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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**EXPLANATORY NOTE  
FOR THE DRAFT AMENDMENTS TO  
THE CONSTITUTION OF THE KYRGYZ REPUBLIC**

GROUNDS OF MAJOR PROVISIONS OF THE DRAFT LAW OF THE KYRGYZ  
REPUBLIC ON AMENDMENTS TO THE CONSTITUTION OF THE KYRGYZ  
REPUBLIC SUBMITTED TO THE NATIONWIDE DISCUSSION

This document is based on the Final Document of the Constitutional Assembly and on materials of the Constitutional Assembly; and it is structured by the following blocs of issues for consideration.

### **POWERS OF THE PRESIDENT OF THE KYRGYZ REPUBLIC**

Pursuant to the current wording of Article 46 of the Constitution, the President of the Kyrgyz Republic:

solely determines the structure of the Government; upon consultation with the Prime Minister, appoints members of the Government and heads of administrative agencies, relieves them of office; on his own initiative may dismiss Prime-Minister or the Government; appoints judges of local courts; appoints and recalls diplomatic representatives of the country in foreign countries and in international organizations; appoints the Chairman of the Central Election Commission on Elections and Referendums; appoints the Chairman of the Auditing Chamber; appoints, with such consent of local keneshes, heads of corresponding local state administrations, relieves them of office.

The proposed amendments stipulate that a certain portion of powers of the President of the Kyrgyz Republic will be under a joint jurisdiction of the President and the Zhogorku Kenesh. By the decision of the Constitutional Assembly members, those are the following issues:

- jointly deciding on the structure of the Government, i.e. determining how many ministries and state committees there should be, how they will be called, and what their terms of reference in the system of state governance will be;
- jointly forming membership of the Government, it means that any minister, chairman of a state committee, and vice prime minister will be appointed by the President of the Kyrgyz Republic only upon such consent of the Zhogorku Kenesh;
- jointly forming the whole judicial corps. Presently, only justices of higher courts (of the Constitutional, Supreme, and Higher Arbitration Courts) are elected by the Zhogorku Kenesh. It is now proposed that all other judges (of district, city, regional, military, and arbitrage) courts will be elected upon an approval of each nominee by the Zhogorku Kenesh;
- appointing heads of diplomatic missions will be made on consultation with the committee of the Zhogorku Kenesh that covers issues of international relations;
- appointing the Chairman of the Central Commission on Elections and Referendums and the Chairman of the Auditing Chamber will be made only upon such consent of the Zhogorku Kenesh.

2. There are proposed substantial changes in the procedure of appointing heads of local state administrations (akims of rayons and governors of oblasts). Under the draft law, the right to

select candidates for such positions is transferred to the Prime Minister who, with such consent of a corresponding local kenesh, will present candidates for akim and governor offices to the President for appointments.

3. In accordance with the Constitution, the President has the right to form and eliminate executive bodies outside of the Government. Under the proposed changes, this provision is concretized and it is stipulated that the President will have the right to form and eliminate the National Security Service. This will facilitate a better order in the work of the executive branch of power.

The transfer of some powers of the President to the Parliament or the Prime Minister is supposed to provide for a necessary balance of powers of the legislative and executive branches, to clarify and secure the required subordination in the process of deciding on personnel issues in bodies of the state power, and, finally, to provide for a coordinated functioning and interaction of all state bodies.

### **ZHOGORKU KENESH**

1. Under the existing Article 54 of the Constitution, the Zhogorku Kenesh consists of two chambers: the Legislative Assembly and the Assembly of People's Representatives. The proposed changes stipulate their merger into a unicameral Zhogorku Kenesh (Parliament) consisting of 90 deputies.

A majority of the Constitutional Assembly members consider such structure to be better expedient in the current situation and for the future of Kyrgyzstan. In connection with the change of the existing structure of the parliament and the establishment of a unicameral Parliament, powers currently vested, under Article 58 of the Constitution, in the Legislative Assembly and the Assembly of People's Representatives will be vested in the Zhogorku Kenesh.

2. The new wording of the Article stipulates the strengthening of powers of the Parliament by expanding some state functions that will be under the joint jurisdiction of the President and the Parliament (see the above Comments to Article 46).

3. Moreover, the Parliament will enjoy some additional functions:

- expressing no confidence to the Prosecutor-General which will result in his discharge;
- agreeing to appointments of chairmen, deputy chairmen, and judges of all district, city, regional, military, and arbitration courts;
- agreeing to presidential appointments of chairmen of the Central Commission on Elections and Referendums and of the Auditing Chamber;
- appointing and dismissing the Commissioner for Human Rights (Ombudsman).

The unicameral structure of the Parliament and the new body of its powers are supposed to improve legislative activities, increase efficiency of the legislature, and facilitate the strengthening of interaction between the legislative branch with the executive and judicial branches.

## **EXECUTIVE BRANCH**

1. The Government should be accountable not only to the President, as it is currently the case, but also to the Zhogorku Kenesh. The responsibility of the Government, as a collegial body, should begin with the personal responsibility of each individual member of the Government. A nominee for the office of a minister should be ready not only to prove to the Parliament his professional abilities and spotless reputation, but also to meet other high requirements demanded from members of the Government.

Therefore, under the new wording of Article 72 of the Constitution, a minister's activities will be under supervision of both the President and the Parliament; the latter may issue a reprimand to a minister which may become a ground for his dismissal by the President's decision. If the Zhogorku Kenesh chooses to consider this issue once again and decides to express no confidence to the minister, the President will be bound to discharge the minister. Thus, there will increase responsibility of ministers before the Prime Minister as well.

2. The Prime Minister's role will substantially increase: under the proposed amendments, he will select candidates for minister offices, chairmen of state committees, heads of administrative agencies, of other central bodies of executive power, governors of oblasts, and akims of rayons. If unsatisfied with their work, the Prime Minister may recommend to the President to dismiss any of them.

All those provisions are supposed to improve discipline within the Government and to increase the responsibility of all members of the Government, and of governors and akims before the people in the person of the President and the Parliament.

Under the new wording of Article 78 of the Constitution, the Procuracy will be deprived of its current powers of criminal prosecution and sanctioning of arrest (the latter to be understood as an enforcement measure that may be applied to the accused in the course of the preliminary investigation of a criminal case). This enforcement measure will be applied only if so decided by court.

## **COURTS AND JUSTICE**

1. The Constitutional Assembly members have discussed various possibilities of a merger of higher courts, i.e. the Constitutional, Supreme, and Higher Arbitration Courts. There have been expressed different arguments and reasons. The draft amendments submitted to the nationwide discussion envisage one variant of such merger, i.e. a merger of the Supreme Court and the Higher Arbitration Court only.

2. Whereas the trust in courts and fairness of court decisions and verdicts largely depend on whether representatives of the community participate in administering justice, the proposed constitutional provision of the right of citizens of the Kyrgyz Republic to participate in the administration of justice will facilitate democratization of judicial proceedings. Under the new wording of Article 79 of the Constitution, instances of and procedure for the participation of citizens in judicial proceedings will be determined by law.

3. Moreover, the constitutional basis of the judicial system should be arranged so that it could be perceptive of progressive changes. Thus, when both the judicial system itself and the

society in whole are ready for the institute of magistrates (who will be elected by citizens or by local representative bodies of power), there should be secured a possibility for establishment of this institute in the future. Therefore, it is proposed to emphasize that the judicial system of the Kyrgyz Republic and status of judges are determined by the Constitution and constitutional laws.

4. The newly introduced principle of forming the whole judicial corps by the President jointly with the Parliament (both of them enjoying an exclusive right to act on behalf of the people) will not only improve the status of judges of local courts, but will also provide for a constitutionally-approved possibility of introducing a complex, but exacting selection of candidates for judicial positions. The selection process should become open and should involve participation of citizens and communities.

## **LOCAL SELF-GOVERNMENT**

Lately, the local self-government has developed rapidly and extensively in the country. Local keneshes and ayil okmotu have become stronger and indicate their growing ability and readiness to work not only on local affairs traditionally delegated to them, but also to perform state functions. The proposed amendments to Article 92 of the Constitution are supposed to strengthen the potential for a further development of the local self-government.

The draft law also incorporates some other recommendations of the Constitutional Assembly conditioned by the proposed changes in the distribution of powers of the President, Parliament, Prime Minister, in the structure of the Parliament, and in the judicial system, or aimed at the editing improvement of the text of the Constitution.

## **THE SECRETARIAT OF THE CONSTITUTIONAL ASSEMBLY ESTABLISHED BY THE DECREE OF THE PRESIDENT OF THE KYRGYZ REPUBLIC DATED 26 AUGUST 2002 INFORMS AS FOLLOWS:**

Starting from October 18 and until November 18, 2002, citizens and their groups, unions, non-governmental organizations, political parties, and state bodies may send (inform of) their suggestions, comments, recommendations, and opinions in respect of the Draft Law of the Kyrgyz Republic *On Amendments to the Constitution of the Kyrgyz Republic* submitted to the nationwide discussion by the Decree of the President of the Kyrgyz Republic dated 17 October 2002 No 278 *On the Nationwide Discussion of Amendments to the Constitution of the Kyrgyz Republic Worked out on the Basis of Suggestions and Recommendations of the Constitutional Assembly* to any of the following addressees:

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Please send your suggestions, comments, recommendations, and opinions with the following mark "Secretariat of the Constitutional Assembly".

Press Service of the President of the Kyrgyz Republic  
17 October 2002