



THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA

Minutes of Meeting of the Secretary Generals

**ASSOCIATION OF
ASIAN CONSTITUTIONAL COURTS
AND
EQUIVALENT INSTITUTIONS**

Jakarta, 25-26 May 2015



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**MINUTES OF MEETING
OF THE SECRETARY GENERALS**



Association of Asian Constitutional Courts
and Equivalent Institutions

THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

MEETING OF THE SECRETARY GENERALS 25-26 May 2015, Jakarta-Indonesia

MINUTES OF MEETING

Opening

1. The Meeting of the Secretary Generals of the Association of Asian Constitutional Courts and Equivalent Institutions (“the Association”) was held in Jakarta, Indonesia on 25 – 26 May 2015. The Meeting was initiated and hosted by the Secretary General of the Constitutional Court of the Republic of Indonesia, in his capacity as the Secretary General of the Term President of the Association.
2. The Meeting was attended by the Secretary Generals and representatives of the Association from 13 (thirteen) member countries, namely Afghanistan, Azerbaijan, Indonesia, Kazakhstan, Malaysia, Pakistan, Philippines, Republic of Korea, Russia, Tajikistan, Thailand, Turkey, and Uzbekistan. The list of delegates appears in Annex I.
3. The Meeting was aimed at having in-depth discussions on the preparation of the forthcoming Meeting of the Board of Members and the Third Congress of the Association and other issues related to the Association, as well as strengthening cooperation among the Secretary Generals of the Association members.
4. In his welcoming remarks, the President of the Constitutional Court of the Republic of Indonesia extended a cordial welcome to all delegations and provided a brief introduction on Indonesia and its diversity. He further expressed his optimism that the Meeting would contribute to the effective implementation of the vision and mission of the Association.
5. The Agenda of the Meeting appears in Annex II.

Agenda Item I: Brief description of the authorities of each institution and support provided for the implementation of the aforementioned authorities

6. Heads of Delegation briefed the Meeting on the structures, roles, and competence of the authorities of each institution, as well as efforts taken by the Secretary Generals in their respective countries to support the works of the constitutional courts and equivalent Institutions. From the presentations and questions and answers session, the Meeting also benefited from the exchange of experiences, knowledge, and best practices applied in the protection of citizen's constitutional rights, the protection of human rights, the guarantee of democracy, the implementation of the rule of law, and the independence of constitutional courts and equivalent institutions. Presentations of the delegations appear in Annex III.

Agenda Item II: Preparation for Meeting of the Board of Members and the Third Congress

7. The Chairman briefed the Meeting on the provisional agenda of and technical preparation for the upcoming Meeting of the Board of Members, which will be held in Jakarta on 14 August 2015. The provisional agenda and technical preparation appear in Annex IV and V respectively.
8. The Chairman also informed the Meeting that on 18 June 2014, the requirements and letters of admission from the Constitutional Chamber of Supreme Court of Kyrgyzstan were submitted to the President of the AACC, who distributed said documents to each member of the Association by letter dated 28 October 2014. He further informed that the Constitutional Tribunal of the Union of Myanmar intended to join the Association through informal communication with the delegation of the Republic of Korea. The application and admission of Kyrgyzstan and, pending official application, the Constitutional Tribunal of the Union of Myanmar will be discussed and determined at the upcoming Meeting of the Board of Members. The written application from the Constitutional Chamber of the Supreme Court of Kyrgyzstan appears in Annex VI.
9. The Chairman further briefed the Meeting on its proposal to hold the Third Congress in Nusa Dua, Bali in April 2016. Indonesia as the host country further proposed the working theme of the Third Congress, namely "The Protection of Citizen's Constitutional Rights". In this regard, the Meeting noted Indonesia's proposal and

each delegate will convey such proposal to their respective Head of Constitutional Court and Equivalent Institution.

10. The Meeting noted that deliberations on the matters of the working theme, states and institutions to be invited, and financial issues of the Third Congress would be held at the upcoming Meeting of the Board of Members.
11. The Chairman also informed the Meeting of its plan to hold the International Symposium on Constitutional Complaint in Jakarta on 15-16 August 2015. The concept note of the International Symposium appears in Annex VII.

Agenda Item III: Coordination of events, not only to coordinate calendars among member institutions but also to align those events with the aims of the Association

12. The Meeting was briefed on the programmes and activities of members of the Association. The Meeting further noted the commitment of the delegates to coordinate their respective calendars of events and align the themes with the aims of the Association in the following years. Tentative calendars of events of the aforementioned members appears in Annex VIII.

Agenda Item IV: Enhancing the role of Secretary-Generals of Members of the Association

13. The Meeting underscored the important roles of the Secretary Generals of Members of the Association in supporting the works of the Association.
14. The delegation of Republic of Korea (RoK) gave presentation on the establishment of permanent secretariat of the Association. The presentation of the RoK appears in Annex IX. The Delegation of the Philippines supported the ROK proposal, provided the ROK is prepared to shoulder the human and non-human resources including the matters of funding and provision of office and facilities. The Delegation of Russia supported the proposal of the Korean Delegation, however they specified that the certain issues of institution's competence, formation and funding should be elaborated and discussed further. The Delegation of Turkey basically supported the idea of permanent secretariat but suggested that the position should be opened to other countries to volunteer themselves as candidates. The Delegation of Malaysia supported the Korean proposal but suggested that financial matters should not burden the other member countries. The Delegation of Kazakhstan fully supported the proposal of RoK in terms of the

establishment of permanent secretariat. The Delegation of Afghanistan also supported the proposal, but the fund raising system should be further discussed. The Delegation of Russia informed the Chairman of the Meeting that Mr. Jugnee Amarsanaa, the President of the Constitutional Court of Mongolia, through the letter dated 22 May 2015, sent by email, supported the proposal of Korean Delegation, whereas some of the participants confirmed the receipt of the letter. The Korean Delegation was willing to provide the office for the permanent secretariat in Korea and is willing to provide full support in terms of geographical venue as well as human and non-human resources as proposed in the presentation. Furthermore they expressed great appreciation for the support given by the delegations of the members.

15. While agreeing that the role of Secretary General should be strengthened, the delegation of Indonesia expressed their view that the aforementioned matter should be discussed thoroughly, along with the possibility of revisiting the Association Statute, and therefore they offered to host a meeting on 13 August 2015, one day before the upcoming Board of Members Meeting. This proposal was supported by the Delegation of the Philippines. He further suggested that matters of possible amendments of articles the Statute should be discussed in the next Board of Members Meeting for appropriate action in the third Congress meeting.
16. Through an open floor discussion, the Meeting reached a mutual understanding that the role of the Secretary General needs to be strengthened, through, inter alia, a review of the Association Statute. The Meeting accepted the offer from the Delegation of Indonesia to host a meeting of the Secretary Generals of members of Association one day prior to the Board of Members Meeting in Jakarta, August 2015, to discuss the matters raised during this Meeting. The Meeting further noted that delegations should report these matters to their respective Presidents, who by the end of June 2015 should submit their comments regarding the establishment of permanent Secretariat of the Association to the Term President.

Closing

17. The deliberations of the meeting would be reported to the delegations' respective Head of Constitutional Court and Equivalent Institution for further discussion at the next Meeting of the Board of Members.

18. The delegations also expressed their appreciation to the Secretary General of the Indonesian Constitutional Court in his capacity as the Secretary General of the Term President of the Association for organizing this Meeting and looked forward to the continued cooperative process in the future.

Jakarta, 25 – 26 May 2015



Lutfurahman Saeed
Member of the Independence Committee for
Overseeing the Implementation of
the Constitution
Islamic Republic of Afghanistan



Rauf Guliyev
Secretary General of the Constitutional Court
Republic of Azerbaijan



Janediri M. Gaffar
Secretary General of the Constitutional Court
Republic of Indonesia



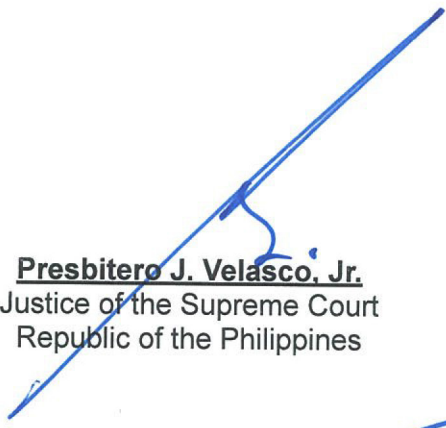
Alibek Temerbekov
Secretary General of the Constitutional Council
Republic of Kazakhstan




Roslan Abu Bakar
Chief Registrar of the Federal Court
Malaysia



Tahir Shahbaz
Registrar of the Supreme Court
Islamic Republic of Pakistan



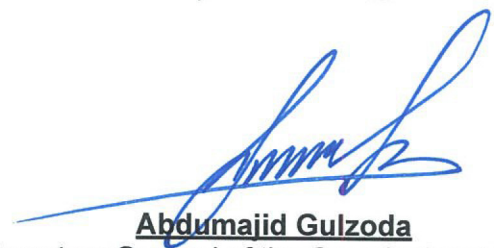
Presbitero J. Velasco, Jr.
Justice of the Supreme Court
Republic of the Philippines




Kim Yong-Hun
Secretary General of the Constitutional Court
Republic of Korea




Vladimir Sivitskiy
Deputy Head of the Secretariat of
the Constitutional Court
Russian Federation



Abdumajid Gulzoda
Secretary General of the Constitutional Court
Republic of Tajikistan



Selim Erdem
Secretary General of the Constitutional Court
Republic of Turkey



Sharof Saidkulov
Head of the Secretariat of
the Constitutional Court
Republic of Uzbekistan

Punya Udchachon
Secretary General of the Constitutional Court
Kingdom of Thailand

LIST OF ANNEXES

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- IX. Proposal of the Republic of Korea**

ANNEX I

LIST OF DELEGATES

1.	Afghanistan	a. Mr. Lutforahman Saeed	Member of Commission
2.	Azerbaijan	a.Mr. Rauf Guliyev b.Mr. RustamSalimov	Secretary General Senior Advisor of the Secretariat
3.	Indonesia	a.Mr. Janedjri M. Gaffar b. Mr. M. Guntur Hamzah c. Mr. Budi A. Djohari d. Mr. Muhidin	Secretary General Head of Case Reseach and IT Management Center Head of Public Relations and Protocol Affairs Bureau Deputy Registrar
4.	Kazakhstan	a. Mr. Alibek Temerbekov b. Mr. AyanTashmagambetov	Head, General Secretary Senior Consultant
5.	Malaysia	a. Mr. Roslan Abu Bakar b. Mrs. HasbiHasan c. Mrs. HusnaDzulkify d. Mr. M.Aizuddin Zolkeply	Chief Registrar Deputy Registrar Deputy Registrar Head of Corporate Communications and International Relations
6.	Pakistan	a. Mr. Tahir Shahbaz	Registrar
7.	Philippines	a. Mr. Presbitero J. Velasco Jr. b. Mr. Raul B. Villanueva c. Mrs. Anna-Li Papa Gombio	Justice Deputy Court Administrator (Attorney) Deputy Clerk of Court and Executive Officer (Attorney)

8.	Republic of Korea	a. Mr. Yong-Hun Kim b. Mrs. Kook-Hee Lim c. Mrs. Shin-Yae Lee	Secretary General Deputy Director Legal Researcher
9.	Russia	a. Mr. Vladimir Sivitskiy b. Mr. EgorBushev	Deputy Head of Secretariat Legal Officer of the International Department
10.	Tajikistan	a. Mr. Abdumajid Gulzoda b. Mr. GolibjonMustafakulov	Secretary General Chief of General Department, Public Service and International Relations
11.	Thailand	a. Mr. Punya Udchachon b. Mr. ChaowanaTraimas c. Mr. MontreeKanokwaree	Secretary-General Secretary General Acting on Advisor on Academic Senior Expert on Legal Cases
12.	Turkey	a. Mr. Selim Erdem b. Mr. SerhatKöksal	Secretary General Rapporteur Judge
13.	Uzbekistan	a. Mr. Sharof Saidkulov b. Mr. Aziz Boltaev	Head of Secretariat Assistant to Chairman

ANNEX II

AGENDA

Meeting of Secretary Generals of the AACC

ITEM ONE : Brief Description of the Authorities of Each Institution and Support Provided for the Implementation of the Aforementioned Authorities

ITEM TWO : Preparation for the Board of Members Meeting of the AACC

1. Agenda for the Board of Members Meeting
2. Technical Preparation for the Board of Members Meeting
3. International Symposium on Constitutional Complaint

ITEM THREE : Coordination of Events (not only to coordinate calendars amongst member institutions but also to align those events with the aims of the Association)

ITEM FOUR : Enhancing the Role of the Secretary-Generals of the Members of the Association

ANNEX III

**PRESENTATION
PAPERS**



CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

COMPETENCE OF THE CONSTITUTIONAL COURT AND SUPPORT OF THE REGISTRAR AND SECRETARIAT-GENERAL OF THE CONSTITUTIONAL COURT

The Constitutional Court of The Republic of Indonesia (the Court) exists within the state administration of Indonesia as a means of realizing a democratic state based on law under the doctrine of constitutional supremacy. In addition, the Court is seen as a fundamental requirement for the protection and guarantee of human rights and constitutional rights of the citizens of Indonesia.

Along with the momentum of political reform in Indonesia in mid-1998, which also facilitated constitutional reform, the need for the establishment of the Constitutional Court grew stronger. During the Court's development, the 1945 amendment was made in four stages between 1999 and 2002. Seeing the results of the amendment, the 1945 Constitution is seen to accommodate very well the need for the establishment of a more democratic governance by adhering to the check and balance mechanism to create balance in relations between channels of state power, which were built in an effort to enforce law and justice.

Through the 1945 amendment, the Court was established as a new state agency on 13 August, 2003, to complement and enhance Indonesia's practice of the principles of constitutionalism and Rule of Law state. The Court fulfilled the needs of Indonesia's state administration, which since its inception has ordained itself as a democracy practicing Rule of law state and upholding the supremacy of the constitution. In this matter, the Court is one of the judicial powers alongside the Supreme Court (MA). Both institutions have equal status and power with different functions and constitutional authority.

In accordance with , Article 24C of the 1945 Constitution grants five authorities to the Court, which are as follows ; (1)To review of laws against the Constitution of 1945; (2)To decide on disputes regarding the authorities of state institutions whose authorities are granted under the 1945Constitution; (3)To decide on the dissolution of political parties (4) To decide on disputes regarding the results of general elections; (5) The opinion of The House of Representative that the President and/or Vice President have/ has allegedly committed a violation of the law in the form of treason against the state, corruption, bribery, other serious criminal acts, or misconduct and/or no longer meet(s) the requirement as President and/or Vice President as intended in 1945 Constitution of the state of The Republic of Indonesia;

1. To review of laws against the Constitution of 1945;

Constitutional review is the main function of the Court. It is generally understood that law is the crystallisation of the political interests of its constituent actors, especially in the legislative body. Therefore, it is possible that the substance of these laws contain points of interest which are not in line with the 1945 Constitution. For example, though laws drafted by lawmakers may reflect the will of the majority of the people's representatives, where such a majority vote threatens human rights, especially the voice of minority groups, said vote should be annulled as in violation of the constitution. This is the main function of the Court as the guardian of the constitution and of democracy, and as the protector of the constitutional rights of the people.

2. To decide on disputes regarding the authorities of state institutions whose authorities are granted under the 1945Constitution;

A dispute of Constitutional authority between state institutions is fundamentally a difference of opinion comprising disputes and other claims regarding the authority possessed by each of the affected state institutions. This may arise as a result of the checks and balances system in place between state institutions, mainly as a consequence of such an institution interpreting its authority by the Constitution. In this case, the parties entitled to file petitions are those state institutions that have a direct interest in the authority under dispute, where said authority is granted by the 1945 Constitution.

3. To decide on the dissolution of political parties;

A political party is an important element in a democratic state. Therefore, the existence of political parties must be guarded and prevented from behaving or acting in an arbitrary manner. Therefore, in order to avoid dissolution of political parties, which threatens and risks the destruction of democracy, a strict constitutional mechanism is

required in to control such conduct. New political parties can be dissolved through a mechanism of the Court, if they are proved to possess or practice ideologies, principles, objectives, programmes, and activities contrary to the 1945 Constitution. In the dissolution of political parties, only the Government is given the position of petitioner.

4. To decide on disputes regarding the results of general elections;

Election is often used as an indicator of a country's democracy or lack thereof. Democratic elections validate a state's claim to be called a democracy. An election is considered democratic when all phases of election are held in a fair, honest, and peaceful manner. Thus, the success of an election is determined by how effectively disputes over election results are resolved. For this reason, the Constitutional Court has the authority to resolve such disputes to ensure democracy is always practised within the confines of the law and constitution.

5. To decide on the opinion of The House of Representative that the President and/or Vice President have/has allegedly committed a violation of the law in the form of treason against the state, corruption, bribery, other serious criminal acts, or misconduct and/or no longer meet(s) the requirement as President and/or Vice President as intended in 1945 Constitution of the state of The Republic of Indonesia

Within the presidential system, it is understood that a president is directly elected by the people and cannot be dismissed in the middle of his term, it being a fixed term. A President cannot be dismissed on purely political grounds. In line with this concept, based on the principle of supremacy of law and equality before the law, the president may be dismissed only if he is proved to have violated the constitution, such as through acts of treason, bribery, or other acts of criminal nature or through moral turpitude and/or if the President and/or Vice President no longer meet(s) the qualifications to serve as President and/or Vice President. These allegations must be proven through Constitutional adjudication by the Court. Any dismissal process must not conflict with the principles of Rule of Law. Therefore, a president cannot be dismissed without a ruling from the Court declaring that said president has been found to have violated the Constitution. To form such an opinion, parliament must call a plenary of at least two thirds of all members of parliament present, in which a two thirds majority must be in agreement of the opinion. Only once these requirements have been fulfilled may the opinion of Parliament on alleged violations by the President and/or Vice President be brought to the Court.

In practice, since the Court was founded thirteen years ago, three of the five authorities have been exercised, namely, to review laws against the Constitution of 1945; to decide on disputes regarding the authorities of state institutions whose authorities are granted under the 1945 Constitution; and to decide on disputes regarding the results of general elections. Overall, the Court has thus far resolved as many as 754 judicial cases, 24 cases of disputes over constitutional authorities whose authorities are granted by the Constitution, 117 cases of disputes over the results of the legislative / presidential election, and 663 cases of disputes over the results of regional election. The two remaining authorities, namely, to decide on the dissolution of political parties and to decide on alleged violations by the President and/or Vice President, have not been exercised as there have been no petitions filed.

The authority of constitutional complaint based on constitutional jurisdiction is not granted by the 1945 Constitution. However, in practice, the Court resolves constitutional complaints that have already internalised into judicial matters. In certain cases, judicial reviews that are addressed by the Court contain elements of constitutional complaint. Thus it is inevitable considering that in the mechanism of the Court, the parties with legal standings in judicial review are, amongst others, individual Indonesian citizens, in addition to societies practising traditional law, public or private legal entities and state institutions. This recognition of the right of every citizen of Indonesia to apply for judicial review of laws against the 1945 Constitution is one indicator of positive constitutional development that reflects progress in the reinforcement of the principles of the Rule of Law.

As a judicial power, the Court is independent, both structurally and functionally. To support its independence, under the provisions of law, the Court has its own budget separate from other agencies or institutions. The Court also has its own supporting bureaucratic apparatus, though the organisation and work procedures remain bound to prevailing regulations regarding this matter. Article 7 of the Constitutional Court regulation states that in the Court, the Registrar and Secretariat General are established to assist the implementation of the tasks and the authorities of the Constitutional Court. Furthermore, these provisions are specified in the Presidential Regulation No. 49 Year 2012 regarding the Registrar and the Secretariat General of the Constitutional Court. In light of this, The Registrar and the Secretariat General of the Court serve as executors of Court bureaucracy.

Service and support provided by the Registrar and the Secretariat General of the Court are intended to make it easier for the Court to focus its efforts on deciding and prosecuting cases of judicial review as its main authority, without neglecting other authorities. In this

context, the Registrar and the Secretariat General of the Court with the help of researchers provide substantial services and support to the Constitutional Justices so that they are able to examine, hear, and decide upon constitutional cases in order to produce high quality decisions.

After a petition is registered with the Registrar of the Court, researchers conduct a study of the case, especially a preliminary study of the format, completeness, and clarity of the petition materials. The study is then submitted to the Constitutional Court, primarily as material for consideration in a preliminary session. In the preliminary hearing, the Court shall provide advice to the petitioners in connection with the clarity and completeness of the material request. On the basis of that advice, the petitioners make improvements to the petition. It is notable that sessions in the court may also be conducted through video conference. The Court has 42 Video Conference units in 42 Universities in 34 provinces throughout Indonesia. These facilities aim to provide easier access for the people. Furthermore, while the Court is located in the Capital, Jakarta, it must provide coverage entire country of Indonesia, a large archipelagic state.

In the hearing stage, researchers continuously follow the trial process and then arrange further study based on facts and information revealed at the hearing as well as related theories and doctrines through literature searches. The results of the study are then submitted to the Court as input. After receiving directions from the Court, the Court Researchers assist the Court Justices to draft their legal opinions, a Justice's formal opinion on a particular case. This legal opinion is brought to the Justices' Deliberation, after which it is stipulated in the Court's ruling.

In passing decisions, the Registrar, through the Substitute Clerk, will stipulate the legal opinion of each Justice in the draft of the Court's ruling. In the Justices' Deliberation, the draft of the Court ruling will be discussed and decided upon by nine Court Justices and finally announced in a plenary session open to the public.

Aside from carrying out its judicial functions, the Court also holds activities to enhance the public understanding of individual constitutional rights. To this end, recently the Court established The Centre of Pancasila and Constitution Education as a working unit within The Secretariat General and Registrar of the Court. The smooth implementation of Court authorities is partially determined by how well the citizens understand their constitutional rights and know the constitutional mechanisms that guarantee and protect their constitutional rights.



MAHKAMAH KONSTITUSI
REPUBLIK INDONESIA

SESSION I

COMPETENCES OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA AND SUPPORT OF THE REGISTRAR AND SECRETARIAT GENERAL

M. GUNTUR HAMZAH
Head of Delegation
Constitutional Court of The Republic of Indonesia

Association of Asian Constitutional Courts and Equivalent Institutions
Jakarta, May 25th 2015

ESTABLISHMENT OF MAHKAMAH KONSTITUSI

- The Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi/MK) exists within the state administration of Indonesia as a means of realizing a democratic state based on law under the doctrine of the supremacy of the constitution;
- MK is seen as a fundamental requirement for the protection and guarantee of human rights and constitutional rights of the citizens of Indonesia;
- The need for the establishment of Constitutional Court grew stronger during political and constitutional reform in Indonesia in mid-1998;
- During this constitutional reform, The 1945 Constitution has been amended one time in four stages which lasted from 1999 to 2002. One of the results of the amendment was the establishment of Mahkamah Konstitusi on 13 August 2003.

COMPETENCE OF MAHKAMAH KONSTITUSI

- In accordance with the 1945 Constitution, MK has five constitutional competences, namely:
 1. To review laws against the 1945 Constitution;
 2. To decide on disputes regarding the authorities of state institutions whose authorities are granted by the 1945 Constitution;
 3. To decide on the dissolution of political parties;
 4. To decide on disputes regarding the result of general elections; and
 5. To decide on the opinion of the House of People's Representatives (DPR) that a President and/or Vice President is presumed to have breached The Constitution.

Review Of Laws

- Review of laws (constitutional review) is the main competence of The Court.
- It is generally understood that law is the crystallization of the political interest of its actors, especially in the legislative body. Therefore, it is possible that the substance of these laws contain points of interest which are not in line with the 1945 Constitution.
- For example, the laws passed by legislative might, in fact, violate constitutional rights of citizens. In that case, MK may annul the law based on petition. The petition in this case may be filed by individual citizen.
- This competence reflects the main function of MK as the guardian of the constitution, democracy, and Indonesia's ideology, and as the protector of human rights and citizens constitutional rights.

Disputes Regarding The Authorities Of State Institutions

- A dispute of Constitutional authority between state institutions whose authorities are granted by the Constitution is fundamentally a difference of opinion and other claims regarding the authority possessed by each of the affected state institution.
- The dispute may arise mainly as a consequence of such an institution interpreting its competence based on the Constitution.
- The petitioners are State Institutions whose authorities are granted by The Constitution that have a direct interest in the authorities under dispute.

Dissolution Of Political Parties

- A political party is an important element in a democratic state. The existence of political party must be guarded and prevented from acting and from being treated in an arbitrary manner.
- To avoid dissolution of political parties, which threatens and risks democracy, a strict constitutional mechanism is required to rule on the dissolution.
- A political party may only be dissolved based on the decision of The Constitutional Court
- It is The Government who has Legal Standing to file a petition to The Constitutional Court to dissolve a political party

Dispute Regarding The Result Of General Elections

- Election is often used as an indicator of a country's democracy or lack of thereof. Democratic elections validate a state's claim to be called a democracy. An election is considered democratic when all phases of election are held in a fair and peaceful manner.
- The success of an election is determined by how effectively dispute over the election results are resolved.
- For this reason, MK has the competence to resolve such disputes to ensure democracy is always practised within the confines of the law and constitution.
- The petitioners in this case are political parties for legislative election, presidential and vice presidential candidates for presidential election, Regional Representative Council (DPD) candidate for DPD election, Governor, Mayor, Regent and their vices candidates for regional election.

Verdict On The Opinion Of DPR On Presidential Impeachment

- In the presidential system, a president is directly elected by the people and cannot be dismissed in the middle of his term, because it is a fixed term.
- A president cannot be dismissed based on sheer political grounds and considerations. The president may be dismissed only if he is proved to have violated the Constitution such as; acts of treason, bribery, or other acts of criminal nature or through moral turpitude and/or the President and/or Vice President no longer meets the qualifications to serve as a President and/or Vice President. These allegations must be proven through Constitutional adjudication by MK.
- Decision of MK on these allegations will serve as a basis by DPR in the plenary session of the People's Consultative Assembly (MPR) whether or not to impeach The President and/or Vice President.

MK: Constitutional Cases Up to Today

- In practice, over the period since the Court was founded thirteen years ago, three of the five authorities have been implemented, namely; to review laws against the 1945 Constitution, To decide on disputes regarding the authorities of state institutions whose authorities are granted by the 1945 Constitution, and To decide on dispute regarding the result of general elections.
- MK has resolved as many as 754 constitutional cases, 24 cases of disputes over constitutional authorities of state institutions, and 117 cases of disputes over the results of the legislative/presidential election, and 663 cases of disputes over the result of regional election. Meanwhile, two others competences, namely: dissolution of political parties and presidential impeachment have never been implemented because there are no petitions.
- Every decision made by MK can be instantly accessed by any parties concerned by ways of direct submission of the decision copies to the parties immediately after the decision is announced. And the public can also anytime access or download the decision through MK Website.

MK: Constitutional Cases Up to Today

- MK is not granted by The 1945 Constitution with the competence to rule on constitutional complaints.
- However, in practice, MK actually deals with constitutional complaints through constitutionality reviews of laws. In fact, in certain cases, constitutionality reviews addressed by MK have the substances of constitutional complaints.

SUPPORTING SYSTEM

- MK is supported by The Registrar And The Secretariat-General.
- In supporting constitutional justices, The Registrar And The Secretariat-General have researchers and law clerks. Researchers provide research, case analysis including preliminary and in-depth analysis, and the draft of Legal Opinion. In addition, researchers also compile constitutional interpretations, legal norms, jurisprudence, and conduct monitoring and evaluation of the implementation of The Constitutional Court decisions.
- The Law Clerks assist in the making of decisions by inserting the legal opinion of The Justices into the draft of decisions based on the direction of the Justices.

SUPPORTING SYSTEM

- MK sessions are conducted in the court room and may also be conducted in the form of long distance sessions through video conference.
- MK has 42 Video Conference units in 42 Universities in 34 provinces throughout Indonesia. These facilities aim to provide easier access for the people.
- Furthermore, while MK is located in the Capital, Jakarta, it must provide coverage entire country of Indonesia, a large archipelagic state.

SUPPORTING SYSTEM

- MK also holds activities to enhance the public understanding of individual constitutional rights. To this end, recently MK established The Centre of Pancasila and Constitution Education, which is located in Cisarua Bogor, West Java, and the most recently, The Center of Constitutional History, located on the fifth and sixth floor of MK building.
- The smooth implementation of Court authorities is partially determined by how well the citizens understand their constitutional rights and know the constitutional mechanisms that guarantee and protect their constitutional rights.

THANK YOU

Independent Commission for Overseeing the Implementation of the Constitution (ICOIC)

- ICOIC established in 2010 based on Art: 157 of the Constitution of Afghanistan
- ICOIC law regulate the Structure, Authorities & Duties, and Operational Affairs of the Commission

Structure of ICOIC

- Art 4 of ICOIC law says the Commission should have 7 members
- The members are appointed by the President of the country with the consent of the Parliament for period of 4 years
- The members of the Commission elect the president of ICOIC through an internal election for 4 years
- ICOIC has 6 departments and an office in charge of administration

Authorities & Duties

According to Art: 8 of the ICOIC Law the Commission has the Following Authorities;

1. Overseeing the Implementation of the Constitution by the President, Legislation, Judiciary, governmental & non- governmental Organizations, Administrative institutions, etc.
2. Interpretation of the Constitution upon request of the President, the Supreme Court, the Government, the National Assembly, the Election Commissions, and the Human rights Commission of Afghanistan
3. Providing Legal Advices to the President and Legislation regarding the constitutional issues.
4. Insure the Consistency of the draft of the laws with the Constitution and Provide specific recommendation to the President and Legislation for development of legislative affairs
5. Report the violation of the Constitution to the President & public awareness programs

Achievements

- Providing 80 constitutional consultations, including interpretation of the constitutional provisions to the President, National assembly, and the Government
- 32 legislative documents ratified upon the ICOIC recommendation
- 30 cases of inconsistency of the laws with the AC is identified and provided the required recommendations
- Monitored detention centers and prisons in 23 provinces as a results 72 cases of violation of Constitutional rights
- Monitored 68 Non-state organizations and 453 cases of violation of the constitution identified and provided required recommendations

Current & Future Plans

Currently we are working on below activities

- working on draft amendment for the AC, which will happen within 18 months
- Public awareness programs to provide philosophical bases on Human rights and national unity in Afghanistan. Starting from schools, Universities and community level (Using Indonesian experience of “PANCASILA”)
- Building a strong relationships with different state & non-state organizations, and Civil Society to strengthen Rule of Law, and establish constitutionalism in Afghanistan
- Strengthen relationship with equivalent institutions in the world, specifically in Asia to mix their experiences with our values to strengthen Rule of Law, Constitutionalism and Human rights

Thank you



The presentation of Mr. Rauf Guliyev Secretary General of Constitutional Court of the Republic of Azerbaijan

(Meeting of Secretary Generals of the Members of AACC in Jakarta, 25-27 May 2015)

The Constitution of the Republic of Azerbaijan, which was drafted under Presidency of National Leader Heydar Aliyev is based on democratic values, has set the mechanism of constitutional control and defined the important role and place of the Constitutional Court, which guarantees the Constitution's supreme legal force.

Within the system of division of powers the Constitutional Court is considered as a judicial body. However, it is a separate institution, remaining outside of any structural, organizational or procedural associations with the general court system. The constitutional provisions establish that the judicial power in the Republic of Azerbaijan shall be exercised by the courts of law, through the administration of justice.

The Constitutional Court of the Republic of Azerbaijan was established on 14 July 1998.

The legal grounds for its activity is the Constitution of the Republic of Azerbaijan, international agreements which Republic of Azerbaijan is a party to, Law "On Constitutional Court" adopted on 23 December 2003, other laws and the Internal Charter of Constitutional Court.

The Constitutional Court of Azerbaijan is the supreme body of constitutional justice on matters attributed to its jurisdiction by the Constitution of Azerbaijan. Constitutional Court is an independent state body and does not depend in its organizational, financial or any other form of activity on any legislative, executive and other judicial bodies, local self-government bodies as well as legal and physical persons.

The functioning of the Constitutional Court is based on the principle of supremacy of the Constitution, as well as principles of independence, collegiality and publicity.

According to Constitution the following entities may apply to Constitutional Court:

- President of the Republic of Azerbaijan;
- Milli Majlis (Parliament);
- Cabinet of Ministers;
- Supreme Court;
- Prosecutor's Office;
- Supreme Majlis of Nakhchivan Autonomous Republic;
- Courts of law;
- Individuals;
- Ombudsman.

Competences of Constitutional Court are quite broad and they are envisaged directly in Constitution.

According to Constitution and Law "On Constitutional Court" the Constitutional Court resolves the issues of the conformity of laws, decrees and other normative legal acts with the Constitution and laws of the Republic of Azerbaijan; resolves the issues of conformity of inter-state treaties of the Republic of Azerbaijan that are not yet in force in respect thereof with the Constitution of the Republic of Azerbaijan; the conformity of inter-governmental agreements of the Republic of Azerbaijan with the Constitution and laws of the Republic of Azerbaijan; gives interpretation to the Constitution and laws of the Republic of Azerbaijan; resolves the disputes regarding the division of competences between legislature, executive and judiciary; verifies and validates the results of elections of members of the Milli Majlis (Parliament); announces the results of elections of President of the Republic of Azerbaijan and so on.

In principle, Constitutional Court cannot initiate the constitutional proceedings without inquiry, request or complaint. The constitutional legal proceedings are inherently directed not on establishment of the facts; it is constructed on the analysis of exclusively normative texts. Within the proceedings initiated on complaints Constitutional Court does

not examine the cases on civil, criminal or administrative delinquencies but the conformity of challenged judicial act to Constitution and laws. The factual aspects studied in ordinary courts are not checked but the correct application or interpretation of normative legal acts by court of law is examined. If the inconformity of challenged acts to Constitution and laws is determined, these acts or some of their provisions shall lose their force.

The decisions of the Constitutional Court are final and cannot be canceled, modified or officially interpreted by any person or institution. The judicial acts recognized as null and void shall not be executed and certain cases shall be re-examined by courts through the procedure specified in legislation.

Within the Staff of the Constitutional Court there are functioning the Department of Constitutional Law; Department of Criminal and Administrative Law; Department of International Law and International Cooperation; Department of Protocol and Public Relations; Department of Human Rights, the organization and analysis; Civil Law Department; Department for Reception of Citizens and Complaints; General Department; Department of Legal Support and systematization of legislation; Sector for Supervision for Execution of Court Decisions; Sector for Organization of Court Sessions; Assistants and Advisors to Chairman and Judges. The current supervision of staff is implemented by Secretary General and his/her Deputy.

Besides, the material technical, financial and economical maintenance is realized by Logistics Department.

From the date of its establishment, the Constitutional Court attaches a big importance to international relations, strengthening and enlargement of co-operation with foreign constitutional review bodies and the international organizations.

The independence of Judges of Constitutional Court is ensured by Constitution of Republic. President of Republic of Azerbaijan Mr Ilham Aliyev 's Decrees provides for the high level material and financial support to Judges and the staff of Court.

Besides its full membership in the Association of Asian Constitutional Courts and Equivalent Institutions since 2014, Constitutional Court of the Republic of Azerbaijan is the full member of the Conference of the European Constitutional Courts and World Conference on Constitutional Justice.

For the 17 years of its activity the Plenum of Constitutional Court of Azerbaijan adopted more than 300 decisions. These decisions settle the irregularities in the field of criminal, civil, administrative and electoral legislation, restore the rights and freedoms of individuals and thus contribute to supremacy of Constitution in Republic of Azerbaijan.

Promotion of the constitutional values through regional cooperation on Asia

by Secretary General
of the Constitutional Council
of the Republic of Kazakhstan
Alibek Temerbekov

The regional framework of the Association of Asian Constitutional Courts and Equivalent Institutions (Association) underlines the great importance of cooperation to promote the constitutional values. The Asian dialog platform allows for problems faced by constitutional courts and equivalent institutions of Asia to be addressed.

Highest appreciation of events organized and action taken by Association accounts for constantly increasing number of members and observer states. Realising distinctive importance and necessity of regional cooperation for sake of constitutional review the Constitutional Council of the Republic of Kazakhstan became the member in just one year after the Association was established.

Many years of proper preparation were spent before the Association started off as the regional international body representing most populated part of the world. Unique feature of the regional body is to unite efforts of states and establish uniform approach for implementation of the constitutional review for protection of human's rights and freedoms. Uniform approach in the long term will result in forming uniform standards in the constitutional practice and harmonising provisions of Constitutions to be applied.

The Association as independent, autonomous and non-political organization is responsible for organising meetings, seminars and official visits among its member on regular basis. Apart from organisational functions, the organisation provides for sharing experience, methods, procedure and opinions in relation to constitutional practice, jurisdiction. Its members enjoy technical and advisory support when it needed for their work.

The Association is not alone in promotion of the constitutional values, there are a number of regional organisation uniting constitutional courts and equivalent institutions of Africa, Europe and South America. All regional bodies play an important role in

establishing relation and developing cooperation among national constitutional institutions for promoting democratic values, rule of law through sharing and exchanging relative experience and holding joint events.

Cutting edge technologies in the field of national law, including constitutional law are freely available for the Association`s members. Advanced access allows for extra channels through which members aware of problems other states face in the concerned field.

Membership of the Association enables building up new contacts relations and links necessary for further cooperation among states and familiarising them with democratic and law reforms undertaken in particular state.

Besides, Indonesia and Kazakhstan set up warm bilateral relations. In 2011, former President of the Constitutional Court of the Republic of Indonesia Mr. Mohamed Mahfud officially visited Kazakhstan. The chairman of the Constitutional Council of the Republic of Kazakhstan Igor Rogov twice participated in official events held in the capital of Indonesia Djakarta (2010, 2011). Both President and Chairman acknowledged importance of joint cooperation necessary for promoting constitutional values.

Initiatives taken by the Constitutional Court of the Republic of Indonesia do not just stay on the paper, they are realised. The load of work done by the Republic of Indonesia and by other co-founders is the best example how a regional organization should be set up. Action taken by Indonesia for the sake of the constitutional values ` promotion deserve the best appreciation and gratitude.

I am certain that the Association is destined for success. Its work will strengthen regional cooperation in Asia, promote constitutional values and lift up the quality of collaboration among constitutional courts and equivalent institutions.

**Presentation for the Meeting of Secretary Generals of the AACC
by Secretary General Kim Yong-Hun, Constitutional Court of Korea**

Initiative to Establish a Permanent Secretariat of the AACC
Session IV, May 2015

Thank you for the kind introduction. I am Secretary General Kim Yong-Hun from the Constitutional Court of Korea. I would like to thank the organizers of the Indonesian Constitutional Court for giving me this opportunity to speak on an initiative proposed by our Court, although we requested this item to be included in the agenda on short notice.

You should have been informed of the basic idea of our proposal by the letter that our Court's President Park Han-Chul sent to the heads of your Courts, and, in this regard, I wish to present a detailed proposal of our initiative to set up a standing or permanent secretariat of the AACC. For convenience, let me refer to it as the "permanent secretariat" for this presentation.

As you all should be aware, the first step towards establishing the AACC began with the agreement to set up an Asian association of constitutional courts at the 3rd Seminar of the Asian Constitutional Court Judges held in Ulaanbaatar in April 2005. The six participating countries were: Indonesia, Mongolia, the Philippines, Thailand, Cambodia, and Korea.

As a result of our efforts that lasted for more than five years, the Association made its historic first step right here in Indonesia in 2010, as the representatives of constitutional courts and equivalent institutions from seven countries—Indonesia, Korea, Thailand, Malaysia, Mongolia, Uzbekistan, and the Philippines—adopted the Jakarta Declaration that officially launched the AACC.

After two years, the historic Inaugural Congress of the AACC was held in Seoul, Republic of Korea in May 2012, followed by the 2nd Congress in Istanbul, Turkey in 2014. We are now looking forward to the 3rd Congress next year, which will be hosted by the Constitutional Court of Indonesia that holds the current presidency.

We may have a short history, but the fact that the Asian courts of constitutional jurisdiction came together to create a permanent forum to share experience and information is very meaningful in itself. As you know, Asia had been the only region without such a regional association for a long time. Although the AACC started off later than other regional groups of constitutional courts, it shortly took its place in our region, and now I believe it is time that we prepare to take a bigger step forward.

Of course, it would also be meaningful if the members continue taking turns to be the chair country and provide the secretariat during their presidency. However, it is a well-known fact that international organizations can engage in much more diverse cooperation projects and develop more systematically if they have a permanent secretariat.

As you all know, after all, the existence of a permanent secretariat enabled organizations such as the Venice Commission to be actively involved in their work and show steady development, and many of the regional groups of constitutional courts other than the AACC possess permanent secretariats of different forms.

In fact, only two regional groups, namely the Conference of European Constitutional Courts and the Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries, operate like the AACC by electing Presidents and having them provide the function of the secretariat, and the rest either have a permanent secretariat like the Conference of Constitutional Jurisdictions of Africa or maintain a de-facto permanent secretariat by having a particular court perform key roles or positions of the secretariat in an effort to increase efficiency of their work process.

In this respect, the Constitutional Court of Korea proposes that the AACC also set up a permanent secretariat. Let me lay out the roles we can expect from the secretariat if we decide to set up one that runs on a permanent basis.

First, the permanent secretariat should work in close consultation with the term President in managing and supporting regular meetings of the AACC, such as the Board of Members meetings and Congresses. As the Congress is the highest-level organ that brings together all member Courts of the AACC,

it is very important that we organize them efficiently and manage their results systematically.

Maybe we could compare this with the works of the Venice Commission, which serves as the secretariat of the World Conference on Constitutional Justice. The Venice Commission successfully organizes the Congresses in close consultation with the host Court and takes charge of managing their results and outcome.

Second, the permanent secretariat could launch joint study projects on democracy and human rights involving a number of countries, and develop public relations and education projects, such as publishing journals.

Publishing journals or periodicals of the AACC on a regular basis would also be an effective means of promoting the exchanges between member Courts and showing the world how much the Association has grown and developed.

Lastly, the permanent secretariat could perform works such as managing the AACC website, assisting with membership application, as well as collecting and storing all sorts of information and materials. This way, the secretariat could provide specialized administrative support for the stable development of the AACC.

We propose to set up a permanent secretariat in the form of what I have described, so that the AACC can be taken to the next level and move forward to become a more permanent and institutionalized body. This will lay the foundation for the Association to increase its influence on issues of human rights and democracy in the Asian region, and we will have more countries around the world paying attention with great interest about the results of our discussions within the Association.

If we reach an agreement on establishing a permanent secretariat, I would like you to know that Korea stands ready to provide momentum for effective implementation of the establishment. If necessary, Korea is willing to provide full support in terms of geographical venue, as well as human and non-human resources.

I ask all of the Secretary Generals here to fully take note of the intention and details of our proposal, and offer us full encouragement and support. We hope that this initiative could be discussed in further detail in August this year, at the Board of Members meeting held in preparation for the 3rd Congress.

Thank you very much for your attention.

THE FEDERAL COURT OF MALAYSIA: A BRIEF DESCRIPTION

1. Introduction

1.1 The Federal Court is the apex court in the judicial hierarchy of Malaysia. The powers and jurisdiction of the Federal Court are derived from the Federal Constitution and the Courts of Judicature Act 1964.

1.2 It is established pursuant to Article 121(2) of the Federal Constitution which provides as follows:

*“There shall be a court which shall be known as the **Mahkamah Persekutuan (Federal Court)** and shall have its principal registry at such place as the Yang di-Pertuan Agong may determine...”*

1.3 The Composition of the Federal Courts provided in Article 122 Federal Constitution are as follows:

- (a) Chief Justice of Federal Court
- (b) President of Court of Appeal
- (c) Chief Judge of High Court of Malaya
- (d) Chief Judge of High Court of Sabah & Sarawak
- (e) Eleven other judges (Article 122(1)) and such additional judges as may be appointed pursuant to Article 122 (1A).

2. Powers and Jurisdiction of the Federal Court

2.1 Article 121(2) of the Federal Constitution stipulates that the Federal Court shall have the following jurisdiction:

- (a) Jurisdiction to determine appeals from the decision of the Court of Appeal, of the High Court or a judge thereof;

- (b) Such original or consultative jurisdiction as is specified in Articles 128 and 130; and
- (c) Such other jurisdiction as may be conferred by or under federal law.

2.2 Original Jurisdiction (Section 81 of the Courts of Judicature Act 1964)

2.3.1 The Federal Court shall have the same original jurisdiction and may exercise powers as are had and may be exercised by the High Court.

2.4 In addition, the Federal Court is also embedded with an exclusive jurisdiction to:

- (a) determine the validity of the law made by the Parliament or by the Legislature of a state and;
- (b) Decide disputes on any other question between the States of the Federation or between the Federation and a State. In such a dispute, the Federal Court may only pronounce a declaratory judgment.

(Article 128 (1) (a) & (b) Federal Constitution)

2.5 Appellate Jurisdiction

2.5.1 **Civil Appeal:** An appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court. An appeal can be made on any judgment or order of the Court of Appeal, in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage; or from any decision as to the effect of any provision of the Constitution including the

validity of any written law relating to any such provision (Section 96 of the Courts of Judicature Act 1964 provides that).

2.5.2 **Criminal Appeal:** The Federal Court has jurisdiction to hear and determine any appeal against any decision of the Court of Appeal in its appellate jurisdiction concerning any criminal matter decided by the High Court in its original jurisdiction (*Section 87 Courts of Judicature Act 1964*).

2.6 Referral Jurisdiction[Article 128(2) of the Federal Constitution]

2.6.1 The Federal Court in exercising its referral jurisdiction may determine in any pending proceedings before another court a question arises as to the effect of any provision in the Constitution and shall thereupon remit the case to that other court to be disposed of in accordance with the determination.

2.7 Reference by High Court(Section 84 Courts of Judicature Act 1964)

2.7.1 Where in any proceedings in the High Court a question arises as to the effect of any provision of the Constitution, the Judge hearing the case may stay the proceedings to await the decision of the question by the Federal Court.

2.8 Advisory Jurisdiction(Article 130 Federal Constitution)

2.8.1 The Federal Court may give its opinion on any question which has arisen or likely to arise, and which had been referred to it by the Yang di-Pertuan Agong, concerning the effect of any provision of the Constitution.

3. The Federal Court Registry

3.1 Article 121(2) of the Federal Constitution expressly provides that the Federal Court shall have a principal registry.

Article 121(2) Federal Constitution

“There shall be a court which shall be known as the Mahkamah Persekutuan (Federal Court) and shall have its **principal registry** at such place as the Yang di-PertuanAgong may determine...”

3.2 A division under the charge and care of the Supervising Deputy Registrar within the Chief Registrar of the Judicial Department’s Office at the Palace of Justice in Putrajaya.

3.3 The Federal Court registry deals with all cases and documents filed under the Federal Court’s adjudication.

3.4 The Federal Court registry also manages all cases prior to the fixing of hearing dates so that parties comply all rules in ensuring papers are in order.

4. Administration of the Federal Court by the Office of the Chief Registrar

4.1 The Chief Registrar’s Office is the administrative arm of the Malaysian Judiciary for both superior and subordinate courts.

4.2 The Chief Registrar is an officer appointed by the Judicial and Legal Services Commission. Prior to the appointment as Chief Registrar, he had served in various capacity such as Magistrate, Session Court Judge, Deputy Public Prosecutor, Federal Counsel, Legal Advisor, etc.

4.3 Section 10(1) of the Courts of Judicature Act provides that the Chief Registrar, shall be appointed by the Yang di-Pertuan Agong (The Ruler) on the recommendation of the Chief Justice.

4.4 The Chief Registrar assume the responsibilities for the administration of the courts throughout the country which comprises of the Federal Court, the Court of Appeal, the High Court, the Sessions Court and the Magistrates' Court.

4.5 It is also responsible for managing the courts' human resources which includes recruitment, transfer, promotions and discipline of its personnel.

4.6 Responsible for all financial matters of the courts which include budgeting for the courts' operation.



ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

MEETING OF THE SECRETARY GENERALS

Pullman Hotel, Jakarta
24 - 27 May 2015

THE FEDERAL COURT OF MALAYSIA



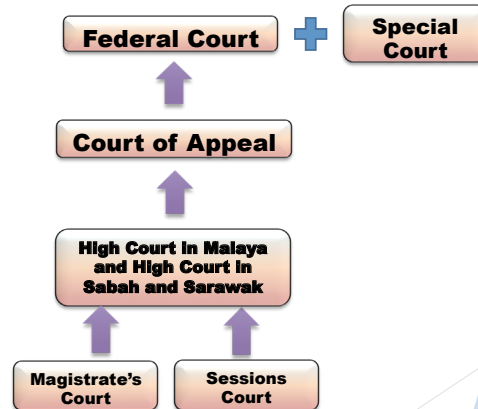
PALACE OF JUSTICE PUTRAJAYA



2



Hierarchy of the Malaysian Courts



3



The Federal Court of Malaysia: Establishment

- ❖ The Federal Court is the **apex court** in the judicial hierarchy of Malaysia for constitutional cases and also other cases.
- ❖ It is established pursuant to Article 121(2) of the **Federal Constitution**.

*“There shall be a court which shall be known as the **Mahkamah Persekutuan (Federal Court)** and shall have its **principal registry** at such place as the Yang di-Pertuan Agong may determine, and the Federal Court shall have the following jurisdictions:*

- jurisdiction to determine appeals from the decision of the Court of Appeal, of the High Court or a judge thereof;
- such original or consultative jurisdiction as is specified in Articles 128 and 130; and
- such other jurisdiction as may be conferred by or under federal law.”

4



The Federal Court of Malaysia: Composition

- Chief Justice of the Federal Court
- President of the Court of Appeal
- Chief Judge of the High Court of Malaya
- Chief Judge of the High Court of Sabah & Sarawak
- Eleven other judges (Article 122(1)) and such additional judges as may be appointed pursuant to Article 122 (1A).

5



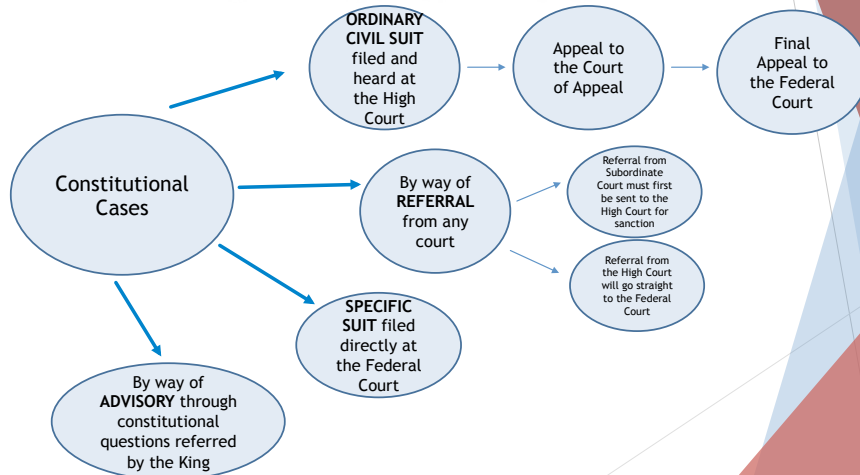
Constitutional Cases

- ▶ There is no statutory interpretation or specific classification of constitutional cases mentioned in the Federal Constitution or any Acts.
- ▶ In general, constitutional cases are any civil suit filed in the High Court or Federal Court to challenge the validity of any written law against the Federal Constitution.
- ▶ Other constitutional cases include;
 - Election petition cases
 - Writ of habeas corpus
 - Judicial review

6



Adjudication of Constitutional Cases



7



Powers and Jurisdictions of the Federal Court

POWER	JURISDICTION	CONSTITUTION (ARTICLE 122 FC)
<ul style="list-style-type: none"> Article 121(2) Federal Constitution 	<ul style="list-style-type: none"> Determine appeals from the decision of the Court of Appeal which originates from the High Court Original/Consultative jurisdiction specified in Art. 128 & 130 FC Other jurisdiction conferred by federal law 	<ul style="list-style-type: none"> Chief Justice of The Federal Court President of The Court of Appeal The Chief Judge of The High Court in Malaya The Chief Judge of the High Court in Sabah and Sarawak 11 Other Federal Court Judges

8

The Jurisdiction of the Federal Court is divided into **FOUR** distinct jurisdictions



9



1. Original Jurisdiction

- The Federal Court shall have the same original jurisdiction as the High Court. (*Section 81 of the Courts of Judicature Act 1964*).
- In addition, the Federal Court is also embedded with an exclusive jurisdiction to:
 - (a) determine the validity of the law made by the Parliament or by the Legislature of a state and;
 - (b) decide disputes on any other question between the States of the Federation or between the Federation and a State. In such a dispute, the Federal Court may only pronounce a declaratory judgment.

(Article 128 (1) (a) & (b) Federal Constitution)

10

- The Federal Court has power to declare any Federal or State law invalid on any of the three grounds stated below:

(a) In the case where the federal or state written law relates to a matter in which the Parliament or the State Legislature has no power to create such law,

(b) In the case of both Federal and State written law, because it is inconsistent with the Constitution, pursuant to Article 4(1); or

(c) In the case of State written law, because it is inconsistent with Federal law, as stated in Article 75.

(per Suffian LP in Ah Thiam v Government of Malaysia [1976] 2 MLJ 112)

- It is to be noted that the proceedings for a declaration that a law created by Parliament or the Legislature is invalid on the grounds that it has no powers to create such law shall not be commenced without leave of a Judge of the Federal Court.

(Article 4 (3) & (4) Federal Constitution)

11



2. Appellate Jurisdiction

The bulk of the Federal Court's work is hearing and determining civil and criminal appeals.

- ✓ Civil Appeals
- ✓ Criminal Appeals
- ✓ Criminal Applications
- ✓ Leave Applications

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Civil Appeals

- **Section 96 of the Courts of Judicature Act 1964** provides that an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court.

This application of this Section is well exemplified in the landmark case of *Terengganu Forest Products Sdn Bhd v Cosco Container Lines Co Ltd & Anor and other applications* [2011] 1 CLJ 51

- Basic prerequisites (*inter alia*)

(i) An appeal can be made on any judgment or order of the Court of Appeal, in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage; or

(ii) From any decision as to the effect of any provision of the Constitution including the validity of any written law relating to any such provision.

13

Criminal Appeals

The Federal Court has jurisdiction to hear and determine any appeal against any decision of the Court of Appeal in its appellate jurisdiction concerning any criminal matter decided by the High Court in its original jurisdiction.

(Section 87 Courts of Judicature Act 1964)

- The Federal Court also may summarily dismiss an appeal that comes before it if it appears to the Judges that,
 - The appeal does not raise any question of law,
 - The evidence is sufficient to support the conviction; and
 - There is no material in the circumstances of the case which could raise a reasonable doubt or lead the Court to consider that the sentence ought to be reduced.

(Section 90 of Courts of Judicature Act)

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- During the hearing of an appeal, the Federal Court shall hear the submissions on both sides and may exercise its powers to:

- Confirm, reverse or vary the decision of the Court of Appeal, or
- Order a retrial, or
- Remit the matter to the High Court, or
- Make any order as to it may seem just and may by that order exercise the powers which the Court of Appeal or the High Court might have exercised.

(Section 90 Courts of Judicature Act)

15



3. Referral Jurisdiction

- The referral jurisdiction of the Federal Court is provided under Article 128 (2) of the Federal Constitution.
- The Federal Court in exercising its referral jurisdiction may determine in any pending proceedings before another court a question arises as to the effect of any provision in the Constitution and shall thereupon remit the case to that other court to be disposed of in accordance with the determination.

3.1 Reference by High Court

- Where in any proceedings in the High Court a question arises as to the effect of any provision of the Constitution, the Judge hearing the case may stay the proceedings to await the decision of the question by the Federal Court.
- Where an order for stay of proceedings has been made, the judge shall state the question which in his opinion has arisen as to the effect of the Constitution in a form of a special case and the question shall be transmitted to the Federal Court for determination.
- *(Section 84 Courts of Judicature Act 1964)*

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4. Advisory Jurisdiction

- The Federal Court may give its opinion on any question which has arisen or likely to arise, and which had been referred to it by the Yang di-Pertuan Agong, concerning the effect of any provision of the Constitution.
- The Federal Court shall pronounce in the open court its opinion on the question which was referred to it.
- *(Article 130 Federal Constitution)*

17



Administrative Arm of the Federal Court: The Chief Registrar's Office

- The Chief Registrar's Office is the administrative arm of the Malaysian Judiciary for both superior and subordinate courts.
- The Chief Registrar is the most senior **Judicial Officer** in the Judicial and Legal Services Commission.
- Prior to the appointment as Chief Registrar, he had served in various capacity such as Magistrate, Session Court Judge, Deputy Public Prosecutor, Federal Counsel, Legal Advisor, etc.

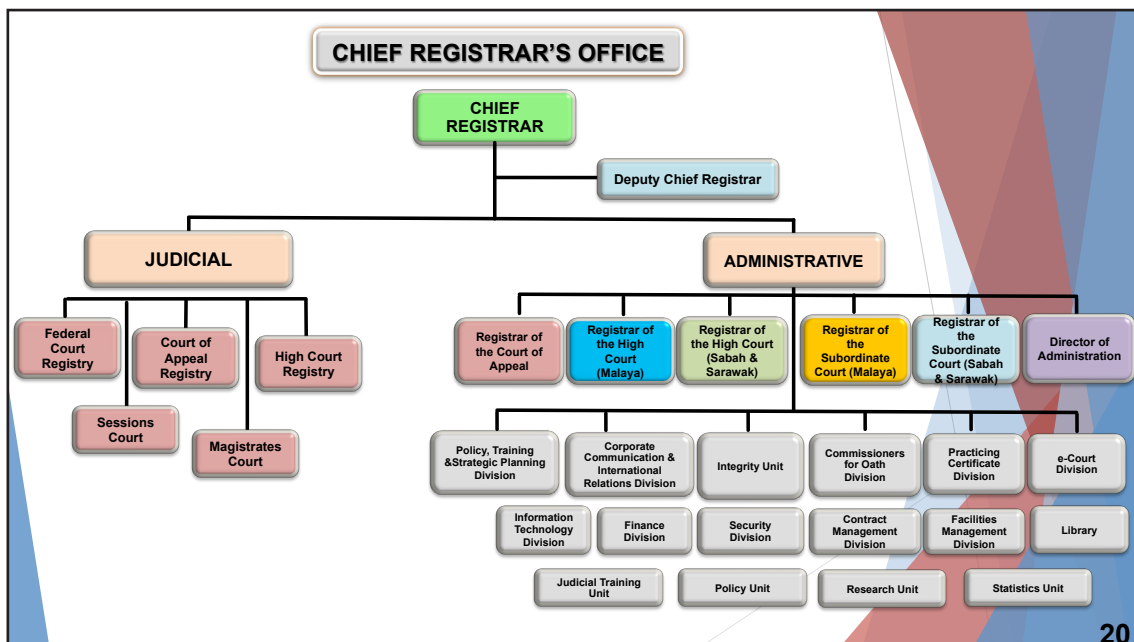
18



Appointment of the Chief Registrar (Section 10 Courts of Judicature Act 1964)

S.10(1) The Chief Registrar shall be appointed by the Yang di-Pertuan Agong (The Ruler) on the recommendation of the Chief Justice

19



20



The Chief Registrar's Office: Functions and Duties - Administrative

Administration of the Court

- The Chief Registrar assume the responsibilities for the administration of the courts throughout the country which comprises of the Federal Court, the Court of Appeal, the High Court, the Sessions Court and the Magistrates' Court.

Finance

- Responsible for all financial matters of the courts which include budgeting for the courts' operation.

Human Resource

- Responsible for managing the courts' human resources which include recruitment, transfer, promotion and discipline of its personnel.

21



The Chief Registrar's Office: Functions and Duties - Judicial

Ex Officio Sessions Court Judge and First Class Magistrates

- The Chief Registrar of the Federal Court shall, *ex officio*, be First Class Magistrates in the Federal Territory and the respective states designated therein (Section 77 Subordinate Courts Act 1948).
- The Chief Registrar is also an *Ex Officio* Sessions Court Judge in the Federal Territory and the respective states designated therein.

Attending Federal Court Sitzings for High Profile Cases / Special Proceedings

- The Chief Registrar will attend the Federal Court sittings for High Profile cases and Special Proceedings.

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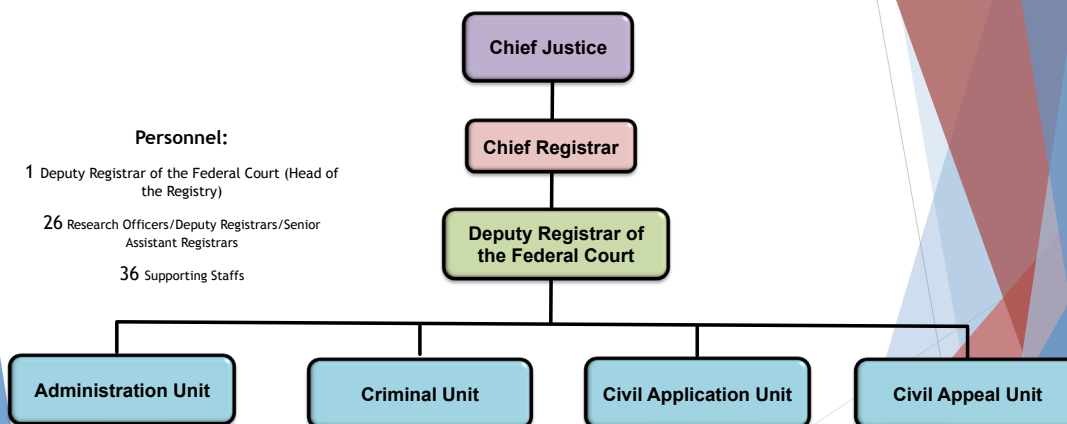
The Chief Registrar on Duty during the Reference Proceedings for the late Sultan of Perak



The Federal Court Registry

Personnel:

- 1 Deputy Registrar of the Federal Court (Head of the Registry)
- 26 Research Officers/Deputy Registrars/Senior Assistant Registrars
- 36 Supporting Staffs





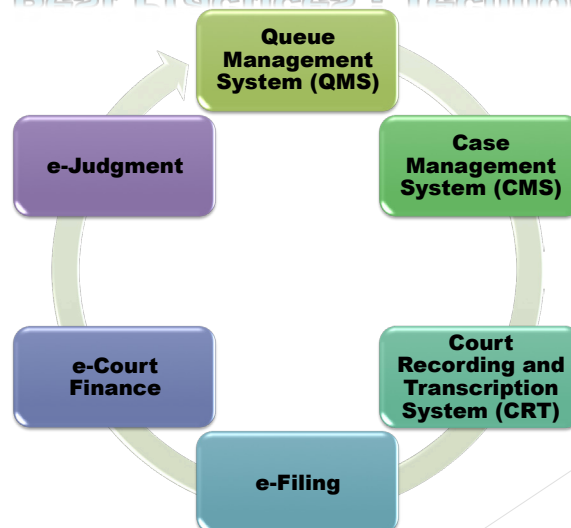
Federal Court Registry: Functions and Duties

- ❖ A division under the charge and care of the Supervising Deputy Registrar within the Chief Registrar's Office at the Palace of Justice in Putrajaya
- ❖ Deals with all cases and documents filed under the Federal Court's adjudication
- ❖ Managing all cases prior to the fixing of hearing dates so that parties comply all rules in ensuring papers are in order.

25



Best Practices : Technology



26



Best Practices : Strengthening Administration



27



Challenges

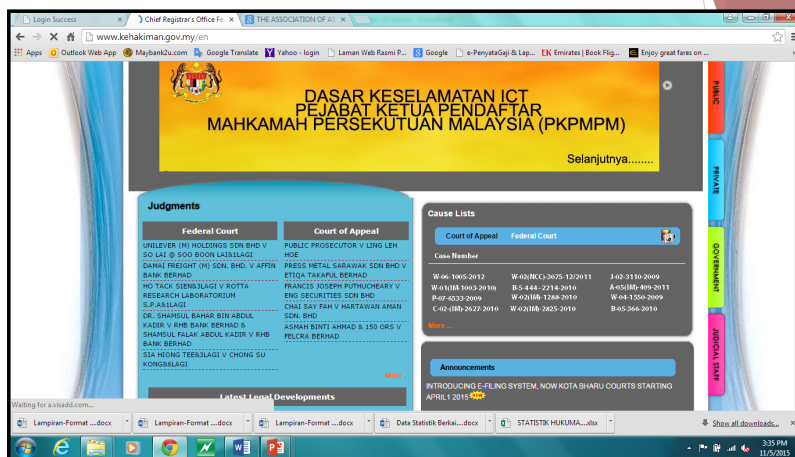
- ❑ **Going electronic – Acceptance by Lawyers and Public**
- ❑ **Improving public access**
 - ▶ One stop centre
 - ▶ Court brochure
 - ▶ Website, email, Facebook, Twitter.
- ❑ **Strengthening public confidence**
 - ▶ Ground of Judgment published in the court website
 - ▶ Increasing the number of counter services
 - ▶ Assigning experienced staffs to man the counters
 - ▶ Extending/prolonging the hours for counter services (lunch hour)
 - ▶ Putting all the notices on the notice board
 - ▶ Providing facilities for the disabled.
 - ▶ Websites, email, Facebook, Twitter.

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www.kehakiman.gov.my



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30

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Conclusion

To maintain as a world class Judiciary

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THANK YOU

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Meeting of Secretary Generals of Members of AACC
Held On 25-27 May, 2015 in Jakarta, Indonesia.

**Presentation: Implementing Authorities of the Institutions-
Pakistan Judiciary**

**By: Syed Tahir Shahbaz,
Registrar, Supreme Court of Pakistan**

- 1) Introduction:** Considering the organization and strength of judicial hierarchy of Pakistan; the Supreme Court of Pakistan is the Apex Court and Court of ultimate appeal and final arbiter of law & Constitution. It comprised of Chief Justice and so many other judges; determined by the Parliament and the law. Presently, Supreme Court consists of Chief Justice of Pakistan and 16 other judges. The Senior Most Judge of Supreme Court is appointed as Chief Justice of Pakistan by the President of Pakistan and other Judges are appointed by the Judicial Commission of Pakistan as provided under Article 175A of the Constitution. The Chief Justice also Ex-Officio Chairman of the Judicial Commission of Pakistan, Supreme Judicial Council, Law and Justice Commission, Centre of Excellence for law and legal education. The Jurisdiction of Supreme Court includes Original, Appellate, Review and Advisory. All executive authorities of state shall act in aid to the Supreme Court; it has power to transfer cases; make and revise procedural rules; monitor performance of special courts and may punish in the cases of contempt of court. It has four Branch Registries, one in each provincial capitals with division of work through sections of the Registry.
- 2) High Courts in Pakistan:** At the head of Federal and each provincial judiciary there is High Court including Islamabad High Court, Lahore High Court, High Court of Sindh, High Court of Balochistan and Peshawar High Court. They have further benches (circuit benches) on division level of the provinces. Besides that there are independent Supreme Court and Chief Court of Azad Kashmir and Gilgit-Baltistan respectively.

3) The subordinate judiciary of Pakistan: Under the control of respective High Courts, subordinate judiciary has been divided into **106 Judicial Districts**. The province of Punjab has 37, Sindh 24, Balochistan 26, Khyber-Pakhtunkhwa 24 and ICT 2 judicial districts.

4. Jurisdiction of Supreme Court of Pakistan:

The Supreme Court of Pakistan exercises Constitutional, Appellate, Review and Advisory jurisdiction. Under Part-VII (The Judiciary) of the Constitution, jurisdiction of Supreme Court of Pakistan can broadly be categorized as following:-

- 1) Constitutional Jurisdiction:** Article 184 (1) of the Constitution grants exclusive jurisdiction to the Supreme Court in any disputes between **A) Government of Pakistan and one or more Federating Unit/Province B) between Govt. of Pakistan and any Province or Provinces on one side and one or more other side. C) between two or more Provinces.** The Supreme Court also exercises original jurisdiction (concurrently with High Court) for the Enforcement of fundamental rights, where a question of ‘public importance’ is involved. A Constitution Petition may be filed under Article 184 (1) and 184 (3) of the Constitution for such disputes involving any question on which the existence or extent of a legal right depends. Article 186(1) of the Constitution of Pakistan, provides that if at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer such matter to the Supreme Court for advisory opinion. Further, under Article 186 (2) if the Supreme Court, after consideration and constitutional interpretation, as it thinks fit, report to the President, its opinion thereon. Hence, under Article 186(1), The President of Islamic Republic of Pakistan may invoke the advisory jurisdiction of the Supreme Court and may refer the matter to the Supreme Court for advice.
- 2) Appellate Jurisdiction:** Under Article 185 (1) and (2) of the Constitution, the Supreme Court has Appellate Jurisdiction to hear and determine appeals from the judgments, decrees, final orders or sentences of High Court, both in Criminal and Civil cases. Article 185(1) and (2) empowers Supreme Court to entertain direct Appeals (Civil and Criminal) permitted under the Constitution and Under Article 185(3) and 212 (3) of the Constitution, the Supreme Court may in its discretion may grant leave to appeal in petitions filed against the judgment of High Courts and Service Tribunals. Also apart from above mentioned appeals/petitions under

Article 185(2), the Supreme Court entertains direct appeals permitted under the statutes i.e. Election, Tax, contempt, land acquisition and Bar Councils matters.

- 3) Review Jurisdiction of the Court:** Article 188 of the Constitution, provides that subject to provisions of any act of {Majlis-I-Shoora (Parliament)} and of any rules made by the Supreme Court (under Article 191), the Supreme Court has the power to review any judgment pronounced or order made by it. Also under Article 186A of the Constitution, the Supreme Court has power to transfer cases from one High Court to another High Court or to the Supreme Court. Further it has power to issue and execution of processes of Supreme Court under Article 187 (1) of the Constitution for doing complete justice in the matter.

Implementing Authorities of the Institution-Pakistan Judiciary

1) The Judicial Commission of Pakistan (on appointment of judges of superior courts).

A) Introduction: In pursuance of the 18th & 19th amendment¹ to the Constitution of Islamic Republic of Pakistan, 1973, a judicial commission has been created by insertion of Article 175 (A), to recommend the appointment of judges of Superior Courts (*the Supreme Court, High Courts and Federal Shariat Court*) in Pakistan. The Judicial Commission of Pakistan has been constituted under the Article 175A of the Constitution of Pakistan for the purpose of appointing Judges of the superior courts. The Chief Justice of Pakistan acts as a Chairman of Judicial Commission. For each anticipated or actual vacancy of a Judge in the Supreme Court or the Chief Justice of Federal Shariat Court or the Chief Justice of a High Court, the Chief Justice of Pakistan shall initiate nominations in the Commission for appointment against such vacancy. Similarly, the Chief Justice of Federal Shariat Court and High Courts shall initiate and send nomination for appointment against anticipated or actual vacancy of a Judge to the chairman of the Commission. The Commission by majority of its total membership shall recommend to the Parliamentary Committee one person, for each vacancy of a Judge in the Supreme Court, Federal Shariat Court and High Courts as the case may be. The Parliamentary Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed, to the Prime Minister who shall forward the same to the President for appointment as Chief Justice or Judge as the case may be.

¹ “Judicature” Part-VII of the Constitution of Pakistan, 1973.

B) Composition and Strength of the Commission: The Judicial Commission is headed by Chief Justice of Pakistan as its Chairman and other members include 04 senior most judges of Supreme Court, Attorney-General for Pakistan, Federal Law Minister, former Judge Supreme Court, a Representative of Pakistan Bar Council are permanent members while in addition to that Chief Justice and a Senior Puisne Judge of the concerned Court and Provincial law Minister and a Representative of Provincial Bar are also members as the case may be.

C) Mandate of the Commission:

- 1) CJP initiates names for CJs of High Courts and for judges in Supreme Court.
- 2) Concerned CJ initiates names for judges of High Courts.
- 3) The Commission recommends the appointments of judges to Parliamentary Committee by majority of its total membership
- 4) The Parliamentary Committee within 14 days sends its recommendations to the President through the Executive (Prime Minister). After approval by the President of Pakistan, the Ministry of Law issues notification of appointment.

2) The Supreme Judicial Council:

A) Introduction and Background of the Council: As provided in Article 209 (1) of the Constitution of Islamic Republic of Pakistan, there shall be a five member Supreme Judicial Council of Pakistan (Supreme Court of Pakistan) under the Chairmanship of Hon'ble Chief Justice of Pakistan, exclusively empowered under clause (7) of Article 209 to proceed for inquiry into the conduct or capacity of a Judge of the Superior Court in Pakistan (i.e Supreme Court, Federal Shariat Court and High Courts), on the direction of President of Pakistan or the Council may, on its own motion or upon information received from any source, inquire into the matter. After inquiry, the Council reports to the president its opinion, expressed in terms of the majority of the Council. The President may remove the Judge from office under clause (6) of Article 209, if the Council is of the opinion that the Judge is incapable of performing the duties of his office or has been guilty of misconduct.

B) Composition of the Council. As provided in clause (2) of Article 209 of the Constitution, the Council shall consist of a) the Chief Justice of Pakistan b) the two next most senior Judges of the Supreme Court; and c) the two most senior Chief Justices of High Courts. The Registrar, Supreme Court of Pakistan or any

person designated so by the Chief Justice of Pakistan will act as Secretary to the Council. The *inter se* seniority of the Chief Justices of High Courts shall be determined with reference to their dates of appointment as Chief Justice [otherwise than as acting Chief Justice], and in case the dates of such appointments are the same, with reference to their dates of appointments as Judges of any of the Courts. Further, clause (3) of Article 209 of the Constitution provides that if at any time the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or any other cause, then--

If such member is a Judge of the Supreme Court, the Judge of the Supreme Court who is next in seniority below the Judges referred to in paragraph (b) of clause (2), and if such member is the Chief Justice of a High Court, the Chief Justice of another High Court who is next in seniority amongst the Chief Justices of the remaining High Courts,

shall act as a member of the Council in his place.

C) Powers and Functions of the Council.

Clause (5) of Article 209 read with Clause (2) of Article 215 and Clause (5) of Article 168 of the Constitution, empowers the Council to inquire into the referred matter by the President of Pakistan, or the Council may, on its own motion, on information from any source, inquire into the conduct or capacity of a Judge of the superior courts in Pakistan (i.e Supreme Court, Federal Shariat Court and High Court) and other constitutional office holders, if the President or the Council itself is of the opinion that a Judge of the Supreme Court or High Court or Chief Election Commissioner of Pakistan {Article 215(2)} or Auditor General of Pakistan {Article 168(5)} is incapable of properly performing the duties of his office by reason of physical or mental incapacity; or may have been guilty of misconduct under Code of Misconduct issued under Clause (8) of Article 209 of the Constitution by the Council.

Also, Clause (6) of Article 209 read with Rule 12 of Supreme Judicial Council Procedure of Inquiry, 2005, empower the Council to form its opinion on conclusion of proceedings that the Judge concerned has been guilty of misconduct or incapacitated in the performance of his duties properly and report the same to the President, to be expressed in terms of the majority of its strength. The President may remove the Judge/constitutional office holder from office. Further, Clause (7) of Article 209 empowers only the Council exclusively to inquire the referred

matter and a Judge of the Supreme Court or of a High Court shall not be removed from office except as provided under Article 209 of the Constitution. The Council also has power to issue a code of conduct under Clause (8) of Article 209 to be observed by Judges of the Supreme Court and High Courts.

Article 210 further empowers the Council to have the same power as the Supreme Court has to issue directions or orders for securing the attendance, of any person or the discovery or production of any document; and any such direction or order shall be enforceable as if it had been issued by the Supreme Court. Further, Clause (2) of Article 210 reflects that the provisions of Article 204 (*Contempt of Court' Jurisdiction*) shall apply to the Council as they apply to the Supreme Court and a High Court. Also as provided under Article 211 the proceedings before the Council, its report to the President and the removal of a Judge under clause (6) Article 209 shall not be called in question in any court.

D) Sending Reference/Complaint before the Council and Report thereon:

As provided under clause (5) of Article 209, the President of Pakistan may direct the Council to, or the Council may, on its own motion, inquire the conduct or capacity of a Judge of the Supreme Court or a Judge of High Court or Chief Election Commissioner or Auditor General of Pakistan. Also under Rule 5 of Supreme Judicial Council Procedure of Inquiry, 2005, any member of public having authentic knowledge and source may bring to the notice of the Council or any of its member or the Secretary, information alleging incapacity or misconduct of a Judge or other constitutional office holders i.e. Chief Election Commissioner and Auditor General of Pakistan, may refer the matter before the Council for inquiry.

3) The Law and Justice Commission of Pakistan:

- 1) Introduction:** The Commission is a Federal Government institution, established under an Ordinance (XIV of 1979). The Commission is headed by the Chief Justice of Pakistan and comprises 12 other members including Chief Justice of Federal Shariat Court and High Courts, Attorney General for Pakistan, Secretary, Ministry of Law & Justice and Chairperson, National Commission on the Status of Women and 4 other members, one from each Province.
- 2) Mandate of the Commission:** A think Tank comprised of prominent thinkers, advocates and jurists in law and legal education. To explore the flaws and drawbacks in the existed laws and system. To propose and suggest suitable amendments in law to the Governments. To formulate a uniform policy for the Judiciary. Improvement

in the skills, training of judicial officers and their performance. Suggest measures for service delivery of justice in Pakistan

4. The National Judicial (Policy Making) Committee:

1) Introduction and Composition of the Committee: The National Judicial (Policy Making) Committee is constituted under an Ordinance (LXXI) of 2002. The Chief Justice of Pakistan is the Chairman of the Committee and the CJs of Federal Shariat Court and 4 Provincial High Courts are its members. The Secretary, LJCP is designated as the Secretary to the Committee.

2) Mandate of the Committee:

- i) To formulate a uniform policy for Pakistan judiciary
- ii) Improving the capacity and performance of the administration of justice;
- iii) Setting performance standards for judicial officers and persons associated with performance of judicial and quasi judicial functions;
- iv) Improvement in the terms and conditions of service of judicial officers and court staff, to ensure skilled and efficient judiciary;
- v) Publication of the Annual Statements of disposal, institutions and performance reports of the Supreme Court, Federal Shariat Court, High Courts and courts subordinate to High Courts and Administrative Courts and Tribunals.

1. National Judicial Policy, 2009 and revised 2012.

- i) A uniform policy formulated and approved by the NJPMC in 2009 and revised in 2012.
- ii) All Special Courts/Tribunals to be placed under the Control of Judiciary
- iii) Expeditious disposal of cases
- vi) Strict adherence to Code of Conduct
- iv) Zero tolerance for corruption
- v) Policy of posting transfer (own districts or where relatives practice)
- vi) Improving the living conditions of prisoners
- vii) Discouraging false and frivolous litigation
- viii) Improvement of investigation and prosecution
- ix) Coordination among the stake holders

1. Access to Justice Development Fund:

i) Introduction and Composition of the Fund: The Law and Justice Commission of Pakistan manages and administers this statutory endowment of Rs.1421 Million with Rs. 58 Million as initial grant to establish this Fund. It's Governing Body under the Chief Justice of Paksitan, consists of Chief Justices of High Courts, Secretaries M/o Finance and Law; and Secretary of the Law and Justice Commission of Pakistan as Members of the Fund. It has an Investment Committee, consists of Sr. Joint Secretary, of Investment, Finance Division, Sr. Joint Director, State Bank of Pakistan and Joint Secretary, Law and Justice Commission of Pakistan. To review and recommend project proposals, disbursement mechanism, technical guidance, also there is a Technical Evaluation Committee (TEC) of the Fund.

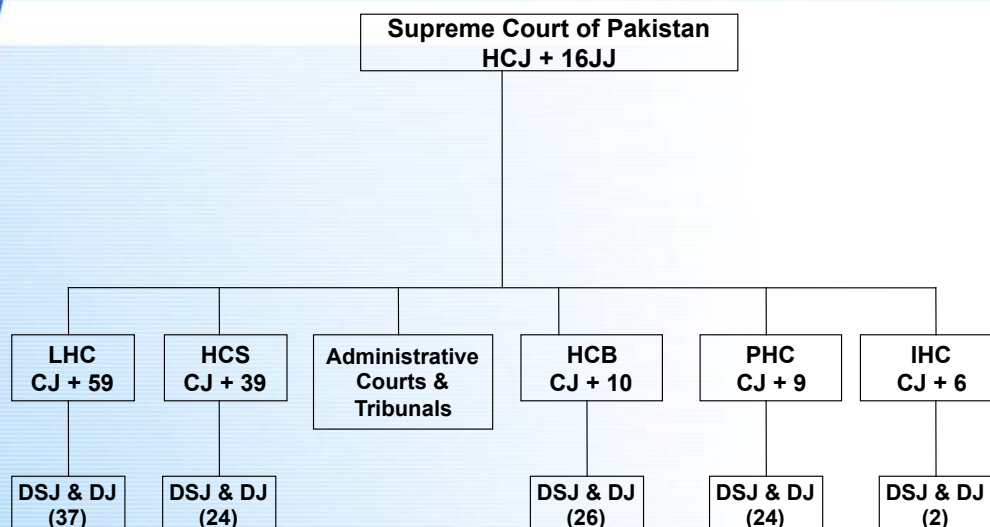
ii) Mandate (Utilizing Areas) of the Fund:

- i) To improve performance standards of the District Judiciary and their supporting staff
- ii) Arranging training programme including courts infrastructure and amenities to the litigants.
- iii) Improve professional capacity of practicing lawyers and the new entrance in the profession
- iv) Providing legal aid to the needy litigants; and
- v) Improve quality of legal education by developing curriculum to address the need of the time.

1. IT-Automation of Court: NA

The Supreme Court of Pakistan

Introduction



Jurisdiction of Supreme Court of Pakistan

1. Constitutional Jurisdiction:

- A) Disputes between Federation and One or more Federating Units/Provinces
- B) Disputes between Federation and any Federating Unit/Province or Provinces on one side and one or more other side
- C) Disputes between two or more Federating Units/Provinces
- D) Enforcement of Fundamental Rights
- E) Public Interest Litigation
- F) Advisory Jurisdiction: References by the President for opinion and reports thereon

2. Appellate Jurisdiction:

- 1) Direct Appeal
- 2) Appeals by Special Leave to Appeal

Implementing Authorities of The Institutions

1) Judicial Commission on Appointment of Judges of Superior Courts

A) Composition:

- A) Chief Justice of Pakistan, Chairman
- B) Four Senior Most Judges of SCP, Members
- C) CJ and HJ-I of High Court, Members
- D) Fed.&Prov.Law Ministers and AGP, Members
- E) Former Judge, SCP/Reps. of HCJP, Reps of PBC and HC Bars, Members

B) Mandate:

- i) CJP Initiates names for judges of superior courts
- ii) CJ, High Court recommends names for judges of HC
- iii) JCP Recommends appointments by majority to Parliamentary Committee
- iv) Parliamentary Committee within 14 days send its recommendations to the President through Prime Minister and for approval.

2) Supreme Judicial Council (for removal of Judges of Superior Courts)

1. Composition of the Council:

- A) Chief Justice of Pakistan, Chairman
- B) Two Senior Most Judges of SCP, Members
- C) Two Senior Most Chief Justices of HCs, Members

2. Mandate:

- i) To act upon the Reference/Complaint sent by the President or on its own motion
- ii) To form Opinion/Report about the conduct of Judge for removal or otherwise
- iii) To prepare Code of Conduct for judges of superior courts

3) Law and Justice Commission of Pakistan

1. Composition of the Commission:

- A) Chief Justice of Pakistan, Chairman
- B) Chief Justices of FSC and All HCs, Members
- C) AGP, Fed.Secy M/o Law and Chairperson, NCSW, Members
- D) Four Other Members including Jurists and Scholars

2. Mandate:

- i) Exploring flaws and draw backs in the existing laws.
- ii) Recommending amendments in laws.
- iii) Improvement in the skills, training of judges and their performance.
- iv) Suggest measures for expeditious dispensation of justice in Pakistan.

4) National Judicial Policy Making Committee (NJPMC)

1) Composition of NJPMC:

- a) Chief Justice of Pakistan, Chairman
- b) Hon. Chief Justices of HCs, Members

2) Mandate:

- i) To form a Uniform Policy for Judiciary.
- ii) To improve capacity and performance of administration of justice.
- iii) Setting performance standard for judges.
- iv) Publication of Annual Statements.

National Judicial Policy

1. Salient Features of National Judicial Policy.

- i) A Uniform Policy for Pakistan Judiciary.
- ii) Expeditious disposal of cases
- iii) Strict adherence to Code of Conduct
- iv) Zero Tolerance for Corruption.
- v) Improvement of Investigation/prosecution
- vi) Discouraging false and frivolous litigations
- vii) Special Courts/Tribunals to be placed under the Judiciary.

Access to Justice Development Fund.

1. Access to Justice Development Fund.

i) Composition of Fund.

- a) It has Governing Body under the Chief Justice of Pakistan

ii) Mandate (Utilizing Areas).

- a) Performance Standard of judges and staff
- b) Quality of legal education, its curriculum and Professional capacity of lawyers
- c) Legal Aid to the needy litigants

IT-Court Automation

1. Case Flow Management.
2. Online Case Status
3. SMS Alert System.
4. Automated Cause Lists and Categorization of cases
5. Human Resources Management System
6. Advocates Record Tracking System
7. Official WebSite: WWW.SupremeCourt.Gov.PK
8. Up-Loading Judgments and Papers
9. Automation of Court Library
10. Access to Law Sites

THANK YOU

**PRESENTATION ON THE
PHILIPPINE SUPREME COURT
(THE HIGHEST CONSTITUTIONAL COURT
IN THE PHILIPPINES)**



*Meeting of Secretaries General
ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS
AND EQUIVALENT INSTITUTIONS
Jakarta, Indonesia, 24-27 May 2015*

**AUTHORITIES AND ATTRIBUTES OF
THE PHILIPPINE SUPREME COURT**

THE PHILIPPINE JUDICIARY IS A HIERARCHICAL ORGANIZATION

FOUR LEVELS OF THE PHILIPPINE JUSTICE SYSTEM

FIRST LEVEL	Metropolitan Trial Court Municipal Trial Court in Cities Municipal Trial Court Municipal Circuit Trial Court Shari'a Circuit Court
SECOND LEVEL	Regional Trial Court Shari'a District Court
THIRD LEVEL	Court of Appeals Sandiganbayan Court of Tax Appeals Shari'a Appellate Court (to be organized)
FOURTH LEVEL	Supreme Court

UNDER THE 1987 PHILIPPINE CONSTITUTION THERE IS ONLY ONE SUPREME COURT WHICH IS CONSIDERED THE HIGHEST COURT OF THE LAND

- The vertical hierarchy allows for a systematic order of appellate review.
- The Supreme Court deals with constitutional and non-constitutional cases.

AS A CONSTITUTIONALLY CREATED COURT, THE SUPREME COURT HAS THE ATTRIBUTES OF A CONSTITUTIONAL COURT

- *All courts in the Philippines are lower than the Supreme Court and no law is needed for its creation after the ratification of the 1987 Constitution.*
- *The powers of the Supreme Court are derived and provided in the Constitution.*
- *The composition of the Supreme Court (one Chief Justice and 14 Associate Justices) can be changed only by amending the Constitution.*

Classification of Powers of the Supreme Court

- JUDICIAL POWER
 1. Duty of the courts to settle actual controversies. The jurisdiction of the Supreme Court under the Constitution are:
 - Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, quo warranto and habeas corpus
 - Review, revise, reverse, modify or affirm final judgments and orders of lower courts
 2. Expanded jurisdiction of judicial review

Cont.

- **RULE-MAKING POWER**
 - Rules involving (1) protection and enforcement of constitutional rights; (2) admission to the practice of law; (3) integrated bar; and (4) legal assistance to the underprivileged
- **ADMINISTRATIVE POWER**
 - Power to (1) assign judges of lower courts to other stations; (2) discipline of judges of lower courts; (3) change the venue or place of trial; and (4) appoint all officials and employees in the judiciary

FISCAL AUTONOMY

- Appropriations for the Judiciary **MAY NOT BE REDUCED** by the legislature below the amount appropriated for the previous year.
- Once the budget of the Judiciary is approved, it shall be **AUTOMATICALLY AND REGULARLY RELEASED**.
- The Chief Justice of the Supreme Court may, **BY LAW**, be authorized to **AUGMENT** any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

CHALLENGES FACING THE PHILIPPINE JUDICIARY

CHALLENGES BEING ENCOUNTERED BY THE PHILIPPINE JUDICIARY

- Budgetary constraints
- Case congestion and delay
- Integrity issues
- Inefficiencies in operations
- Competency issues
- Issues on public trust and confidence

FOUR PILLARS OF THE JUDICIAL REFORM

AGENDA: Addressing the challenges facing the Philippine Judiciary under the Sereno Court

1. Institutionalized integrity and restored public credibility
2. Predictability, rationality, speed and responsiveness of judicial actions
3. Improved systems, processes and infrastructures
4. Effective and efficient human resources

OFFICE OF THE CLERK OF COURT *EN*

***BANC*: The nucleus of the Supreme Court's
administrative machinery**

THE *EN BANC* CLERK OF COURT OF THE SUPREME COURT IS EQUIVALENT TO THE SECRETARY GENERAL OF A CONSTITUTIONAL COURT

The *En Banc* Clerk of Court performs the following tasks for the Supreme Court:

- Preparation of the agenda and drafting of the minute resolutions of the Court *En Banc*
- Case monitoring
- Implementation of policies and programs approved by the Court *en banc*

THE *EN BANC* CLERK OF COURT OF THE SUPREME COURT IS EQUIVALENT TO THE SECRETARY GENERAL OF A CONSTITUTIONAL COURT (continuation)

- General supervision over personnel and other administrative matters
- Recommendation of action plans on various matters
- Custodian of Court funds, resources, properties and premises
- Liaison officer concerning official matters and those involving inter-governmental coordination

OFFICE OF THE COURT ADMINISTRATOR

- With respect to administration and supervision over lower courts, the Office of the Court Administrator assists the Supreme Court.

ROLE OF THE ASSOCIATION

- The Association must undertake strategies to strengthen and protect the independence of the constitutional court and the Judiciary.

MARAMING SALAMAT!

TERIMA KASIH!!!!!!

Presentation for the Meeting of Secretary Generals of the AACC

by Secretary General Kim Yong-Hun, Constitutional Court of Korea

Role and Function of the Secretariat of the Constitutional Court of Korea

Session I, May 2015

Dear colleagues,

I am Kim Yong-Hun, the Secretary General of the Constitutional Court of the Republic of Korea. First and foremost, I would like to extend my sincere appreciation to Chief Justice Arief Hidayat, Secretary General Janedjri M. Gaffar, and, of course, the Secretariat staff of the Indonesian Constitutional Court, who have worked hard to bring us together here in Jakarta for this great Meeting of Secretary Generals of the AACC.

As the topic of this session suggests, I would like to give you a brief introduction about the jurisdiction of the Korean Constitutional Court and the role and function of its secretariat to assist the Court in exercising its powers.

1. Organization and Jurisdiction of the Constitutional Court of Korea

First, let me begin by giving you an idea about how our Court was established. The Constitutional Court of Korea was established on September 1, 1988 by the 9th constitutional amendment proclaimed in October 1987, in order to guarantee the people's fundamental rights and effectively control the abuse of state powers. This change was a result of the reflection of our own unfortunate constitutional history during the past authoritarian regime and the citizens' strong desire to achieve democracy.

At our Court, there are nine Justices including the Court President. Three are elected by the National Assembly, other three are nominated by the Chief Justice of the Supreme Court, and the remaining three are nominated by the President of the Republic. After such nomination process, all the nine Justices are appointed by the President of the Republic as a formality. The term of a Justice is six years, and it is renewable.

The President of the Court is appointed from among the Justices by the President of the Republic, upon the approval of the National Assembly. The President leads the Court by presiding over the full bench, and, currently, President Park Han-Chul serves as the fifth President since his appointment to the post in April 2013.

According to the Korean Constitution and the Constitutional Court Act, our Court has jurisdiction over five areas: constitutional review of statutes, constitutional complaints, competence disputes, impeachment, and dissolution of political parties.

Over the past 26 years, our Court has received more than 27,000 cases of various kinds. Around 26,000 cases have been disposed of, and contested laws were struck down in over 780 cases, while in almost 500 cases, the Court has upheld the complaints filed by individuals seeking remedies against violations of their fundamental rights. Also, about 80 cases involving competence disputes between state agencies and local governments were resolved by our Court judgments.

In particular, our Court has the experience of addressing rare and unprecedented cases even in international terms, from the impeachment of an incumbent President in 2004 to the dissolution of a political party in 2014.

As a result of such active Court proceedings, the Constitution in Korea has become a standard for all state actions, and the Constitutional Court has been established as the last resort for the protection of people's fundamental rights, with great impact on every aspect of the citizens' day-to-day lives and national policies, and has become a guardian of the Constitution that safeguards the constitutional principle and values.

2. Role and Function of the Constitutional Court of Korea

Now, let me briefly go over the current status of our Court's Secretariat and its key roles and functions.

According to the Constitutional Court Act, the Korean Constitutional Court has a secretariat that deals with the Court's administrative work, which is headed by the minister-level Secretary General and the vice minister-level Deputy Secretary General.

Under the Constitutional Court Act, the Secretary General oversees and supervises the administrative work of the Secretariat under the instructions of the Court President, and has the authority to command his or her subordinate public servants, as well as to appear and make statements before the National Assembly and State Council meetings.

The Deputy Secretary General assists the Secretary General, and acts on the Secretary General's behalf in case he or she becomes incapable of discharging his or her duties due to an accident.

The first Secretary General of our Court was appointed on September 30, 1988, and I am now serving as the 10th Secretary General.

Next, I would like to explain about the organization of our Secretariat.

Our Secretariat is composed of 1) Planning and Coordination Department charged with budget, system and institution, international cooperation, 2) Administration and Management Department responsible for human resources, general service, audit and inspection, 3) Judicial Affairs Department that oversees judicial administrative affairs, 4) Materials Management Department that manages all sorts of different materials and information, and 5) Public Relations Department dedicated to public relations and communication. And we have a total of 14 divisions under these Departments.

In addition to the Secretariat, we also have a research institute tasked with conducting specialized research and studies on constitutions, constitutional theories, as well as jurisprudence and cases of advanced countries around the world, so that the results can be cited and referenced in our constitutional justice.

We also have some 70 Research Officers who assist the nine Justices with research and studies related to constitutional review and adjudication of cases.

A Research Officer should be 1) a person qualified as a judge, a public prosecutor, or an attorney, 2) a person who has been in a position equal to or higher than an assistant professor of law in an accredited college or university, and 3) a person who has obtained a doctorate in law, and engaged in legal affairs for five or more years in an accredited research institute, such as a college or university. The Research Officers are appointed by the President of the Court following a resolution of the Council of Justice.

In total, we have a little more than 300 staff members and employees, who are mostly public servants in general service. A part of them are contract employees.

Apart from the administrative support, there is another important function of our Secretariat that I want to talk about: public relations, education and research, and international cooperation.

The Secretary General is in charge of the public relations on Court activities involving the public, government, National Assembly, and media. For example, I appear before the National Assembly and brief lawmakers on the activities and major decisions of our

Court to seek their understanding and approval. I also oversee the consultation with the budget authority. Although I do not directly engage in judicial proceedings, I supervise all sorts of public relations activities related to court proceedings and their results.

We work hard to make our Court an institution trusted by the public. We are running a “constitutional education camp for children” and a regular cultural education program for employees and the public named “Baeksong Academy,” as well as publish a number of books, thereby increasing public awareness of the values and meaning of the Constitution and actively interacting with the public.

Lastly, I want to tell you that our Court is also active in the area of international cooperation. We intend to promote exchanges and share mutual experience and wisdom with constitutional courts and other institutions exercising constitutional jurisdiction across the world.

We have actively engaged in the activities of international organizations, such as the Venice Commission, the World Conference on Constitutional Justice, and the Association of Asian Constitutional Courts and Equivalent Institutions. This is part of our efforts to share the values of democracy and human rights protection and contribute to the development of constitutional justice.

In this context, we held the 3rd Congress of the World Conference on Constitutional Justice in Seoul last year. Furthermore, Justice Kang Ilwon of our Court became the first Asian judge to be elected as the Co-President of the Joint Council on Constitutional Justice of the Venice Commission last year, which shows that Asian constitutional courts are increasing their presence even in the global forums.

We also conduct an overseas study program for Justices, Research Officers, and Secretariat staff to enhance our internal capabilities. At the same time, we invite staff and employees from other Asian constitutional courts and arrange study visits for them in order to help advance constitutional justice in the Asian region. The Secretariat is playing a central role in these programs.

3. Conclusion

Thanks to the devoted judicial activities of the Justices and the endeavors of the Secretariat to support such activities as I mentioned, for many years, the Korean Constitutional Court has been named the most trusted state agency.

Looking back in time, around the period when our Court was founded, the supremacy of the Constitution and fundamental rights of citizens were more rhetorical than practical notions, and the control of norms remained very limited. For this reason, establishing a constitutional court was a bold decision with no guarantee of success back then.

Yet, 26 years after, the overall assessment is that our Court has firmly established itself as the last resort to safeguard the Constitution and protect the fundamental rights of citizens.

But our Court will not be complacent and settle for the status quo. We will strive further to make a more trustworthy Court that also contributes to the global community.

Thank you for your attention.



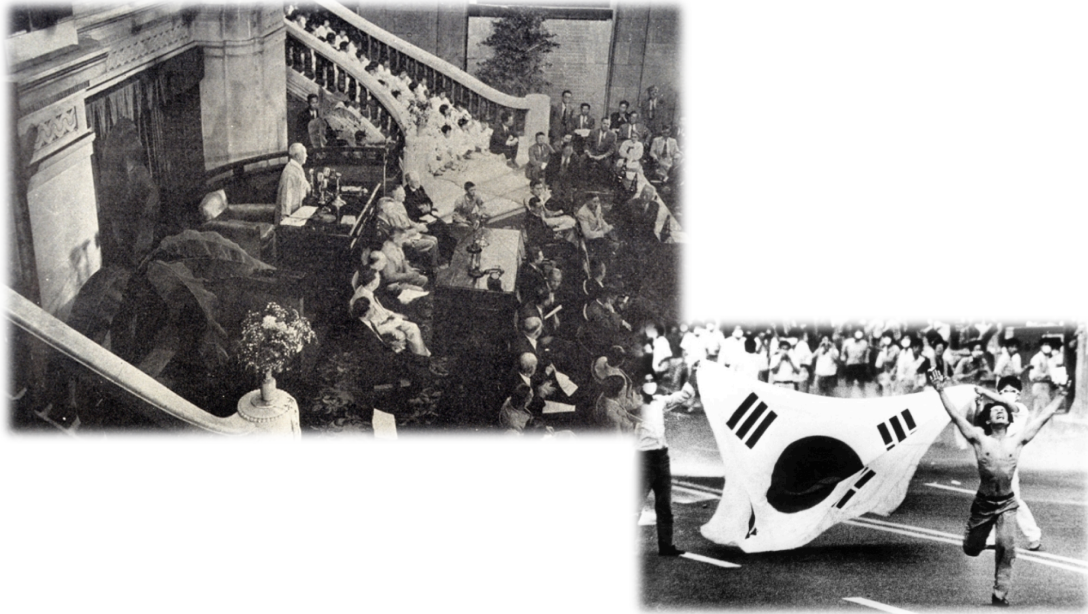
The Constitutional Court *of Korea*

May 25, 2015

Establishment of Constitution al Court of Korea



2



3

Composition & Jurisdiction



I. Composition



5

II. President *Park, Han-Chul*

2013. 4. ~ present :
President, Constitutional Court of Korea

2011. 2. ~ present :
Justice, Constitutional Court of Korea

2009. 8. ~ 2010. 7. :
Chief Prosecutor, East Branch of Seoul District
Prosecutor's Office

1993. 8. : LL.M., Graduate School of Law,
Seoul National Univ.

1975. 2. : LL.B., College of Law,
Seoul National Univ.



6

III. Jurisdiction

1. Adjudication on the Constitutionality of Statutes
2. Adjudication on Constitutional Complaints
3. Adjudication on Competence Dispute
4. Adjudication on Impeachment
5. Adjudication on Dissolution of a Political Party

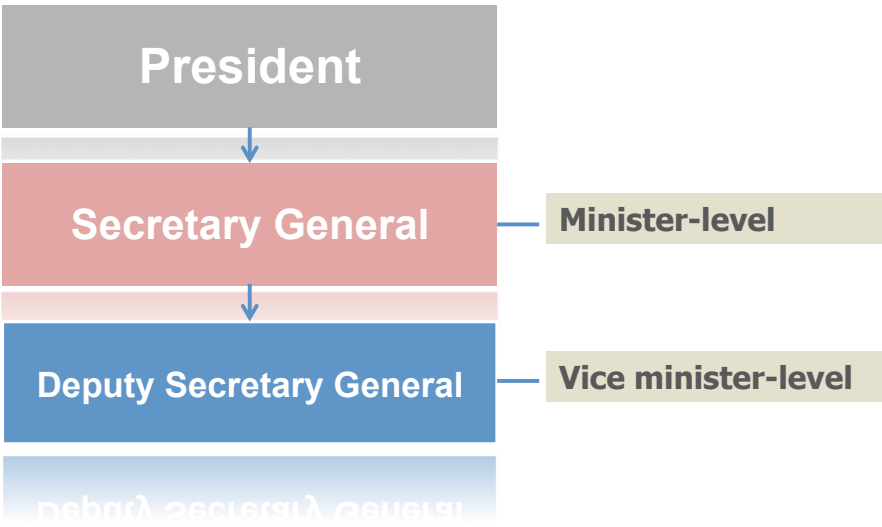
IV. Caseload Statistics

Type	Total	Constitutionality of Statutes ¹⁾	Impeachment	Dissolution of a Political Party	Competence Dispute	Constitutional Complaint			
						Sub total	§68 I	§68 II	
Filed	27,475	864	1	2	85	26,523	21,513	5,010	
Settled	26,715	809	1	1	80	25,824	21,112	4,712	
Dismissed by Panel	14,017					14,017	11,688	2,329	
Decided by Full Bench	Unconstitutional ²⁾	518	247			271	80	191	
	Unconformable ³⁾	165	56			109	47	62	
	Conditionally Unconstitutional ⁴⁾	69	18			51	19	32	
	Conditionally Constitutional ⁵⁾	28	7			21		21	
	Constitutional	2,012	300			1,712	4	1,708	
	Upholding ⁶⁾	520			1	16	503	503	
	Rejected	6,773		1		20	6,752	6,752	
	Dismissed	1,811	62			30	1,719	1,436	283
	Other	6					6	5	1
	Withdrawn	796	119			14	663	578	85
Pending	760	55		1	5	699	401	298	

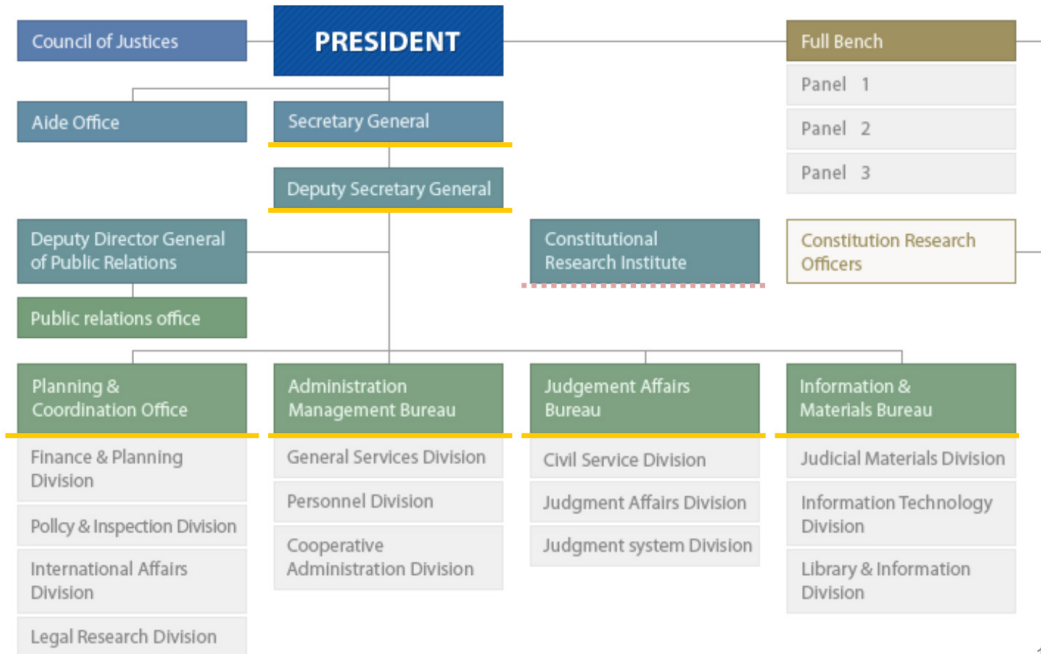
Roles & Functions of the Secretariat



I. The Secretariat



II. Organization



11

III. Representation of the Secretariat



12

IV. Public Relations



13

V. International cooperation



14

• **AACC**



15

• **3rd Congress of World Conference on Constitutional Justice**



16

• **Venice Commission**



17

• **Overseas study program**



18

• **Training / Study visit for other Asian courts**



Thank you!



Regarding the Constitutional Court of the Russian Federation and its Secretariat

The Constitutional Court of the Russian Federation is the highest judicial authority in Russia, competent to deliver constitutional justice. It is one of the two highest courts: also there exists the Supreme Court which is the highest judicial authority for civil cases, economical disputes, criminal, administrative, and other cases, except constitutional disputes. These Courts are not subordinated – each one of them has its own competence.

Being created in 1991 and based on the Law of the RSFSR “On the Constitutional Court of the Russian Soviet Federative Socialist Republic”, the Court started its work on examination of cases in January 1992. From 1995 the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, elaborated in accordance with the 1993 Constitution of the Russian Federation, regulates the Court’s activities, (a federal constitutional law is a law of a particular kind, which has to be adopted in cases explicitly stipulated by the Constitution of the Russian Federation; this is an analogue of the organic law in some Roman law countries).

The Constitutional Court of the Russian Federation has the following general competencies:

- 1) The Constitutional Court considers the conformity with the Constitution of the Russian Federation of:
 - federal laws and normative acts of the President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation;
 - constitutions of the republics, statutes, laws, and other normative acts of the territorial subjects of the Russian Federation issued on the matters of the Federal competence and joint competence of the Federal authorities and authorities of the territorial subjects of the Russian Federation;
 - treaties between the Federal authorities and authorities of the territorial subjects of the Russian Federation, treaties between the authorities of the territorial subjects of the Russian Federation;
 - international treaties of the Russian Federation not yet in force.

Federal and regional authorities as well as a group of Members of the Federal Assembly (the Parliament) – not less than one-fifth of the total amount of each House respectively can apply to the Constitutional Court to request an abstract constitutional review. Within

the concrete constitutional review procedure and by means of constitutional complaints, regarding violation of constitutional rights and freedoms of citizens and organisations, the Court reviews the constitutionality of a law applied in a concrete case; upon requests of courts the Constitutional Court reviews the constitutionality of a law to be applied by a competent court in a particular case.

Usually, constitutional review is optional, i.e. it starts upon the initiative of a person entitled to appeal. The Constitutional Court cannot initiate constitutional review on its own.

Constitutional review of an international treaty on accession of a new subject to the Russian Federation is compulsory.

- 2) The Constitutional Court resolves competence disputes between the authorities, if such competence is stipulated by the Constitution;
- 3) The Constitutional Court interprets the Constitution of the Russian Federation;
- 4) The Constitutional Court shall determine compliance with established procedures when charging the President of the Russian Federation of treason or other grave crime;
- 5) The Constitutional Court checks the conformity with the Constitution of the Russian Federation of the issues put to a referendum of the Russian Federation in accordance with the respective federal constitutional law regulating the conduct of a referendum of the Russian Federation.

As of today, the most widespread category of cases of the Constitutional Court is review of constitutionality of normative legal acts. Within this category the review initiated by constitutional complaints of citizens and organisations concerning constitutionality of norms applied in a particular case prevails.

In its activity the Constitutional Court decides solely on the matters of law. It refrains from establishing and research of the facts in all cases where it is the competence of other courts or other bodies.

The main principles of the Court's functioning are: independence, collegiality, publicity, adversariality and equality of arms.

The Constitutional Court of the Russian Federation consists of nineteen judges appointed by the Council of the Federation (the upper chamber of the Federal Assembly – the Russian Parliament) on the proposal of the President of the Russian Federation. The President and Vice-Presidents of the Constitutional Court of the Russian Federation shall be appointed by the Council of the Federation on the proposal of the President of the

Russian Federation, from the list of the judges of the Constitutional Court of the Russian Federation.

All decisions are rendered by the full board of the judges of the Court. No division into chambers, judicial assemblies, etc. exists. Decisions are rendered with either a public hearing or – if the decision can be delivered on the basis of the existing legal positions of the Constitutional Court – in written proceedings (without a hearing).

The main place of residence of the Constitutional Court of Russia until May 2008 was the Capital of Russia – Moscow. Since May 2008, the new seat of the Court is the Federal City of St. Petersburg. If necessary, the Constitutional Court a right to hold its meetings in any other place.

Decisions of the Constitutional Court Russia are final and binding, non-appealable and, therefore, are not reversible. A legal norm declared unconstitutional becomes null and void on the basis of the judgment of the Constitutional Court; it means that no special decision of the legislature on this issue is necessary. In cases of concrete control the applicant's case (a citizen's or an organisation's one) is subject to revision. Retroactive effect is not applicable in case of other applicants. However, other courts shall make their decisions with due regard to the Constitutional Court's decision, even if at the time of the first instance judgment the Constitutional Court's decision has not yet been issued.

The Secretariat of the Constitutional Court of the Russian Federation (hereinafter – the Secretariat) is an independent division of the Constitutional Court, ensuring its due activities. The number of the staff at the Secretariat is 155 people. As yet, the Secretariat employs 22 Candidates of Sciences (21 – legal; 1 – Philology), 7 Doctors of Law, 7 Lawyers Emeritus of the Russian Federation (the highest honorary title).

It is necessary to stress, that the issues of personnel, finance, logistics, welfare and medical support of the Secretariat staff are resolved by the Department of Civil Service and Personnel, the Financial Department and the Administrative Department of the Court, respectively. These units are also included in the apparatus of the Constitutional Court, however, only the Secretariat is mentioned in the legislation. At the same time, there is no such a position as the Chief of Staff of the Constitutional Court of Russia. Coordination, if necessary, is provided by one of the Vice-Presidents of the Constitutional Court.

The main function of the Secretariat is the preliminary review of the received applications. Thus, in accordance with Articles 40 and 111 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Secretariat shall

provisionally review appeals, admitted to the Constitutional Court, for the compliance with the requirements of the said Federal Constitutional Law, when they do not address the issues requiring examination of the judges of the Constitutional Court. The Secretariat receives visitors; it carries out correspondence with applicants independently. When an appeal is explicitly not within the Court's jurisdiction or the formal requirements of the application are not met and in some other situations which are directly specified in the legislation, the Secretariat shall notify this applicant of the non-compliance with the requirements of the Federal Constitutional Law and return the appeal and all the attached documents. The applicant can correct mistakes in the application, or appeal the decision of the Secretariat to the Constitutional Court. It is notable that within the national legal system this function of a court's secretariat exists only in the sphere of constitutional justice, whereas it is not inherent in the system of courts of general jurisdiction and arbitration.

If the appeal meets the formal requirements, the Secretariat prepares a conclusion, references and other materials for the study of the appeal by a judge.

By judges' requests the Secretariat assists them in preparation of cases and other issues to be discussed at the Court's meetings. For this purpose the Secretariat cooperates with the apparatus of judges of the Constitutional Court.

In addition to the abovementioned activities the Secretariat provides a significant amount of organisational and interim work related to the functioning of the Constitutional Court. The Secretariat:

- prepares analytical and reference materials on assignments of the President and judges of the Constitutional Court;
- provides organisational and documentation support of the Constitutional Court and the judge's meetings;
- examines and summarises the activities of public bodies ensuring the implementation of decisions of the Constitutional Court;
- ensures international relations of the Constitutional Court;
- examines and summarises foreign constitutional review jurisprudence, practice of international judicial bodies;
- provides the publishing activity of the Constitutional Court;
- provides the interaction with the media in the coverage of the activities of the Constitutional Court;
- ensures creation, support, and development of informational systems and data banks of the Constitutional Court.

The development features of constitutional justice in the Republic of Tajikistan

Dear colleagues!
Ladies and Gentlemen!

First of all, I would like to thank the organizers of the meetings of Association of Asian Constitutional Courts and Equivalent Institutions (AACC) and Constitutional Court of Indonesia for its fine organization. The value of such meetings is important and invaluable to all members of the AACC, especially for those states, that follow to the way of creation of the democratic constitutional state.

Today, we are present at a high level forum, which is taking place in Indonesia and for the first time, we exchange experiences with a great interest, among our colleagues from member's states of Association of Asian Constitutional Courts and Equivalent Institutions (AACC). The work of this forum is unconditional and will have the most positive impact on our activity in the Constitutional Court of Tajikistan.

Dear colleagues!

The Constitutional Court of the Republic of Tajikistan is established as a specialized constitutional control body, and on November of this year Constitutional Court of Tajikistan is celebrating its 20th years. The Constitutional Court of Tajikistan is an independent judicial and constitutional control body and acts in order to protect and ensure the supremacy and direct effect of provisions of the Constitution, as well as the protection of human and civil rights and freedoms.

The including of constitutional justice into the legal system of the Republic of Tajikistan indicates that the government prefers to provide-transfer the decision-making authority-powers on constitutional-legal issues to competency of specialized body, as the specificity of the body of constitutional control, as the whole judiciary power, lies in its relative constancy, neutrality and independence.

The creation of this new body in the system of our statehood is a prime example of the integration of the legal system of Tajikistan into the modern legal system. The experience of other countries shows that bodies of constitutional control, created in the postwar period in Europe had one of the main objectives - the protection of Constitution and the rule of its standards, as well as the effective implementation of the principle of separation of powers, which is enshrined in their constitutions.

Thus, the providence of a smooth and coordinated work of the legislative, executive and judicial powers formed an essential function of constitutional control. Emphasizing special essence to the role and place of the Constitutional Court in the statehood and the judiciary powers, thereby its competence is enshrined in a separate article of the Constitution, so that it could effectively fulfill the judicial power. The power, which is possible and effective, is only in the context of the theory of separation of powers, which excludes excessive concentration of power and guarantees citizens true freedom. The power, which is the result of self-limiting of state, is allowing the control over itself by an independent body of constitutional control. In the modern systems of constitutional control, along with other existing subjects, such subject, successfully fulfills its function of protecting the Constitution and ensure its supremacy. The Constitutional Court of the Republic of Tajikistan by its characterization fully corresponds to the nature and purpose of modern constitutional control bodies.

In its activities, the Constitutional Court of the Republic of Tajikistan carries out both the preliminary and subsequent control's types of legal normative acts. These types of control are common for all existing models of constitutional control. Besides, the Constitutional Court of the Republic of Tajikistan also provides as concrete as abstract types of control. The Constitutional Court of the Republic of Tajikistan provides mandatory and optional types of control as well, i.e., some laws and normative legal acts are subject to mandatory control and others by the initiative of applicants, addressing to the Constitutional Court. The Court shall execute as well as desicing kind of control as its acts are binding for all public authorities and their officials. In order of their entry into force, the acts of Constitutional Court of the Republic of Tajikistan are applied, used and have legal force after their adoption. The Constitutional Court carries out external control, i.e., the control of all normative legal acts adopted by the bodies of the state.

As can be seen from the proposed characteristics of Constitutional Court of the Republic of Tajikistan, there are accumulated and integrated the positive features and base moments of all current models of constitutional control in it, related to various legal systems. The leadership of our country also attaches great importance to development of the institution of constitutional control in Tajikistan.

Thus, on June 2007, on the base of the Message of the President of the Republic of Tajikistan, H.E. Emomali Rahmon addressed to Parliament, was developed and adopted the Program of judicial reform in the Republic of Tajikistan. In particular, it is noted in the Program that: "one of the main values of the Constitution of Tajikistan is a sovereign supremacy and direct effect of its provisions. With the aim of ensuring of these values and protection of the Constitution, there was established the Constitutional Court and its

activity and work of more than ten years proved the necessity and significance of this new body for the independent Tajik state, and as well as showed that for the progress and development of society, it is necessary to strengthen the status and role of the Constitutional Court”.

On the basis of this program on March 2008, was included amendments and the changes to the Constitutional Law “On Constitutional Court of the Republic of Tajikistan”. In accordance with this law, the Constitutional Court is endowed with new and very important mandate. Now, it will determine the compliance to Constitution, the drafts amendments and additions to the Constitution of the Republic of Tajikistan, draft laws and other matters submitted to a referendum. Besides, significantly expanded the range of subjects entitled to appeal to Constitutional Court.

After included changes and amendments, each deputy of the lower chamber and every member of the upper chamber of Majlisi Oli (Parliament of RT) may appeal directly to the Constitutional Court of the Republic of Tajikistan as abstract and as concrete subject of law.

The Commissioner for Human Rights as well can be the subject of appeal to the Constitutional Court. Citizens and legal persons have the right to appeal directly to the Constitutional Court on the conformity to the Constitution, laws and other normative legal acts, governing plenums of the Supreme Court and the Supreme Economic Court of the Republic of Tajikistan applied by the relevant government or public authorities, as well as by judiciary bodies in relation to them in a particular case, violating by their opinion, their constitutional rights and freedoms. Judges of the Republic of Tajikistan may also appeal to the Constitutional Court on the conformity to the Constitution, the laws and other normative legal act governing plenums of the Supreme Court and the Supreme Economic Court of the Republic of Tajikistan applied or to be applied in respect of a citizen or a legal entity in a particular case.

Nowadays, the subject of appeal are entitled to appeal not only the law and its subjects to conformity to the Constitution, as it was before, but also any regulatory act of the state and public bodies, as well as guidelines plenums of the Supreme Court and the Supreme Economic Court of the Republic of Tajikistan.

Concerning the legal status of the body of constitutional control in Tajikistan, it should be mentioned that the concept of “constitutional control” directly related to the presence of the Constitution, protection of the constitutional norms and principles established to ensure the balance of powers among higher authorities. It has also important significance the ensuring of the constitutional guarantees of human and civil rights and freedoms. The

legal status of Constitutional Court of Tajikistan is caused to the specifics of its competency and its position in the system of public authorities. The Constitutional Court is on a par with other branches of government, and through the implementation of its constitutional jurisdiction by direct influencing to the process of law-making in the country.

The main mission of constitutional control is to ensure the supremacy and stability of the Constitution, preserving the constitutional balance of separation of powers. It serves as a mechanism of checks and balances, and its main task is to detect, assess and restore the disturbed balance.

At the level of Constitution it is established that the decisions of the Constitutional Court of the Republic of Tajikistan are final. It should be noted that for the last years, the Republic of Tajikistan confidently goes on a way of further democratization of the political life of Tajik society, on the way of development and improvement of the political system, development of democratic institutions, as well as rigorous protection of constitutional human and civil rights and freedoms. It is contributed by the socio-political and economic stability in our state and identification of itself as a democratic legal, social and civil society. In the adopted program of judicial and legal reform for 2011-2013 years, along with other issues of reforming of the judicial-legal system, it was as well foreseen the development of a new edition of the Constitutional Law “On the Constitutional Court of the Republic of Tajikistan”.

The draft of new edition of Constitutional Law “On Constitutional Court of the Republic of Tajikistan” has been studied and discussed with leading experts from Germany, in particular, by a professor from Hamburg University, Mr. Otto Luchterhandt. The draft of new edition of Constitutional Law “On Constitutional Court of the Republic of Tajikistan” also was studied and discussed by judges of the Constitutional Court of Berlin, by members and experts of the Venice Commission of the Council of Europe, in particular by the President of the Conference of Constitutional control of the new democracies, by the Chairman of the Armenian Constitutional Court, Professor G.G Arutunyan and by ex-chairman of the constitutional courts of Latvia and Romania. We also received a separate opinion from the Venice Commission of the Council of Europe on a draft of our Constitutional Law, which had been taken into account in its final revision. During the preparation of project we studied the experience of the constitutional control bodies of Armenia, Germany, Kazakhstan, Latvia, Poland, Russia and other countries.

The Constitutional law adopted on August 2014 and has already entered into force. The law in new edition is a continuation of the implementation of the constitutional principle of separation of powers in Tajikistan, reform of the judicial-legal system of our country,

the transformation of the judiciary, including the Constitutional Court into the comfort mechanism for our citizens in order to protect the constitutional rights and freedoms. In the new version of the constitutional law, there had been resolved the following problems and issues: optimization and specification of powers of the Constitutional Court; improvement of the mechanism of realization of powers of the Constitutional Court, the constitutional proceedings through including into the constitutional law new separate articles; a sequence logical construction of the project of Constitutional law and the development of the draft Constitutional law on the basis of the interdependence of institutions, content and activities of the Constitutional Court; edition improvement of the text of articles of Constitutional law on “The Constitutional Court of the Republic of Tajikistan”.

The structure of the Constitutional law in new edition corresponds to the logical and consistent structure of interdependence of institutions, to the content and activity of Constitutional Court. According to the Constitutional law of Tajikistan “On the Constitutional Court of the Republic of Tajikistan”, the structure of Constitutional Court consists of seven judges: including the Chairman, Vice-Chairman and judges of the Constitutional Court of the Republic of Tajikistan.

The Constitutional Court of the Republic of Tajikistan studies and improves the professional activities of judges and Constitutional Court Office’s staff, which are aimed at safeguarding the Constitution, ensuring constitutional law and protection of human and civil rights and freedom, and this improvement will influence effectively in fulfillment its functions in further and facilitate to establishing a democratic and legal state as the Republic of Tajikistan.

The Office of the Constitutional Court of the Republic of Tajikistan is a component of the Constitutional Court of the Republic of Tajikistan and was established according to provisions of Article 77 of Constitutional Law of the Republic of Tajikistan “On Constitutional Court of the Republic of Tajikistan.” According to requirements of this Article of Constitutional Law, Office of the Constitutional Court fulfills informative, research advisory, and other supplementary work.

Regulations on the Office of Constitutional Court, its structure and staff are approved by the Chairman of Constitutional Court of the Republic of Tajikistan. At the present time, the Office of Constitutional Court is functioning on the base of Regulations for the Office of Constitutional Court, which was established by Instruction of the Chairman of Constitutional Court.

The Office of Constitutional Court, according to duties and terms of references of the Constitutional Court, establishes contacts and initiates cooperation with the

Executive Office of the President of the Republic of Tajikistan, the offices of Majlisi Milli and Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan (Parliament of RT), establishes cooperation with the Supreme Court, Supreme Economic Court of the Republic of Tajikistan, with the Council of Justice, and other governmental bodies.

According to the provisions of the Regulations, main duties of the Office of Constitutional Court consist of the following:

- Legal, organizational, technical, logistics and financial supports for Constitutional Court and its judges;
- Analysis and generalization of Constitutional Court activities;
- Systematization of existing legislation;
- provision of contacts and mutually beneficiary cooperation with constitutional controlling authorities of other states and international organizations;
- holding of protocol events and business visits of Constitutional Court's judges;
- Establishment of cooperation of the Constitutional Court with ministries and other structures of the republic;
- Organization of informative works, ensuring cooperation with periodic publications, other official mass media, including Internet mass media;
- Preparation of reports and informative and analytical materials about Constitutional Court activities;
- ensuring the implementation of instructions and orders of the Chairman of Constitutional Court and warrants of Constitutional Court's judges etc.

The structure of Constitutional Court

1. Head of the Office of Constitutional Court;
2. Chamber of the Chairman of Constitutional Court;
3. Division of Legal Maintenance of Judges;
4. General Division and Public Service
5. Financial and Material Division.

At the end of my speech, I would like to emphasize that harmonization of legislation and norms of current legislation with involvement of international law proposes, on the one hand, the observance by the Republic of Tajikistan, its international obligations, and

on the other, attaching to the national legal system, the maximum balance and efficiency. In its turn, the effectiveness of the national legal system is determined by the quality of the functioning of its elements (legislation, law-making, law enforcement, legal education, etc.) by relationships between them, as well as by relationship between the law and other social systems. There is existed the objective need for the integration of Tajikistan into the global legal space, identifying opportunities for adapting foreign experience in the conditions of the Tajik reality, taking into account the foreign legal culture that gives new ideas and directions for the development of the Tajik legislation, for the definition of the legal policy of the state.

In this connection, the legislative policy, along with the protection of national interests of Tajikistan, shall comply with the requirements and standards of international law, with the legal regulation of new economic relations, especially with the business and market activity. And in this direction, along with other national legal institutions, the role of constitutional courts as “negative and positive legislator” especially raises, that rejects, annuls defective legal norms from the legal system and thereby performing special role on the protection of Constitution and ensuring of its supremacy.

Thanks for your attention!

**Dr. Chaowana Traimas,
Secretary-General
of the Office of the Constitutional Court of the Kingdom of Thailand
At the the meeting of Secretary-Generals of the Association of Asian
Constitutional Courts and Equivalent Institutions (AACC)
Jakarta, the Republic of Indonesia
on 25th - 27th May, 2015**

Mr. Chairman,
Distinguished Participants,
Ladies and Gentlemen,

First of all, I would like, on behalf of the Delegation of the Constitutional Court of the Kingdom of Thailand, to express our sincere appreciation to the Constitutional Court of the Republic of Indonesia for inviting our Delegation to take part in this meeting of Secretary-Generals of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) hosted by the Constitutional Court of the Republic of Indonesia in Jakarta on 25th - 27th May, 2015 as well as for the hospitality extended to us. We are thus provided with the good opportunity to visit the vibrant capital city of Jakarta, the Republic of Indonesia.

I. A Brief Introduction on the Powers and Duties of the Constitutional Court of the Kingdom of Thailand

I would like to begin with a brief introduction on the powers and duties of the Constitutional Court of Thailand. I intend to do so by referring to the Constitution of the Kingdom of Thailand 2007, a document of great significance and relevance to the protection of rights and liberties of the people. Even if the 2007 Constitution had been repealed, section 45 of the Interim Constitution 2014 provided for an establishment of the jurisdiction of the Constitutional Court to review the provision of law from being contrary to or inconsistent with the Constitution. Nevertheless, a scope of powers and duties in adjudicating and ruling constitutional cases under the 2007 Constitution can be categorized into the following functions:

- (1) constitutionality review of laws and draft laws so as to prevent any contrariness or inconsistencies with the Constitution;
- (2) powers and duties in relation to the protection of rights and liberties of the people as guaranteed by the Constitution;
- (3) powers and duties in relation to the public participation in the governance and the inspection of exercise of State powers;
- (4) adjudication of disputes pertaining to the powers and duties of two or more organs with respect to the National Assembly, Council of Ministers or non-judicial constitutional organs;
- (5) ruling on whether or not a treaty must be approved by the National Assembly; and
- (6) powers and duties stipulated by the Organic Act on Political Parties (2007).

It is thus said that the Constitutional Court has to perform its function of safeguarding the supremacy of the Constitution. Moreover, the Constitutional Court serves as a body which realizes the recognition and protection of the people's rights and liberties in practice through ruling of the Constitutional Court. Such roles are apparent from the provisions of section 27 which stated that "rights and liberties recognized by this Constitution explicitly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, Council of Ministers, Courts, including constitutional organs and state agencies in the enactment of laws, enforcement of laws and interpretation of laws." In addition, the protection of rights and liberties under the Thai Constitution also existed in the form of prohibitions on the restriction of rights and liberties recognized by the Constitution as stipulated in section 29. Furthermore, section 30 of the Thai Constitution also provided for human rights protection by way of equality. As such, unjust discrimination on the grounds of differences was prohibited.

Next, I would like to discuss further the Constitutional Court's role in the protection of rights. This was found in two parts. Firstly, the right to seek judicial relief in the event of a violation of rights and liberties recognized under the Constitution was provided under section 28, "a person may invoke human dignity or exercise one's rights and liberties to the extent that the rights and liberties of others are not violated, that the Constitution is not defied, or that is not inconsistent with the good morals of the people. A person whose right or liberty recognized under this Constitution is violated may rely on the provisions of this Constitution to seek judicial relief or to invoke as an argument in judicial proceedings." The second part was protection by the Constitutional Court provided under section 154 in the form of an "abstract norm control" constitutional review of a bill of law prior

to promulgation, and protection in the form of a “concrete norm control” constitutional review of a law that was already in force as provided under section 211. The latter was invoked by the exercise of the right to seek judicial relief or relied as an argument in court through various agencies, including the exercise of the right to file a complaint through the Ombudsman or National Human Rights Commission under section 245 or section 257 of the 2007 Constitution.

Furthermore, the 2007 Constitution was the first Constitution to recognize the protection of human rights by way of allowing a direct action by the people as provided under section 212, “a person whose rights or liberties recognized by this Constitution are violated may file an application in the Constitutional Court for a ruling that a provision of law is contrary to or inconsistent with the Constitution.” The effect of this provision was to enable the people to exercise the right to file an action directly in the Constitutional Court as an additional channel. In addition, the key constitutional provision for the promotion of human rights protection by the Constitutional Court was section 216 which provides that “a ruling of the Constitutional Court is final and binding on the National Assembly, Council of Ministers, Courts and other state organs.” The Constitutional Court is therefore a vital organ which protects and safeguards human rights through the binding effect of Constitutional Court rulings with respect to the exercise of state powers by legislative, executive and judicial organs, as well as the exercise of constitutional powers by other organs.

II. The Support Provided for the Implementation of the Constitutional Court Ruling

According to the provision of section 216 paragraph 5 of the 2007 Constitution which stated that “The decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organ.”. This provision explicitly means that the implication of the decisions of the Constitutional Court shall be deemed final and binding all of the State Organs in the enactment of laws, enforcement of laws and interpretation of laws.

III. The Example of the Constitutional Court Ruling

I shall illustrate by giving an example of a Constitutional Court ruling which reflects the roles of the Constitutional Court in protecting the equal rights of men and women from violation by any provision of law. The Constitutional Court ruled that section 12 of the Surnames Act was a mandatory provision which required a married woman to use only her husband’s family name, thus infringing the married woman’s right of family name usage.* The provision of law resulted in men and women having unequal rights, causing

an inequality under the law due to differences in sex and personal status. The provision also amounted to an unjust discrimination since the one-sided requirement that a married woman should use her husband's family name because of marriage did not constitute a justification for discrimination on the grounds of differences in physical attributes or obligations arising from the differing sexes of men and women. Hence, there was no cause for discrimination due to differences in sex and personal status.

As for the argument that this discrimination originated from social causes aimed at securing peace and harmony within the family, and that it was consistent with Thai tradition and way of life, the Constitutional Court found such an argument untenable. Family peace and harmony is achieved through understanding, acceptance and mutual respect between the husband and wife. Moreover, the first law on usage of family names in Thailand was enacted in 1913. There had been no prior family name system in Thailand. It was therefore unlikely that the practice could be regarded as a longstanding tradition and way of life. The grant of a right to a married woman to use her family name merely promoted equality under the law for both men and women.

For the aforementioned reasons, **the Constitutional Court therefore held that section 12 of the Surnames Act 1962 raised constitutionality issues as it was contrary to or inconsistent with section 30 of the Constitution. The provision was rendered unenforceable pursuant to section 6 of the Constitution.**

IV. Conclusion

Last but not least, to conclude my presentation, the Constitutional Court is the supreme court regarding constitutional matters. As such, it performs the important function of safeguarding the supremacy of the Constitution. It also serves as a judicial body which recognizes and protects the rights and liberties of the people and translates into reality with the protection of rights and liberties by the exercise of adjudicative power.

Thank you for your attention.



THE STRUCTURE AND FUNCTIONS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TURKEY (TCC)

26th MAY 2015

SELİM ERDEM
SECRETARY GENERAL



PRESENTATION OUTLINE

- 1. SHORT HISTORY**
- 2. MEMBERS OF THE COURT**
- 3. DECISION MAKING IN THE COURT**
- 4. STRUCTURE AND DUTIES OF THE COURT**
- 5. INDIVIDUAL APPLICATION**

5/26/2015

Selim Erdem

2



1. SHORT HISTORY

- ❖ The Turkish Constitutional Court was first introduced by the 1961 Constitution.
- ❖ The system of constitutional review established by the 1961 Constitution was preserved in the 1982 constitution and the establishment and powers of the Constitutional Court were reorganized.
- ❖ Finally, the composition, powers and structure of the Court were changed considerably by the constitutional amendments in 2010.

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2. MEMBERS OF THE COURT

- ❖ After the 2010 constitutional amendments, Turkish Constitutional Court consists of 17 members.
- ❖ The members of the Constitutional Court shall be elected for a term of twelve years. A member shall not be re-elected.
- ❖ The members of the Constitutional Court shall retire when they are over the age of sixty-five.

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3. DECISION MAKING IN THE COURT

- ❖ After the 2010 constitutional amendments, there has been an increase in the decision-making bodies of the Court.
- ❖ Previously, the Court used to take its decisions only in the form of plenary.
- ❖ After the introduction of the individual application, two Sections and three Commissions under each Section have been established.

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4. STRUCTURE OF THE COURT

- ❖ 4.1 PLENARY
- ❖ 4.2 SECTIONS
- ❖ 4.3 COMMISSIONS
- ❖ 4.4 RAPPORTEURS
- ❖ 4.5 GENERAL SECRETARIAT

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4.1. THE PLENARY

The plenary,

- ❖ Consists of 17 members, including the president
- ❖ Convene with the participation of at least 12 members and the president
- ❖ As a rule, the plenary shall take decisions by absolute majority.

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4.1. THE PLENARY-Duties

- ❖ The Plenary of the Court carries out abstract and concrete review of the constitutionality of norms,
- ❖ The Plenary of the Court tries, for offences relating to their functions, the President of the Republic, the Speaker of the Grand National Assembly of Turkey, members of the Council of Ministers; presidents and members of the High Judicial Organs,
- ❖ The Plenary of the Court decides on the cases related to the dissolution of political parties,

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4.1 THE PLENARY-Duties

- ❖ The Plenary of the Court carries out the financial audit of political parties,
- ❖ The Plenary of the Court reviews the decisions of the Parliament with regard to the annulment of the parliamentary immunity or disqualification from membership,
- ❖ The Plenary of the Court reviews and decides on the individual applications referred to the Plenary by the Section,

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4.2. SECTIONS

The Sections,

- ❖ consist of seven members,
- ❖ convene with four members under the chairmanship of a deputy president,
- ❖ shall make their decisions with a absolute majority

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4.2. SECTIONS

- ❖ Examine and adjudicate on the merits of individual applications.
- ❖ If a Commission deems it necessary for the adoption of a principal judgment, then the application is referred to the Section where the admissibility review may be carried out together with the review on the merits.

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4.3. COMMISSIONS

- ❖ The Commissions are mainly responsible to carry out the admissibility review.
- ❖ There are three Commissions under each Section.

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4.3. COMMISSIONS

- ❖ Each commission consists of two members and shall decide unanimously.

- ❖ When unanimity cannot be ensured, the matter shall be transferred to the Section.

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4.3. COMMISSIONS

- ❖ An administrative unit, Individual Applications Bureau, responsible for the first administrative examination of the applications, was also established.
- ❖ The bureau is acting as a filter before commissions.
- ❖ Commissions is a second filter which renders inadmissability decisions.
- ❖ Only admissable cases go through sections.

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4.4. RAPPORTEUR-JUDGES

- ❖ There is enough number of rapporteur-judges in the Court.
- ❖ Currently, total number of rapporteur-judges is 100. 76 of them are rapporteur judges and 25 of them are assistant rapporteur judges.

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4.5. GENERAL SECRETARIAT

- ❖ The administrative issues are dealt by the General Secretariat in the Court.
- ❖ The General Secretariat is also entitled to follow up execution of judgments.

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INDIVIDUAL APPLICATION

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5. INDIVIDUAL APPLICATION

- ❖ Turkey became a party to the European Convention on Human Rights in 1954,
- ❖ recognized the right to individual application to the European Court of Human Rights in 1987
- ❖ and the compulsory jurisdiction of this Court in 1990.

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5. INDIVIDUAL APPLICATION

- ❖ With the constitutional amendment in 2004, the international agreements on fundamental rights and freedoms to which Turkey is a party to, especially the European Convention on Human Rights, were attributed a greater significance than that of domestic laws.
- ❖ The most recent development regarding the amendments referring to “universal standards” of fundamental rights is the introduction of individual application to the Constitutional Court with the constitutional amendment in 2010.

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5. INDIVIDUAL APPLICATION

- ❖ Individual application can be described as an exceptional and subsidiary remedy that can be exercised following the exhaustion of other remedies by individuals whose fundamental rights and freedoms are violated as a result of a procedure, act or neglect of public authorities.

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5. INDIVIDUAL APPLICATION

- ❖ Individual Application is introduced to the Turkish Legal System with the constitutional amendment in 2010.
- ❖ Application of the new remedy has started by 23/09/2012.

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5. INDIVIDUAL APPLICATION

- ❖ Individual Application is a subsidiary legal remedy.
- ❖ All administrative and judicial authorities are primarily liable to prevent violation of human rights.
- ❖ Thus, administrative and judicial authorities are more effective in the prevention of concrete violations of rights.

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5. INDIVIDUAL APPLICATION

- ❖ For that reason, related authorities are expected to redress such violations before relevant complaints are filed to the Constitutional Court.

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5. INDIVIDUAL APPLICATION

- ❖ Everyone can apply to the Constitutional Court based on the claim that any one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights and the additional protocols thereto, to which Turkey is a party, which are guaranteed by the Constitution has been violated by public force.

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5. INDIVIDUAL APPLICATION

- ❑ Individual applications can not be made directly against legislative transactions and regulatory administrative transactions and similarly, the rulings of the Constitutional Court and transactions that have been excluded from judicial review by the Constitution cannot be the subject of individual application.

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5. INDIVIDUAL APPLICATION

- ❖ The individual application should be made within thirty days starting from the exhaustion of legal remedies; from the date when the violation is known if no remedies are envisaged.

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5. INDIVIDUAL APPLICATION

- ❖ The most valuable aim of introducing individual application procedure is to put an end to violations of fundamental rights arising from acts of public authorities within our national law.
- ❖ Accordingly, applications to the European Court of Human Rights (ECtHR) against Turkey are also decreasing.

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5. INDIVIDUAL APPLICATION

- ❖ Number of Cases against Turkey in ECtHR
 - ❖ 2012-16900
 - ❖ 2013-10950
 - ❖ 2014-9488
 - ❖ and it is expected to continue to decrease further.

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5. INDIVIDUAL APPLICATION

- ❖ The TCC has been doing its best to interpret the provisions of the Turkish Constitution in compliance with universal values.
- ❖ Violation judgments delivered by the TCC contributed to the increasing number of the applications.
- ❖ The future of the individual application depends on the effective functioning of legal system as a whole.
- ❖ The individual application is at the stage of infancy in Turkey.

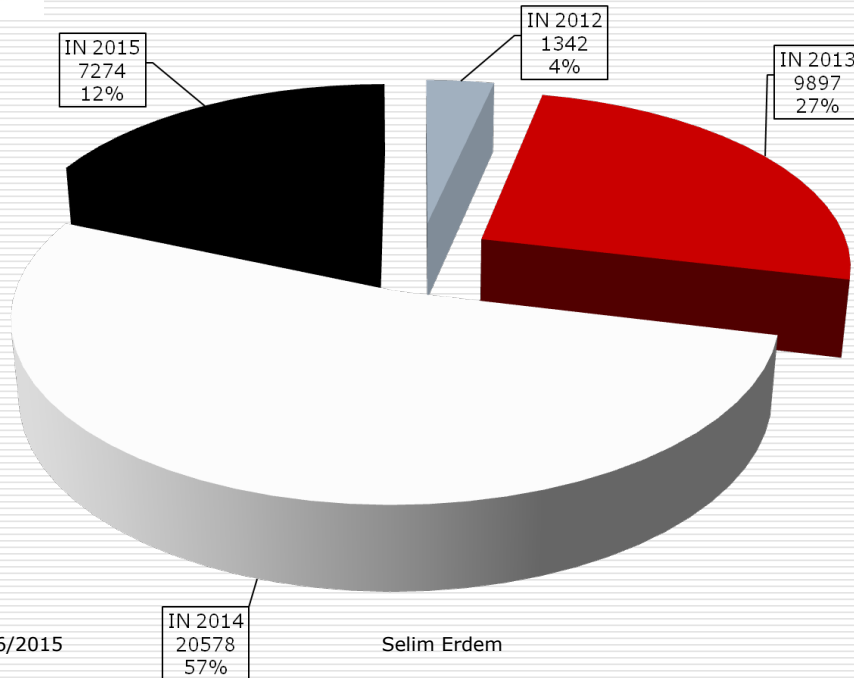
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TOTAL NUMBER OF THE INDIVIDUAL APPLICATIONS = 39091



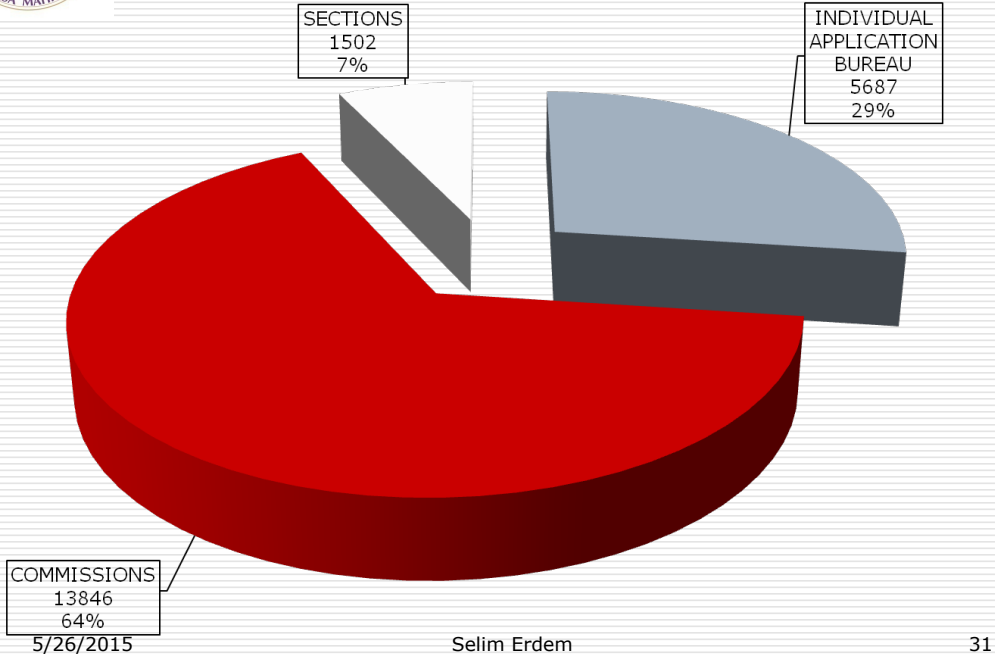
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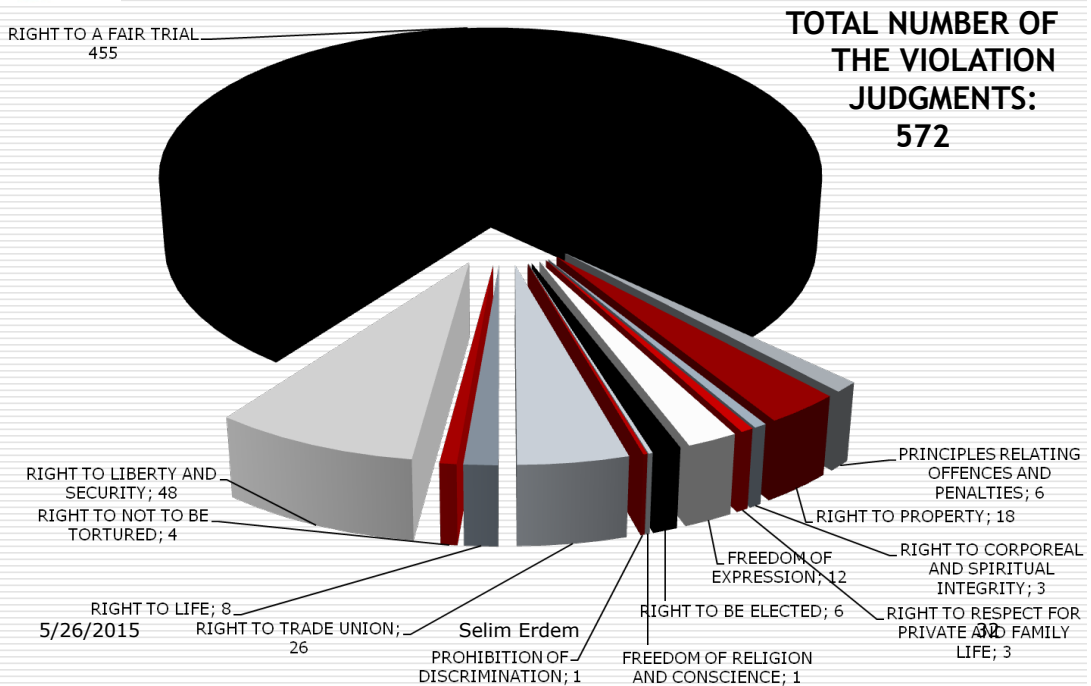
30



TOTAL NUMBER OF THE FINALIZED APPLICATIONS = 21035



CURRENT SITUATION - FUTURE PROJECTIONS

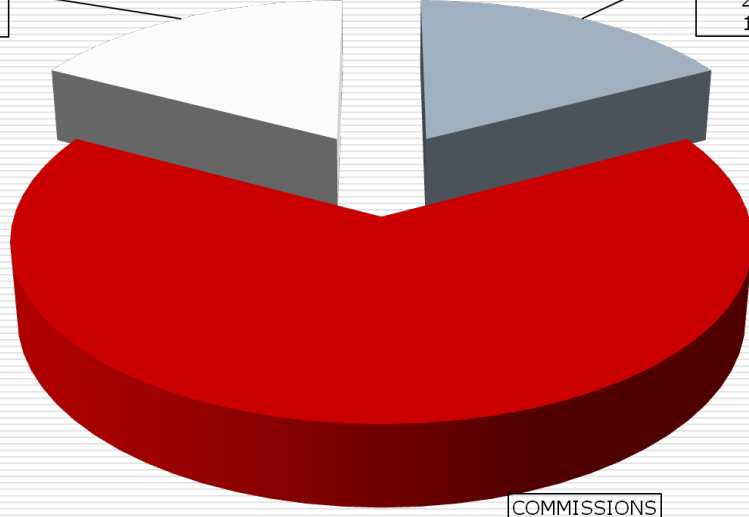




TOTAL NUMBER OF THE PENDING CASES 18056

SECTIONS
3213
16%

INDIVIDUAL
APPLICATION
BUREAU
2695
11%



COMMISSIONS
12148
73%

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THANKS FOR YOUR ATTENTION...

5/26/2015

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**Presentation of the Head of the Secretariat of the Constitutional Court
of the Republic of Uzbekistan Sharof Saidkulov
Meeting of the Secretaries General of the members of AACC
25-27 May 2015, Jakarta**

Dear colleagues, friends!

First of all let me express my deepest gratitude to our Indonesian colleagues for superior organization of such an interesting and beneficial meeting.

The judicial system of the Republic of Uzbekistan consists of the Constitutional Court, Supreme Court, Higher Economic Court, the supreme courts of the Republic of Karakalpakstan for civil and criminal matters, the Economic Court of the Republic of Karakalpakstan elected for a term of five years, regional and Tashkent city courts on civil and criminal cases, interdistrict , district and municipal courts on civil and criminal matters, military and economic courts appointed for the same term.

The Constitutional Court is a body of constitutional adjudication and hears cases related to the constitutionality of acts of the legislative and executive. The Constitutional Court and its judges are independent in their activity and subordinate solely to the Constitution.

Basic rules governing constitutional adjudication are determined by the Constitution, the Law on the Constitutional Court and the Rules of Procedures of the Constitutional Court.

The Constitutional Court consists of seven judges, who are elected by the the country's upper chamber of parliament upon the nomination by the President of the Republic. There are a Chairman, a Deputy Chairman and five judges of the Constitutional Court, including the judge from the Republic of Karakalpakstan.

The legislation does not provide much requirements for the candidates to judges. The citizen of Uzbekistan not younger than thirty years old among the specialists in the sphere of politics and law, possessing high moralities and required qualification can be elected as a judge.

The first judges of the Constitutional Court of Uzbekistan were elected in December 1995 and from that time, the Court started its activity.

As I mentioned above the Court's jurisdiction extends to the acts of the legislative and the executive.

Fist. The Constitutional Court determines the constitutionality of the following acts:

- laws;
- resolutions of the chambers of the parliament;
- decrees of the President of the Republic;
- resolutions of the government;
- resolutions of the local government;
- international treaty and other obligation of Uzbekistan.

Second. The Constitution of Uzbekistan conferred the Constitutional Court with one more competence which is predetermined by administrative and territorial structure of the country. There is a sovereign country namely Republic of Karakalpakstan in Uzbekistan. Karakalpakstan has its own Constitution and laws. The Constitutional Court hears the cases related to the compliance of the Constitution and laws of Karakalpakstan to the Constitution and laws of Uzbekistan.

Third. The Constitutional Court possesses the right to give official interpretations of the norms of the Constitution and laws. Uncertainties, incorrect or contradictory application can be a reason for giving the official interpretation to certain norms.

Fourth. The Constitutional Court as well can introduce a draft law to the lower chamber of the parliament.

Fifth. The Constitution stipulates that the President of the Republic can dissolve the parliament in certain cases. For example, in case of insuperable disagreements within the chambers or between them. In such cases, the President of the Republic can dissolve the parliament or its chambers only upon the consent of the Constitutional Court.

Sixth. The Constitutional Court hears the cases on the compliance of the normative orders of the General Prosecutor to the Constitution and the laws.

All matters within the jurisdiction are examined and decided in court session. There are no panels, only plenary sessions. Four judges of the Court comprises the quorum, in other word if there are four judges at the bench the Court can hear cases.

Only a limited person can initiate the case at the Constitutional Court. According to art.19 of the Law on the Constitutional Court, the following can initiate a case at the Constitutional Court:

- chambers of the parliament;
- the President of the Republic;
- the Speaker of the lower chamber of the parliament;
- the Chairman of the upper chamber of parliament;
- legislative body of Karakalpakstan;
- a group of deputies – not less than one-fourth of the total number of deputies of the lower chamber of parliament;
- a group of senators - not less than one-fourth of the total number of members of the Senate;
- the Chairman of the Supreme Court;
- the Chairman of the Supreme Economic Court
- the General Prosecutor.

The case can also be initiated by at least three judges of the Constitutional Court.

All issues related to the competence of the legislation of the Constitutional Court, can only be solved at its meeting. The meeting of the Constitutional Court is competent if it is present at least four judges from the court.

The law does not provide the ordinary citizens to initiate the case at the Constitutional Court in other words there is no constitutional complaint in our country. However, they can resort to the other person eligible to initiate the case with such request.

The decisions of the Constitutional Court come into force upon their official publication. The law stipulates the decisions to be published in official newspaper, where the law are published as well in weekly journal of the “Collection of the Legislation of the Republic of Uzbekistan”.

The decisions of the Constitutional Court are final, not subject to appeal and binding to all state bodied, legal entities and citizens.

To ensure the activity of the Constitutional Court there established the Secretariat of the Constitutional Court.

The main objective of the apparatus is organizational, technical, analytical, reference, financial and economic support of the Constitutional Court. Its main functions are: to support organizationally and technically the court sessions of the Constitutional Court;

to assist judges in preparing cases and other matters; to support organizationally the examination of appeals to the Constitutional Court, the preparation of replies, opinions, analysis, reference and other materials on the appeals; to research and generalize the state organs activities of implementation of the Constitutional Court decisions, to prepare the information on the implementation of those decisions; organization, management and improvement of the documentary maintenance system of the Constitutional Court on the basis of application of modern information technologies on preparation and processing of documents; and the others. General management of the apparatus carried out by the Chairman of the Constitutional Court and a direct current – by the Head of the Secretariat.

The Secretariat of the Constitutional Court is not so big; it consists of about 20 persons including me, chief experts, experts and the other staff.

There is also a Scientific-Advisory Council which consists of prominent lawyers, law professors and other professionals who act on a pro-bono basis. The Council advises the judges on various matters.

This is all on the Constitutional Court of Uzbekistan.

Availing of this opportunity I would like to invite my colleagues to the international conference on the occasion of the 20th anniversary of the Constitutional Court of Uzbekistan which will be held on 21st-22nd of October 2015 in Tashkent. We have already send the invitation letters and we hope that you received those letters.

Thank you very much for your attention.

ANNEX IV

Provisional Agenda of the Meeting of the Board of Members of the Association

A. Agenda for the Board of Members Meeting

In accordance with Article 16 Paragraph 1 of the AACC Statute concerning the Agenda of the Board of Members Meeting, The President of the Association shall send written invitation to all members of the Association at least three months in advance of the meeting of the Board of Members. The written invitation to the meeting of the Board of Members will be accompanied by the provisional agenda for the meeting.

In order that the meeting proceed smoothly and in alignment with the aims of Association, the Meeting of the Secretary-Generals is arranged to inform members of the Association that the agenda to be discussed during the Board of Members Meeting in August 2015 are as follows:

1. Admission of the Constitutional Chamber of the Supreme Court of The Kyrgyz Republic

- a. The Constitutional Court of Indonesia, as President of the Association, has received a letter concerning admission of the Constitutional Chamber of the Supreme Court of Kyrgyz to the Association, dated 18th June 2014 accompanied by a copy of the Constitution of the Kyrgyz Republic. The admission letter is attached.
- b. The aforementioned letter has been transmitted to each member of the Association by letter, dated 28th October 2014.
- c. Article 7 of the AACC Statute regarding Admission to the Association states the following:
 - 1) A written application for admission to the Association as a member shall be addressed to the Board of Members and submitted to the President of the Association.
 - 2) Insofar as is possible, the following documents should accompany the application:
 - a) Legal instruments governing the establishment and composition of the applicant court or institution and the appointment and status of judges or members of the institution;

- b) Text establishing the nature and scope of its jurisdiction; and
 - c) Letter of acceptance of the AACC statute, signed by the President or Head of the applicant court or institution, addressed to the President of the Association.
- 3) Upon receipt of the application and accompanying documents, the President of the Association transmits copies to all members.
- 4) Membership to the Association shall be effected by a decision of the Board of Members.
- d. As additional information, the Constitutional Tribunal of the Union of Myanmar, through the Constitutional Court of The Republic of Korea, has also stated its intention to join the Association. However, as of today, no official letter for the admission has been received.
- e. Based on the provision and the competence of the Board of Members concerning the admission, suspension, and expulsion of members as stated in Article 13 of the AACC Statute, admission of the Constitutional Chamber of the Supreme Court of The Kyrgyz Republic and, presumably, the Constitutional Tribunal of the Union of Myanmar will be discussed at the Board of Members Meeting in August 2015.

2. Time and Venue of 3rd Congress

- a. In accordance with Article 13 of the AACC Statute, the Board of Members has the competency to fix the dates and venues and select topics for the meetings of the Congress.
- b. Article 21 concerning the Meeting of the Congress regulates that the Association holds a Congress in general once every two years. Thus, Indonesia proposes that the Congress be held in Nusa Dua, Bali in April 2016, two years after the 2nd Congress in Istanbul.
- c. In light of this, all Secretary-Generals are expected to inform their heads of institution that the time and venue of the 3rd Congress will be discussed at the Board of Members Meeting in August 2015.

3. Working Themes of 3rd Congress

- a. In accordance with Article 13 of the AACC Statute regarding Competence of the Board of Members, the Board of Members has the competency to fix

- the dates and venues and select topics for the meetings of the Congress.
- b. In accordance with Article 3 of the AACC Statute concerning the objectives of the Association, themes should cover the following:
 - 1) the protection of human rights,
 - 2) the guarantee of democracy,
 - 3) the implementation of the rule of law,
 - 4) the independence of constitutional courts and equivalent institutions,
and
 - 5) the cooperation and exchange of information and experience amongst members.
 - c. In light of this, while the theme of the Congress will be discussed and decided during the Board of Members Meeting, Indonesia, as the host of the 3rd Congress, proposes the theme “Protection of Citizens’ Constitutional Rights”. Not only is such a theme in line with the aims of the Association as defined in Article 3 of the Statute, but it is also intended to maintain the continuity of the previous Congress themes as stated in the Seoul Declaration and the Istanbul Declaration.
 - d. Based on this provision, all Secretary-Generals are expected to inform their heads of institution that the working themes of the 3rd Congress of the Association will be brought for discussion and decision at the Board of Members Meeting in August 2015.

4. States & Institutions to be invited to 3rd Congress

- a. Article 13 of the AACC Statute regulates admission and expulsion of observers and guests.
- b. Part III of the AACC Statute, specifically Articles 9 and 10 regarding observers and guests, stipulates as follows:
 - 1) Article 9 regarding observers states as follows:
 - a) The status of an observer may be granted to supranational courts, constitutional courts and equivalent institutions;
 - b) Observers are allowed to
 - i. Attend the Congress;
 - ii. Present a report on the specific themes of the Congress upon the

- prior request of the President of the Association;
- iii. Respond to questions relating to their presentations; and
 - iv. Participate in the Association's activities such as symposia, workshops, and seminars;
- c) A written application for observer status to the Association shall be addressed to the Board of Members and submitted to the President of the Association;
 - d) Upon receipt of the application for observer status, the President of the Association transmits copies to all members;
 - e) The admission of the applicant to observer status shall be effected by a decision of the Board of Members;
 - f) Any member may propose which observers should be invited to the next Congress. Such proposal shall be approved by the Board of Members.
- 2) Article 10 regarding guests states that the President of the Association may invite guests to attend the Congress and the Association's activities, such as symposia, workshops, and seminars.
- c. In accordance with Article 20 of the AACC Statute, participants to the Congress will comprise members, observers and guests.
 - d. In accordance with these provisions, all Secretary-Generals are expected to inform their heads of institution that the matter of observers to the Congress will be brought for discussion at the Board of Members Meeting in August 2015.

5. Financial Issues of 3rd Congress

- a. Article 23 of the AACC Statute concerning the financial issues of the Association states as follows:
 - 1) The general cost of organizing the meetings of the Board of Members, the Congress and other activities, including symposia, workshops, and seminars, shall be financed primarily by the equal contribution of members. However, the share of this contribution can be differentiated depending on the respective capabilities of members as decided by the Board of Members;

- 2) The host member shall be responsible for the costs of the secretariat of the Association;
 - 3) The Board of Members may require observers to pay a fee to contribute to the costs of organising the Congress. This fee shall be fixed in light of the costs incurred with respect to the service provided to observers, taking into account the contribution paid by members;
 - 4) Acceptance of all types of financial contributions from third parties shall be subject to prior approval by the Board of Members;
 - 5) The member organising the Congress shall draw up a budget for the Congress, which shall be submitted for the approval of the Board of Members insofar as is possible not later than six months before the opening of the Congress.
 - 6) The final settlement is effected after the end of the Congress on the basis of a final statement of account drawn up by the member organising the Congress.
- b. Furthermore, Article 24 regarding Financial Contribution of Members states in section 1 that Members shall bear their own travel and accommodation expenses and in section 2 that the general costs of organising the meetings of the Board of Members and the Congress are as follows:
- 1) rental of the premises;
 - 2) printing costs;
 - 3) costs of the translation of written documents;
 - 4) interpretation costs;
 - 5) administrative overheads; and
 - 6) costs of local transportation;
- and in section 3 that The Board of Members decides whether and how far the following costs may be part of the general costs of organising the meetings of the Board of Members and the Congress:
- 1) costs of food;
 - 2) costs of any recreational events;

- 3) specific costs of providing an internet site for the Association; and
 - 4) costs of specific security measures;
- c. Based on this provision, all Secretary-Generals are expected to inform their heads of institution that this matter will be discussed during the Board of Members Meeting in August 2015

6. Any Other Business

This section aims to discuss any other topics deemed necessary by the participants. For example, the possibility of amending the Statute regarding the enhancement of the role of the secretary-generals in implementing decisions of the Association.

B. Technical Preparation for the Board of Members Meeting

1. In accordance with Article 15 Sub-Article 1 of the AACC Statute stating that the Board of Members shall insofar as is possible hold at least one meeting between the Congress dates and, in principle, on the day preceding the opening of the Congress, Indonesia, as President of the Association will hold a Board of Members Meeting in Jakarta on 14th August 2015;
2. Participants of said meeting will be the Presidents or Heads of the constitutional courts and equivalent institutions with member status, each accompanied by the Secretary-General, or where appropriate, a member of the institution or of its secretariat, as stated in Article 12 of the AACC Statute.
3. Specific arrangements for the meeting in August 2015 will be as follows:
 - a. Accommodation
 - 1) Accommodation will be arranged by the Host based on the information provided in the participants' registration forms.
 - 2) The Constitutional Court of Indonesia will provide the following rooms for each member:
 - a) 1 room for each of the Presidents or Heads of Delegation and spouse,
 - b) 2 rooms for other members of the delegation up to a total of four people.
 - 3) Accommodation is available for the duration of both the Board of Members Meeting and the ensuing International Symposium.

b. Transportation

- 1) The Constitutional Court of Indonesia will provide airport transfers for all participants arriving in Soekarno Hatta airport and for participants departing from the hotel to Soekarno Hatta airport, as well as any local transport related to the event.
- 2) Any other transportation costs arising from travel outside the framework of this program will be borne by the participants, including the arrangement and payment of the international airfares.

4. Further details and arrangements are listed under the attached Logistic Note.

C. International Symposium on Constitutional Complaint

1. The international symposium will be held in Jakarta on 15th-16th August 2015 as a part of the events celebrating the 12th Anniversary of the Constitutional Court of the Republic of Indonesia;
2. Participants of the symposium will be Members of the Association of Constitutional Courts and Equivalent Institutions and guests consisting of representatives of Judiciary Institutions from approximately 35 countries as well as Indonesian government officials and academics from local universities;
3. Selected members of the Association are also expected to give presentations during the symposium based on their experience in dealing with constitutional complaint;
4. The international symposium will be preceded by a plenary session with keynote speakers the President of the Republic of Indonesia and the Chief Justice of The Constitutional Court of Indonesia;
5. The international symposium will then be divided into 3 sessions focusing on 3 sub-topics as follows:

a. Constitutional Complaint as an instrument for Protecting Fundamental Rights of Citizens.

The focus of discussion in the second session will be on the functions and benefits of constitutional complaint mechanisms in the participants' respective countries. In this session, representatives of the participating institutions will explain constitutional complaint cases that have been deliberated upon related to the protection of fundamental rights or constitutional rights of citizens.

b. Comparative Perspective on Constitutional Complaint.

The focus of discussion in this sub-topic includes but is not limited to the background of the establishment of constitutional complaint mechanisms, accesses and objects of constitutional complaint, filters for constitutional complaint cases, time limits of constitutional complaint petitions, exhaustion of remedies, processes and stages of court hearings, deadlines for deciding on cases, and the legal consequences of verdicts.

c. Problems and Challenges in Dealing with Constitutional Complaint Cases.

In the last session, participants will discuss real issues and challenges faced by the Constitutional Courts of their countries in implementing the authority of constitutional complaint mechanisms. Problems that may be discussed, amongst others, are the overburdening cases submitted to the Constitutional Court, potential of institutional conflicts in examining the verdicts of Supreme Courts or general courts, the negligence of constitutional complaint verdicts that are against the interests of governments or corporations, and the lack of support from organisational structures and experts in handling cases of constitutional complaint. The participants are also expected to share their views regarding present and prospective constructive measures taken to overcome the problems and challenges that have been faced.

ANNEX V

LOGISTIC NOTE FOR THE MEETING OF THE BOARD OF MEMBERS AND INTERNATIONAL SYMPOSIUM

1. VENUE DETAILS

Fairmont Hotel Jakarta

Jl. Asia Afrika No.8, Gelora Bung Karno, Senayan,
Kebayoran Baru, Jakarta Selatan
DKI Jakarta 10270
Telepon:(021) 29703333



For registration of the participants, please kindly submit the complete registration form as attached to the Letter of Invitation by email to humas@mahkamahkonstitusi.go.id or by fax to **+62 (21) 351 24 56** before July 15, 2015.

2. VISAS REQUIREMENTS

Please see Annex I to check if you need a visa to enter Jakarta, Indonesia.

If you need a visa, please make the necessary arrangements as soon as possible by contacting the nearest Indonesian Embassy/Consulate. For the list of Indonesian Embassies and Consulates, please visit: <http://www.kemlu.go.id/Pages/Mission.aspx?l=en>.

Please note that you may need a transit visa if you will be traveling via another country, even if you do not need a visa to enter Indonesia.

All passports must be valid for a minimum of six months from the date of entry into Jakarta and have at least two blank pages available for stamps.

As the above information is subject to change, you are advised to verify these details with the relevant diplomatic mission in your country of residence before your departure.

Please contact the organizers if you require additional documentation for your visa application.

3. DRESS CODE

The dress code for all programs during the Board of Member Meeting and International Symposium from August 14-17, 2015 will be office attire/business suit.

4. HOTEL ACCOMMODATION

Fairmont Hotel Jakarta

Jl. Asia Afrika No.8, Gelora Bung Karno, Senayan,

Kebayoran Baru, Jakarta Selatan

DKI Jakarta 10270

Telepon:(021) 29703333

Check-in : 1.00pm,

Check-out : 12.00pm

Accommodation will be arranged by the Host based on the information provided in the participants' registration forms.

The Organizer will provide 1 room for each of the Presidents or Head of Delegation of the members of the Association of the Asian Constitutional Courts and Equivalent Institutions and 1 additional share room for 2 other delegates. Accommodation is available for 4 nights (14th, 15th, 16th & 17th August 2015) at **Fairmont Hotel Jakarta**. Accommodation includes breakfast at the hotel.

Please kindly be advised that the organizer will cover only room charges. All other incidentals (such as overseas telephone calls, telegrams and faxes, room service, laundry and mini-bar charges, and costs for accompanying persons, including any additional surcharge for double room) will be borne by the participants upon check-out.

Room charges due to check-in process prior to 14 August 2015 and/or extension beyond 17 August 2015, will be at the participants own expense. However, extended stay due to unavailability of flights will be covered by the organizer, as necessary. Please kindly inform the registration for such arrangement.

Please note that while every effort will be made to accommodate requests for an early check-in time/ or late check-out, we will not be able to guarantee that this service will be available.

5. LOCAL TRANSPORTATION

The organizer will provide airport transfers for all participants *arriving* in Soekarno Hatta airport and for participants *departing* from the hotel to the airport, as well as any local transport related to the event. More information about the airport transfers will be advised prior the meeting.

Any other transportation costs arising from travel outside the framework of this program will be borne by the participants, including the arrangement and payment of the international airfares or other transport costs incurred.

6. MEALS (including information for those with special dietary requirements)

The organizer will provide all meals mentioned in the Meeting programme. For any of special dietary needs, please inform the organizer in advance.

7. FIRST AID MEDICAL TREATMENT (in emergency situation)

In case of emergency, the organizer will provide medical facilities at the hotel venue including ambulance car. Such facilities are intended to provide first aid medical treatment only; for serious illness that may require additional treatment or facilities, the organizer may refer to the hospital nearby. It is advised that all participants have their health insurance with them.

8. INDEPENDENCE DAY NATIONAL CEREMONY

The organizer will arrange all Heads of Delegation to attend National Ceremony to commemorate the independence day of the Republic of Indonesia at the Presidential Palace on 17 August 2015. Members of delegation will have a free session at the hotel. Further information will be available prior to the meeting.

9. GENERAL INFORMATION

Capital of the Republic of Indonesia, Jakarta is one of the world's largest cities with an area of 661 square kilometers (255 sq mi). Jakarta is an autonomous province consisting of five municipalities, namely: Central Jakarta, North, West, East and South Jakarta and the District of Pulau Seribu or the Thousand Islands.

For more information: <http://www.jakarta-tourism.go.id/>

Climate

May is usually sunny and humid in Jakarta. Rain showers may occur. The average temperature is around 27 – 32 degrees Celsius.

Time zone

Jakarta is in the Indonesia Western Time Zone (WIB) (UTC/GMT +7 hours).

International dialling codes

The country code for Indonesia is 62. The area code for Jakarta is 021.
To make an international phone call, dial 00 + country code + phone number.

Cellular Communication

The local SIM card in Indonesia uses GSM. Participants can buy SIM cards at the airport, or can contact our officers to assist you.

Electricity supply

The main voltage for electricity is 220V. Central European type wall socket (two-pin plugs) is standard in Indonesia.



Currency, banking, credit cards and ATMs

The official currency in Indonesia is the Indonesian Rupiah (IDR/Rp.) available in the following denominations: banknotes: Rp. 2,000, Rp. 5,000, Rp. 10,000, Rp. 20,000, Rp. 50,000, and Rp. 100,000. Cash can usually be exchanged at exchange offices (Money Changers), banks and hotels. Cash transaction uses only the Indonesian Rupiah as the local currency.

As of 20 April 2015, the exchange rate of 1 USD is Rp. 12,811 and 1 Euro is Rp. 13,834.60. Banking hours are generally from 08:00 to 15:00, Monday to Friday.

Cash machines (ATMs) are available throughout Jakarta, accepting major credit and bank cards and instructions are available in English.

Airport Tax

There will be the airport tax of Rp. 150,000 (approximately USD 15,-) upon departure from Soekarno Hatta International airport. This tax is payable in Rupiah (IRD/Rp.) only.

10. CONTACT POINTS

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ANNEX I

No.	Countries	Diplomatic Passport		Service/ Official Passport		Regular Passport	
		Visa Requirement		Visa Requirement		Visa Requirement	
		Yes	No	Yes	No	Yes	No
	Afghanistan		X		x	x	
	Azerbaijan		X		x	x	
	Kazakhstan		X		x	x	
	Republic of Korea		X		x	x	
	Malaysia		X		x		x
	Mongolia		X		x	x	
	Pakistan		X		x	x	
	Republic of the Philippines		X		x		x
	Russian Federation		X		x		x
	Republic of Tajikistan	x		x		x	
	Kingdom of Thailand		X		x		x
	Republic of Turkey		X		x	x	
	Republic of Uzbekistan	x		x		x	

ANNEX VI



Кыргыз Республикасы, Бишкек шаары,
720040, Эркиндик проспекти, 39
тел.: + 996(312) 62 16 11; факс: 62 20 40

Кыргызская Республика, г. Бишкек,
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Иск. № 05-5/674

"18" 06 2014 ж.г.

**Board of members
of the Association of Asian
Constitutional Courts
and Equivalent Institutions**

Application for admission

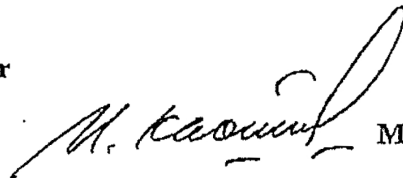
Association of Asian Constitutional Courts and Equivalent Institutions is an independent, non-political organization whose main objectives are symposia on state and constitutional jurisdiction, facilitating the exchange of experience and technical assistance to strengthen the independence of constitutional courts.

In this regard, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic expresses its intention to become a member to the Association of Asian Constitutional Courts and Equivalent Bodies.

Please, consider this as an appropriate application for admission.

Sincerely,

**President
of the Constitutional Chamber
of the Supreme Court
of the Kyrgyz Republic**

 M. Kasymaliev

КЫРГЫЗ РЕСПУБЛИКАСЫНЫҢ
ЖОГОРКУ СОТУНУҢ
КОНСТИТУЦИЯЛЫК ПАЛАТАСЫ



КОНСТИТУЦИОННАЯ ПАЛАТА
ВЕРХОВНОГО СУДА
КЫРГЫЗСКОЙ РЕСПУБЛИКИ

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Иск. № 05-5/442

" 09 " 07 2014 ж.г.

Mr. Hamdan Zoelva
President
of the Association of Asian
Constitutional Courts
and Equivalent Institutions

President
of the Constitutional Court
of the Republic of Indonesia

Dear President,

I would like to express you my deep respect, and also noted that Constitutional Chamber accepts the terms of the Statute of Association of Asian Constitutional Courts and Equivalent Institutions and has the intention to become a member of the Association.

Please find our application for admission attached.

Yours Sincerely,

President
of the Constitutional Chamber

M. Kasymaliev

Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic

Adopted by the Jogorku Kenesh of the Kyrgyz Republic on May 12, 2011

SECTION I STATUS AND ORGANIZATION OF ACTIVITY 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 the highest 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

1. The organization, competence, composition, procedure of formation, election and dismissal of the Chairman and deputy chairman 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.
2. Consideration and decision making on matters within the competence of the Constitutional Chamber shall be performed in accordance with the constitutional proceedings defined in the Constitution and the present constitutional law.
3. The status, guarantees of independence, procedure of liability, suspension and dismissal of the judges of the Constitutional Chamber shall be defined in the constitutional and other laws.

Article 4. Competencies of the Constitutional Chamber

1. The Constitutional Chamber shall:

- 1) in the event of contradiction of laws and other normative regulatory acts with the Constitution declare them unconstitutional;
- 2) make its pronouncement on constitutionality of international agreements which have not entered into force for the Kyrgyz Republic;

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 the expert, scientific and consultative activity.

3) make an annual analysis of the execution of acts adopted by the Chamber and make it available to the general public by way of publication.

CHAPTER 2

COMPOSITION AND ORGANIZATION OF ACTIVITY OF THE CONSTITUTIONAL CHAMBER

Article 5. Composition of the Constitutional Chamber

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

2. The judges of the Constitutional Chamber shall be elected pursuant the procedure 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).

Article 6. 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 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.

Article 7. 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 the position of a judge 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 temporarily performed by a judge of the Constitutional Chamber to whom these duties were assigned by the meeting of judges of the Constitutional Chamber.

Article 8. 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 therein and persons present;
- 7) ensure overall guidance of the Administration of the Constitutional Chamber, appoint and dismiss from office 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 for approval of the Chamber;
- 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 9. 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.

Article 10. Secretary judge of the Constitutional Chamber

The secretary judge of the Constitutional Chamber 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 decisions 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 11. Independence

1. The Constitutional Chamber is independent and shall be subject to the Constitution, the present constitutional law and the Rules of Procedure of the Constitutional Chamber.
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 12. 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.

The Constitutional Chamber shall perform its activity provided at least two thirds of the total number of judges of the Constitutional Chamber are present or by panels composed of three judges in cases envisaged in the present Constitutional law.

Composition and procedure of panel formation shall be defined in the Rules of Procedure of the Constitutional Chamber.

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 or in the event of positive decision on self-recuse or recusation in accordance with the procedures of the present constitutional law.

Article 13. 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 sittings.

3. Judgments and pronouncements of the Constitutional Chamber shall be announced in public.

Article 14. 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 shall have the right to announce the documents presented.

Article 15. Language of constitutional proceedings

1. Constitutional legal proceedings are conducted in the state language. Upon motion of the participants in the process the proceedings may be conducted in the official language.

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 16. 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 in the event the presence of such judge is needed for ensuring the quorum.

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 quitted judge from deliberations and adoption of a judgment or pronouncement.

6. During the deliberations of the Constitutional Chamber no judge participating in the sitting 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 17. 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 18. 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 which have not entered into force for the Kyrgyz Republic;
- 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 claims in respect of issues within the competence of the Constitutional Chamber.

Article 19. 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, in making its pronouncement to the draft law on changes to the Constitution, shall determine whether it corresponds to the following:

- 1) fundamental rights and freedoms of a man and citizen and admissibility of their restriction;

- 2) principles of a democratic and secular state based on the rule of law;
- 3) the procedures of changing the Constitution envisaged in article 114 thereof.

4. The Constitutional Chamber shall deliver its acts only on subjects dealt upon in the petition and in respect of such part of a normative legal 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 20. Subjects of appeal to the Constitutional Chamber

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

1) a private person (persons) or a legal entity (entities) in case they believe that the laws or other normative regulatory acts violate their rights and freedoms recognized in the Constitution;

2) the Jogorku Kenesh;

3) a faction (factions) of the Jogorku Kenesh;

4) the President;

5) the Government;

6) the Prime Minister;

7) a judge (judges) of the Kyrgyz Republic;

8) bodies of local self-governance;

9) the Prosecutor General;

10) the Akyikatchy (the Ombudsman).

2. Agencies and officials listed in paragraphs 2-6 and 8-10, part 1 of this article shall submit to the Constitutional Chamber petitions in the form of presentments, other persons shall submit motions and a judge (judges) shall submit requests.

In the event of appeal to the Constitutional Chamber on the issues of competence, agencies and officials listed in paragraphs 2-6, 8-10, part 1 of this article may submit presentments only to the extent of their competence.

Article 21. 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 subjects listed in part 1 article 20 of the present constitutional law.

Article 22. The right to appeal on expressing a pronouncement on the constitutionality of international agreements, which have not entered into force for the Kyrgyz Republic

The right to submit a petition on giving the pronouncement on the constitutionality of international agreements which have not entered into force for the Kyrgyz Republic shall be assigned to subjects listed in paragraphs 2-6, part 1, article 20 of the present Constitutional law.

Article 23. 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 subjects listed in paragraphs 2-5, 10, part 1, article 20 of the present Constitutional law.

CHAPTER 6

APPEAL TO THE CONSTITUTIONAL CHAMBER

Article 24. 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 concordance with the Constitution of a law, other normative regulatory act, an international agreement which has not entered into force for the Kyrgyz Republic or a draft law on changes to the Constitution.

Article 25. 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 26. Documents to be attached to the petition

The following documents should be attached to the petition:

- 1) copy of the text of a normative legal 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 27. Registration of petitions sent to the Constitutional Chamber

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

CHAPTER 7

ACCEPTANCE OF A PETITION FOR PROCEEDING, PREPARATION OF A CASE FOR CONSIDERATION AND CONSIDERATION OF CASES IN THE CONSTITUTIONAL CHAMBER

Article 28. Acceptance of a petition for proceeding

1. The petition received by the Chairman of the Constitutional Chamber shall be transferred to panel of three judges of the Constitutional Chamber to decide on acceptance thereof for proceeding, such decision shall be made within thirty working days since the date of registration.

2. The verification of the petition and the documents attached thereto shall be entrusted to one of judges – members of the panel. The decision on acceptance of the petition for proceeding or on refusal to accept shall be made by the majority vote of the panel members.

In case of acceptance of petition for proceedings the judge to whom the verification was entrusted, hereinafter referred to as reporting judge, shall prepare the case for the sitting, in the event of refusal the materials are returned to the applicant.

3. A panel shall refuse to accept the petition for proceeding:

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 for proceeding of a petition on the constitutionality of international agreements which have not come into force for the Kyrgyz Republic shall result in the suspension of the process of entry into force of contested international agreements until the completion of case consideration in the Constitutional Chamber.

Article 29. 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 five months since the day of its acceptance for proceedings. Upon the decision of the chairman of the Constitutional Chamber this time period may be prolonged for one month.

Article 30. Preparation of a case for consideration

1. A reporting judge is obliged within two months period 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;
- 2) question the parties;
- 3) makes a decision on solicitation of necessary documents and other information relevant for the case;
- 4) question relevant official and other persons;
- 5) in case of necessity 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 ten 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 31. Participants in the constitutional legal proceedings

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

Article 32. 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 bodies, whose presentments or motions were accepted for proceeding;

2) the defendant party shall mean a body or officials who published or signed a normative legal 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 a party 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 shall have the right 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 33. 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 34. 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 35. Participation of other persons on certain issues of law, considered by the Constitutional Chamber

1. Private persons and legal entities, state agencies, public associations and international organizations have the right to present their written explanations, arguments and considerations on certain issues of law, reviewed by the Constitutional Chamber in a concrete case. The Constitutional Chamber, however, shall not be bound by their arguments and considerations.

2. Written explanations, arguments and considerations of subjects, listed in part one of this article, shall contain a list of issues of law which these subjects desire to highlight as well as information confirming their competence in these issues.

The reporting judge shall have the right to apply to the subjects listed in part one of this article at his/her own initiative.

Article 36. Self-recuse and recusation of a judge (judges)

A judge of the Constitutional Chamber should announce the self-recuse at any stage of constitutional proceedings 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 other personal relations to the parties in the proceedings;
- 3) in the event that there are other forcible circumstances which may influence his / her impartiality and neutrality.

On the same grounds the parties may request the recusation of a judge (judges).

2. Upon motion of the parties and in the event of circumstances listed in part 1 of this article, the Constitutional Chamber shall make a motivated decision on recusation after hearing the judge whose recusation should be decided upon.

Recusation (self-recuse) of a judge (judges) shall not be allowed in the event that this will result in the violation of the quorum for the consideration of the case and the Constitutional Chamber shall make a decision on that.

Article 37. 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 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 38. 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 necessity to have a closed sitting on the case shall be subject to a motivated decision, such decision shall be announced publicly before the sitting.

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 39. 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 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 of the sitting the Constitutional Chamber shall fix the date to which the sitting is transferred.

Article 40. 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, such period should not last for more than three months, 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.

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, the Constitutional Chamber shall issue a ruling and notify the persons participating in the case.

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

Article 41. 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 successor.

2. The decision on terminating the proceedings on the case shall be made in the Constitutional Chamber by the majority vote of judges participating in the sitting.

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.

Article 42. 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 articles 7 and 9 of the present constitutional law.

2. Before commencement of consideration of the merits 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 or distributed for review. Documents which cause concern in terms of their authenticity, shall be not subject to announcement and review. 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 43. Resumption of consideration of an issue

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 or consider new evidence, then it adopts a decision on resumption of the issue.

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 44. 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:
 - 1) the venue and time of the sitting;
 - 2) the name of the case;
 - 3) the panel of judges considering the case;
 - 4) the secretary of the sitting and on each participant in the proceedings;
 - 5) witnesses and experts;
 - 6) explanations of parties;
 - 7) evidence from witnesses, opinions of experts, questions asked to them and answers given by them;
 - 8) every action which took place during the proceedings in their order;
 - 9) 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 materials 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 45. 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 rates for each case of violations, which are represented in the following:

- 1) intervention in the procedural actions of the Chamber, exerting influence on the judge;
- 2) 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;
- 3) non-attendance without good reason or failure to notify the Constitutional Chamber on the reasons of non-attendance;
- 4) 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;
- 5) willful violation of the sequence of speeches by the participants in the sittings;
- 6) 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 or failure to observe the deadline for payment 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 46. 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 paragraph 1 part 6 article 97 of the Constitution, the Constitutional Chamber shall adopt a judgment, in respect of the competencies envisaged in paragraphs 2 and 3 of part 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 47. 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 are 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 48. 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 legal act, the constitutionality of which was verified, indicating the source of publication or receipt;
- 9) the normative legal 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 49. 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 or 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.

Dissenting opinion of a judge shall be attached to the materials of the case and shall be published simultaneously with the act of the Constitutional Chamber in the same publication where such act is to be printed.

Article 50. 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 51. 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 except those related to acceptance of a petition for proceeding or refusal to do so. 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 legal act or part thereof shall not be superseded by a repeated adoption of the same normative legal 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 decision shall oblige relevant state agencies and officials thereof to align to the Constitution and the acts of the Constitutional Chamber normative regulatory acts which were adopted by them and which were based on the above documents except for judicial acts. Before the alignment or cancellation thereof the Constitution and the decisions of the Constitutional Chamber 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 52. 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 legal 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.

Failure to execute, improper execution or obstruction to the execution of judicial 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 53. 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. These circumstances however 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 54. 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 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 55. 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:

- 1) ensure staffing, organizational, scientific and analytical, informational and reference, material and technical as well as other support to the Constitutional Chamber;
- 2) receive visitors on matters not related to the constitutional legal proceedings;
- 3) 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;
- 4) assist the judges in the preparation of cases and other matters for the consideration at the sittings and meetings;
- 5) study and summarize the activity of the state agencies in ensuring the implementation of acts adopted by the Constitutional Chamber;
- 6) perform other activity within its competence.

Article 56. 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 57. Symbols of judicial powers of the Constitutional Chamber

The court room of the Constitutional Chamber shall have displayed the state emblem of the Kyrgyz Republic, the state flag of the Kyrgyz Republic 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 58. 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 59. 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 60. 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 61. Period of formation of the Constitutional Chamber

1. The full membership of the Constitutional Chamber shall be formed no later than sixty 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 of the Kyrgyz Republic, 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 of the Kyrgyz Republic for 2010.

Article 62. 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);

- The law of the Kyrgyz Republic "On constitutional legal proceedings of the Kyrgyz Republic" (Bulletin of the Jogorku Kenesh of the Kyrgyz Republic, 2009, No 7, page 745).

Rosa Otunbaeva,
The President of the Kyrgyz Republic

SECTION VI JUDICIAL POWER IN THE KYRGYZ REPUBLIC

Article 93

1. Justice in the Kyrgyz Republic shall be administered only by a court.

In cases and under the procedures envisaged in the law, the citizens of the Kyrgyz Republic shall have the right to participate in the administration of justice.

2. Judicial power shall be exercised by means of constitutional, civil, criminal, administrative and other forms of legal proceedings.

3. The judicial system of the Kyrgyz Republic shall be defined in the Constitution and laws and shall consist of the Supreme Court and local courts.

The Constitutional Chamber shall act as part of the Supreme Court.

Specialized courts may be established by the law.

Creation of extraordinary courts shall not be permitted.

4. The organization and procedures of courts shall be defined by law.

Article 94

1. Judges shall be independent and subordinate only to the Constitution and laws.

2. A judge shall enjoy the right of immunity and may not be detained or arrested, subjected to search or personal inspection, except for cases when he/she is caught in the act.

3. No one shall have the right to demand a report from a judge on a given court case.

Any interference in the administration of justice shall be prohibited. Persons found guilty of influencing upon a judge shall be liable in accordance with the law.

4. A judge shall be provided with social, material and other guarantees of his independence in accordance with his/her status.

5. Any citizen of the Kyrgyz Republic who is not younger than 40 years of age and not older than 70 years of age and has a higher legal education and not less than 10 years of experience in the legal profession may be a judge in the Supreme Court.

6. Judges of the Supreme Court shall be elected until they reach the age limit.

7. The judges of the Supreme Court shall elect from amongst them the Chairperson of the Supreme Court and his/her deputies for the term of three years.

One and the same person may not be elected Chairperson of the Supreme Court or deputy chairperson for two consecutive terms.

The procedure of electing and dismissing of the Chairperson of the Supreme Court and his/her deputies shall be defined by law.

8. Any citizen of the Kyrgyz Republic who is not younger than 30 years of age and not older than 65 years of age, has higher legal education and not less than 5 years of experience in the legal profession may be a judge in a local court.

Judges of local courts shall be appointed by the President upon submission of the Council on selection of judges for an initial term of 5 years and, for subsequent terms, until they reach the age limit. The procedure of nomination and appointment of judges shall be defined in the constitutional law.

The assembly of judges of a local court shall elect from among them the chairperson and deputy chairperson of court for the term of three years.

One and the same person may not be elected the chairperson or deputy chairperson of a local court for two consecutive terms in one and the same court.

9. The status of judges of the Kyrgyz Republic shall be defined by the constitutional law, which may impose additional requirements towards the candidates to the positions of judges of the Supreme Court and local courts.

Article 95

1. Judges of all courts of the Kyrgyz Republic shall hold their posts and retain their prerogatives as long as their conduct is irreproachable. The violation of the requirements of irreproachability of the conduct of judges shall serve the basis for bringing such judge to account in accordance with the procedure envisaged in the constitutional law.

2. Judges of the Supreme Court may be dismissed early from their office by the majority of not less than two-thirds of the total number of deputies of the Jogorku Kenesh upon submission of the President based on the proposal of the Council of judges.

3. In the event of death of a judge or him being declared dead or missing, legally incapable, loss of citizenship, withdrawal from citizenship or acquisition of another citizenship, the powers of the judge shall be terminated by the body which elected or appointed him, from the date of emergence of grounds in accordance with the constitutional law.

4. Selection of candidates for the position local court judge, submissions for their nomination and transfer (rotation) shall be done by the Council on selection of judges in accordance with the procedure envisaged in the constitutional law.

5. The removal and dismissal from office of judges in local courts shall be carried out by the President upon submission of the Council of Judges in cases and in accordance with the procedure set forth in the constitutional law.

6. Administrative and criminal action against judges of all courts of the Kyrgyz Republic may be brought in a judicial proceeding upon the consent of the Council of Judges in accordance with the procedures envisaged in the constitutional law.

7. The Council on selection of judges is composed of judges and representatives of the civil society.

The Council of Judges, the parliamentary majority and the parliamentary opposition correspondingly shall elect one third of the composition of the Council on selection of judges.

8. The organization and procedure of the Council on selection of judges, its powers and rules of formation shall be defined by the law.

Article 96

1. The Supreme Court shall be the highest body of judicial power in respect of civil, criminal, administrative as well as other cases; it shall revise the court rulings of local courts upon appeals of the participants in the judicial process in accordance with procedures established by the law.

2. The Plenum of the Supreme Court composed of the Chairperson and collegium of the Supreme Court shall give explanations on issues of court practice.

3. The rulings of the Supreme Court shall be final and not subject to appeal.

Article 97

1. The Constitutional Chamber of the Supreme Court shall be a body which shall perform constitutional oversight.

2. Any citizen of the Kyrgyz Republic who is not younger than 40 years of age and not older than 70 years of age, has higher legal education and not less than 15 years of experience in legal profession may be the judge of the Constitutional Chamber of the Supreme Court.

3. The judges of the Constitutional Chamber of the Supreme Court shall elect the chairperson and deputy chairperson from amongst them for the term of 3 years.

4. One and the same person may not be elected the chairperson or deputy chairperson of the Constitutional Chamber of the Supreme Court for two consecutive terms.

5. The judges of the Constitutional Chamber of the Supreme court may be subject to early dismissal from their posts by the Jogorku Kenesh by the majority of not less

than two thirds of votes of the total number of the deputies of the Jogorku Kenesh upon submission of the President on the basis of proposal of the Council of judges.

6. The Constitutional Chamber of the Supreme Court:

1) shall declare unconstitutional laws and other regulatory legal acts in the event that they contradict the Constitution;

2) shall conclude on the constitutionality of international treaties not entered into force and to which the Kyrgyz Republic is a party;

3) shall conclude on the draft law on changes to the present Constitution.

7. Everyone shall have the right to challenge the constitutionality of a law or another regulatory legal act in case he/she believes that these acts violate rights and freedoms recognized in the Constitution.

8. The ruling of the Constitutional Chamber of the Supreme Court shall be final and shall be not subject to appeal.

9. In the event that the Constitutional Chamber of the Supreme Court determines unconstitutionality of laws or provisions thereof, such laws shall be repealed on the territory of the Kyrgyz Republic, the same applies to other regulatory legal acts based on such laws and provisions thereof declared unconstitutional with the exception of court rulings.

10. Court rulings based on provisions of laws declared unconstitutional, shall be revised by courts in each concrete case upon appeals of citizens whose rights and freedoms were affected.

11. The composition and the procedures of formation of the Constitutional Chamber of the Supreme Court, election and dismissal of chairpersons, deputy chairpersons of the Constitutional Chamber as well as the procedure of administering constitutional justice shall be defined in the constitutional law.

Article 98

1. The State shall ensure funding and appropriate conditions for the functioning of courts and the activities of judges.

The funding of courts shall be at the expense of the republican budget and should ensure the possibility of full and independent administration of justice.

2. The budget of the judicial system shall be drawn up independently by the judiciary and shall be included in the republican budget upon agreement with the executive and legislative branches of power.

Article 99

1. The cases in all courts shall be heard in an open manner. The hearing of a case in closed session shall be permitted only in cases provided for in the law. The decision of the court shall be announced publicly.
2. Trial in absentia in criminal or other cases in courts shall not be permitted except in the cases provided for by the law.
3. Judicial proceedings shall be administered on the basis of the adversarial principle and equality of the parties.
4. A judicial act may be annulled, changed or suspended by a court under the procedure established by law.
5. The procedural rights of parties in the process including the right to appeal against decisions, verdicts and other judicial acts as well as the procedure for exercising those rights shall be defined by law.

Article 100

1. Acts of courts of the Kyrgyz Republic which have entered into legal force shall be binding for all state authorities, local self governance bodies, legal entities, public associations, officials and private persons and shall be enforceable throughout the territory of the Republic.
2. Failure to implement, improper implementation or hindering of implementation of judicial acts and also interference with the activities of courts shall incur liability established by the law.

Article 101

1. A court shall not have the right to apply a legal and regulatory act which is in contradiction with the present Constitution.
2. In the event that during examination of a case in any judicial instance, there arises a question concerning the constitutionality of the law or other legal and regulatory act on which ruling of the case shall be based, the court shall send an inquiry to the constitutional Chamber of the Supreme Court.

Article 102

1. Judicial self regulation shall be used to resolve internal issues concerning the activities of judges.
2. The bodies of judicial self regulation in the Kyrgyz Republic shall be the Congress of judges, the Council of judges and the assembly of judges.

The Congress of judges shall be the superior body of judicial self regulation.

The Council of judges shall be the elected body of judicial self regulation which shall perform its functions between the Congresses of judges, shall protect rights and legal interests of judges, shall oversee over the formulation and execution of the budgets of courts, organization of training and re-training of judges, shall consider issues of disciplinary proceedings against judges.

The assembly of judges shall be the primary body of judicial self regulation.

3. The organization and procedures of judicial self regulation bodies shall be defined in the law.

Article 103

Justice shall be administered free of charge in cases provided for in the law as well as in all cases where the parties to judicial proceedings submit proof that they do not have sufficient means to conduct them.

ANNEX VII

CONCEPT NOTE OF THE INTERNATIONAL SYMPOSIUM ON CONSTITUTIONAL COMPLAINT

1. One of the important powers in protecting fundamental rights of citizens by the Constitutional Court in many countries is the constitutional complaint. Victor Comella (2004) defines the constitutional complaint as a complaint to the Constitutional Court by individuals who feels their fundamental rights or constitutional rights have been violated by public officials. Under certain conditions, for example in Germany, the constitutional complaint may also be filed by the local government under the right to run its own government.
2. In general, Gerhard Dannemann (1994) stated that the characteristics to categorize the mechanism of constitutional complaint is determined by at least four factors; (1) the availability of legal efforts on constitutional rights violation; (2) the separate process for the examination of constitutional cases from other general legal issues; (3) the application is filed by individuals who directly affected by public officials' offenses; and (4) the court which decide the case of constitutional complaint has the authority to rehabilitate victims' rights.
3. The limitation for the constitutional complaint mechanism generally applied in many countries is that the petition can only be examined by the Constitutional Court when all possible legal remedies have been exercised (exhausted). In addition, all possibilities to restore or prevent the occurrence of violations on the Constitution should also have been carried out previously. Nevertheless, despite the constitutional complaint being generally understood by many academics or state officials, there are numerous differences in the provision and implementation of constitutional complaint mechanism in different countries. Each country set different objects for constitutional complaint; ranging from merely public official offenses, the constitutionality of legislation products, to the general court verdicts. Of all those differences, I Dewa Gede Palguna (2011) concluded that the Constitutional Court only examine the conformity between constitutional complaint objects and the Constitution, whereas the assessment of legal issues and other facts remain under the authority of general court to decide upon. Thus, so long as there is no violation on the fundamental rights or constitutional rights, the Constitutional Court is bound to the verdict of general court.

4. The terms used for constitutional complaint also vary in many countries. In Western Europe, for example, the Constitutional Court of Austria use the term *Individualbeschwerde*, the Federal Constitutional Court of Germany use the term *Verfassungsbeschwerde*, and the Constitutional Court of Spain use the term *recurso de amparo*. The mechanism of constitutional complaint is also known in the Eastern European countries, such as Hungary, Croatia, Poland, the Czech Republic, Russia, and Ukraine. Outside the Europe, the mechanism of citizens' constitutional rights protection which resembles constitutional complaint is also known in the Africa and Asia countries, such as South Africa, Azerbaijan, South Korea, Thailand, and Turkey. Meanwhile, South American countries are more familiar with constitutional complaint mechanism in term *juicio de amparo* or *writ of amparo*, such as in Chile, Colombia, Ecuador, Meksico, and Venezuela. In a conference organized in 2013 in Peru, the Venice Commission used a more general term, namely the Individual Access to Constitutional Justice.

5. The vast numbers of countries which apply the constitutional complaint mechanism also bring effect on development on of the constitutional rights enhancement discourses in countries which are yet to have the mechanism. Academic studies and researches on the constitutional complaint are on the rise, namely in France, Italy, Lithuania, Macedonia, and also in Indonesia. Such countries which do not have the constitutional complaint mechanism might consider the experience of other countries which had previously applied in order to find a model that suits their own needs. In terms of support provided to handle the cases, for example, such countries could observe the handling of constitutional complaint cases run in Germany and South Korea. With 16 judges, The Federal Constitutional Court of Germany on annual average receive more than 6,000 constitutional complaint petitions from a population of 80 million people. While the South Korean Constitutional Court which has 9 justices, could receive around 1,000 constitutional complaint petitions every year on average from a population of 50 millions. With consideration to the number of population, number of cases, and number of Justices in the aforementioned two countries, other countries intended to adopt the authority for constitutional complaint in their Constitution Courts could apply the ideal ratio for case proceeding support. For Indonesia with a population of 250 million people, for example, the number of Constitutional Justices could be increased from 9 to 50 justices because it might be predicted that the incoming cases for constitutional complaint within one year ranges from 5,000 to 18,000 petitions. The number of petitions will also be influenced by the scope of authority. The wider its scope of authority in adjudicates constitutional complaint cases means the more petitions are expected to be received.

6. For the Constitutional Court in certain countries, the adoption of constitutional complaint authority will required an amendment to the constitution, particularly when the constitution limitedly regulates the existence of the Constitutional Court, both on its authorities and its organizational structure such as in Indonesia. One country which initially amended its constitution to accomodate the constitutional complaint mechanism is Turkey. In 2010, Turkey amended its constitution to provide more authorities and strengthen their Constitution Court structure.

7. To conduct a comparative study on constitutional law as an effort to enhance the protection of citizens' constitutional rights, particularly related to the mechanism of constitutional complaint in various countries has become ver important. The Constitutional Courts which have the constitutional complaint authority will get the benefit in improving their existing mechanism; whereas for countries which have no such mechanism, they will be able to get valuable resources for deeper discourse and discussions. It is very possible to learn that countries which have implemented the constitutional complaint authority has their complicated problems that might be anticipated. In a conference organized by the Venice Commission in Azerbaijan with the theme *Execution of the Decisions of Constitutional Courts* in 2008, for example, revealed that the execution of Constitutional Court decisions/ verdicts in some countries were still experiencing problems. In Indonesia, such execution of the Constitutional Court verdicts has not experienced a significant obstacle. Yet, should the Indonesian Constitutional Court adopts a constitutional complaint mechanism, there is no guarantee that the verdicts could smoothly be implemented, particularly in cases in which the rights of citizens should be recovered from the cooptation of political or business interests as a result of a government regulation or judicial verdict at the Supreme Court level. Thus, a mechanism to restore the victims' rights should be considered, so that they do not to put more efforts to uphold the Constitutional Court verdicts. In other words, necessary instruments are needed to ensure the execution of Constitutional Court verdicts related to the authority to adjudicate constitutional complaint cases.

8. In that context of constitutional rights protection, the International Symposium on Constitutional Complaint by the Constitutional Court of the Republic of Indonesia is very relevantly organized. Moreover, the Constitutional Court of the Republic of Indonesia as President of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) carries a duty and a responsibility to promote the strengthening of citizens' constitutional rights protection among its member states.

Consequentially, the Constitutional Court of the Republic of Indonesia could also serve as a role model for other countries in manifesting an intensive and productive international mutual relation.

9. In order to ease the discussion of constitutional complaint and to obtain the desired results, the International Symposium needs to systematically put the main theme of Constitutional Complaint into several sub-topics, as follows:

Main Topic:

“International Symposium on Constitutional Complaint”

Sub Topics:

1. *Constitutional Complaint as an Instrument for Protecting Fundamental Rights of Citizens;*
2. *Comparative Perspectives on Constitutional Complaint;;*
3. *Problems and Challenges in Dealing with Constitutional Complaint Cases.*

Plenary Session:

1. President of the Republic of Indonesia;
2. Chief Justice of the Constitutional Court of Indonesia;

Session One:

Constitutional Complaint as an Instrument for Protecting Fundamental Rights of Citizens

The focus of discussion in the second session will be on the functions and benefits of constitutional complaint mechanism in certain country. In this session, representatives of the Constitutional Court from various countries are also expected to explain the constitutional complaint cases which examined and decided related to the protection of citizens’ fundamental rights or constitutional rights. Thus, it could be observed the extent of impacts, benefits, and effectiveness of the verdicts on constitutional complaint cases in each country. This is also due

to the fact that in a comparative study on Constitution, there are some countries having a constitutional complaint mechanism but is still ineffectively exercised. It is because their Constitutions have no strict rules to guarantee the fundamental or constitutional rights of the citizens.

Session Two:

Comparative Perspectives on Constitutional Complaints

In this session, representatives of the Constitutional Court from various countries are expected to provide general or specific explanation on the rules and provisions of constitutional complaint from the perspective of each country. The focus of discussion in this sub-topics includes, but not limited to, the background of the establishment of constitutional complaint mechanism, accesses and objects of constitutional complaint, filters for constitutional complaint cases, time limit of constitutional complaint petitions, exhaustion of remedies, process and stages of court hearings, the deadline for deciding on cases, and the legal consequences of verdicts.

Session Three:

Problems and Challenges in Dealing with Constitutional Complaint

In the last session, the representatives will discuss real issues and challenges faced by the Constitutional Court of various countries in implementing the authority of constitutional complaint mechanism. Problems which could be explained, among other things, are the overburdening cases submitted to the Constitutional Court, potential of institutional conflicts in examining the verdicts of Supreme Court or general court, the negligence of constitutional complaint verdicts which are against the governments or corporations' interests, and the lack of support from organizational structures and experts in handling cases of constitutional complaint. The country representatives are also expected to share their views regarding present and prospective constructive measures taken to overcome the problems and challenges occurred.

As previously explained, there are many differences in the regulation and implementation of constitutional complaint mechanisms in different countries, it is advised that each session could comprise from representatives of different regions. For example, each sub-topic and Panel requires a representative from Africa, Latin America, Asia, Western Europe, and/or Eastern Europe, accordingly to the number

of participants. As a result, within a limited time the discussion will be more varied and depicts a comprehensive constitutional complaint mechanism. Proceedings of the International Symposium will also greatly assist the participants in reviewing the presentation and discussion presented by each delegation.

ANNEX VIII

**EVENTS OF THE
ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS
AND EQUIVALENT INSTITUTIONS**

No.	Country Name	Event	Date	Notes
1	Indonesia	International Symposium	15 – 17 August 2015	Attended by Chief Justices, Justices, and/or Secretary Generals
		Short Course	October 2015	Attended by Secretary General/Staff of Constitutional Court or the Equivalent Institutions
2	Kazakhstan	Anniversary of Constitution of Kazakhstan	28 - 30 August 2015	
3	Malaysia	International Exhibition of Human Rights	27 July-18 August 2015	
4	Tajikistan	International Conference	17 – 19 September 2015	Attended by Chief Justices, Justices, and/or Secretary Generals
5	Turkey	International Symposium	27 – 29 April 2015	Attended by Chief Justices, Justices, and/or Secretary Generals
		Summer School	30 August – 9 September 2015	Attended by Secretary General/Staff of Constitutional Court or the Equivalent Institutions

6	Republic of Korea	Short Course	16 – 23 November 2014	Attended by Secretary General/Staff of Constitutional Court or the Equivalent Institutions
7	Russia	International Conference	28-30 October 2011	Attended by Chief Justices, Justices, and/or Secretary Generals
8	Uzbekistan	International Conference	21 – 22 October 2015	Attended by Chief Justices, Justices, and/or Secretary Generals

ANNEX IX

Presentation for the Meeting of Secretary Generals of the AACC by Secretary General Kim Yong-Hun, Constitutional Court of Korea

Initiative to Establish a Permanent Secretariat of the AACC

Session IV, May 2015

Thank you for the kind introduction. I am Secretary General Kim Yong-Hun from the Constitutional Court of Korea. I would like to thank the organizers of the Indonesian Constitutional Court for giving me this opportunity to speak on an initiative proposed by our Court, although we requested this item to be included in the agenda on short notice.

You should have been informed of the basic idea of our proposal by the letter that our Court's President Park Han-Chul sent to the heads of your Courts, and, in this regard, I wish to present a detailed proposal of our initiative to set up a standing or permanent secretariat of the AACC. For convenience, let me refer to it as the "permanent secretariat" for this presentation.

As you all should be aware, the first step towards establishing the AACC began with the agreement to set up an Asian association of constitutional courts at the 3rd Seminar of the Asian Constitutional Court Judges held in Ulaanbaatar in April 2005. The six participating countries were: Indonesia, Mongolia, the Philippines, Thailand, Cambodia, and Korea.

As a result of our efforts that lasted for more than five years, the Association made its historic first step right here in Indonesia in 2010, as the representatives of constitutional courts and equivalent institutions from seven countries—Indonesia, Korea, Thailand, Malaysia, Mongolia, Uzbekistan, and the Philippines—adopted the Jakarta Declaration that officially launched the AACC.

After two years, the historic Inaugural Congress of the AACC was held in Seoul, Republic of Korea in May 2012, followed by the 2nd Congress in Istanbul, Turkey in 2014. We are now looking forward to the 3rd Congress next year, which will be hosted by the Constitutional Court of Indonesia that holds the current presidency.

We may have a short history, but the fact that the Asian courts of constitutional jurisdiction came together to create a permanent forum to share experience and information is very meaningful in itself. As you know, Asia had been the only region without such a regional association for a long time. Although the AACC started off later than other regional groups of constitutional courts, it shortly took its place in our region, and now I believe it is time that we prepare to take a bigger step forward.

Of course, it would also be meaningful if the members continue taking turns to be the chair country and provide the secretariat during their presidency. However, it is a well-known fact that international organizations can engage in much more diverse cooperation projects and develop more systematically if they have a permanent secretariat.

As you all know, after all, the existence of a permanent secretariat enabled organizations such as the Venice Commission to be actively involved in their work and show steady development, and many of the regional groups of constitutional courts other than the AACC possess permanent secretariats of different forms.

In fact, only two regional groups, namely the Conference of European Constitutional Courts and the Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries, operate like the AACC by electing Presidents and having them provide the function of the secretariat, and the rest either have a permanent secretariat like the Conference of Constitutional Jurisdictions of Africa or maintain a de-facto permanent secretariat by having a particular court perform key roles or positions of the secretariat in an effort to increase efficiency of their work process.

In this respect, the Constitutional Court of Korea proposes that the AACC also set up a permanent secretariat. Let me lay out the roles we can expect from the secretariat if we decide to set up one that runs on a permanent basis.

First, the permanent secretariat should work in close consultation with the term President in managing and supporting regular meetings of the AACC, such as the Board of Members meetings and Congresses. As the Congress is the highest-level organ that brings together all member Courts of the AACC, it is very important that we organize them efficiently and manage their results systematically.

Maybe we could compare this with the works of the Venice Commission, which serves as the secretariat of the World Conference on Constitutional Justice. The Venice Commission successfully organizes the Congresses in close consultation with the host Court and takes charge of managing their results and outcome.

Second, the permanent secretariat could launch joint study projects on democracy and human rights involving a number of countries, and develop public relations and education projects, such as publishing journals.

Publishing journals or periodicals of the AACC on a regular basis would also be an effective means of promoting the exchanges between member Courts and showing the world how much the Association has grown and developed.

Lastly, the permanent secretariat could perform works such as managing the AACC website, assisting with membership application, as well as collecting and storing all sorts of information and materials. This way, the secretariat could provide specialized administrative support for the stable development of the AACC.

We propose to set up a permanent secretariat in the form of what I have described, so that the AACC can be taken to the next level and move forward to become a more permanent and institutionalized body. This will lay the foundation for the Association to increase its influence on issues of human rights and democracy in the Asian region, and we will have more countries around the world paying attention with great interest about the results of our discussions within the Association.

If we reach an agreement on establishing a permanent secretariat, I would like you to know that Korea stands ready to provide momentum for effective implementation of the establishment. If necessary, Korea is willing to provide full support in terms of geographical venue, as well as human and non-human resources.

I ask all of the Secretary Generals here to fully take note of the intention and details of our proposal, and offer us full encouragement and support. We hope that this initiative could be discussed in further detail in August this year, at the Board of Members meeting held in preparation for the 3rd Congress.

Thank you very much for your attention.



**THE CONSTITUTIONAL COURT
OF MONGOLIA**

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Date 22. May 2015
Ref. 1/215

H.E.PROF. DR.ARIEF HIDAYAT,
CHIEF JUSTICE OF
THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

Dear Chief Justice,

Firstly, I would like to congratulate you on behalf of the Constitutional Court of Mongolia for the occasion of your election as the Chief Justice of the Constitutional Court of Indonesia.

I would also like to express my deep gratitude to the Constitutional Court of Indonesia for organizing meeting of the Secretary Generals of the Asian Association of the Constitutional courts and equivalent institutions /AACCEI/ in your country during May 25th to 27th, 2015. I consider that this is a very innovative and creative effort for developing international cooperation between the Secretariats of the member organizations which will undoubtedly open many great opportunities to the Association.

Unfortunately, the Secretariat of the Constitutional Court of Mongolia will not participate in the meeting for its high workload. But I am faithful that meetings of the Secretary Generals of the members of the AACCEI will be organized on a regular basis in which the Secretariat of the Constitutional Court of Mongolia will participate.

Last week, I received a letter from our comrade Park Han-chul, President of the Constitutional Court of Korea. It was about an exciting initiative by the Constitutional Court of Korea on operating a permanent secretariat under the AACCEI in hopes of taking the current activities of the Association to the next level and moving it forward to become a more permanent and institutionalized body.

I congratulated President Park Han-chul for taking this initiative, because it is no doubt that it will result in multiplying the operational phase of the Association, in expanding the scope and increasing the type of its projects, which will take us closer to our common mission to improve the protection of human rights and freedom in the Asian continent.

The President Park Han-chul also mentioned in his letter that the initiative will be officially presented in detail by the Secretary General of the Constitutional Court of Korea during the meeting of the Secretary Generals of the AACCEI members.

Therefore, I am writing you this letter as an expression of support of the Constitutional Court of Mongolia for the Constitutional Court of Korea's worthy initiative on operating permanent secretariat of the AACCEI as well as the proposal to establish the Secretariat in their country, Republic of Korea and to provide necessary resources. I hope that the Secretary Generals of the AACCEI will also support the initiative widely during their meeting in Jakarta.

Availing this opportunity, I would like to wish a great success to the Constitutional Court of Indonesia in organization of the meeting of the Secretary Generals of the AACCEI and I look forward to meet you this year in Jakarta during the meeting of the members of the Board of the Association.

Sincerely yours,

CHAIRMAN, ACADEMICIAN

JUGNEE AMARSANAA

THE STATUTE OF
THE ASSOCIATION OF
ASIAN CONSTITUTIONAL COURT AND
EQUIVALENT INSTITUTIONS

THE STATUTE OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS

Preamble

The Presidents or Heads of the Asian constitutional courts and equivalent institutions exercising constitutional jurisdiction:

RECALLING the Memorandum of Understanding to establish the Asian Conference of Constitutional Courts which was agreed at the 3rd Seminar of Asian Constitutional Courts Judges in Ulaanbaatar, Mongolia, on 8 September, 2005;

TAKING NOTE with appreciation of the work done by the Preparatory Committee for the Establishment of the Association of Asian Constitutional Courts and Equivalent Institutions since October 2007;

CONSIDERING the importance of close cooperation among the Asian constitutional courts and equivalent institutions exercising constitutional jurisdiction for the progress of democracy and the rule of law in Asia;

REALIZING the need of sharing experiences, exchanging information, and discussing issues of mutual concern over constitutional practice and jurisprudence for the development of the Asian constitutional courts and equivalent institutions;

CONVINCED that the establishment of a permanently functioning body composed of the Asian constitutional courts and equivalent institutions will greatly enhance cooperation and exchanges of experiences and information among them;

HAVE THEREFORE AGREED on the following provisions for the establishment of an association on the basis of mutual respect and with a due regard to the principle of judicial independence.

PART I GENERAL PROVISIONS

Article 1

Name

The name of the association shall be the “Association of Asian Constitutional Courts and Equivalent Institutions” (hereinafter referred to as the “Association”).

Article 2

Legal Status

The Association shall operate as an autonomous, independent, and non-political body in accordance with this Statute. It shall not produce any legally binding effects outside the Association.

Article 3

Objectives

The objectives of the Association shall be to promote:

- (a) the protection of human rights;
- (b) the guarantee of democracy;
- (c) the implementation of the rule of law;
- (d) the independence of constitutional courts and equivalent institutions; and
- (e) the cooperation and exchanges of experiences and information among members.

Article 4

Functions

With a view to achieving the objectives set out in Article 3, the Association shall have the following functions:

- (a) to hold regular meetings;
- (b) to organize activities such as symposia, workshops and seminars;
- (c) to facilitate sharing of experiences of constitutional case-law or adjudication;
- (d) to promote the exchange of information on the working methods and constitutional case-law;
- (e) to promote the exchange of views on institutional, structural and operational issues as regards public-law and constitutional jurisdiction;
- (f) to meet requests from members for technical assistance in enhancing the independence of their constitutional courts and equivalent institutions as an essential factor in guaranteeing and implementing the objectives of the Association;
- (g) to support efforts for maintaining regular contacts among members; and
- (h) to enter into cooperation with organizations related to constitutional matters as deemed necessary.

Article 5
Working Language

1. The official working language of the Association shall be English.
2. Any member may request simultaneous translation into another language at its own expense. The member hosting the meetings of the Board of Members and the Congress shall provide support for the simultaneous translation insofar as practicable.
3. The President of the Association may allow an interpreter to translate the participation of a delegation, at the latter's expense, into English.

PART II
MEMBERSHIP

Article 6
Membership

1. Only one institution from a sovereign country in Asia can become a member of the Association.
2. Membership of the Association is open to Asian constitutional courts and equivalent institutions which exercise constitutional jurisdiction.
3. Members shall be fully entitled to participate in all matters related to the Association.

Article 7
Admission to Membership

1. A written application for admission to the Association as a member shall be addressed to the Board of Members and submitted to the President of the Association.
2. Insofar as possible, the following documents should accompany an application:
 - (a) legal instruments governing the establishment and composition of the applicant court or institution and the appointment and status of judges or members of the institution;
 - (b) texts establishing the nature and scope of its jurisdiction; and
 - (c) the acceptance letter of this Statute, signed by the President or Head of the applicant court or institution, addressed to the President of the Association.

3. Upon receipt of the application and necessary documents, the President of the Association transmits their copies to all members.
4. The admission to membership shall be effected by a decision of the Board of Members.

Article 8
Loss of Membership

1. Any member may at any time declare its intention to withdraw from the Association. This declaration shall be made in written notification to the President of the Association.
2. Where there is an important reason for concluding that effective cooperation between the Association and a member is no longer possible, the member may be decided to have lost its membership by the Board of Members and shall be declared to be so by written notification of the President of the Association.
3. The President of the Association shall inform all members of the name of the member which has lost its membership.

PART III
OBSERVERS AND GUESTS

Article 9
Observers

1. The status of an observer may be granted to supranational courts, constitutional courts and equivalent institutions.
2. Observers are allowed to:
 - a. attend the Congress;
 - b. make presentation of a report on the specific themes of the Congress upon the prior request of the President of the Association;
 - c. respond to questions relating to their presentation; and
 - d. participate in the Association's activities such as symposia, workshops and seminars.
3. A written application for an observer status of the Association shall be addressed to the Board of Members and submitted to the President of the Association.

4. Upon receipt of the application for an observer status, the President of the Association transmits its copies to all members.
5. The admission to an observer status shall be effected by a decision of the Board of Members.
6. Any member may propose which observer should be invited to the next Congress. Such proposal shall be approved by the Board of Members.

Article 10

Guests

The President of the Association may invite guests to attend the Congress and Association's activities such as symposia, workshops and seminars.

PART IV

ORGANS

Article 11

Organs

The organs of the Association shall be the Board of Members and the Congress.

PART V

BOARD OF MEMBERS

Article 12

Composition

The Board of Members shall be composed of the Presidents or Heads of the constitutional courts and equivalent institutions with member status. The Presidents or Heads shall be accompanied by their Secretary General, or, where appropriate, a member of their court or institution or of its secretariat.

Article 13

Competence

The Board of Members is the central decision-making body and has competence in the following matters:

- (a) admission, suspension and expulsion of members;
- (b) admission and expulsion of observers and guests;
- (c) fixing the dates and venues and selecting topics of the meetings of the Congress;
- (d) approval of the Congress budget;
- (e) fixing the financial contributions to the Congress;
- (f) approving financial contributions from a third party;
- (g) adoption of the final declaration of the Congress;
- (h) drawing up the Association regulations;
- (i) amending the Statute;
- (j) dissolving the Association;
- (k) taking decision on recommendations from the other organ of the Association;
- (l) adoption of the Association's work programmes for next two years; and
- (m) taking decisions on matters related to the Association not specified in this Statute.

Article 14

Presidency

1. The President of the Association shall be the President or Head of the member which is to host the next Congress.
2. The President of the Association shall preside over the Board of Members as well as the Congress. If necessary, the President may designate participating Presidents or Heads of other members to preside over parts of the meeting.

Article 15

Meetings

1. The Board of Members shall insofar as possible hold at least one meeting between the Congress dates and, in principle, on the day preceding the opening of the Congress.
2. The Board of Members meets in general on the day preceding the opening of the Congress and also before the closing of the Congress.
3. In general, a preparatory meeting of the Board of Members will be held not later than six months before the next Congress in order to prepare for it. Other meetings of the Board of Members may be held if necessary.
4. Decisions may be taken by way of circulation.

Article 16

Agenda

1. The President of the Association shall send written invitation to all members of the Association at least three months in advance of the meeting of the Board of Members. The written invitation to the meeting of the Board of Members shall be accompanied by the provisional agenda for the meeting.
2. The provisional agenda shall include:
 - (a) The individual topics for debates;
 - (b) The budget for the next two years and the financial statement of the Association;
 - (c) The reports on the work of the Association;
 - (d) The recommendations from the other organ of the Association; and
 - (e) Other items that the President of the Association deems necessary.
3. The decisions taken shall be written down in the minutes of the meeting. The Secretariat shall be responsible for preparing the minutes of the meeting.
4. Members shall be provided with the minutes.

Article 17

Venue of meetings

The Board of Members shall, as a rule, meet at the seat of the member responsible for organizing the next Congress. In a particular case, the Board of Members may fix another venue.

Article 18

Quorum

1. The Board of Members shall be empowered to take decisions if at least majority of the members of the Association are present at the meeting.
2. A judge or member, the Secretary General or another designated staff member of the court or institution concerned may represent its President or Head at meetings and vote on his/her behalf.

Article 19

Voting

1. The Board of Members shall take decisions by a two thirds majority of the members present at a meeting.
2. Each member shall have one vote.

PART VI CONGRESS

Article 20 Composition

The following shall be entitled to participate in the Congress: members, observers and guests.

However, observers and guests are not allowed to participate in voting or decision-making.

Article 21

Meetings

1. The Association holds in general a Congress once every two years.
2. The Congress comprises an opening and a closing session as well as the debates.
3. The Congress shall start with a solemn opening session. It ends with a special closing session.
4. The Board of Members designates a chairperson for each meeting in the Congress.
5. For the preparatory meeting of the Board of Members and the Congress, the host member shall provide the participants with an updated list of members, observers and guests.

PART VII SECRETARIAT

Article 22

Secretariat

The Secretariat of the Association shall be provided by the member organizing the next Congress.

PART VIII FINANCING

Article 23 Principles of Financing

1. The general costs of organizing the meetings of the Board of Members and the Congress and other activities including symposia, workshops and seminars shall be financed primarily by the equal contribution of members. But the share of the contribution can be differentiated depending on respective capabilities of members as decided by the Board of Members.
2. The host member shall be responsible for the costs of the Secretariat of the Association.
3. The Board of Members may require observers to pay a fee to contribute to the costs of organizing the Congress. This fee shall be fixed in the light of the costs incurred in respect of the services provided to observers, taking into account the contribution paid by members.
4. The acceptance of all types of financial contributions from third parties shall be subject to prior approval by the Board of Members.
5. The member organizing the Congress shall draw up, insofar as possible not later than six months before the opening of the Congress, a budget for the Congress which shall be submitted for the approval of the Board of Members.
6. The final settlement is effected after the end of the Congress on the basis of a final statement of account drawn up by the member organizing the Congress.

Article 24 Financial Contribution of Members

1. Members shall bear their own travel and accommodation expenses.
2. The general costs of organizing the meetings of the Board of Members and the Congress are the following:
 - (a) rental of the premises;
 - (b) printing costs;

- (c) costs of the translation of written documents;
 - (d) interpretation costs;
 - (e) administrative overheads; and
 - (f) costs of local transportation.
3. The Board of Members decides whether and how far the following costs may be part of the general costs of organizing the meetings of the Board of Members and the Congress:
 - (a) costs of food;
 - (b) costs of any recreational events;
 - (c) specific costs of providing an internet site for the Association; and
 - (d) costs of specific security measures.
 4. The Board of Members shall furthermore decide on the number of delegates per country whose costs will be included in the general costs of organizing the meetings of the Board of Members and the Congress.
 5. The costs not included in the general costs of organizing the meetings of the Board of Members and the Congress shall be billed separately.
 6. The host member is free to cover partly or entirely the costs mentioned in Sections 2 and 3 above.

Article 25

Financial Contribution of Observers

1. Observers shall bear their own travel and accommodation expenses.
2. Observers may be required to pay a participation fee for each participant which comprises the costs of food and any recreational events.
3. The costs of special programs shall be charged to the observers.
4. The amount of the participation fee is decided based on the proposal made by the host member.
5. The host member is free to cover partly or entirely the aforementioned costs and the fee mentioned in Section 3 of Article 23.

Article 26
Financial Contribution of Guests

1. In general, guests shall bear their own travel and accommodation expenses.
2. Guests shall not contribute to the general costs of organizing the Congress and shall not be required to pay the costs of food and any recreational events.
3. The costs of special programs shall in general be charged to the guests.
4. The host member is free to cover partly or entirely the aforementioned expenses and costs.
5. The Board of Members may moreover decide that the aforementioned costs are partly or entirely included in the general costs of organizing the Congress.

PART IX
MISCELLANEOUS PROVISIONS

Article 27
Liaison Officer

1. Each member shall designate one officer as Liaison Officer.
2. The Liaison Officer shall act as the channel of communication among members.

Article 28
Seating Arrangements

1. At the Congress, there shall be not more than five seats for each member and not more than two seats for each observer. Members are to be seated up-front, followed by observers. In general, seats for members and observers are arranged in alphabetical order of the names of their countries.
2. Seats for guests will be arranged by the host member.

Article 29
Media and Publicity

1. The media (press, radio, television) is invited to the opening of the Congress.
2. The debates are not open to the public.
3. After the closing session, a press conference may be held by the President of the Association, accompanied, if appropriate, by other participants in the Congress.

PART X
FINAL PROVISIONS

Article 30
Dissolution

The Association may be dissolved by a decision of the Board of Members.

Article 31
Original Copy

This Statute is done in English in a single original copy.

Article 32
Entry into Force

This Statute shall enter into force on the day of its adoption at a meeting of the Presidents or Heads or their designated representatives of the constitutional courts and equivalent institutions which are members of the Preparatory Committee. The members of the Preparatory Committee who adopt this Statute shall be the founding members of the Association.



**THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA**