



Strasbourg, 14 April 2011

Opinion No. 622 / 2011

CDL-REF(2011)018
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE CONSTITUTIONAL CHAMBER
OF THE SUPREME COURT
OF KYRGYZSTAN

**CONSTITUTIONAL LAW
OF THE KYRGYZ REPUBLIC
“On the Constitutional Chamber
of the Supreme Court of the Kyrgyz Republic”**

**SECTION I
STATUS AND ORGANIZATION OF THE CONSTITUTIONAL CHAMBER OF THE
SUPREME COURT OF THE KYRGYZ REPUBLIC**

**Chapter 1
General Provisions**

Article 1. Constitutional Chamber of the Supreme Court of the Kyrgyz Republic

The Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (hereinafter referred to as the Constitutional Chamber) is a judicial body which independently performs constitutional oversight by means of constitutional legal proceedings.

Article 2. Fundamental principles of activity of the Constitutional Chamber

The fundamental principles of activity of the Constitutional Chamber shall be independence, collegiateness, openness, adversarial nature and equality of parties to the process.

Article 3. Legislation on the Constitutional Chamber

The organization, competence, composition, procedure of election and dismissal of the chairperson and deputy chairperson of the Constitutional Chamber shall be defined in the Constitution of the Kyrgyz Republic (hereinafter referred to as the Constitution) and the present constitutional law.

Consideration and decision making on matters within the competence of the Constitutional Chamber shall be performed in accordance with the constitutional legal procedures as envisaged in the present constitutional law.

The status, guarantees of independence, procedure of liability, dismissal and discharge of the judges of the Constitutional Chamber shall be defined in the constitutional laws, other laws as well as other normative regulatory acts.

The Constitutional Chamber shall be entitled to adopt Rules of Procedure on internal aspects of its activity not regulated by the legislation.

Article 4. Competencies of the Constitutional Chamber

1. The Constitutional Chamber shall:

- 1) in case of contradiction of laws and other normative regulatory acts with the Constitution declare them unconstitutional;
- 2) make its pronouncement on constitutionality of international agreements to which the Kyrgyz Republic is a party and which have not entered into force;
- 3) make its pronouncement on the draft laws on changes to the Constitution.

2. In order to ensure effective organization of its activity the Constitutional Chamber shall:

- 1) adopt the Rules of Procedure of the Constitutional Chamber, approve the Regulation on the administration of the Constitutional Chamber, its structure and number of its staff within the estimate of expenses;
- 2) in relation to the petition received be entitled to solicit information and documents

from all state agencies and bodies of local self-governance, officials thereof, public associations, legal entities and private persons as well as attract specialists for expert and scientific and consultative activity;

- 3) conduct an annual analysis of the status of the constitutional legality in the republic.

Chapter 2

Composition, procedure of formation and organization of activity of the Constitutional Chamber

Article 5. Composition of the Constitutional Chamber

1. The Constitutional Chamber shall be composed of nine judges – the chairman, the deputy chairman and seven judges of the Constitutional Chamber.

The Constitutional Chamber shall have the right to perform its activity in case there are no less than two thirds of the total number of judges present.

2. The composition of the Constitutional Chamber shall be formed in view of the representation of no more than 70 percent of persons of the same gender.

Article 6. Requirements towards the candidates to the position of a judge of the Constitutional Chamber

1. Any citizen of the Kyrgyz Republic who is no younger than 40 years of age and no older than 70 years of age, has a higher legal education and at least fifteen years of work record in a legal profession, an irreproachable reputation and capable of performing the functions of a judge of the Constitutional Chamber as per his/her professional qualities and the state of health, may be elected judge of the Constitutional Chamber.

2. The following persons may not be judges of the Constitutional Chamber:

- 1) those having convictions, including expunged or removed from the records;
- 2) those earlier dismissed from the position of a judge of the Kyrgyz Republic due to exceptionable conduct;
- 3) those dismissed from the law enforcement agencies due to the discreditation of the rank of law enforcement officer;
- 4) those having the citizenship of a foreign country.

Article 7. The procedure of formation of the Constitutional Chamber

1. The judges of the Constitutional Chamber shall be elected at the sitting of the Jogorku Kenesh and stay in their position until they reach the age limit. The procedure of electing shall be determined by the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic.

2. Selection of candidates for the vacant position of a judge of the Constitutional Chamber shall be performed by the Council on selection of judges on a competitive basis.

The competition for the vacant position of a judge of the Constitutional Chamber shall be held on the basis of an interview.

3. The Council on selection of judges no later than sixty days and no earlier than eighty days prior to reaching the age limit or no later than twenty days since the day of early termination of the powers of a judge of the Constitutional Chamber or his/her early dismissal shall announce a competition for a freed of vacant position of a judge of the Constitutional Chamber.

A judge of the Constitutional Chamber shall have the right of no earlier than eighty and no later than sixty days prior to the expiration of his/her term of office to submit an application to the Council on selection of judges requesting his nomination for election to the position of a judge of the Constitutional Chamber. In such event the Council on selection of judges within

two weeks period since the day of receipt of such application shall consider it in accordance with procedures envisaged in the constitutional law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic" (hereinafter referred to as the constitutional law on the status of judges).

In the event that a candidate fails to get necessary number of votes of the members of the Council on selection of judges, then a competition for a vacant position of a judge of the Constitutional Chamber shall be announced no later than five days since the rejection of the candidacy of an acting judge.

4. The applicant should submit an application for participation in the competition to the Council of judges within ten days since the publication of the announcement.

The following documents shall be attached to the application:

- 1) a copy of the passport;
- 2) a certified copy of the diploma of higher legal education;
- 3) certified copies of service record and other documents confirming applicant's work record in legal profession;
- 4) medical health certificate issued within one year period before the participation in the competition.

The application may be accompanied by other documents (references and recommendations) concerning the personality of the applicant.

Acting judges of the Kyrgyz Republic shall have the right to participate in the competitive selection of judges of the Constitutional Chamber by submitting applications.

Personal files of judges of the Kyrgyz Republic who submitted applications for participation in the competition, shall be produced to the Council on selection of judges by the authorized state agency on ensuring the activity of local courts (hereinafter referred to as the authorized agency).

5. Based on the outcomes of the interview the Council on selection of judges within ten days period shall submit to the Jogorku Kenesh the candidacy of a judge of the Constitutional Chamber.

Article 8. Procedure of election of the chairman, deputy chairman and the secretary judge of the Constitutional Chamber

1. A meeting of judges of the Constitutional Chamber shall elect the chairman, the deputy chairman and secretary judge from amongst its members for the period of three years.

One and the same judge may not be elected the chairman and the deputy chairman of the Constitutional Chamber for two consecutive terms.

2. A meeting of judges of the Constitutional Chamber shall be deemed eligible in the event that no less than two thirds of the total number of judges of the Constitutional Chamber are attending.

The meeting of judges of the Constitutional Chamber to elect its chairman, deputy chairman and the secretary judge of the Constitutional Chamber shall be presided by the oldest judge of the Constitutional Chamber.

The candidates to the position of the chairman, the deputy chairman and the secretary judge of the Constitutional Chamber shall be nominated by the judges of the Constitutional Chamber or by self-nomination.

3. The chairman, the deputy chairman and the secretary judge of the Constitutional Chamber shall be elected by secret vote. The procedures of voting shall be defined in the Rules of Procedure of the Constitutional Chamber.

The chairman, the deputy chairman and the secretary judge of the Constitutional Chamber shall be deemed elected in the event they were voted for by the majority of the total

number of the judges of the Constitutional Chamber.

4. The organizational and technical aspects of elections of the chairman, the deputy chairman and the secretary judge of the Constitutional Chamber shall be the responsibility of the administration of the Constitutional Chamber.

Article 9. Grounds for dismissal of the chairman, the deputy chairman and the secretary judge of the Constitutional Chamber

1. The chairman, the deputy chairman and the secretary judge of the Constitutional Chamber shall be dismissed from their offices upon expiration of their term of election or upon their own volition.

The powers of the chairman, the deputy chairman and the secretary judge of the Constitutional Chamber shall also be terminated in case of their early dismissal from office or termination of powers as judges of the Constitutional Chamber.

2. Before a new chairman of the Constitutional Chamber is elected due to expiration of powers or early termination of powers or early dismissal from office of the acting chairman of the Constitutional Chamber, the duties of the chairman shall be performed by the deputy chairman of the Constitutional Chamber.

In the event of absence of the chairman, the deputy chairman and the secretary judge of the Constitutional Chamber, the duties of the chairman shall be performed by a judge of the Constitutional Chamber to whom these duties were assigned by the meeting of judges of the Constitutional Chamber.

Article 10. Chairman of the Constitutional Chamber

The chairman of the Constitutional Chamber, alongside with the performance of duties of a judge of the Constitutional Chamber, shall:

1) manage the preparation of cases and other matters for consideration at the sittings of the Constitutional Chamber;

2) convene the sittings of the Constitutional Chamber, submit for discussion matters subject to consideration and chair the sittings;

3) represent the Constitutional Chamber and speak on its behalf;

4) distribute petitions received among the judges of the Constitutional Chamber;

5) present the Rules of Procedure of the Constitutional Chamber for its approval;

6) define measures to ensure the holding of sittings, security of participants and persons present;

7) ensure overall guidance of the administration of the Constitutional Chamber, appoint and dismiss the head of administration in accordance with the requirements of the legislation on the civil service, as well as present the Regulation on the administration of the Constitutional Chamber and its structure;

8) sign copies of judgments, pronouncements, resolutions, rulings and minutes of sittings of the Constitutional Chamber;

9) perform other duties in accordance with the present constitutional law and the Rules of Procedure of the Constitutional Chamber.

The chairman of the Constitutional Chamber shall issue orders and instructions.

Article 11. Deputy chairman of the Constitutional Chamber

The deputy chairman of the Constitutional Chamber, alongside with the performance of duties of a judge of the Constitutional Chamber, shall perform the duties of the chairman of the Constitutional Chamber in the absence of the latter or in accordance with his/her instructions.

In the event of absence of the deputy chairman of the Constitutional Chamber, his

duties shall be performed by the secretary judge or by any of the judges of the Constitutional Chamber in accordance with the decision of a meeting of judges of the Constitutional Chamber.

Article 12. Secretary judge of the Constitutional Chamber

The secretary judge alongside with the performance of duties of a judge of the Constitutional Chamber, shall:

- 1) perform organizational activity for the preparation of sittings of the Constitutional Chamber and take measures to ensure the implementation of judgments of the Constitutional Chamber;
- 2) organize activity on keeping and timely execution of the minutes of the sittings of the Constitutional Chamber;
- 3) sign copies of judgments, pronouncements, resolutions, rulings and minutes of sittings of the Constitutional Chamber;
- 4) organize informational support to the activity of the Constitutional Chamber;
- 5) perform other functions in accordance with the present constitutional law and the Rules of Procedure of the Constitutional Chamber.

SECTION II CONSTITUTIONAL LEGAL PROCEEDINGS

Chapter 3

Principles of constitutional legal proceedings

Article 13. Independence

1. The Constitutional Chamber is independent and shall be subject to the Constitution and laws.
2. The judgments of the Constitutional Chamber are based on the Constitution and reflect the legal views of judges which are free from whatsoever biases.
3. The judges of the Constitutional Chamber shall adopt acts in the conditions which exclude exposure to external influence on the freedom of their will.
4. Intervention of whatsoever nature in the activities of the Constitutional Chamber shall be not allowed and shall be subject to liability envisaged in the law.

Article 14. Collegiate nature of consideration of cases

1. Cases shall be considered and judgments thereon shall be made by the Constitutional Chamber in a collegiate manner.
2. A judge may not be removed from participation in the sitting of the Constitutional Chamber except for cases of his/her dismissal from office in accordance with the procedures of the constitutional law or in the event that his/her announcement of recuse is honored.

Article 15. Openness of the constitutional legal proceedings

1. Consideration of cases in the Constitutional Chamber shall be held in an open manner. Closed sittings are allowed only in cases envisaged in the present constitutional law. Sittings are held in the courtroom which is accessible for the representatives of the civil society and the mass media.
2. The Constitutional Chamber shall notify in writing the participants on the time and venue of its sittings, shall display the information on its proceedings in the premises of the Constitutional Chamber as well as on the official website of the Constitutional Chamber ten days prior to the commencement of the sitting.
3. Judgments and pronouncements of the Constitutional Chamber shall be announced

in public.

Article 16. Oral proceedings

Examination of cases during the sittings of the Constitutional Chamber shall be held orally. During the sitting the Constitutional Chamber shall hear the explanations of the participants in the process and announce the documents presented.

Article 17. Language of proceedings

1. Constitutional legal proceedings are conducted in the state language or in the official language upon motion of the participants in the process.

2. Participants in the constitutional proceedings without command of the language of the process shall be entitled to the right to give their explanations in another language and use the service of an interpreter.

Article 18. Directness of consideration of cases

1. The Constitutional Chamber may not make a judgment or the pronouncement on the merits of the case without its direct consideration in accordance with the procedure envisaged in the present constitutional law.

2. Judges of the Constitutional Chamber shall personally participate in the consideration of the case since the opening of the sitting until its closure.

3. No judge may refrain from consideration of a case except in the event that there are circumstances preventing the participation of a judge in the sitting.

4. Entering of a new judge in the sitting shall result in the resumption of proceedings on the case since the commencement of the trial.

5. Impossibility for a judge to participate in further consideration of the case shall not preclude from continuation of proceedings with the quorum of judges present, but excludes the participation of the judge who quitted from deliberations and adoption of a judgment or pronouncement.

6. During the deliberations of the Constitutional Chamber no judge shall have the right to abstain from voting, each judge should personally express his/her opinion on the case prior to announcement of the judgment or pronouncement.

Article 19. Adversarial nature and equality of parties

The parties shall be entitled to equal rights and opportunities on assertion of their views on the basis of adversarial manner of the sitting of the Constitutional Chamber.

Chapter 4

Jurisdiction over cases in the Constitutional Chamber

Article 20. Jurisdiction over cases

1. Within the constitutional legal proceedings the Constitutional Chamber shall consider the following cases:

1) on recognition as unconstitutional laws and other normative regulatory acts in the event of their contradiction to the Constitution;

2) on giving the pronouncement on constitutionality of international agreements not entered into force to which the Kyrgyz Republic is a party;

3) on giving the pronouncement on draft laws on changes to the Constitution.

2. In the event that several interrelated petitions are united and some of them are subject to the jurisdiction of the Constitutional Chamber and the others are subject to the

jurisdiction of other state power agencies, then the Constitutional Chamber shall consider only the petitions on issues within the competence of the Constitutional Chamber.

Article 21. Limits of adjudication

1. The Constitutional Chamber shall establish and decide upon the matters of law exclusively.

2. The Constitutional Chamber, by verifying the constitutionality of a contested normative legal act, shall determine its correspondence to the Constitution in the following aspects:

- 1) the content of provisions;
- 2) the format of the normative legal act;
- 3) the procedure of adoption, signing, publication and entering into force.

3. The Constitutional Chamber shall deliver its acts only on subjects dealt upon in the petition and in respect of such part of a normative regulatory act, the constitutionality of which was questioned. The Constitutional Chamber in this respect shall be not bound by arguments and assumptions presented in the petition.

Chapter 5 Subjects of appeal to the Constitutional Chamber

Article 22. Subjects for appeal to the Constitutional Chamber

1. The following persons or entities shall be entitled to the right to appeal to the Constitutional Chamber:

- 1) a private person or a legal entity in case they believe that the laws or other normative regulatory acts violate rights and freedoms recognized in the Constitution;
- 2) the Jogorku Kenesh;
- 3) a deputy (deputies) of the Jogorku Kenesh;
- 4) the President;
- 5) the Government;
- 6) the Prime Minister;
- 7) a judge (judges) of the Kyrgyz Republic;
- 8) local keneshes;
- 9) the Prosecutor General;
- 10) the Akyikatchy (the Ombudsman).

2. Agencies and officials listed in paragraphs 2-6 and 8-10 of the part one of this article shall submit to the Constitutional Chamber their presentments, other persons and agencies shall submit motions and a judge (judges) shall submit requests (hereinafter referred to as the petitions).

Article 23. The right to appeal on declaring laws and other normative regulatory acts unconstitutional

The right to submit a petition on declaring laws and other normative regulatory acts unconstitutional shall be assigned to entities listed in part 1 article 23 of the present constitutional law.

Article 24. The right to appeal on expressing a pronouncement on the constitutionality of international agreements, which have not entered into force and to which the Kyrgyz Republic is a party

The right to submit a petition on giving the pronouncement on the constitutionality of international agreements which have not entered into force and to which the Kyrgyz Republic is a party shall be assigned to the Jogorku Kenesh, the President, a deputy (deputies) of the Jogorku Kenesh, the Government and the Prime Minister.

Article 25. The right to appeal on expressing a pronouncement on the draft law on changes to the Constitution

The right to submit a petition on giving the pronouncement on the draft law on changes to the Constitution shall be assigned to the Jogorku Kenesh, a deputy (deputies) of the Jogorku Kenesh and the Government.

**Chapter 6
Appeal to the Constitutional Chamber**

Article 26. Reasons and grounds for consideration of a case in the Constitutional Chamber

The reason for consideration of a case in the Constitutional Chamber shall be a petition to the Constitutional Chamber in the form of presentment, motion or request provided such petition complies with the requirements of the present constitutional law.

The ground for the consideration of a case shall be an uncertainty discovered in respect of constitutionality of a law, other normative regulatory act, an international agreement which has not entered into force or a draft law on changes to the Constitution.

Article 27. General requirements to petitions

1. A petition to the Constitutional Chamber shall be submitted in writing and shall be signed by an authorized person (authorized persons).
2. Petitions as well as materials attached thereto shall be submitted in the state or the official language.
3. The petition should contain the following:
 - 1) the name of the Constitutional Chamber;
 - 2) the title, address as well as other relevant information concerning the applicant;
 - 3) the title, address and other relevant information on the representative of the applicant and his/her powers except for cases of representation ex officio;
 - 4) the title and address of the state agency and the official who signed or published a normative regulatory act, the constitutionality of which is subject to verification;
 - 5) provisions of the Constitution and the present constitutional law, which provide for the right of appeal to the Constitutional Chamber;
 - 6) circumstances, on which the party bases its petition as well as evidence confirming the facts presented by such party;
 - 7) exact description, number, date of adoption, sources of publication as well as other requisites of a contested normative act;
 - 8) concrete grounds for the review of the petition as envisaged in the present constitutional law;
 - 9) opinion of the applicant in respect of the matter questioned as well as its legal substantiation with reference to the relevant norms of the Constitution;
 - 10) claim to the Constitutional Chamber submitted as per presentment, motion or request.
 - 11) the list of documents attached.

Article 28. Documents to be attached to the petition

The following documents should be attached to the petition:

- 1) copy of the text of a normative regulatory act which is contested by the applicant party in whole or in part;
- 2) power of attorney or other document which confirms the capacity of the representative except for cases of representation ex officio.

In case of necessity the petition may be accompanied by the list of persons subject to be summoned at the sitting of the Constitutional Chamber, their addresses as well as other documents and materials.

Article 29. Registration of petitions sent to the Constitutional Chamber

Petitions received by the Constitutional Chamber shall be subject to mandatory registration on the day of receipt.

Chapter 7**Acceptance of a petition for proceeding, preparation of a case for consideration and consideration of cases in the Constitutional Chamber****Article 30. Acceptance of a petition for proceeding**

1. The petition received shall be transferred by the chairman to a judge of the Constitutional Chamber to decide on acceptance thereof for proceeding.

2. After having verified the petition and the documents attached thereto, the judge shall within five days period adopt a decision on acceptance of the petition for proceeding and preparation of the case for the sitting of the Constitutional Chamber or on rejection of the petition for proceeding, then returning the materials to the applicant.

3. A judge shall reject the acceptance of the petition for proceeding in the following cases:

- 1) In the event that the petition in its format and content does not meet the requirements of the present constitutional law;
- 2) In the event that the petition was sent by a non-eligible agency or person (subject);
- 3) In the event that the petition was submitted by a representative of a party, who does not have the powers to handle the case in the Constitutional Chamber or the representative is a person who is not envisaged in the present constitutional law;
- 4) In the event that the claim of the petition is not subject to the jurisdiction of the Constitutional Chamber;
- 5) In the event that the constitutionality of the matter of the petition was verified by the Constitutional Chamber and a valid act of the Constitutional Chamber is available.

4. Cancellation or lapse of an act, the constitutionality of which is being contested, shall result in the refusal to accept the petition for proceeding in the Constitutional Chamber.

5. The decision on refusal to accept the petition for proceeding or the receipt thereof may be subject to appeal by the parties to the Constitutional Chamber. The Constitutional Chamber shall adopt a separate resolution on this matter.

6. The acceptance of petition in respect of constitutionality of international agreements which have not come into force shall result in the suspension of the process of entry into force of contested international agreement until the completion of case consideration in the Constitutional Chamber.

Article 31. Period of consideration of matters in the Constitutional Chamber

The Constitutional Chamber shall consider a petition accepted for proceeding and shall

render an act on such matter within two months since the acceptance thereof for proceedings. Upon the decision of the chairman of the Constitutional Chamber this time period may be prolonged for one month.

Article 32. Preparation of a case for consideration

1. A judge is obliged to prepare a case for consideration in respect of a petition accepted for proceedings, for this purpose the judge shall:

1) ascertain the parties to the process, explain to them their procedural rights and responsibilities envisaged in the present constitutional law as well provide assistance in obtaining evidence for the presentation to the Constitutional Chamber;

2) question the parties;

3) solicit necessary documents and other information relevant for the case;

4) question relevant official and other persons;

5) ascertain the witnesses, experts and other persons who should be invited and summoned to the sitting;

6) decide upon the combination within one legal proceeding the interlinked petitions of various persons or segregation of requests outside of the jurisdiction which are included in one petition;

7) make a decision on appointing the case for consideration at the sitting of the Constitutional Chamber, notify the participants in the sitting and ensure the presence of relevant persons;

8) draft an act on materials available;

9) no later than nine days prior to the sitting ensure the delivery of copies of the case papers to all judges of the Constitutional Chamber and the participants in the sitting;

10) conduct other actions to ensure appropriate consideration of the case.

2. In the event of extreme difficulty of requests presented or their exceptional importance the preparation of a case for consideration may be entrusted to several judges.

Article 33. Participants in the constitutional legal proceedings

The participants in the constitutional legal proceedings shall be the parties, their representatives, witnesses, experts and interpreters.

Article 34. Parties and their representatives

1. The following entities shall be deemed as parties to the constitutional legal proceedings:

1) the appealing party shall mean persons or agencies, whose presentments or motions were accepted for proceeding;

2) the defendant party shall mean an agency of officials who published or signed a normative regulatory act or subjects who initiated a draft law on introduction of changes in the Constitution, ratification, adoption or otherwise enforcement for the Kyrgyz Republic of an international agreement the constitutionality of which is being contested.

2. The representatives of the parties may be the representatives ex officio, at law or defense lawyers. Each party shall be entitled to have no more than three representatives. Parties to one and the same matter may entrust the handling of a case to one of them.

The powers of representatives of the parties shall be formalized in accordance with the procedures envisaged in the civil procedural legislation.

3. A judge (judges), whose request was accepted for proceedings by the Constitutional Chamber shall be not recognized as parties and shall be not summoned to sitting.

4. The parties shall be entitled to equal procedural rights.

The parties and the representatives thereof shall have the right to acquaint with the materials of the case, make extracts from them, make copies, present evidence, participate in the examination of evidence, present their views and assumptions on all matters emerging during the process as well deliver a closing speech.

The parties shall also have the right to make motions, give oral and written explanations to judges as well as express their opinions in respect of presentments and motions laid.

The appealing party shall have the right to change the grounds or the subject of its claim, increase or decrease its volume or withdraw the claim. The defendant party shall have the right to acknowledge them in full or in part or object to them.

5. Each party is obliged to present evidence and prove the circumstances, to which it refers as a ground for its claims and objections.

The parties shall be obliged to use their rights in good faith. The communication of deliberately false information to court shall be deemed as disrespect of court and shall result in liability at law.

The parties and representatives thereof should appear at the summons of the Constitutional Chamber, give their explanations and answer the questions.

Article 35. Witnesses

1. In the event that there is a need to investigate the facts of the case which are subject to the jurisdiction of the Constitutional Chamber, the sitting may be attended by persons possessing information or materials pertaining to such facts and such persons shall act as witnesses.

2. A witness is obliged to inform the Constitutional Chamber of the circumstances related to the merits of the case which are known to him/her personally as well as answer the questions of the judges of the Constitutional Chamber and the parties. In case of necessity a witness may use written notes, documents as well as other materials.

Article 36. Expert

1. The Constitutional Chamber may summon to its sitting a person as an expert, such person shall have special knowledge on matters relating to the case under consideration. The aspects, on which the experts should provide his/her opinion, shall be defined by the reporting judge or the Constitutional Chamber.

2. Upon permission of the Constitutional Chamber the expert shall have the right to acquaint with the materials of the case, ask questions to parties and witnesses as well as present motions requesting the provision of additional materials.

3. Upon presentation of his/her opinion, the expert is obliged to answer additional questions of the judges of the Constitutional Chamber and the parties.

Article 37. Self-recuse

A judge of the Constitutional Chamber should announce the self-recuse before the commencement of consideration of a case in the following instances:

1) in the event that the judge under his/her position participated in the adoption of the act which is the subject of proceedings;

2) in the event that the impartiality of a judge in adjudication may be questioned in view of his familial or otherwise personal relations to the parties in the proceedings.

Article 38. Open sittings

The Constitutional Chamber shall hold its sittings in an open manner except for cases envisaged in the present constitutional law.

Persons present shall have the right to record the proceedings from their seats. Filming and photographing, video recording, live radio and TV broadcast shall be allowed only upon permission of the Constitutional Chamber. Upon giving a warning, the chairperson shall have the right to remove certain persons from the courtroom in the event they intervene in normal process of the sitting.

Article 39. Closed sittings

The Constitutional Chamber shall announce a close sitting in case it is necessary for protection of the state secrets, ensuring the security of citizens, secrecy of their private life and safeguarding of the public morale.

The closed sitting shall be attended by the judges of the Constitutional Chamber, the parties and the representative thereof. The possibility for other participants in the proceedings to attend shall be defined by the Constitutional Chamber. The presence of the employees of the administration of the Constitutional Chamber, who are directly responsible for ensuring due procedures at the sittings, shall be established by the chairperson upon consent of the judges.

Article 40. Postponement of sittings

1. A sitting of the Constitutional Chamber may be postponed in the following cases:

1) in the event of illness or absence for any other reason of any judges in the sitting which results in the violation of quorum;

2) in the event of failure to appear of both or either party, a witness or an expert whose attendance was deemed mandatory and in case their absence may influence proper adjudication;

3) in the event that the Constitutional Chamber decides that the case under consideration is not properly prepared;

4) in the event of delay in presentation of solicited materials when they are essential for adjudication;

5) in the event of other circumstances which prevent regular process in the court sitting or comprehensive consideration of the case provided such circumstances can not be removed during the proceedings.

2. The decision on postponement of the sitting of the Constitutional Chamber shall be made by the majority votes of judges participating in the sitting. In case of postponement the Constitutional Chamber shall fix the date to which the sitting is transferred.

Article 41. Suspension of proceedings

1. In the event that the consideration of a case is not possible within the time limits envisaged in the present constitutional law, the Constitutional Chamber shall be entitled to suspend the proceedings of the case for the period needed for removal of obstacles emerging, in these circumstances the period of consideration shall be also suspended.

The proceedings on the case shall be resumed after the circumstances which caused its suspension cease to exist. The suspension of proceedings of the case by the Constitutional Chamber shall not preclude from consideration of other cases.

In case the sitting of the Constitutional Chamber is resumed with another panel of judges, then the consideration of the case shall be reopened.

2. The consideration of the case shall resume from the moment it was suspended, while repeated summons of experts, specialists and witnesses who had been already heard shall be done only in case of necessity. In the event that the proceedings are resumed, then the Constitutional Chamber shall issue a ruling and notify the persons participating in the case.

In case the sitting of the Constitutional Chamber is resumed with another panel of judges, then the consideration of the case shall be reopened.

Article 42. Termination of proceedings on a case

1. The Constitutional Chamber shall terminate the proceedings on a case:

1) in the event that the applicant waives his/her claims or a party voluntarily waives the matter prior to the Constitutional Chamber makes its judgment on the merits;

2) in the event that during the preparation or consideration of a case it is established that the case is outside the jurisdiction of the Constitutional Chamber. In such case an agency of jurisdiction shall be indicated;

3) in the event that an act, the constitutionality of which was contested, had been cancelled or had lost its force in the process of preparation or consideration of the case except that by virtue of this act constitutional rights and freedoms of private persons and legal entities were infringed;

4) in the event of death of a private person who was a party to the case;

5) in the event of liquidation of a legal entity who was a party to the case without appointment of its assignee.

The ruling of the Constitutional Chamber on the termination of proceedings on the case shall deprive the parties of the opportunity to again apply to the Constitutional Chamber with the same petition and on the same grounds, except for cases envisaged in paragraphs 4 and 5, part 1 of the present article.

Article 43. Procedure of consideration of cases

1. The Constitutional Chamber shall consider the cases at its sittings under the chairmanship of the chairman, in the event of absence of the chairman, the presiding person shall be defined pursuant the procedure of article 12 of the present constitutional law.

2. Before commencement of consideration of the case the chairperson shall:

1) open the sitting of the Constitutional Chamber and announce the case subject to consideration;

2) announce the membership of the Constitutional Chamber;

3) pass the floor to the secretary of the sitting for him/her to report on the presence of summoned participants in the sitting, witnesses, experts, interpreter as necessary as well as on the reasons of absence of whatsoever persons. Absence of a party or a representative thereof in the sitting of the Constitutional Chamber shall not preclude from the consideration of the case, except when a party requests such consideration in its presence and confirms good reason of absence;

4) verify the credentials of the parties;

5) explain to the parties their rights and responsibilities and to the summoned persons – their responsibilities and liability;

6) question the participants in the sitting in respect of their motion to summon additional witnesses and experts, on solicitation of additional evidence, on other matters arising during the sitting and submit them for decision of the court;

7) remove witnesses and experts from the courtroom;

8) announce the commencement of consideration of the merits of the case.

3. The following procedures are followed in consideration of each case:

1) the reporting judge shall present the merits of the case, reasons and grounds of its consideration, the essence of available materials and then answer the questions of the judges of the Constitutional Chamber;

2) the explanations of each party shall be heard;

3) the parties shall have the opportunity to ask questions to each other and to other participants in the proceedings, then the questions are asked by the judges of the Constitutional

Chamber. Admissibility of questions asked during the proceedings shall be decided upon by the Constitutional Chamber;

4) before hearing the evidence of witnesses and experts the chairperson shall verify their identity and warn them in writing on criminal liability for refusal to give evidence or for giving deliberately false evidence, the interpreter shall be informed on the liability for deliberately false interpretation;

5) documents presented to the court shall be read in the courtroom. Documents which cause concern in terms of their authenticity, shall be not subject to announcement. Upon decision of the Constitutional Chamber the reviewed documents shall be deposited either in original or in attested copies;

6) upon consideration of materials of the case the Constitutional Chamber shall listen to closing speeches of the parties and the chairperson shall announce the completion of consideration of the case and retirement of judges in the deliberations room.

Article 44. Resumption of consideration of a case

In the event that after the closing speeches of the parties the Constitutional Chamber decides that it is necessary to ascertain additional circumstances relevant for the adjudication on the case, then it adopts a decision on resumption of the case.

Upon completion of additional examination the parties shall have the right to closing speeches again but only in respect of new circumstances and evidence.

Article 45. Minutes of the sitting of the Constitutional Chamber

1. The secretary shall keep minutes of the sittings of the Constitutional Chamber.

2. The minutes of the proceedings should contain the following information:

- the venue and time of the proceedings;
- the name of the case;
- the panel of judges considering the case;
- the secretary of the sitting and on each participant in the proceedings;
- witnesses and experts;
- explanations of parties;
- evidence from witnesses, opinions of experts, questions asked to them and answers given by them;
- every action which took place during the proceedings in their order;
- opinions and statements of judges as well as on the results of voting by judges on matters which emerged during the proceedings.

3. For ensuring the completeness of the minutes the use of shorthand and technical facilities shall be allowed, the minutes of the sitting should contain an indication of their use.

The records of the case shall have attached minutes as well as technical facilities used in the proceedings such as the audio recordings, video recordings and films.

4. The minutes shall be executed no later than five working days since the closure of the sittings.

The minutes shall be signed by the chairperson and the secretary judge of the Constitutional Chamber.

Article 46. Application of procedural protection measures

1. In order to safeguard the dignity of the Constitutional Chamber and the participants in the sitting as well as to ensure due process of the constitutional legal proceedings, the Constitutional Chamber may remove the persons from the courtroom or impose a fine in the

amount of up to five nominal fine rates for each case of violations, which are represented in the following:

- 1) proclamation of anti-constitutional statements and appeals irrespective of their wording;
- 2) intervention in the procedural actions of the Chamber, exerting influence on the judge;
- 3) non fulfillment or delay in fulfillment without good reason the requirements of the Constitutional Chamber in the process of preparation and consideration of the case;
- 4) non-attendance without good reason or failure to notify the Constitutional Chamber on the reasons of non-appearance;
- 5) violation of rules of proceedings in the sitting of the Constitutional Chamber, disobedience to the judges of the Constitutional Chamber, neglect of procedures and rules of etiquette adopted by the Constitutional Chamber;
- 6) willful violation of the sequence of speeches by the participants in the sittings;
- 7) use of insulting expressions.

2. In the event that the violations listed in the present article were manifested during the proceedings, then the measures of procedural protection shall be applied immediately upon protocolary ruling of the Constitutional Chamber.

3. In other cases measures of procedural protection shall be applied in accordance with the procedures envisaged in the legislation of the Kyrgyz Republic.

4. The perpetrator shall pay the fine no later than five days since the notification of imposition of the fine. In the event of refusal to pay the fine within five days periods the ruling of the Constitutional Chamber on imposition of the fine shall be executed in accordance with the legislation on executory processes.

Chapter 8

Acts of the Constitutional Chamber

Article 47. Types of acts of the Constitutional Chamber

1. The Constitutional Chamber shall adopt acts in the form of judgments, pronouncements, resolutions and rulings.

2. Having considered petitions in respect of the competencies envisaged in subparagraph 1 paragraph 6 article 97 of the Constitution the Constitutional Chamber shall adopt a judgment, in respect of the competencies envisaged in subparagraphs 2 and 3 of paragraph 6 of the same article the Constitutional Chamber shall adopt a pronouncement.

3. The judgment and pronouncement of the Constitutional Chamber shall be pronounced in the name of the Kyrgyz Republic and shall be signed by the chairperson and judges of the Constitutional Chamber.

4. The Constitutional Chamber shall adopt other acts in the form of resolutions, separate or protocolary rulings.

Article 48. Procedure of adopting acts of the Constitutional Chamber

1. The Constitutional Chamber shall adopt its acts by way of open vote via individual questioning of judges in the deliberations room.

2. During the deliberation judges shall be free in expressing their opinion on the matter under review and may ask other judges to specify their opinions. The number and the duration of speeches may not be limited.

3. The deliberations of the Constitutional Chamber shall be attended only by judges considering the concrete case, presence of other persons shall not be allowed.

4. A judge shall not have the right to abstain from or not participate in the voting. In all cases the chairperson shall vote the last.

5. The minutes of the deliberations shall mandatorily reflect the matters submitted to voting as well as the voting returns. The minutes shall be kept by the secretary judge, signed by all judges present and shall be not subject to announcement.

6. Judges participating in the deliberations may not disclose the content of deliberations and the returns of voting.

7. A case shall be deemed solved per se, in the event that the Constitutional Chamber satisfies in full or in part the claims contained in the petition or dismisses these claims.

8. An act of the Constitutional Chamber shall be deemed adopted in the event that it is voted for by the majority of judges present at the sitting. In case none of the proposals gets the majority of votes, then the chairperson shall submit for repeated voting two proposals which got the largest number of votes.

9. In the event that during the adoption of a judgment or a pronouncement the votes are equally divided, then the judgment or the pronouncement is adopted in favor of the constitutionality of a contested act. In the event of a tie vote in respect of other acts, the act for which the chairperson voted shall be deemed adopted.

10. An act of the Constitutional Chamber should be substantiated and motivated.

11. The judgment and the pronouncement of the Constitutional Chamber shall be announced in full in the open sitting of the Constitutional Chamber immediately after the signing thereof. In exceptional cases in respect of extremely complicated matters the drafting of the declaratory part to the judgment or the pronouncement may be postponed for the period of up to ten days but the operative part shall be announced during the same sitting.

Article 49. Contents of an act of the Constitutional Chamber

Depending on the character of the matter under consideration, the act of the Constitutional Chamber shall include the following:

- 1) the name of the act, the date and venue of its adoption;
- 2) the personal composition of the Constitutional Chamber adopting a judgment or a pronouncement and the secretary of the sitting;
- 3) the parties and representatives thereof;
- 4) the subject of claims, grounds and reasons for consideration;
- 5) provisions of the Constitution and the present constitutional law, which establish the right of the Constitutional Chamber in considering the matter;
- 6) the arguments of the parties;
- 7) factual and other circumstances determined by the Constitutional Chamber;
- 8) the exact title of the normative regulatory act, the constitutionality of which was verified, indicating the source of publication or receipt;
- 9) the normative regulatory act, the draft law on introduction of changes to the Constitution or the international agreement, which has not entered into force for the Kyrgyz Republic, the constitutionality of which was verified;
- 10) the arguments in favor of the act adopted by the Constitutional Chamber as well as in case of necessity the arguments defeating the statements of the parties;
- 11) the norms of the Constitution and the present constitutional law, which were followed by the Constitutional Chamber in adoption of its act;
- 12) the findings of the Chamber on the merits of the case considered;
- 13) the indications of the final character of the act and its mandatory execution;
- 14) the procedures of entry into force of the act as well as the procedure, deadline and

specificity of execution and publication.

Article 50. Dissenting opinion of a judge of the Constitutional Chamber

1. A judge of the Constitutional Chamber who does not agree to the act of the Constitutional Chamber, shall have the right to express his/her dissenting opinion in writing, such opinion shall be attached to the materials of the case. The dissenting opinion of the judge shall be published in the "Bulletin of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic" jointly with the act of the Constitutional Chamber.

2. A judge of the Constitutional Chamber, who voted for a judgment or pronouncement on the merits of the case considered by the Constitutional Chamber, but who was left in minority during voting on some other matter or on motivation of the adopted act, shall have the right to present his/her dissenting opinion in writing as disagreement with the majority. Such opinion of a judge shall be attached to the materials of the case and may be published in the "Bulletin of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic".

Article 51. Interpretation of an act

1. An act of the Constitutional Chamber may be officially interpreted only by the Constitutional Chamber upon motion of persons or entities who have the right to appeal to the Constitutional Chamber.

2. The matter of interpretation of an act of the Constitutional Chamber shall be considered at the sitting of the Constitutional Chamber with the participation of a person or entity. Agencies or persons, who were the parties to the case under consideration, shall be also summoned to the sitting.

3. The Constitutional Chamber shall make a ruling on the interpretation of its act; such ruling shall be represented by a separate document and shall be published in the same publication where the act in question had been published.

Article 52. Corrections of inaccuracies in the act

The Constitutional Chamber after the proclamation of the act shall have the right to correct inaccuracies contained therein in terms of names, definitions, clerical errors as well as evident technical and editorial inaccuracies; the Constitutional Chamber shall adopt a ruling in this respect.

Article 53. Legal force of acts of the Constitutional Chamber

1. The acts of the Constitutional Chamber shall be final and shall be not subject to appeal. Judgments and pronouncements of the Constitutional Chamber shall enter into force upon their proclamation; other acts shall enter into force upon their signature.

The legal force of a judgment on unconstitutionality of a normative regulatory act or part thereof shall not be superseded by a repeated adoption of the same normative regulatory act or part thereof with the same contents.

2. The acts of the Constitutional Chamber shall be mandatory for all state agencies, local self governance bodies, officials, public associations, private persons and legal entities and shall be subject to implementation on the entire territory of the republic.

3. In the event that the Constitutional Chamber decides that laws or other normative regulatory acts or provisions thereof are unconstitutional, then such laws and normative regulatory acts shall be cancelled on the territory of the Kyrgyz Republic; the same requirement applies to other normative regulatory acts which were based on laws, other normative regulatory acts or provisions thereof recognized as unconstitutional except for judicial acts. Before the adoption of a new normative regulatory act the Constitution shall be directly applied.

4. Judicial acts which are based on provisions of laws or other normative regulatory acts which were declared unconstitutional shall be revised by the court which adopted such acts in

each concrete case based on the appeals of citizens whose rights and freedoms were affected.

5. In case the Constitutional Chamber declares unconstitutional international agreements which have not come into force, such agreements shall not be subject to entry into force and application.

Article 54. Execution of acts of the Constitutional Chamber

1. Judgments and pronouncements of the Constitutional Chamber shall be forwarded to parties, state agencies and officials, whose normative regulatory acts were the subject of consideration and shall be published in the official publications of state power agencies as well as in the "Bulletin of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic", as necessary they shall be also published in other publications.

2. In the event that by judgment of the Constitutional Chamber a normative regulatory act was declared unconstitutional in whole or in part or in the event that the judgment of the Constitutional Chamber results in the necessity to remove a gap in the legal regulation, then:

1) The Government shall no later than three months after the publication of the judgment of the Constitutional Chamber shall submit to the Jogorku Kenesh new drafts of the constitutional law, law or a set of interlinked draft laws or a draft law on introduction of amendments and / or changes to the law which was pronounced as unconstitutional in part. These draft laws shall be considered by the Jogorku Kenesh in an extraordinary manner;

2) The President, the Government no later than two months after the publication of the judgment of the Constitutional Chamber shall adopt the new normative regulatory act or introduce changes and / or amendments to the normative regulatory act which was pronounced as unconstitutional in part.

3. Failure to execute, improper execution or obstruction to the execution of legal acts of the Constitutional Chamber as well as intervention in the activity of the Constitutional Chamber shall result in liability envisaged in the law.

Article 55. Special rulings of the Constitutional Chamber

1. In the event that during the proceedings the Constitutional Chamber establishes the violations of law, then the Constitutional Chamber shall be entitled to make a special ruling and send such ruling to relevant state agencies, local self governance bodies, legal entities and / or officials thereof; within one month since the receipt of the copy of such special rulings these entities should inform on measures undertaken.

2. In the event of failure to inform on the measures taken, the officials in default may be brought to liability in accordance with the law. Meanwhile, these circumstances shall not relieve the relevant officials from reporting on measures undertaken in respect of the special ruling of the Constitutional Chamber.

SECTION III FINAL PROVISIONS

Article 56. Financial provision for the activity of the Constitutional Chamber

1. The activities of the Constitutional Chamber shall be financed from the funds of the republican budget.

2. The Constitutional Chamber shall independently draft its budget for the next fiscal year; such budget shall be included in the budget without changes and shall be submitted to the Council of judges of the Kyrgyz Republic.

3. The Constitutional Chamber shall independently dispose of money, which is envisaged in the budget of the Supreme Court for the financing of the Constitutional Chamber.

4. In the procedure of adoption of the republican budget the estimates of expenses of

the Constitutional Chamber may not be reduced compared to the previous fiscal year.

Article 57. Administration of the Constitutional Chamber

1. The administration of the Constitutional Chamber shall ensure its activities.

2. The activity of the administration of the Constitutional Chamber shall be directly managed by the head of administration, who is appointed and dismissed by the Chairman of the Constitutional Chamber in accordance with the legislation on the civil service. The employees of the administration of the Constitutional Chamber shall be civil servants; they are appointed and dismissed from their positions by the head of administration in accordance with the legislation on the civil service and the labor law.

3. The administration of the Constitutional Chamber shall:

- ensure staffing, organizational, scientific and analytical, informational and reference, material and technical as well as other support to the Constitutional Chamber;
- receive visitors on matters not related to the constitutional legal proceedings;
- ensure preliminary consideration of petitions to the Constitutional Chamber and in cases when they do not contain matters to be referred to the judges of the Constitutional Chamber for review;
- assist the judges in the preparation of cases and other matters for the consideration at the sittings and meetings;
- study and summarize the activity of the state agencies in ensuring the implementation of acts adopted by the Constitutional Chamber;
- perform other activity within its competence.

Article 58. Official publication of the Constitutional Chamber

An official publication of the Constitutional Chamber shall be the "Bulletin of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic".

Article 59. Symbols of judicial powers of the Constitutional Chamber

The court room of the Constitutional Chamber shall have displayed the state emblem, the state flag and the Constitution.

The judges of the Constitutional Chamber shall hold their sittings in gowns, the description and samples of these gowns shall be approved by the Government upon proposal of the Council of judges.

Article 60. The seal of the Constitutional Chamber

The Constitutional Chamber shall have its seal with the state emblem of the Kyrgyz Republic and the name of the Constitutional Chamber.

Article 61. The seat of the Constitutional Chamber

The permanent seat of the Constitutional Chamber shall be the capital of the Kyrgyz Republic – Bishkek.

The Constitutional Chamber shall as a rule have its sittings at its permanent seat. The Constitutional Chamber may have its sittings at another venue in the event it deems it necessary.

SECTION IV TRANSITORY PROVISIONS

Article 62. Procedure of consideration of petitions received prior to enactment of the Constitution and the present constitutional law

Petitions received prior to enactment of the Constitution and the present constitutional law shall be considered and acted upon by the Constitutional Chamber within the limits of its competence established by article 97 of the Constitution.

Article 63. Period of formation of the Constitutional Chamber

1. The full membership of the Constitutional Chamber shall be formed no later than thirty days since the enactment of the present constitutional law.

Judges of the Constitutional Court of the Kyrgyz Republic, whose powers were terminated due to dissolution of the Constitutional Court of the Kyrgyz Republic, shall have the right to participate in the competition for the vacant positions of judges of the Constitutional Chamber in accordance with the new Constitution.

2. After the full membership of the Constitutional Chamber is formed, it shall elect its chairman, deputy chairman and secretary judge of the Constitutional Chamber in accordance with the procedures envisaged in the present constitutional law, and shall immediately start its activity.

3. The Constitutional Chamber shall be the successor of the Constitutional Court of the Kyrgyz Republic. Material guarantees of independence of the Constitutional Court, which were established prior to enactment of the present constitutional law, including a separate building which was previously occupied by the Constitutional Court, shall be reserved by the Constitutional Chamber.

Material and technical provision of activity of the Constitutional Chamber shall be ensured by the Government on the basis of property of the Constitutional Court within the approved budget of the Constitutional Court for 2010.

Article 64. Enactment of the present constitutional law

1. The present constitutional law shall enter into force since the day of its official publication.

2. The following laws hereby lose their force and effect:

- The law of the Kyrgyz Republic "On the Constitutional Court of the Kyrgyz Republic" (Bulletin of the Jogorku Kenesh of the Kyrgyz Republic, 1994, No 2, page 46, newspaper "Sv.Gory", no 25 dated April 29, 1994);

- The law of the Kyrgyz Republic "On constitutional legal proceedings of the Kyrgyz Republic" ("Erkin-Too" newspaper, NN 68-69 dated August 7, 2009).

**The President
of the Kyrgyz Republic**