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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS
ON THE LAW AMENDING AND SUPPLEMENTING THE LAW ON
“CONSTITUTIONAL PROCEEDINGS IN KYRGYZSTAN”

AND

ON THE LAW OF KYRGYZSTAN AMENDING AND SUPPLEMENTING
THE LAW ON “THE CONSTITUTIONAL COURT OF KYRGYZSTAN”

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..*

2

This rewording is apparently made in order to comply with the Constitution. The general criteria of the Venice Commission as to the balanced composition of the Court and the qualified majority of their nomination are not implemented in the Constitution and had already been object of comments by the Venice Commission in the opinion CDL-AD(2007)045.

3

Article 5 of the existing Law has been proposed to be reworded. In the reworded text the general length of term for Judges, which was 15 years, has been dropped and not replaced. Whilst the terms of President and Vice-president of the Court is fixed in the Constitution, no term for Judges is mentioned any more.

The fact that the Constitutional Court may begin its work already if only two thirds of its members is elected is somehow not welcome; it is indeed not the same to say (as in the draft to the amendment of the proceedings before the Constitutional Court and in Art. 13, par. 4 of the existing law on the Constitutional Court) that the Court may validly hold a session if two thirds of the Judges are present than to say that one third of the Judges need not even be elected in order to start work. This could in fact lead to withholding the election of the Court in its totality in an arbitrary way and is to be criticised.

4

The fact of having abolished the whole Chapter II of the existing Law would need some clarification about the motivation and intention of the legislator. In fact, Chapter III (proposed to be abolished) speaks about the Independence of Judges of the Constitutional Court [art. 7], the Inviolability of Judges of the Constitutional Court [art. 8], the Suspension of Powers of a Judge of the Constitutional Court [art. 9], the Termination of Powers of a Judge [art. 10], the Financial an Social Provision of Judges of the Constitutional Court [art. 11] and the Guarantees of Labour Rights of Judges of the Constitutional Court [art. 12].

All these vast matters have been proposed to be abolished “en bloc” and without an apparent counter-part, is not in line with the general standards set out by the Venice Commission. Specific information on the subject might, however, bring some more light on the matter, allowing to make concrete proposals.

5

With reference to amendments in the second paragraph, the words “commercial courts” and “and commercial” are not visible; it could be a matter of translation.

The abolishment of paragraph 3, subpara. 3, i.e. the abolishment of the competence to suspend the powers of Judges of the Constitutional Court could be seen as interfering with the independence of the Court and should be discussed

The amendment in par. 8 of art. 13 should read as paragraph 7.