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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT CONSTITUTIONAL LAW

**“ON INTRODUCING AMENDMENTS AND ADDITIONS TO THE
CONSTITUTIONAL LAW OF THE KYRGYZ REPUBLIC
‘ON THE CONSTITUTIONAL CHAMBER OF THE SUPREME COURT
OF THE KYRGYZ REPUBLIC’”**

Article 1.

Introduce the following amendments and additions to the constitutional law of the Kyrgyz Republic "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic" (Bulletin of the Jogorku Kenesh of the Kyrgyz Republic, 2011, #6, p.532)

1. In Article 20:

- 1) In paragraph 1 of part 1 to remove the word "his";
- 2) to declare second paragraph of part 2 to no longer be in force.

2. Supplement part three of Article 25 with the following paragraph:

"Requirements to a petition, indicated in paragraph 6 of part 3 of the present article, are presented when the rights and freedoms of the petitioning party were violated by the disputed act.

3. Part 5 of Article 28 shall be reworded as follows: "5. The decision on a refusal to accept the petition for proceedings or on its receipt can be appealed by parties to the Constitutional Chamber. As a rule, an appeal is subject to review without the participation of an appellant. A decree is adopted on the basis of the results of the review";

4. Article 29 shall be supplemented with the following paragraphs two and three:

"Separate petitions accepted for proceedings may be recognized as urgent by the definition of the Constitutional Chamber.

Cases recognized by the Constitutional Chamber as urgent are subject to consideration within a period not exceeding two months."

5. Supplement with the following Article 30-1:

"Article 30-1. Leaving a petition without consideration

Petitions accepted for proceedings may be revoked by the petitioning party prior to its consideration at a session of the Constitutional Chamber.

In this case, in the course of ten days, a reporting judge makes a decision on the return of a petition and its abandonment.

Leaving a petition without consideration does not deprive the petitioning party of the possibility to repeatedly appeal to the Constitutional Chamber with the same demands and on the same grounds."

6. Part 2 of Article 32 shall be reworded as follows:

"2. Parties may conduct their affairs personally or through their representatives. Each of the parties can have no more than three representatives. The authorities of representatives are documented in accordance with the procedure, established by the Civil Code of the Kyrgyz Republic."

7. Supplement with the following Article 34-1:

"Article 34-1. Expert

An expert is a person who is not involved in the case, and is called upon by the reporting judge or the Constitutional Chamber for obtaining consultations on matters concerning the case that is being reviewed. Persons with special knowledge in specific areas of the law are invited to serve as experts."

8. Title and Part 1 of Article 35 shall be reworded as follows:

"Article 35. Participation of other persons in a session of the Constitutional Chamber

1. At the request of the reporting judge or the Constitutional Chamber, state bodies, legal entities, international organizations submit their written explanations, arguments and considerations on specific issues of law addressed by the Constitutional Chamber.. At the same time, the Constitutional Chamber shall not be bound by their arguments and considerations."

9. Paragraph one of part 2 of Article 36 shall be reworded as follows: "At the request of parties and given the presence of circumstances specified in part 1 of the present Article, the Constitutional Chamber shall make a reasoned decision after hearing the opinions of persons involved in the case, and also hear out the judge, to whom the recuse is issued, if the challenger wishes to offer an explanation"

10. Supplement with the following Article 36-1:

“Article 36-1. Sessions and meetings of the Constitutional Chamber

1. A session of the Constitutional Chamber is convened on all matters related to the competency of the Constitutional Chamber. The sessions is held in compliance with the requirements, established by the constitutional law and the Regulations of the Constitutional Chamber.

2. Sessions of the Constitutional Chamber are convened by the Chairman of the Constitutional Chamber in accordance with the session schedule, as well as at the initiative of the Chairman of the Constitutional Chamber, Deputy Chairman of the Constitutional Chamber, and Judge-Secretary.

3. Matters, concerning the organization of work of the Constitutional Chamber and the work of its apparatus are reviewed at a meeting of judges of the Constitutional Chamber, convened by the Chairman of the Constitutional Chamber, or by the Deputy Chairman of the Constitutional Chamber on his behalf.

Staff members of the Constitutional Chamber can be invited to the meeting of judges of the Constitutional Chamber.”

11. First sentence of Part 2 of Article 39 shall be reworded as follows: “A decision to postpone a judicial session of the Constitutional Chamber on grounds stipulated in part 1 of the present article may be adopted by a majority of votes of judges participating in the court session, without inviting parties.”

12. In Article 41:

1) Supplement part 1 with the following paragraph 3-1:

“3-1) If there is a decision of the Constitutional Chamber on the subject of appeal”;

2) Replace the word “parties” with the word “party” in the second paragraph of Part 2.

13. Part 1 of Article 45 shall be reworded as follows:

“In order to protect the dignity of the Constitutional Chamber and participants of a session and to ensure a due process of constitutional legal proceedings, the Constitutional Chamber may remove persons from the courtroom or bring them to administrative responsibility for each case of violation, expressed in one of the following forms:”

14. Second paragraph of Article 49 shall be reworded as follows:

“A dissenting opinion is submitted by a judge within ten working days from the date of a decision, attached to the case and published in the same publications, where the act itself is subject to publication”;

15. Supplement with the following Article 50-1:

“Article 50-1. Explanation of decision

The decision of the Constitutional Chamber may be legally explained only by the Constitutional Chamber itself at the request of bodies and persons entitled to appeal to the Constitutional chamber, other bodies and persons, to whom it is directed.

Request for an explanation of a decision of the Constitutional Chamber is reviewed at a session of the Constitutional Chamber in the same order as the order in which the decision was taken. If the request for the explanation of the decision of the Constitutional Chamber is subject to review in a session with a hearing, the body or the person requesting the explanation of the decision, as well as bodies acting as parties of the case under review are invited to the session.

A decree is issued on the explanation of the decision of the Constitutional Chamber as a separate document and is subject to publication in those publications where the decision itself was published.”

16. Article 52 shall be reworded as follows:

“Article 52. Enforcement of acts of the Constitutional Chamber

1. Decisions and conclusions of the Constitutional Chamber are directed to parties, state bodies and officials, whose legal and regulatory acts were subject to review, and are published in official publications of state bodies, as well as in the “Bulletin of the

Constitutional Chamber of the Supreme Court of the Kyrgyz Republic”, and if necessary – in other publications.

2. In cases, when by the decision of the Constitutional Chamber a constitutional law or a law is recognized as fully or partially not corresponding to the , or if the decision of the Constitutional Chamber entails a need to eliminate a gap in legal regulation, the Government of the Kyrgyz Republic not later than within 4 months of a publication of the decision by the Constitutional Chamber introduces a draft of a constitutional law or a law ensuing from the indicated decision to the Jogorku Kenesh. Indicated legislative drafts are subject to consideration by the Jogorku Kenesh in an extraordinary manner.

State bodies who have lawmaking functions in accordance with the legislation repeal their legal and regulatory act or adopt a new regulatory act or introduce amendments and (or) additions to the regulatory act recognized as unconstitutional in its separate part not later than in three months.

3. Non-enforcement, undue enforcement or obstruction in the execution of acts of the Constitutional Chamber, as well as interference in the work of the Constitutional Chamber entails liability set by the law.”

Article 2.

The present constitutional Law comes into effect from the day of its official publication.

**President of the Kyrgyz
Republic**