



Strasbourg, 14 April 2011

**Opinion No. 624 / 2011**

**CDL-REF(2011)016**  
Engl. only

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

**DRAFT LAW**  
**ON THE COUNCIL ON SELECTION OF JUDGES**  
**OF KYRGYZSTAN**

**The Law of the Kyrgyz Republic**  
**“On the Council on selection of judges of the Kyrgyz Republic”**

The present Law regulates the status, procedures of formation, organization and activity of the Council on selection of judges of the Kyrgyz Republic.

**Article 1. Status of the Council on selection of judges and its main tasks**

1. The Council on selection of judges of the Kyrgyz Republic (hereinafter referred to as the Council) is an independent collegiate body created in accordance with the Constitution of the Kyrgyz Republic (hereinafter referred to as the Constitution). The status of the Council is regulated by the Constitution and by the present Law.

2. The main tasks of the Council are to select the candidates for vacant positions of judges of the Supreme Court of the Kyrgyz Republic (hereinafter referred to as the Supreme Court), the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (hereinafter referred to as the Constitutional Chamber), local courts as well as recommend for appointment and transfer (rotation) of judges of local courts.

3. The Council shall perform its activity on the principles of independence, openness, collegiality, good faith and legality.

**Article 2. Legal foundation of activity**

The legal foundation of activity of the Council is represented by the Constitution, the constitutional Law of the Kyrgyz Republic “On the status of judges of the Kyrgyz Republic”, the present Law as well as other normative and legal acts of the Kyrgyz Republic.

**Article 3. Authority of the Council**

1. The Council shall:

1) Hold a competitive selection of judges of the Supreme Court, the Constitutional Chamber and local courts to vacant positions;

2) Propose to the President of the Kyrgyz Republic (hereinafter referred to as the President) based on the outcomes of the competitive selection:

- the candidates to a vacant position of a judge of the Supreme Court, the Constitutional Chamber for the presentment to the Jogorku Kenesh of the Kyrgyz Republic (hereinafter referred to as the Jogorku Kenesh);

- the candidates to a vacant position of a local court judge for appointment;

3) Submit relevant proposals on transfer (rotation) of local court judges to the President.

2. The Council shall have the following rights for the execution of its authority:

1) Request and receive necessary information, documents and other materials from the state agencies and local self-governance bodies as well as officials thereof;

2) Hear verbal and request written explanations from officials of the state agencies and local self-governance bodies;

3) Invite to its meetings the officials from the state agencies and local self-governance bodies, the representatives of organizations and citizens.

**Article 4. Composition of the Council and its term of office**

1. The Council shall be composed of judges and the representatives of the civil society, which shall be formed by the Council of Judges of the Kyrgyz Republic, the parliamentary majority and the parliamentary opposition of the Jogorku Kenesh, the number of members of the Council shall be twenty four.

2. The term of office of the Council shall be three years since the approval thereof by the Jogorku Kenesh.

3. In case a member leaves the Council in accordance with the provisions of the present Law, a new member shall be proposed to the Jogorku Kenesh within at least one month since the relevant position becomes vacant for the remaining term of office of the Council in accordance with the procedure of election of a Council member. A new member of the Council shall be accordingly elected by the members of the Council of Judges, the parliamentary majority and the parliamentary opposition in effect at that moment in view of part 6 article 5 of the present Law. The Jogorku Kenesh shall consider the matter of electing a new member of the Council within at least one month since the date of receipt of the proposal.

4. One and the same person can not be elected member of the Council for more than two consecutive terms.

5. The formation of the new composition of the Council shall commence three months prior to the expiration of the term of office of the acting Council.

#### **Article 5. Formation of the Council**

1. The Council of Judges, the parliamentary majority and the parliamentary opposition of the Jogorku Kenesh shall each elect one third of the composition of the Council correspondingly.

2. The judges shall be elected members of the Council by the Council of Judges in accordance with procedures adopted by the congress of judges.

3. The representatives of the civil society shall be elected members of the Council by the parliamentary majority and the parliamentary opposition of the Jogorku Kenesh at the faction meetings. The meetings of the parliamentary majority and the parliamentary opposition factions shall be held separately and shall be deemed valid in case at least half of its members are present. The meeting of factions, the nomination of candidates for the membership in the Council and the voting shall be held in an open manner. The candidates from the parliamentary majority and the candidates from the parliamentary opposition who win the largest number of votes of the members of the parliamentary majority and the parliamentary opposition shall be deemed elected members of the Council.

4. The full membership of the Council shall be approved by the Jogorku Kenesh in the individual voting with the use of individual ballot papers. During the process of approval of the membership in the Council all candidates proposed by the Council of Judges, the parliamentary majority and the parliamentary opposition of the Jogorku Kenesh shall be included in a single name list. All the candidates are voted for simultaneously. The membership of the Council is deemed approved in case entire membership is voted for by the majority of those present but not less than fifty votes of deputies. Since the day of approval of the new membership of the Council the previous members of the Council shall terminate their activity.

5. In case of changes in the membership of the parliamentary majority and parliamentary opposition of the Jogorku Kenesh the members of the Council elected by them shall perform their functions until the expiration of the term of office.

6. The composition of the Council shall be formed in view of representation of not more than seventy percent of persons of the same gender as its members.

#### **Article 6. Requirements towards the candidates for membership in the Council**

1. Persons recommended for membership in the Council shall be citizens of the Kyrgyz Republic, be of an impeccable reputation, enjoy respect of the society and shall have no previous convictions, including convictions expunged or removed from the records.

2. A person who reached thirty years of age and who is not with the civil or municipal service can be a member of the Council from the civil society.

However, half of the representatives from the civil society should have higher legal education and at least five years of work record in the legal profession; while the second half of the representatives of the civil society should have higher education and at least three years of professional work record. The parliamentary majority and the parliamentary opposition have the right to propose not more than four representatives without higher legal education and

corresponding work record in the legal profession.

3. A member nominated by the Council of Judges may be a judge with the work record of at least ten years.

However, the Chairman of the Supreme Court and his/her deputies as well as judges who are members of the Council of Judges can not be elected members of the Council.

#### **Article 7. Termination and suspension of powers of a member of the Council**

1. The powers of a member of the Council shall be terminated in the following cases:

- 1) Expiration of the term of office for which he/she is approved;
- 2) Submission of a request to termination the powers of his/her own volition;
- 3) Departure for permanent residence outside the Kyrgyz Republic;
- 4) Termination of citizenship of the Kyrgyz Republic;
- 5) Termination of a criminal case on non-rehabilitating grounds;
- 6) Entry into force of a judgment of conviction pronounced by a court in respect of such person;
- 7) Entry into force of a court verdict declaring such person legally incapable or partially capable;
- 8) Death or entry into force of a court verdict declaring him / her dead;
- 9) Entry into force of a court verdict declaring him / her missing;
- 10) Three consecutive cases of non-attendance of the sittings of the Council without good reason;
- 11) Failure to make an announcement of recuse in cases envisaged in the present Law;
- 12) Dismissal from the position of the judge of the Kyrgyz Republic;
- 13) Joining the civil or municipal service by members of the Council from among the representatives of the civil society.

2. The powers of a member of the Council shall be terminated by the decision of the Council in case of institution of criminal proceedings (as an accused person) or institution of administrative proceedings in an action at law.

#### **Article 8. Election and term of office of the Chairman of the Council**

1. The Chairman of the Council is elected by secret ballot by the majority vote of the total number of the Council members for the period of one year.

2. The candidates for election of the Chairman of the Council shall be nominated by the Council members or by self-nomination.

3. The names of the nominated candidates shall be entered in a ballot paper manufactured by the authorized state agency which ensures the activity of local courts (hereinafter referred to as the authorized agency), the number of such ballot papers should correspond to the number of Council members.

4. The ballot papers of the members absent at the meeting of the Council shall be cancelled by the Secretary of the Council in the presence of the chairperson.

5. After being completed the ballot papers for voting shall be collected by the Secretary and handed over to the chairperson, in case the chairman of the new composition of the Council is elected, they are handed over to the oldest member of the Council.

6. The votes are counted by the chairperson or by the oldest member of the Council in the presence of the Council members.

A member of the Council who gets more than one half of votes of the total number of the Council members, shall be deemed elected the Chairman of the Council. The minutes confirming the election returns shall be signed by the chairperson and the Secretary of the Council.

7. In case none of the candidates wins the necessary number of votes, the second round of elections is held among the two candidates who got the largest number of votes. In case the candidates fail to get required number of votes, then elections are held with the participation of other candidates.

8. The term of office of the Chairman of the Council shall commence since the date of his / her election and shall terminate on the corresponding date and month, preceding the election day of the new Chairman.

9. The election of a new Chairman of the Council shall be held during the last month of the term of office of the acting Chairman. In case of failure to hold the elections of the new Chairman within the time period prescribed in this Article, then the acting Chairman of the Council shall perform his/her duties until new Chairman of the Council is elected.

10. During the period of absence of the Chairman of the Council his / her functions are performed by one of the members of the Council in accordance with the decision of the Chairman, in case of inability to do so, by the decision of the Council taken by the majority vote of the total number of Council members.

### **Article 9. Powers of the Chairman of the Council**

1. The Chairman of the Council shall:

- 1) Organize the work of the Council as well as represent the Council in its relations with state agencies, local self-governance bodies and other organizations;
- 2) Convene meetings, define matters submitted for review by the meetings of the Council and define the rapporteurs;
- 3) Chair the meetings of the Council;
- 4) Organize the verification of materials presented to the Council;
- 5) Remove persons who violate public order from the meeting hall;
- 6) Ensure the generalization of the results of Council's activity and take measures aimed at improvement of its business;
- 7) Inform the Jogorku Kenesh, the Council of Judges on early termination of powers of a member of the Council in cases envisaged in the present Law on the necessity to elect a new member to the Council;
- 8) Inform the head of the authorized agency on the activity of the unit of such agency which assures organizational, materials, technical and methodological support of the Council for making decisions on stimulation or on applying disciplinary measures in respect of the staff of this unit.

### **Article 10. Powers of the members of the Council**

1. A member of the Council shall:

- 1) Participate in the meetings of the Council;
- 2) Acquaint himself / herself with the materials presented for the consideration of the Council;
- 3) Participate in the review and verification of materials;
- 4) Submit motivated and substantiated proposals on the issues under review;
- 5) Participate in the decision making by means of voting;
- 6) Sign the decisions of the Council;
- 7) Express dissenting opinion, such dissenting opinion shall be attached to the materials related to each candidate;
- 8) In the absence of the Chairman of the Council preside over the meetings of the Council in accordance with the decisions made by the Chairman of the Council or decisions made by the Council members.

2. A member of the Council should:

- 1) Be impartial and unbiased in the consideration of matters within the competence of the Council;
- 2) Maintain confidentiality in respect of information related to private life of a candidate to the position of judges and judges inasmuch as such information might have become available pursuant the execution of his / her powers;
- 3) Make an announcement of recuse in consideration of a matter on the agenda of the Council in case he / she is a spouse or a close relative of the person in respect of whom the

decision is to be made.

#### **Article 11. Secretary of the Council**

1. The functions of the Secretary of the council are performed by a designated employee of the authorized agency.
2. The Secretary of the Council shall:
  - 1) Maintain business correspondence in the Council;
  - 2) Ensure preparation of the Council meetings;
  - 3) Notify the Council members and the media on the date, time and venue of the Council meetings;
  - 4) Guarantee the delivery of the agenda of the forthcoming Council meetings to its members;
  - 5) Ensure preparation and voting on candidates applying for a vacant position of a judge;
  - 6) Keep minutes of the meetings of the Council;
  - 7) Ensure distribution of the copies of decisions made to interested persons;
  - 8) Post a notice on the competition for the replacement of a vacant position of a judge of the Supreme Court, the Constitutional Chamber and local courts in the governmental publication and on the official website of the Council;
  - 9) Perform other functions according to the instruction of the Chairman of the Council within the competence of the Council.

#### **Article 12. Meetings of the Council**

1. Meetings of the Council are held as necessary. A meeting of the Council is deemed valid in case it is attended by at least two thirds of the total number of the Council members.
2. The date, time and venue of the Council meeting are decided upon by the Chairman of the Council.
3. The members of the Council, the persons, in respect of whom the matters will be considered as well as the mass media shall be informed by the Secretary on the time of the meeting at least five calendar days prior to the date of the meeting. The list of the mass media shall be approved by the decision of the Council, such mass media should be at least five.
4. Minutes and verbatim records are kept at the meeting of the Council.

#### **Article 13. Procedure of the Council meetings**

1. The consideration of matters subject to be decided upon at the meeting of the Council, commences with the report of the chairperson or a member of the Council.
2. The Consideration of materials at the meeting of the Council shall be held in an open manner with the participation of persons applying for relevant positions, the mass media as well as any other interested persons. Absence of a person applying for a relevant position, provided such person was duly notified on the time and venue of the meeting, shall not become an obstacle for the consideration of the matter in respect of other candidates.
3. The meetings of the Council are subject to mandatory audio and video recording. The safe keeping of audio and video recordings as well as providing open access to them shall be the responsibility of the authorized agency.

#### **Article 14. The first meeting of the Council**

1. The first meeting of the new composition of the Council shall be held at least one month after the date of its approval by the Jogorku Kenesh.
2. The first meeting of the Council shall be held under the chairmanship of the oldest member of the Council, such meeting shall be deemed valid in case it is attended by at least two thirds of the total number of members.

3. The authorized body shall notify the oldest member of the Council on the necessity to define the date, venue and time of the first meeting of the Council and shall arrange for its organization.

4. The first meeting of the new composition of the Council shall deal with the election of the Chairman of the Council.

#### **Article 15. Rejection and recuse**

1. A member of the Council shall not participate in the consideration of a matter and shall be subject to refusal in case there are circumstances which exclude his / her participation in such consideration or in case there are any other circumstances which cause reasonable concern in respect of his/her impartiality.

2. A rejection may be announced by a person whose matter is being considered, the substantiation for rejection shall be made in writing.

3. The decision on rejection of a Council member shall be made by the majority vote of members present at the meeting.

4. A member of the Council shall not participate in the consideration of a matter and shall make a statement of recuse in case he / she is a spouse or a close relative of a person in respect of whom the decision is to be made.

5. The powers of a Council member shall be terminated in case of a failure to make an announcement of recuse under circumstances provided in part 4 of the present article.

#### **Article 16. Announcement of a competition for a vacant position of a judge of the Supreme Court, the Constitutional Chamber and a local court**

1. The selection of candidates for a vacant position of a judge of the Supreme Court, the Constitutional Chamber and a local court shall be made on a competitive basis.

2. The Council shall announce a vacant position of a judge of the Supreme Court, the Constitutional Chamber and a local court in the governmental publication as well as on the official website of the Council.

3. The notice on a vacant position should contain the information of the place of submission of application for the vacant position by applicants, the list of documents to be attached to the application as well as the deadline for submission of the documents.

4. The competition for the position of a judge may be attended by persons who meet the requirements of the Constitution and the constitutional law.

5. The candidate for a vacant position of a judge of the Supreme Court, the Constitutional Chamber or a local court shall submit his / her application and documents to the authorized agency either personally or by mail. The acting judges applying for a vacant position of a judge shall submit their documents in accordance with the procedure prescribed in the constitutional law.

6. Documents which are received after the deadline, are incomplete or which do not meet the requirements of the constitutional law, shall be returned by the Secretary of the Council with a cover letter signed by the Chairman of the Council and stating the reasons for such return.

7. The final list of candidates shall be published in the governmental publication and on the official website of the Council as well as in the list of the mass media indicated in article 12 of the present law.

#### **Article 17. Competition for a position of a judge**

1. Proposal of the Council on appointment to the position of a local court judge or on a presentment to the position of a judge of the Supreme Court or the Constitutional Chamber shall be made on the basis of the outcomes of a competitive selection; the procedures of such selection shall be defined in the constitutional law.

2. A competition shall be held separately in respect of each vacant position and

alternately in respect of each candidate.

3. The meeting shall commence with the report of the chairperson of the meeting or a member of the Council who was appointed the rapporteur on the candidate and on information available in his/her personal file, after that the candidate shall be given the right to explanations.

4. In consideration of applications submitted by several persons applying for one vacant position of a local court judge, such applications are reviewed in the alphabetic order.

5. Based on the outcomes of the competitive selection, the Council shall have an open vote on each candidate and make the decision to propose candidates for the position of a judge of the Supreme Court, the Constitutional Chamber and a local court.

6. The decision of the Council shall be subjoined to the personal file of the candidate. Personal files of candidates, who participated in the competition, shall not be returned to and shall be kept by the authorized agency in accordance with the procedures prescribed in the law.

### **Article 18. Decisions of the Council**

1. Decisions of the Council shall be made by open vote by the majority of the total number of the members of the Council with the use of individual ballot papers.

2. The individual ballot papers shall be manufactured by the authorized agency in accordance with the template approved by the Council members and in the number equal to the number of Council members; these ballot papers shall enumerate all candidates applying for a vacant position of a judge of the Supreme Court, the Constitutional Chamber and a local court who passed the competitive selection.

3. The ballot papers of Council members absent from the meetings shall be cancelled by the Secretary of the Council in the presence of the chairperson.

4. Each member of the Council shall be allowed to vote for one candidate only. The members of the Council may not abstain from voting.

5. After being completed, the ballot papers shall be collected by the Secretary of the Council and handed over to the chairperson.

6. The votes are counted by the chairperson in the presence of the Council members. A candidate applying for a vacant position of a judge of the Supreme Court, the Constitutional Chamber or a local court, who gets the majority of votes of the total number of Council members, shall be deemed recommended for a vacant position of a judge of the Supreme Court, the Constitutional Chamber or a local court.

7. In case none of the candidates gets the required number of votes, repeated voting is held among the two candidates who got the largest number of votes. A candidate who gets the majority of votes of the Council members present shall be deemed recommended for a vacant position of a judge of the Supreme Court, the Constitutional Chamber or a local court.

In case after this procedure none of the candidates gets the required number of votes, then the Council shall make a motivated decision to refuse the recommendation for all candidates and shall announce and hold a new competition.

8. In case of disagreement with the decision, a member of the Council shall be entitled for a dissenting opinion, which shall be attached to the minutes of the meeting of the Council.

9. Based on the voting returns the Council shall make the decision, which should contain the date and venue, the composition of the Council and the matter under consideration. The decision shall be signed by the chairperson and the members of the Council who attended the meeting.

10. The decision of the Council shall be announced right after it has been made in the presence of persons whose matter was considered. Absence of the person shall not be considered as an obstacle for the announcement of the decision. The Council shall have the right to announce only the substantive provisions of the decision made. In case the substantive part of the decision is announced, its full text shall be made available within at least four days.

11. Interested persons shall be entitled to a copy of the decision within five days since its adoption.

12. The decisions of the Council are not subject to appeal.

### **Article 19. Proposals of the Council on presentment and appointment to the position of a judge**

1. On the basis of the adopted decision the Council shall submit its proposal to the President:

- on submission of presentment to the Jogorku Kenesh for election to a position of a judge of the Supreme Court or the Constitutional Chamber;

- on appointment to a position of a judge in a local court or transfer (rotation) of a judge in a local court.

2. The President has the right to return the submitted candidate's file with a motivated decision. In case the Council fails to establish circumstances preventing the appointment:

- of a candidate to a position of a judge of the Supreme Court and Constitutional Chamber, then the Council shall again submit to the President the proposal on the same candidate for further presentment to the Jogorku Kenesh for election to a position of a judge of the Supreme Court or the Constitutional Chamber within thirty days;

- of a candidate to a position of a judge of a local court, then the Council shall again submit to the President the proposal on the same candidate, in case of absence of reasonable grounds for rejection thereof, such candidate shall be subject to appointment within thirty days.

In case the Council agrees to the circumstances stated by the President, then it announces a new competition.

3. In case of non-election by the Jogorku Kenesh of the proposed candidate to a position of a judge of the Supreme Court or the Constitutional Chamber, then the Council shall hold a new competition and propose new candidate for a vacant position.

### **Article 20. Transfer (rotation) of a judge**

Transfer (rotation) of a judge to another court shall be effected in accordance with the procedures and on the grounds envisaged in the constitutional law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic".

### **Article 21. Organization and assurance of business of the Council**

1. The members of the Council shall work on a pro-bono basis. During the period of operation of the Council the members shall be relieved from performing their official duties retaining the right to salary at their principal place of work.

2. Organizational, material, technical and methodological assurance of the business of the Council shall be provided by the authorized agency upon agreement of the Council.

3. In order to improve material, technical and methodological assurance of the Council grant funds of international organizations may be used.

### **Article 22. Procedure of entry into force of the present Law**

1. The present Law shall enter into force since the date of its official publication.

2. In accordance with the present Law, the members of the Council on selection of judges of the Kyrgyz Republic shall be elected within two months period.

3. The following laws shall be deemed null and void since the date of entry into force of the present Law:

- The Law of the Kyrgyz Republic "On the National council for judicial affairs of the Kyrgyz Republic" (published in Erkin-Too newspaper on September 14, 2007, No 66);

- The Law of the Kyrgyz Republic "On introduction of changes and amendments to the Law of the Kyrgyz Republic "On the National council for judicial affairs of the Kyrgyz Republic" (published in Erkin-Too newspaper on July 8, 2008, No 49).

### **The President of the Kyrgyz Republic**