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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION

ON THE DRAFT CONSTITUTIONAL LAW ON THE CONSTITUTIONAL COURT

OF TAJIKISTAN

on the basis of comments by

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Contents

I. Introduction 3
II. General remarks 3
III. Remarks article by article 3
A. Chapter 1 - General provisions 3
B. Chapter 2 - Composition of the Court and election of the judges 4
C. Chapter 3 - Status of the Judges of the Constitutional Court 4
D. Chapter 4 - Powers of the President, Vice-President and Judge-Secretary 6
E. Chapter 5 - Basic principles of constitutional proceedings 7
F. Chapter 7 - Powers of the Constitutional Court 8
G. Chapter 8 - Jurisdiction of the Constitutional Court 8
H. Chapter 9 - Procedure 8
I. Chapter 10 - Consideration of cases 9
J. Chapter 11 - Acts of the Constitutional Court 10
K. Chapter 13 - Social provision 11
L. Chapter 14 – Other matters 11
IV. Conclusions 12

I. Introduction

1. By letter dated 12 February 2014, Mr M.A. Makhmudzoda, the Chairman of the Constitutional Court of Tajikistan requested an opinion on the draft law on the Constitutional Court of Tajikistan (CDL-REF(2014)014).

2. The Venice Commission has invited Mr Aivars Endzins, Mr Gagik Harutyunyan and Mr Lucian Mihai to act as rapporteurs for this opinion.

3. A delegation of the Venice Commission, composed of Mr Endzins and Mr Mihai, accompanied by Mr Schnutz Dürr and Ms Svetlana Anisimova from the Secretariat visited Dushanbe on 5-6 May 2014 and had meetings (in chronological order) with Chairman M.A. Makhmudzoda and the Judges of the Constitutional Court, Mr D.M. Davlatov, Advisor to the President of Tajikistan on legal issues, Mr M. Vatanov, Chair of the Committee on Legislation and Protection of Human Rights of the *Majlisi Namoyandagon* of the *Majlisi Oli* (lower chamber of Parliament) and Mr R.Sh. Mengliev, the Minister of Justice of Tajikistan, as well as with NGOs. This opinion is takes into account the information obtained during the above-mentioned visit.

4. *The present opinion was adopted by the Venice Commission at its … Plenary Session (Venice, …).*

II. General remarks

5. The draft constitutional law is to replace the existing law from 1995, which had been amended several times. The Commission's delegation was informed that, since more than half of the provisions of the existing law are affected by the changes, a new constitutional law has been prepared rather than amendments to the existing law. The new draft is coherent and clearly builds on the experience acquired on the basis of the law in force.

6. This opinion is based on an English translation of the law. Some of the issues raised can of course relate to translation.

III. Remarks article by article

A. Chapter 1 - General provisions

7. Rather than referring to "other regulatory legal instruments" as an additional basis for the activity of the Court, Article 2 should explicitly specify which other legal acts are to be adopted (e.g. rules of procedure to be adopted by the Court).

8. Article 3 prohibits discrimination on several grounds. **There should be an open ended formulation of possible grounds of discrimination.** Other grounds like age or sexual orientation are not mentioned.

9. Article 5.1 provides for a quorum of two thirds of the judges, i.e. five out of the seven judges and a decision must be adopted with simple majority. This means that in case of five judges present, a vote of three judges is sufficient for a decision. This might weaken such a decision, given that in fact only three out of the seven judges have voted for it. In order to overcome this issue, **a rule could be introduced that a decision should be taken with the vote of at least four judges**.

10. Article 6 provides that the Court “shall determine and decide only questions of law”. This provision should take into account Article 35.3.4 and Article 57.4 which both provide that the Court shall adopt “findings“. This term seems to indicate that in these cases the Court will ascertain facts and not only decide questions of law. Therefore, Article 6 should also refer to “findings”.

11. According to Article 7, one judge shall be a ‘representative’ of Gorno-Badakhstan. Due to his or her independence a judge cannot be a representative of this district but can only originate there. However, the same terminology is used in Article 89 of the Constitution.

B. Chapter 2 - Composition of the Court and election of the judges

12. Article 8 provides that the President, the Vice-President and the judges of the Court are nominated by the President of the Republic and elected by Parliament. In a presidential system, where the President of the state has real executive powers and not only ceremonial ones, not all nominations should be made by the President. Parliament should be able to directly elect - with a qualified majority - at least part of the judges upon its own proposals. However, such a change would first require an amendment to Articles 56.2 and 69.9 of the Constitution. In addition, preferably the President and Vice-President of the Court should be elected by the judges themselves.

13. The absence of a reference to previous experience in “legal” provisions in Article 8.3seems to be a translation error.

14. Article 9 provides for a 10 year mandate for the judges of the Court (presumably implicitly also for the President and the Vice-President). In order to safeguard their independence, it would be preferable to exclude the re-election of the judges (at least – by means of transitory provisions - for the judges newly appointed in the future, after the adoption of this draft law, so the mandates of the judges currently in office could remain unaffected). This is no common standard, however. The mandate could be longer or the judges could be elected until retirement. The Constitution is silent on this issue, which thus could be regulated in the draft constitutional law.

15. Given that upon their election, judges have to be between 35 and 65 years old (Article 8.3) and that the mandate lasts for 10 years (Article 9.1), the maximum age of a judge can be 75 years. Generally, 70 years is considered as the maximum age for a member of the Constitutional Court. To achieve this, the draft law could either define 60 years as the maximum age for becoming a judge or set a maximum age of 70 years, which terminates the judges mandate before the 10 years. The latter alternative seems more practical.

16. **In order to ensure the continuity of the Court, the judges should stay in office until their successor takes up office.**

C. Chapter 3 - Status of the Judges of the Constitutional Court

17. Article 11.1 provides that “in performing their duties and considering cases” judges of the Constitutional Court shall be bound only by the Constitution and this law. This excludes that the judges be bound by any other legal instruments in the course of judicial proceedings. In view of the presumption of constitutionality of legislation, the binding force of other legal texts “in performing the duties” of the judges should not be explicitly ruled out (e.g. regulations about business trips etc.).

18. Article 11.6 should be amended, as the judges of a constitutional court shall never provide “lawful representation in court or other law enforcement agencies” (even for the benefit of their close family members).

19. Article 12 gives the judges wide immunity, excluding any criminal and administrative proceedings against them without the consent of Parliament. A merely functional immunity, relating only to acts performed in the exercise of their duties would be preferable. Ordinary crimes, like drunken driving should not be covered by immunity. **The immunity should be lifted by the Constitutional Court itself, rather than by Parliament**, which is a political organ.

20. This article also specifies that criminal and administrative cases against the judges are to be considered by the Supreme Court. The Commission's delegation was informed that panels within the Supreme Court hand down sentences and that an appeal to another panel of the Supreme Court is possible. Although the right to appeal in criminal cases seems therefore safeguarded, it would be better to have an explicit provision within the body of this draft law.

21. Article 13 should determine that in case of suspension of a judge, the Court should decide without the judge concerned, maintaining the regular quorum and majority requirement.

22. Article 14 provides for a series of grounds for the recall of the judges. In each case, the judge is recalled by Parliament upon proposal by the President of the Republic. In particular the death of the judge is purely factual and need not result in a "recall" at all. The same applies regarding resignation and expiration of the term of office. Others require an assessment of the behaviour of the judge: whether he or she has engaged in activity incompatible with the office (Article 14.5), whether he or she has committed and act which discredits the honour and dignity (Article 14.7). In such cases a court – **either the Constitutional or the Supreme Court - should decide** on this issue **before the judge is recalled by political organs** (Parliament, the President of the Republic).

23. Article 14.11 foresees that a judge is recalled after being transferred to another job. However, **a transfer of a judge to another position during his or her term as a reason for a recall has to be excluded.** During his or her term of office a judge cannot be appointed to another post without a prior resignation, even with his or her agreement.

24. **A violation of legislation relating to traditions, ceremonies and rites** is also provided by Article 14.7 as a reason for a recall of a judge. It seems that this law in particular prohibits excessively large weddings, which ruin whole families. While such a law may make sense in Tajik society in general, it **should not be a reason to dismiss a judge of the Constitutional Court.**

25. Article 15.1: after retirement there should immunity only for opinions expressed during the mandate as a judge.

26. The free choice of retirement provided for in Article 15.2 is unusual. The delegation was informed however that such retirement does not in itself entitle the judge to a pension. Such 'retirement' would thus more akin to a resignation of the judge (under Article 14.1). Probably these two provisions could be merged, but without requiring an acceptance of the resignation / retirement.

27. The Commission's delegation was informed that Article 15.5, which provides for the recognition of years earlier service in other state functions for the calculation of the judge's pension only applies to cases when a judge of the Court leaves the court, works in five positions (Head of the Presidential Administration, Minister of Justice, Chair of the Council of Justice - or their deputies - , Member of Parliament, State Advisor to the President on Legal Policy) and returns as a judge. The Commission's delegation was informed that these five

positions were selected because in the past judges of the Constitutional Court took up these positions and later returned as judges to the Court. Apart from the question whether it is coherent to select in the law only some state positions, the real problem is rather the existence of a practice of switching back and forth between the position of judge and high executive positions. The danger of such a practice is that the judges could be 'rewarded' with high positions for favourable decisions taken as a judge. Even if judges of course can take up other public positions after the end of their mandate if they have not yet reached the retirement age, switching to the executive and then even returning as a judge to the Court does not seem appropriate. A solution to this problem can be long mandates for judges combined with a high minimum age for entry or taking up other less political public positions, for example in teaching. This question relates to the issue of the re-appointment of judges discussed under Article 9 above.

D. Chapter 4 - Powers of the President, Vice-President and Judge-Secretary

28. Both Articles 16.1.3 and 38 stipulate that the President of the Constitutional Court send to the President of the Republic and to Parliament an **annual message on the situation with regard to compliance with the Constitution**. Such a message is not foreseen in the Constitution. The Commission's delegation was informed that in practice these messages mostly relates to information, which the Court receives through various petitions, which do not lead to proceedings before the Court. However, such a message is very delicate and should best be avoided. There is a danger that the Court would possibly express itself on issues, which could be brought before the Court (not least because the Court already raised these issues in its report) and the judges would then be biased if they had already expressed themselves in the annual report. If it is deemed necessary to have such an annual message, it **should refer only to the execution of judgements**.

29. According to Articles 16.1.13 and 71, the **Judges of the Constitutional Court receive qualification grades from Parliament**. Any discretion in awarding such grades should be avoided in order to safeguard the independence of the judges. Otherwise this could be used to reward judges for favourable decisions. However there is **no problem with qualification grades if they are awarded automatically by the President of the Court, after a given number of years of service.**

30. Article 16.3 provides that the President of the Constitutional Court has the right to participate in sessions of the Government, Parliament, the supreme courts and other state organs. The Commission's delegation was informed that this provision helps to ensure a sufficient respect for the Court in protocol issues. In many countries the Constitutional Court President indeed ranks between third and fifth position in State protocol, which shows the importance of the Constitutional Court among state powers. If Article 16.3 were retained for protocol reasons, the President should use this right sparely and participate mostly in ceremonial sessions of other state powers in order to avoid giving the impression of being close to the executive or the legislative powers.

31. Article 16.3 also provides for "other powers" to be exercised by the President of the Court. Without further specification of the type and source of such powers, this provision should be removed.

32. Article 18 provides that one of the judges acts as the Secretary of the Court. This position is different from that of a Vice-President. It seems that the President of the Court nominates / makes a proposal for the Secretary (Article 16.1.11) who is then elected by the judges (Article 18). Given the possibly high workload of the Court, a Secretary who is a staff member rather than a judge might be more efficient. However, there is no problem in relation to standards.

E. Chapter 5 - Basic principles of constitutional proceedings

33. Article 19.3 provides that parties can inspect audio-visual recordings. While it seems that the word “inspection” of recordings refers to a “consultation” it should be made clear that such consultation only refers to official recordings, not those made by private participants in the hearing. The parties should not have a right to “veto” recordings.

34. Article 20.4 requires that the hearing shall begin anew if a new judge appears at a court session. Given that recordings of the hearings are available, the new judge should acquaint him or herself with these recordings.

35. Article 22 establishes the principle of adversarial proceedings. While this principle certainly applies to civil and criminal proceedings, the nature of constitutional proceedings is different. While one party, the applicant, has a clear interest in the proceedings the identification of the other party is not straightforward. The simple fact that an act was issued by a state organ does not necessarily make that organ an appropriate adversarial party. Due to political reasons, the organ might not have a real interest in defending the constitutionality of the adopted act. Therefore, some constitutional justice systems work in an inquisitorial way, with the Constitutional Court establishing arguments in favour and against constitutionality of the challenged provision. Other adversarial systems provide that prosecution defends public interests as a party.

36. Article 23 but also other provisions (Articles 31 and 47) place a very strong emphasis on the oral nature of the proceedings. These provisions seem to be inspired from civil and criminal proceedings, where the taking of evidence is essential. However, constitutional proceedings are very different in nature. The facts of the underlying case are usually not essential. The issue before the Constitutional Court is an abstract one, whether a given norm is in conflict with the Constitution. The underlying case only provides the ‘flavour’ for the case. Many constitutional courts decide cases without hearings or hold hearings only in some cases and only pronounce the decision in public. The law should also provide for a written procedure. There is of course no objection in principle against hearings in some cases, which help the public to get acquainted with the work of the Court but there is a danger of overburdening the court with hearings. In any case, **the clause in Article 23 requiring the reading out of all documents seems excessive and should be deleted.**

37. Articles 26.2-4, 50.2.1-3, 52, 53, 55.2-3 and 82 regulate very **practical issues**, which **should be removed from the law and be regulated in the rules of procedure** to be adopted by the Court. Regulation of these issues on the level of regulation is also important in order to enable the Court to change its practical functioning without requiring an intervention from Parliament.

38. The rule in Article 27.5 that not all judges can be disqualified is welcome but should exclude not only the recusal of all judges but any recusal which brings the number of judges below the quorum. The Constitutional Court has to remain operational and a *non liquet* because of recusals has to be excluded. Recusals should not lead to a lowering of the quorum, which would weaken the force of the decisions taken. Often, former members of Parliament are appointed as judges to the Constitutional Court and the mere participation in the adoption of a law should not exclude a judge from the proceedings.

39. For the right of a party to change his or her claim until the end of the hearing in Article 30.3, see also the remarks relating to Articles 47.1.8, 48 and 51 below.

F. Chapter 7 - Powers of the Constitutional Court

40. Article 35.2 of the draft constitutional law gives the Constitutional Court an important additional role in **examining constitutional amendments**, which extends the powers provided for in the Constitution and which is not provided for in Articles 89, 98 and 99 of the Constitution. The control of constitutional amendments by the Constitutional Court is known also from other countries. In such cases **the applicable standards should be made very clear**. Article 100 of the Constitution excludes "the form of public administration, the territorial integrity, and the democratic, law-governed secular and social nature of the state" from amendment. If the Constitutional Court were to examine constitutional amendments, a reference to these unamendable provisions and possibly to a control of the amendment procedure would be appropriate. On the question who can initiate such a review see under Article 45.3 below.

41. Article 35.2, seventh indent, provides that the Court should control regulatory legal instruments of settlements and villages and regulatory legal instruments not only of ministries, state committee but also of "other state bodies". These powers are rather related to administrative than to constitutional justice and could overburden the Court. They be should be attributed to ordinary (administrative) courts.

G. Chapter 8 - Jurisdiction of the Constitutional Court

42. Article 39.2 provides that the Constitutional Court has jurisdiction over secret regulatory acts. In a state ruled by law there should be no normative acts of a secret nature. All normative acts should be public. This issue can however not be settled in the present law. To the extent that such legal acts indeed exist, they should of course be controlled by the Constitutional Court.

43. Article 41.5, 41.6, 41.7 and 41.8 provides for individual complaints, complaints by legal entities, by the Commissioner for Human Rights and by ordinary courts provide. Such a wide access is most welcome. It would be very important to actively inform the public but also judges and lawyers about this access. However, **Article 41.6 should not refer to citizens only. Any individual under the jurisdiction of the Republic of Tajikistan should have the right to the appeal to the Constitutional Court.**

44. Article 41.8 enables ordinary judges to refer to the Constitutional Courtnormative acts, which they applied or are to apply in specific cases. The civil, criminal and administrative procedure codes should provide for a suspension of the proceedings in these cases until the Constitutional Court decides on the constitutionality of the normative act.

H. Chapter 9 - Procedure

45. Article 42.3 requires for an application to include an "indication of substantive connection", "concrete reasons" and "substance of the applicant's claim" as separate elements. The Court should be open to appeals and should not be formalistic in the examination of the applications. These elements should be merged.

46. Articles 42.7 and 67 provide for fees for the introduction of a case. Constitutional justice is in the interest of the State as a whole and access to the Court should preferably be free. Any court costs should be low, especially for individual applicants to allow them to defend their human rights. In addition legal aid should be provided for individuals who cannot afford legal representation.

47. Article 43 sets a deadline for applicants "within six months as from the date on the relevant decision is adopted in respect of them". This definition is appropriate for individual

applications but not for all types of applications, e.g. for conflicts of competences or the verification of the constitutionality of international treaties. **It would be important not only have specific deadlines but to introduce specific procedures for each type of claim.**[1]

48. Article 44.6 enables the Constitutional Court to suspend the operation of regulatory legal instruments. In view of the principle of presumption of unconstitutionality, such a suspension should be a rare exception. **The draft law should set out stringent conditions under which the suspension of a challenged norm is possible**, for example because the operation of these provisions would cause irreparable damage to the State.

49. Article 46.1 obliges the Court to decline to institute proceedings if in term of its form and content the application does not meet the requirements of Article 42. As concerns form, in the interest of constitutional justice, the law should be more lenient and the applicants should be given occasion to correct formal errors.

50. Article 45 partly restates the powers of the Constitutional Court set out in Article 35 and should be merged into that article.

51. Article 45.3 enables the President of Tajikistan and Parliament to submit draft constitutional amendments to the Constitutional Court. This could be extended to other subjects, at least to the Government, to a certain number of members of the Parliament, and to the Supreme Court. Such extension is prohibited neither by Article 89 of the Constitution on the Constitutional Court, nor by Articles 98-100, which regulate the procedure for introducing constitutional amendments.

52. Article 46.2 is rather general and could be moved to Article 1.

53. Article 47.1 should probably refer to the “judge rapporteur” rather than the “judge” only.

54. According to Articles 47.1.8, 48 and 51.1.2 it seems that Court proceedings are stopped **if an application is withdrawn or the challenged act is no longer in force** (see also Article 30 above). Article 48 seems to provide that this shall not be the case if constitutional civil rights and freedoms were violated. Such an automatic continuation may not be necessary. However, **the Court should be able to continue the proceedings if it deems it necessary in the public interest,** which can of course include the interest of individuals.

55. Article 47.1.9 provides that copies of relevant documents have to be sent 10 days before the court session to judges and parties. This is too short for the parties who have to prepare their position on the basis of these documents.

56. Notifications to parties under Article 47.1.11 should be done by the President or the Secretary General of the Court rather than by the rapporteur judges. This may be especially important when more than one rapporteur judge have been appointed under Article 47.2.

I. Chapter 10 - Consideration of cases

57. Article 49 establishes a deadline of 6 months for the completion of a case. An extension of this deadline should be possible.

[1] See for example Articles 68-80 of the Armenian Law on the Constitutional Court.

J. Chapter 11 - Acts of the Constitutional Court

58. Article 57.3 provides that “acts of the Constitutional Court of the Republic of Tajikistan shall be binding on all state bodies, organisations, institutions, public associations, officials and citizens to whom they are addressed.” The acts of the Court should be binding on all state organs and not only those to whom they are addressed.

59. Article 57.4 is unclear. For what shall the findings of the Constitutional Court be the basis?

60. Article 57.5 refers to the ‘annulment’ of normative acts and the ‘repeal’ of other acts based on those acts. The effects of the decisions thus seem unclear, at least in the English translation. An annulment has an effect *ex tunc*, that means that the act is completely removed as from the time of its adoption. In its radical form annulment results in the invalidity of all acts, including individual acts, which have been based on the annulled act. This can have serious consequences, for example as a consequence of the annulment of a civil law provision on marriage could result in the invalidity of all marriages concluded under this provision. This is why countries which in principle provide for annulment of normative acts (e.g. Germany) in practice attenuate those effects.

61. Conversely, a repeal of a provision however has effects only as from the adoption of the decision of the Constitutional Court *(ex nunc)*. The consequences of this solution are much clearer but it can also lead to unjust situations when individual acts, which are based on an already repealed unconstitutional law continue to be in force. In its radical form, even the applicant would not have any benefit of having a law annulled if the individual decision taken against him or her remains in force. Therefore, some systems (e.g. Austria) introduced the ‘premium for the catcher’ providing that the individual act directed against the applicant is repealed, while individual acts directed against other individuals remain in force.

62. Both the term ‘annul’ and ‘repeal’ used in the draft law seem to imply a direct effect of the judgement, which is positive. The Court should not recommend to other organs to repeal the unconstitutional act but it should lose its force by virtue of the judgement itself.

63. Article 57.6 provides that court decisions, which are based on an act, which was found to be unconstitutional, shall not be executed. Following the *ex nunc* logic, this would mean that only individual acts which are not yet executed are affected but already executed acts remain in force.

64. Article 57.7 seems to provide an exception to the *ex nunc* rule by providing that the Constitutional Court can identify concrete violations and can request other state bodies to remedy to these violations. In view of the above, the terminology used in Article 57 should be clarified.

65. At least in the English translation, Article 57.9 (like Article 89 of the Constitution) refers to “treaties which have not yet entered into force”. However, there seems to be an issue of terminology. Even after ratification by Tajikistan, treaty could not have entered into force (e.g. a multilateral treaty, which requires a minimum number of ratifications for entry into force). Article 57.9 should exclude the ratification of treaties which were found unconstitutional.

66. Article 58.6 provides that decisions (judgements and findings) of the Court shall be immediately pronounced after their adoption. In addition, this provision should stipulate that **the decision enters into force upon publication in the official journal**.

67. In Article 59.2, in cases when judges agree on the operational part of the decision but not on the reasoning, concurring opinions might be introduced in addition to dissenting opinions.

68. Article 60 refers to a synopsis of the judgement. This part probably contains the motivation or reasoning. This is clearly the central part of the judgement. **The draft law should be more explicit on the need to provide a reasoning**, which contains clear legal arguments, which establish a logical link between the relevant constitutional provisions and the constitutionality or unconstitutionality of the challenged act.

69. Article 61 provides for additional judgements and Article 64 for the interpretation of Acts of the Constitutional Court by the Court. Constitutional Court judgements should be clear in themselves. Of course, it may be necessary to rectify material errors in a judgement. However, the very existence of procedures allowing for additional judgements or interpretations could be seen as an invitation to exert pressure on the Court to soften unwelcome decisions. **Apart from a procedure to correct errors, amendments and interpretations of decisions should not be possible**.

70. Article 62.2 provides that decisions (judgements and findings) of the Constitutional Court shall be published in the mass media. The mass media should be informed about a judgement but they cannot be obliged to publish the decisions. **All judgements should however be published in full the official journal, which entails their entry into force**. The judgements should also be published in the Court's Bulletin. In addition, they should be available on the web-site of the Court.

71. The liability for acts of non-execution of Constitutional Court judgement (Article 63) should be set out in the draft law itself and not only by reference to the legislation in general.

K. Chapter 13 - Social provision

72. Article 68.2 provides that **the official salary and additional payments for judges** are determined by presidential order. For the independence of the judges of the Constitutional Court it is **essential that this be fixed by the law**.

73. According to Article 68.4 housing is provided to the judges. This system should be phased out as the promise of better housing could be used to influence them. Privileges in kind should be replaced by higher salaries in order to guarantee the independence of the judges.

74. For the independence of the Court it is **important that its budget be determined by Parliament rather than by the executive** (Article 74.2) upon a proposal by the Court. Of course, Parliament cannot be bound by such a proposal (see also Article 78.3 as concerns staff).

75. By reference to general legislation, Article 77 provides liability for contempt of court and similar "acts which display a flagrant disregard for the Court". While such a provision is acceptable, in practice it should be ensured that respectful criticism of a judgement remains possible.

L. Chapter 14 – Other matters

76. Article 79 provides that the Constitutional Court shall have representatives in the regional centres of Tajikistan. This article should also set out what competences these representatives shall have (informing about the Court, accepting appeals etc.).

IV. Conclusions

77. The draft constitutional law “On the Constitutional Court of Tajikistan” is a coherent text, which will provide a firm basis for an effective work of the Constitutional Court.

78. Nonetheless, some provisions should be further improved to comply with common standards and to provide an efficient work of the Court. The most important issues are:

1. Either the Constitutional or the Supreme Court should decide on the grounds for the recall of a judge before the judge is recalled by political organs (Article 14).
2. A transfer of a judge to another position during his or her term as a reason for a recall has to be excluded (Article 14).
3. Individual applications should be possible not only from citizens but from any individual (Article 41).
4. The Court's budget should be determined by Parliament (Article 74).

79. Furthermore, the Venice Commission recommends:

1. There should be an open ended formulation of possible grounds of discrimination (Article 3).
2. A rule could be introduced that a decision should be taken with the vote of at least four judges (Article 5).
3. The judges should stay in office until their successor takes up office (Article 9).
4. The immunity of the judges should be lifted by the Constitutional Court itself (Article 12).
5. A violation of legislation relating to traditions, ceremonies and rites should not be a reason to dismiss a judge of the Constitutional Court (Article 14).
6. The law should also provide for a written procedure. At least the rule requiring the reading out of all documents should be deleted (Article 23).
7. The annual message on the situation with regard to compliance with the Constitution should refer only to the execution of judgements (Articles 16 and 38).
8. There should be no discretion in awarding qualification grades to the judges (Articles 16 and 71).
9. The applicable standards for examining constitutional amendments should be made very clear (Article 35).
10. The law should set out specific procedures for each type of claim (Article 43).
11. The draft law should set out stringent conditions under which the suspension of a challenged norm is possible (Article 44).
12. If an application is withdrawn or the challenged act is no longer in force the Court should be able to continue the proceedings if it deems it necessary in the public interest (Articles 47, 48 and 51).
13. The decisions of the Court should enter into force upon publication in the official journal (Articles 58 and 62).
14. The draft law should be more explicit on the need to provide a reasoning (Article 60).
15. Apart from a procedure to correct errors, amendments and interpretations of decisions should not be possible (Articles 61 and 64).
16. The salary and additional payments for judges should be determined by the law (Article 68).
17. Several practical issues should be moved to the rules of procedure (Articles 26, 52, 53, 55 and 82).

80. The Venice Commission remains at the disposal of the Tajik authorities for any further assistance they may need.