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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KYRGYZSTAN

**DECISION TO ACCEPT
THE APPLICATION OF THE POLITICAL PARTY “REFORM” ON THE
VERIFICATION OF THE CONSTITUTIONALITY OF ARTICLE 1, 2 OF
THE CONSTITUTIONAL LAW OF THE KYRGYZ REPUBLIC “ON
SUSPENSION OF CERTAIN PROVISIONS OF THE CONSTITUTIONAL
LAW OF THE KYRGYZ REPUBLIC “ON ELECTIONS OF THE
PRESIDENT OF THE KYRGYZ REPUBLIC AND DEPUTIES OF THE
JOGORKU KENESH (PARLIAMENT) OF THE KYRGYZ REPUBLIC”***

**Unofficial translation provided by the Constitutional Chamber of the Supreme Court of Kyrgyz Republic*

Decision to accept the application of the political party "Reform" represented by its chairperson Klara Sooronkulova on the verification of the constitutionality of Article 1, 2 of the Constitutional Law of the Kyrgyz Republic "On suspension of certain provisions of the Constitutional Law of the Kyrgyz Republic "On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic»

November 2, 2020

Bishkek city

Panel of judges of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (hereinafter, the «Constitutional Chamber») consisting of: Mr. Emil Oskonbaev, Mrs. Meergul Bobukeeva, Mr Jamil Sharshenaliv, with the secretary Kurmanbek Ablakimov, considered the application of the political party "Reform" represented by its chairperson Klara Sooronkulova, Found:

On October 28, 2020, the Constitutional Chamber received an application from the political party "Reform" represented by its chairperson Klara Sooronkulova on the verification of the constitutionality of Article 1, 2 of the Constitutional Law of the Kyrgyz Republic "On suspension of certain provisions of the Constitutional Law of the Kyrgyz Republic "On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic» with paragraph 1 of Article 3, parts 2, 3 of Article 5, part 1 of Article 16, part 1 of Article 20, paragraphs 1, 2 of part 1 of Article 52, parts 1, 2 of Article 70, part 5 of Article 80 of the Constitution of the Kyrgyz Republic.

According to the subject of the appeal, the above-mentioned Constitutional Law was adopted by Parliament of the Kyrgyz Republic (hereinafter, the «Jogorku Kenesh») in favor of the interests of certain political groups and individuals with gross violations of the procedure for adoption of laws, provided for by the laws of the Kyrgyz Republic "On the Rules of Procedure of Jogorku Kenesh of the Kyrgyz Republic" (hereinafter, the «Rules of Procedure») and "On normative legal acts of the Kyrgyz Republic".

So, according to part 9 of Article 55 of the Rules of Procedure, the time interval between each reading of the draft law cannot be less than 10 working days and more than 30 working days, except for the cases provided for in part 10 of Article 55 of the Rules of Procedure. Meanwhile, the contested constitutional law was adopted within one hour on October 22, 2020. At the same time, Article 1 of the constitutional law states that it was adopted in order to stabilize the socio-political, epidemiological and related economic situation in the country. Whereas the stabilization of the socio-economic situation as an exception that falls under paragraph 8 of part 10 of Article 55 of the Rules of Procedure, respectively, allowing the Jogorku Kenesh to adopt the draft law in the second and third readings and/or in three readings simultaneously, should be conditioned by the introduction of a state of emergency, emergency situation or force majeure circumstances. On the day the law was passed, the State was not in any of these conditions.

Other goals cited to justify the adoption of the constitutional law, namely: increasing the level of public confidence in the electoral process, due to the need to take into account the opinions of the broadest strata of society, the implementation of a constitutional reform that provides for amendments to the current Constitution of the Kyrgyz Republic, cannot serve as a basis for the adoption of a constitutional law without passing all the necessary stages of the legislative process.

Thus, the subject of the appeal comes to the conclusion that through agreements and gross violations of the procedure for adoption of laws, the Jogorku Kenesh suspended the most important norms of the Constitutional Law "On Elections of the President of the Kyrgyz Republic

and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" (hereinafter, the «Constitutional Law on Elections»), aimed at ensuring the legitimacy in the current political situation, and the right of everyone to elect and be elected.

Further, the applicant notes a violation of an important principle of the exercising of State power – principle of openness and responsibility of State authorities, bodies of local self-governance towards the people and exercise of their powers in the interests of the people (paragraph 3 of Article 3 of the Constitution).

According to paragraph 1 of part 1 of Article 52 of the Constitution, citizens shall have the right to participate in the discussion and adoption of laws and decisions of republican and local significance. In development of this constitutional provision, parts 1 and 2 of Article 22 of the Law "On normative legal acts of the Kyrgyz Republic" establish that draft normative legal acts that directly involve interests of citizens and legal entities, also draft normative legal acts regulating entrepreneurship shall be offered for public discussion by publishing them on the official site of the lawmaking body. Public discussion of a normative legal act shall be ensured by a lawmaker by means of: ensuring access to the text of the draft normative legal act; accepting, considering, and generalizing proposals made by participants of the public discussion; resulting from public discussions, drafting final information about proposals with specified reasons for their inclusion/non-inclusion in the draft normative legal act. The final information shall be reflected in the rationale paper to the draft normative legal act.

However, the draft normative legal act was posted on the official website of the Jogorku Kenesh at 13:52 p.m. on October 22, 2020 and adopted on the same day at 18:00 p.m. Whereas, according to Article 23 of the Law "On normative legal acts of the Kyrgyz Republic", the term of public discussion of draft normative legal acts shall be at least one month, with the exception of draft laws aimed at regulating the rights of citizens and legal entities in circumstances of force majeure. According to part 2 of Article 51 of the Rules of Procedure factions, committees, deputies, the Government and representatives of civil society have the right to send written comments and proposals on the draft law to the responsible committee within 2 weeks from the date of its publication on the official website of the Jogorku Kenesh. However, these subjects were deprived of any opportunity to take part in the discussion of the draft law.

Also, part 3 of Article 115 of the Rules of Procedure stipulates that parliamentary hearings on draft laws on ensuring the constitutional rights, freedoms and obligations of citizens, the legal status of political parties, NGOs and the media, on the budget, taxes and other mandatory fees, on the introduction of new types of State regulation of entrepreneurial activities, on ensuring environmental safety and combating offenses are mandatory. According to the applicant, no parliamentary hearings were held.

Thus, the Constitutional Law adopted by the Jogorku Kenesh "On suspension of certain provisions of the Constitutional Law of the Kyrgyz Republic" On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" does not meet the requirements of legality established by Article 7 of the Law "On normative legal acts of the Kyrgyz Republic", according to which the legality of regulatory legal acts is ensured by its adoption in the prescribed manner.

The applicant also considers that there were violations of part 5 of Article 80 of the Constitution, which stipulates that constitutional laws shall be adopted by the Jogorku Kenesh after not less than in three readings by not less than two-thirds of the total number of deputies of the Jogorku Kenesh.

According to the subject of the appeal, it follows from the video recording of the meeting of the Jogorku Kenesh that 78 deputies voted for the adoption of the bill, while 83 votes were recorded, 4 of which were counted as transferred by power of attorney. Meanwhile, the requirements of part 4 of Article 85 of the Rules of Procedure prohibit deputies from transferring the right to vote to other deputies when voting for a bill.

In general, the applicant believes that the draft law was initiated by a group of individuals sheltered from public view, adopted in an incredibly short time, without public discussion, without consideration in committees, without proper analyzing and understanding by deputies, in violation with the established procedure for adoption of normative legal acts thus contradicts part 3 of Article 5 of the Constitution, which establishes that the State, its authorities, local self-government bodies and officials thereof shall not go beyond the limits of powers defined in the Constitution and laws.

The subject of the appeal notes that the content of the Constitution cannot include all aspects of the organization and activities of public authorities, the relationship between a person and the State. In this regard, the specification and development of constitutional provisions takes place in the relevant legislation. Constitutional laws are organically linked to the Constitution and essentially continue and develop its provisions. Based on this, the applicant states that by suspending the provisions of the constitutional law, the legislator suspended the Constitution itself. More precisely, by suspending the rules governing the procedure for holding repeated elections to the Jogorku Kenesh, legislator paralyzed the effect of parts 1, 2 of Article 70 of the Constitution, which contain the constitutional foundations for holding elections of deputies of the Jogorku Kenesh.

The applicant believes that the Constitution does not contain provisions that suppose the adoption of a constitutional law on the suspension of the provisions of other laws. The subject of regulation of constitutional laws is defined in the Constitution in an exhaustive way by establishing mandatory rules and cannot be arbitrarily expanded and supplemented. However, on 22 October 2020, the Parliament arbitrarily adopted the Constitutional Law "On the suspension of certain norms of the Constitutional Law of the Kyrgyz Republic "On Elections of President of the Kyrgyz Republic and Deputies of Jogorku Kenesh of the Kyrgyz Republic", not envisaged by the Constitution.

According to the applicant, if the elections are declared invalid and failed, by virtue of Article 38 of the Constitutional Law on Elections, repeated elections are called within one month by the Central Election Commission and conducted by the relevant election commissions. Repeated elections do not provide for such stages as compilation of voter lists, creation of polling stations and election commissions. Moreover, if there are certain grounds, repeated elections are held only among the political parties that participated in the elections. Thus, according to the applicant, repeated elections and main elections are inseparable cycles of a single process, and repeated elections are an organic continuation of the main elections.

Since the elections were declared invalid due to massive violations of the electoral legislation, which significantly affected the freedom of expression of the voter's will and distorted the principle of universal equal suffrage, repeated elections are an important legal means of restoring the violated right to vote and be elected, guaranteed by the Constitution.

According to the applicant, Article 2 of the contested Constitutional Law, which declares the holding of repeated elections or new elections of deputies of the Jogorku Kenesh not later than June 1, 2021, is an infringement of the right of every citizen to elect and be elected to state and local self-government bodies in the manner prescribed by this Constitution and laws (paragraph 2 of part 1 of Article 52 of the Constitution).

By suspending the rules on elections, the State terminates its obligations to ensure the supremacy of the power of the people, represented and ensured by the popularly elected Jogorku Kenesh (paragraph 1 of Article 3 of the Constitution). Suspension of a law that affects the fundamental political rights and freedoms of citizens is a restriction of these rights within arbitrarily established time limits. Whereas, human rights and freedoms are among the highest values of the Kyrgyz Republic. They act directly, determine the meaning and content of the activities of all state bodies, local self-government bodies and their officials (paragraph 1 of Article 16 of the

Constitution); the laws that deny or derogate human and civil rights and freedoms should not be adopted in the Kyrgyz Republic (part 1 of Article 20 of the Constitution).

The applicant is concerned about such grounds for restricting electoral rights as "the need to take into account the opinions of the broadest segments of society, the implementation of a constitutional reform, which provides for amendments to the current Constitution of the Kyrgyz Republic». These goals are not proportionate to the generally significant constitutional goals of restricting human rights set out in part 2 of Article 20 of the Constitution, part 3 of the same Article prohibits restrictions on rights and freedoms for other purposes and to a greater extent than is provided for by the Constitution.

The applicant claims that the suspension of the cycle of regular elections to the highest legislative body of the country hinders the legitimization of power and creates favorable conditions for the usurpation of power, prohibited by part 2 of Article 5 of the Constitution of the Kyrgyz Republic. Klara Sooronkulova emphasizes the socio-political value of the Constitution as a normative legal act regulating the principles of life of the state and society, which expresses the interests of entire nation, and in this sense, the constitutional reform process should take place in conditions of maximum transparency, with a special organization of mass discussion.

The applicant notes that every intervention in the content of the Basic Law must be of an exclusively verified nature, and this requires a broad public discussion of the proposed amendments, as well as a slow, thorough and systematic promotion of the legislative process. Therefore, the subject of the appeal comes to the conclusion that the participation of the legitimate supreme legislative body, formed by free and legitimate elections, is of great importance.

The subject of the appeal questions the legitimacy of the proposed constitutional changes, in view of participation in the constitutional reform of the Jogorku Kenesh, since his term of office ended on October 28, 2020.

The applicant, summarizing his arguments, noted that the constitutional provisions should not be changed under the influence of temporary factors and in favor of individual interests of political groups and public figures. The subject of the appeal notes that the introduction of amendments to the Constitution creates significant risks to the foundations of the constitutional order, the development of parliamentarism and its legitimacy, which in turn is regarded as an attempt to unauthorized, arbitrary changes in the constitutional order.

In view of the above, the applicant requests to recognize the contested normative provision as contrary to the Constitution of the Kyrgyz Republic.

The panel of judges, having examined the petition of the political party "Reform" represented by its representative Klara Sooronkulova, and the materials attached to it, after hearing the information of Judge Emil Oskonbaev, who checked the petition under part 2 of Article 28 of the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic", came to the following conclusions.

In the applicant's requirements for verifying the conformity of Articles 1, 2 of the Constitutional Law of the Kyrgyz Republic "On the suspension of certain norms of the Constitutional Law of the Kyrgyz Republic "On Elections of the President and Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic" with part 1 of Article 16, part 1 of Article 20, paragraphs 1 and 2 of part 1 of Article 52, part 5 of Article 80 of the Constitution of the Kyrgyz Republic, based on the arguments presented in the petition, it is seen that there is uncertainty in the issue of whether the contested norms comply with the Constitution of the Kyrgyz Republic, which is the basis for the consideration of the case by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic in the framework of constitutional proceedings.

The submitted petition of the political party "Reform" represented by its chairperson Klara Sooronkulova, in this part, meets the requirements of Articles 20, 21, 24, 25, 26 of the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic" and is subject to acceptance for proceedings.

The applicant's reference to part 2 of Article 5 of the Constitution of the Kyrgyz Republic, which prohibits the appropriation of power in the state by anyone and defines the usurpation of state power as an especially grave crime, is regarded by the panel of judges as his value judgment of events related to the adoption of the contested Constitutional Law, respectively, does not require direct regulatory control.

Based on the foregoing and guided by parts 2, 5 of Article 28 of the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic", the panel of judges of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, decided:

1. Accept for proceedings a petition to verify the compliance of parts 1 and 2 of the Constitutional Law of the Kyrgyz Republic "On the suspension of certain norms of the Constitutional Law of the Kyrgyz Republic "On elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic" with paragraph 1 of Article 3, part 3 of Article 5, part 1 of Article 16, part 1 of Article 20, paragraphs 1 and 2 of part 1 of Article 52, parts 1 and 2 of Article 70, part 5 of Article 80 of the Constitution of the Kyrgyz Republic.
2. This ruling may be appealed to the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic.

Panel of Judges:

Emil Oskonbaev
Meergul Bobukeeva
Jamil Sharshenaliev