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(VENICE COMMISSION)

COMMENTS

**ON THE LAW
ON BODIES OF JUDICIAL SELF-REGULATION
OF THE KYRGYZ REPUBLIC**

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**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Introduction

The Constitutional Court of the Kyrgyz Republic has asked the Venice Commission to adopt an opinion on the law "On bodies of judicial self-regulation". This law is part of a series of laws reforming the judicial system of the Kyrgyz Republic as a consequence of the constitutional changes in this field.

Preliminary remarks

The opinion is based on an English version of the new law that has been adopted on 15 February 2008.

Comments to the new law

Article 1 of the new law defines the term "self-regulation" as "the means of organising the judicial community, making it possible to resolve questions concerning the internal activities of judges through its own bodies". This form of self-regulation is understood as a prerequisite of "expressing and defending the interests of both judges and other persons vested with judicial power" (Article 4). The aims are specified in Article 5, i.e. to protect the rights and lawful interests of judges, to assist in improving the judicial system and judicial proceedings, and to represent the interests of judges in dealings with state bodies, public associations and international organisations.

The idea therefore seems to be to provide a framework for forming coherent stand-points of the judicial community in all questions concerning judges.

To regulate self-regulation might be a contradiction in itself. But if such a law is deemed necessary it should not contain too rigid rules. It is important to provide a solid basis for the self-regulation of the judges, but to avoid suffocating it.

In this context some of the regulations raise some doubts.

First, according to the status of individuals exercising the activities of judicial self-regulation is governed by the Law "On civil service". The content of this law is not known; but it might be too rigid, if there are strict regulations on responsibilities or perhaps even regulations subordinating the representatives to the administration.

Second, it does not seem to be necessary that the Congress of judges can be convened by the President of the Kyrgyz Republic (Article 6 para. 2). This regulation contradicts the very idea of self-regulation.

Third, according to the organisation, technical, material, financial and methodological resources for the activity of the Council of judges shall be provided by the Judicial department of the Kyrgyz Republic (Article 8 para. 4). It is not clear in how far this creates a strong dependency incompatible with the idea of self-regulation.

Forth, the rules for the election of the representatives are very rigid as well (e.g. the prohibition of re-election of members of the Council of judges for a second consecutive term; Article 8 para. 8).

It is not stated clearly who will be the members of the bodies of judicial self-regulation. On the one hand it seems to be evident that only judges can participate. On the other hand the law explicitly refers to “the interests of both judges and other persons vested with judicial power”. Which other persons are meant here? Are they allowed to participate in the self-government?

Article 4 para. 1 explicitly mentions the “powers” of the bodies of judicial self-regulation. Article 4 para. 6 determines the forms of regulation, i.e. decisions and communications. According to Article 7 para. 3 the decisions are binding. These regulations have to be read together with the list of tasks the Council of judges has. According to Article 9 para. 2 the enumeration is very broad and comprises tasks of a very different nature. There are tasks to implement certain measures, to examine certain questions, to hear reports, to engage in cooperation, to organise something. It is not quite clear in which cases binding decisions are adopted and what the legal consequences of those binding decisions are.

The Council of judges also “examines questions of instituting disciplinary proceedings against judges”. Do such decisions concern concrete judges? Are they binding?

The Congress of Judges is called upon to “establish the Blueprint for judicial reform”. Here, too, it is not clear what the legal consequences are. Are all judges bound to defend the position of the Congress of Judges? In which way does the legislator have to take this decision into account?

Overall assessment of the new law

The new law is very short and contains some important aspects, such as the organisation of training and further training of judges and the court apparatus. Practice will show if the implementation of the somewhat strict rules concerning the self-regulation of judges leaves enough space for real self-regulation and for an open debate among the judges on the problems of the judicial system and thus finally leads to an improvement in the adjudication of concrete cases.