete immunity of judges – there should be no immunity from criminal liability if a judge commits a crime. It is reasonable to grant immunity from civil suit to a judge acting in good faith in the performance of his or her duty. But, it should not be extended to a corrupt or fraudulent act carried out by a judge.
 - (9) A provision should be added to the draft Law that covers and regulates the process of selecting candidates for the office of president of the Constitutional Court and president of the Supreme Court.
 - (10) The procedure for selecting candidate judges for the Constitutional Court should be more transparent. The Venice Commission therefore recommends that there should be input from a body, such as an expert committee or the Judicial Council, who would vet the suitability of candidates for election.

- (11) Furthermore, it is not clear what information is kept in the judges' personnel files that are considered by the Council in deciding which candidates are submitted to the President and who compiles them.
 - (12) Article 15.9: is unclear as to whether or not the Council, if the President and Parliament fail to appoint anyone, is to look at the application again.
 - (13) With respect to the competition for local judges, the applicants may, *inter alia*, supply other documents and where serving judges are concerned, their documents shall contain private opinions - this might be revised as it is not transparent.
 - (14) The Venice Commission recommends that a judge should first resign before being able to contest political office, because if a judge is a candidate and fails to be elected he or she is nonetheless identified with a political tendency to the detriment of judicial independence.
 - (15) Furthermore, it should be made clear that the decision made by the President for either suspending or restoring the powers of a judge is not a discretionary decision.
 - (16) Article 26: sets out the grounds for dismissal from office and in its last point refers to "*activity incompatible with the office of judges*". This should be clarified, as Article 26 already enumerates the grounds and it should be made clear who determines this.
 - (17) Article 26.3: refers to early dismissal, but there are no criteria for such an early dismissal, it might be suggested that this provision be deleted. The procedure to be adopted is not set out and it is not even clear that any grounds must be stated or what rights of defence the judge has. There is also no provision for the involvement by an expert body.
 - (18) Article 26.4: it would be desirable to include criteria or procedures for the dismissal of a judge by the President on the proposal of the National Council of Judges.
 - (19) Article 29.1: provides that complaints may also be instituted by private opinion of a higher-ranking court, which seems unjust because it is impossible to defend oneself against a private complaint.
 - (20) Article 29.3: the draft Law does not indicate that the judge has the right to confront and question witnesses or make submissions. There is no reference to a right to legal representation.
 - (21) Article 29.4: there is no provision for an appeal to a court of law and this omission should be rectified.
66. It is important to note that, sometimes, the problem with Kyrgyz laws seems to be not so much the laws themselves, but their interpretation and application in practice. In this case, the decision-making process of the National Council of Judges and the Council of Judges must be analysed.
 67. It is of course difficult to predict what kind of effect this draft Law will have, however it can be stated that after taking on board the recommendations, it will provide a good basis for the development of judicial independence and integrity.
 68. The Venice Commission stays at the disposal of the Kyrgyz authorities for any further assistance.