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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with
the Judicial Training Centre of Tajikistan
the Tajik Branch of the Open Society Institute - Assistance Foundation
the Venice Commission with the support of the German Government

Seminar

on

**“International Experiences and Standards
in the Field of the Independence of the Judiciary”**

Dushanbe, 12-13 November 2009

SYNOPSIS

The Judicial Training Centre of Tajikistan, the Tajik Branch of the Open Society Institute - Assistance Foundation and the Venice Commission organised with the support of the German Government, a seminar on the "International experience and standards in the field of independence of the judiciary" in Dushanbe, Tajikistan on 12-13 November 2009.

The Seminar gathered together the following participants: Judges Karimov and Abdullaev of the Constitutional Court of Tajikistan, ordinary judges from Dushanbe and other regions, the Ombudsman, Mr Alizoda, and the Head of the Department of Constitutional Rights of Citizens of the Presidential Office of Tajikistan, Mr Salimov. GTZ and Helvetas participated as well. The Venice Commission was represented by Mr Endzins (member, Latvia), Mr Huseynov (member, Azerbaijan) and Mr Olivetti (expert, Italy). The Seminar was opened by the Director of the Judicial Training Centre, Ms Khamidova and Mr Alimardonov for the Open Society foundation.

The Ombudsman and the Head of the Department of Constitutional Rights of Citizens of the Presidential Office presented various aspects of judicial reforms which had taken place in Tajikistan and of the future reforms planned.

Past reforms included:

- the establishment of a judicial council in charge of judicial appointments, judicial discipline, and the preparation of the judicial budget;
- the setting up of the Judicial Training Centre;
- the undergoing by judges of a year's training before they were appointed after a final examination;
- serving judges following courses in various fields of law with a major problem being currently that experienced judges and trainers only know legal terminology in Russian whereas courses are supposed to be held in Tajik and younger judges do not understand Russian well enough any longer;
- the extension of the mandate of judges from 5 to 10 years;
- detentions, search warrants and telephone tapping had to be ordered by a judge and no longer by the prosecutor;
- the abolition of the Supreme Court's right to make legislative proposals, which could draw it into politics as this competence had been shifted to the Judicial Council.

The new programme for legal reform was discussed and would include:

- an amendment to the criminal procedure Code was currently being prepared in Parliament, which aims was to further reduce the powers of the prosecution. The adoption of this Code is expected to take place on 19 November 2009 and its entry into force in April 2010;
- new regional collegial appeal courts to be set up soon allowing appeals which could not be heard previously to be heard. A specialisation of judges in ordinary courts in family and administrative matters should be a precursor to the establishment of specialised courts in these fields. These administrative courts would also be in charge of settling conflicts between municipalities and the State. The competence for the execution of judgements was to be transferred from the Ministry of Justice to the Judicial Council;
- the development of a system of arbitration in order to speed up judicial proceedings without being of detriment to individuals in that they should not lose their right to appeal against a court decision;
- the introduction of judicial terms until retirement might be envisaged, following a probationary period.

During the conference, participants discussed the independence of constitutional courts and in particular the courts of Tajikistan and international co-operation between constitutional courts

and equivalent bodies as a means to promote judicial independence. The Judicial Training Centre should also offer training in human rights protection and the application of international human rights instruments on a regular basis (often such programmes were sponsored by international donors such as GTZ, the Soros Foundation or UNICEF, which had sponsored courses on juvenile justice).

As regards the independence of the courts, Mr Alizoda insisted on the need to reinforce the material equipment of the courts and to raise the salaries of the judges. Mr Salimov informed the participants that the President of the Republic had accepted criticism of the judiciary and of the death penalty voiced at the OSCE Round Table in Warsaw in October 2009 and that he had decided to reinforce the independence of the courts, possibly also through a constitutional reform of the method of the appointment of judges (who were currently appointed by the President). There was a need to physically protect judges from threats by drug traffickers.

As regards the independence of the Constitutional Court, Judge Karimov presented guarantees for the independence of his court such as the method of appointment by the two chambers of Parliament, discipline, immunities, salaries and the right to publish dissenting opinions. He insisted on the need for a dialogue between the three branches of power including the Constitutional Court. The Constitutional Court now was competent to receive individual complaints (a first case is pending). The relationship between the Constitutional Court and ordinary courts and possible problems in their relationship were discussed.

Reference was made to reports and opinions adopted by the Venice Commission, whilst international experts presented standards in the field of judicial independence as well as experiences and problems which had been encountered in European states (e.g. corruption and "telephone justice"). They insisted on the key importance of judicial terms until retirement and pointed out that there was a danger to draw judges into politics if they were elected and had to run an electoral campaign.

Both the Judicial Training Centre and the Constitutional Court (the Venice Commission delegation had met with the Chairman of the Court separately) expressed their wish for further co-operation with the Venice Commission in 2010 (requests for a seminar on the new Criminal Code with the Judicial Training Centre in March and for a conference with the Constitutional Court in November 2010).

In the framework of a study visit organised by GTZ, a delegation of the Constitutional Court of Tajikistan under its Chairman (together with a delegation from the Constitutional Court of Kyrgyzstan) had a meeting with the Secretariat of the Venice Commission in Strasbourg on 16 November 2009.