

QUESTIONNAIRE

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The Constitution of the Kyrgyz Republic is the main source of national law. Specificity of the Constitution as the basic source of national law is that it is the highest mode of people's wills implementation. Thus, the Constitution defines the foundations of the constitutional system, recognizes and guarantees the fundamental rights and freedoms of individual and citizen, the procedure of organization of state power, etc. The Kyrgyz Republic, recognizing itself as a democratic and as a state governed by the Rule of Law (Article 1 of the Constitution of the Kyrgyz Republic), establishes its pursuit to the rule of law in the preamble of the Basic Law. Constitution includes the basic contents of the main provisions of the rule of law and as the main source of national law has a supreme legal force and direct application on the entire territory of the state. It means that Constitution shall serve as the basis for the adoption of constitutional laws, laws as well as other regulatory legal acts. Constitutional oversight institutions in case of contradiction of laws and other normative regulatory acts with the Constitution declare them unconstitutional. On the basis mentioned above, the concept of the rule of law envisaged in the Constitution is protected from any arbitrariness of law-making bodies.

In general, the national legal system of the Kyrgyz Republic, led by the Constitution is aimed at the recognition of the rule of law principle.

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

Constitution of the Kyrgyz Republic is the highest legal guarantee of rights and freedoms of individual and citizen in the country by embodying the universally recognized principle of the rule of law.

In turn, the main provisions of the rule of law are reflected in consolidation of such values as rights and freedoms (the highest value), rule of law of state, supremacy of the Constitution and the law, access to justice, equality, etc.

Thus, embodying the ideas of justice and equality, Constitution of the Kyrgyz Republic declares the principle of everyone's equality before the law and courts (Article 16 of the Constitution). In the view of this in the legal community real life, the execution, distribution of the benefits are carried out and there is a requital for both merits and caused harm as well as for various kinds of violations. Therein the equalization measure – becomes the principle "equal for equal".

Hereinafter developing the idea of equality, the state safeguards the equality of individual and citizen's rights and freedoms irrespective of sex, race, language, disability, ethnicity, belief, age, political and other opinions, education, origin, proprietary and other status as well as other circumstances. Consequently, the public authority is entitled to publish only those laws that qualify the specified criteria of justice and equality. Thus, the basic ideas of justice and equality building the essence of the rule of law, are the quintessence of the Basic Law of the country, define the legal parameters of social life and specified in the laws and other normative legal acts.

Commitment of the Kyrgyz Republic to the principle of the rule of law is also affirmed by set comprehensive human rights and freedoms protection mechanisms, including:

- The laws that deny or derogate human and civil rights and freedoms shall not be adopted in the Kyrgyz Republic;
- Everyone shall have the right to protect his/her rights and freedoms by any means that are not prohibited by law;
- Everyone shall have the right to be provided with qualified legal aid. In cases provided for in law, legal aid is rendered at the expense of the state.
- Guarantee everyone the right to judicial protection of his rights and freedoms, including the right to appeal against the actions (inaction) of state agencies, local self-government bodies and their officials
- Everyone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms, if domestic legal remedies are exhausted.

The Basic law establishes such constitutional values, ensuring the supremacy of the Constitution in the hierarchy of national legal system with the all main principles, goals and values.

Thus, Constitution as a regulatory legal act has the supreme legal force and direct application. The laws and other relevant legal acts shall not contradict to the Constitution.

The state bodies, local self-government, officials, citizens and their associations are obliged to observe the Constitution and laws. In addition, international treaties to which the Kyrgyz Republic is a party which have entered into force under the established legal procedure and also the universally

recognized principles and norms of international law are the integral part of the legal system of the Kyrgyz Republic.

Thereby, human and citizen rights and freedoms act directly and define the meaning and the content of the activity of legislative and executive power and self-governance bodies (Article 16).

The above mentioned demonstrates that the national legal system of the Kyrgyz Republic doesn't follow the way of interpretation the principle rule of law in substantive or formalistic form.

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

Constitutional Chamber performs judicial constitutional oversight aimed at protection the constitutional framework, rights and freedoms of the individual and citizen, ensuring the supremacy and direct application of the Constitution on the entire territory of the state. Constitutional Chamber within the framework of constitutional proceeding:

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

2) issues opinion (conclusion) on the constitutionality of international treaties not entered into force and to which the Kyrgyz Republic is a party;

3) issues opinion (conclusion) on the draft law on changes to the Constitution.

Eliminating the unconstitutional legal acts, the Constitutional Chamber restores justice to the citizens whose' constitutional rights and freedoms have been violated, and thereby ensures the supremacy of the law. Whereas, deciding the issue of constitutionality of the challenged law and other normative legal acts, the Constitutional Chamber sets and makes decisions exclusively on the issues of law. Hence, within its mandate the Constitutional Chamber ensures adherence of the rule of law in the national legal system, meanwhile not setting the priorities on the area of the law.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

As the highest judicial body of constitutional oversight, the Constitutional Chamber in all decisions interprets certain elements of principle of the rule of law. Moreover, the essence of interpretation is to disclose the content of the main provisions of the concept of the rule of law for further practical rule-making and enforcement of the law by the relevant authorities.

For example, decision of the Constitutional Chamber dated 24 September 2014 noted that the supremacy of the Constitution means that any legal act, any action of the authority or its official must comply with the Constitution of the Kyrgyz Republic and shall not contradict its' requirements. The necessity of ensuring the unity, integrity and consistency of the whole legal system determines supremacy of the Constitution of the Kyrgyz Republic.

In another decision dated 11 July 2014, the Constitutional Chamber noted that the principle of supremacy of the Constitution is an integral attribute of the rule of law state and requires strict compliance with the Constitution by state authority, individuals and legal entities.

The Kyrgyz Republic is the Rule of Law State that means it's functioning as a special entity of public authority ensuring the rule of law, subordination of all its bodies and activities to the Constitution and laws which in turn requires subordination of the politics to the law, political actions and decisions to the constitutional legal requirements.

Developing the idea of the rule of law in the decision dated 11 May 2016, the Constitutional Chamber establishes that compliance of constitutional principle of equality which safeguards protection against all forms of discrimination in the execution of rights and freedoms, means, in addition, the prohibition to introduce such differences in the rights of persons belonging to the same category, which do not have an objective and reasonable justification.

Further on, the Constitutional Chamber revealed in its decision dated 31 January 2014 one of the most important integral elements of the rule of law, noting that the right to judicial protection implies, in particular, that the case must be revised by the legally established court whose competence to consider this case and its procedure shall be defined by the law.

In the meantime, the legislative regulation of the justice administration envisaging the specific guarantees of full exercising the right to judicial protection and ensuring effective remedy shall not abolish or derogate the rights and freedoms of individual and citizen, and their possible restrictions must be proportionate and preconditioned by protection of the constitutional values.

Developing this legal position, the Constitutional Chamber in decision dated 14 May 2014 noted that the restriction of the rights and freedoms of individual and citizen the Constitution of Kyrgyz Republic requires strict compliance of the conditions: the restriction must be presented in a strictly defined legal form – in the form of the law; restriction can be permissible only if it serves a particular purpose specified in the Constitution of the Kyrgyz Republic; restriction is allowable only to the extent that it is necessary for the protection of constitutional values. At the same, Constitutional Chamber noted that establishing principles, objectives and the legal form of restrictions, i.e. bases (general conditions) limitation of rights and freedoms, the Constitution of the Kyrgyz Republic thus protects the rights and freedoms of the individual against

arbitrary action by the state, and at the same time obliges the government to restrict them in the name of protection of public interests.

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

Hereinbefore there were specified the most important constituent elements of the rule of law, recognized and guaranteed by the Basic Law of the country. So, since the independence of the Kyrgyz Republic (1991) the content of reviewed constitutional values was not changed. However, it should be noted that the constitutional justice having the objective - formation of the rule of law state, with fundamental features such as supremacy of the law, Constitution and the statute, respect for the rights and freedoms of individual and citizen, has become an essential attribute of the democratic reforms in the country. Therefore, the establishment of judicial constitutional oversight institute in the Kyrgyz Republic was an important step towards the democratization of social relations, of formation in the state the constitutional legality. In turn, the Constitutional Chamber, in the framework of the assigned powers, ensures the stability of the constitutional order in the country, protection of constitutional rights and freedoms of individual and citizen. Thus, Constitutional Chamber, implementing constitutional powers, seeks to assert the concept of the rule of law in the national legal system.

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

According to the Constitution international treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic. Therefore International law (international treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law) has a significant influence on the formation and dynamics of the national law, by imposing on the Kyrgyz Republic pursuant to obligations when signing various international treaties.

Thus, implementation of many international treaties, proclaiming the idea of the rule of law, is an example of the practical interpretation of this principle in the national legal system. At the same time, analysis of the Constitutional Chamber decisions shows the most frequent using in practice regulations of international legal instruments (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Bangalore Principles of Judicial Conduct,

and others.) formulated to justify its legal positions. Constitutional Chamber referring to some international treaties, relates norms of national legislation with international law in the part a reasonable balance of interests of the individual, society and state. Further developing the idea and application of international law, the Constitutional Chamber noted that entered into force and, accordingly, are applicable international treaties should be performed by States parties voluntarily on the basis of the principle of good faith performance of the obligations *pacta sunt servanda* (in the conclusion of the Constitutional Chamber of 11 October 2016) .

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

Establishment of the rule of law, based on the principles of respect, protection and ensuring the human rights in all spheres of social, political and economic life of the country is the main factor of stability of the State and the successful development of Kyrgyzstan. The absence of the rule of law and disregard of the legitimate interests of citizens twice has led to the revolutionary change of power in Kyrgyzstan. In these extraordinary situations there took place adoption of normative legal acts took place which in one or another way infringements of the rights and freedoms of individual and citizen.

Undoubtedly, there are threats such as corruption, bureaucracy, the economic crisis as in many democratic countries, causing the instability of legal system, compelling to make political decisions directly threatening the firmness of rights and freedoms of citizens.

National Strategy of Sustainable Development of the Kyrgyz Republic for the period 2013-2017 and the National Security Concept of the Kyrgyz Republic with important provisions aimed at realization of human rights and freedoms, noted that corruption has become a serious threat to the rule of law, undermine the confidence to the authorities, the principles of public administration.

Corruption undermining the authority of the state and violating established procedure in exercising the powers of officials, detrimental to establishment of democratic foundations of society management and essential limits the constitutional rights and freedoms of man and citizen. Aimed at shattering the economic, legal and social foundations of society, corruption poses a real threat not only to each citizen of the country, but also for the constitutional order as a whole. In this context, the primary importance is raising the authority of the Constitution. Criticism the ineffectiveness of certain provisions of the Constitution must not call into question the stability of the constitutional system. The main criterion for evaluating actions and decisions of state bodies should be their compliance with the Constitution.

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

International events have not affected the interpretation of the rule of law in Kyrgyzstan. Despite of the various international events in the world, everybody have to abide the Constitution and other laws and regulations as well as international law in the territory of the Kyrgyz Republic.

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

According to the Constitution of the Kyrgyz Republic the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic issues opinion (conclusion) on the constitutionality of international treaties not entered into force and to which the Kyrgyz Republic is a party. The rights to submit a petition on issuing opinion on the constitutionality of international agreements which have not entered into force for the Kyrgyz Republic are assigned by subjects listed in the Constitutional Law "On the Constitutional Chamber of the Supreme court of the Kyrgyz Republic".

However, the Constitutional Chamber has not received such kinds of petitions.

Moreover, in practice, cases of different interpretation of certain rights or freedoms by the Constitutional Chamber compared to regional / international courts or international bodies are not observed.

However, it should be noted that within the framework of constitutional legal proceedings, checking the constitutionality of the challenged normative legal act with regard to the restrictions established by law in respect of certain rights and freedoms, the Constitutional Chamber pays particular attention to evaluating proportionality of these restrictions, their compliance with constitutional values. At the same time, the Constitutional Chamber correlates the norms of national legislation with international law regarding a reasonable balance of interests of the individual, society and state.

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

The practice of the Constitutional Chamber has a direct impact on guaranteeing that state powers act within the constitutional limits of their authority. Constitutional Chamber in its decisions gives to the relevant rule-making body instructions to eliminate in regulatory legal acts the gaps, contradictions and legal uncertainty. Influence of the practice of the Constitutional Chamber is also caused by the legal force of its acts. According to the Constitutional law “On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic”, 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 Kyrgyz Republic.

So, in the case concerning the constitutional review of Article 5 paragraph 2 item 2 of the Law of the Kyrgyz Republic “On the republican budget of the Kyrgyz Republic for 2013 and projection for 2014-2015” and of Article 5 paragraph 2 item 2 of the Law of the Kyrgyz Republic “On the republican budget of the Kyrgyz Republic for 2014 and projection for 2015-2016” (in decision dated 11 April 2014 № 25-P), Government contested the provision of the Law “On the republican budget of the Kyrgyz Republic”, according which main committee of the Parliament should give consent for the approval of capital investments from the state budget, that was itemized after the adoption of the law, ie, at the stage of implementation of the law on the national budget.

Having considered the case, the Constitutional Chamber has come to the conclusion that the established by the legislator negotiation procedure of planning capital investments from the republican budget with the specialized committee of Parliament can not be carried out at the stage of implementation of the law on the republican budget. Conferring the specialized committee authority stipulated by challenged provision at this stage of the budget process, is an interference in the Government activity on implementation of the national budget, which is contrary to the Constitution and violates the principle of separation of powers.

It is necessary to pay attention that the Constitutional Chamber in its decision has distinguished between the powers of the Government and the Parliament at each stage of the budgetary process, proceeding from the principle of separation of powers, which is proclaimed by the Constitution of the Kyrgyz Republic.

In the decision it is also noted that the parliamentary control, being one of main, after legislative function of Parliament, has to be carried out with the exclusion of intervention in direct executive and administrative activity of executive authorities.

Proceeding from meaning and content of the Constitution, the Constitutional Chamber noted that the limits of parliamentary control should be where executive authorities start carrying out their main activity powers, to which in accordance with the principle of separation of powers legislative branch can not interfere.

Thereby, understanding the importance of accurate establishment of limits of parliamentary control promotes the organization of the relationship of legislative and executive power in the state on the basis of the principle of separation of powers.

Other examples from the practice of the Constitutional Chamber, to which attention should be paid are the decisions dated 27 December 2013 and 13 January 2014.

In the first decision, the Constitutional Chamber in order to ensure the independence of the judiciary acknowledged that the prosecutors of regions, cities of Bishkek and Osh can not bring proceedings against judges, proceedings on them can be initiated only by the General Prosecutor.

According to the second decision, the right of prosecutor's office to charge or transfer to other investigating authorities investigation of criminal cases against officials has been recognized unconstitutional.

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

The acts of the Constitutional Chamber shall be final and shall be not subject to appeal and also 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.

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.

Moreover, Constitution establishes that the court shall not have the right to apply a legal and regulatory act which is in contradiction with the Constitution.

In the event that during examination of a case in any judicial instance, there arise 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.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).

It is important to mention the feature of the human rights activities of the Constitutional Chamber. By taking the decision and resolving the disputes, it indirectly impacts the rules of the law in a particular case, which is reflected in evaluation of a norm and its interpretation in the application process. Constitutional Chamber provides legal characteristics to the normative act, whether it matches the Constitution or not.

Because uncertainty, inaccuracy, internal contradictions, lack of clarity of content of the challenged certain provisions of laws were noted in practice, it was important to pay attention to the need to respect the principle of legal certainty arising from the rule of law.

While recognizing the constitutionality of the adopted laws in general, the Constitutional Chamber in respect of their certain provisions formulated the legal positions that reflect the revealed meaning of the provisions of the law which must be considered and applied both in rule-making, and in law enforcement.

Entrusting competent rule-making authority to adopt a new appropriate regulatory legal act or to exclude from them collisions, legal uncertainty, as well as defining the legal structure of elimination of the revealed shortcomings of normative legal regulation, the Constitutional Chamber to a certain extent performs the function of "the positive legislator", but without substituting the legislator or other rule-making body.

At the same time, the Constitutional Chamber acting within its constitutional status ensures in practice the realization of the principles of the rule of law and a legal state, the development of effective mechanisms for the implementation of constitutional rights and freedoms of citizens, as well as excludes unconstitutional interpretation of the regulatory acts in law-enforcement activity.

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

In the decision on the case "About the constitutionality of Article 28 of the Law "On arbitration courts in the Kyrgyz Republic" dated December 9, 2015, the Constitutional Chamber noted that the constitutional and legal status of arbitration courts established by Article 58 of the Constitution allows to assume that they are formations which are not included to the judicial system, i.e. non-judicial bodies specializing in the resolution of disputes arising out of civil

relations only, and their authority, composition and activities are determined by law.

In this regard the Constitution admits the possibility of resolving civil disputes between individuals with the procedure of arbitration trial by arbitration courts which are acting as civil society institutions, endowed with publicly significant functions.

At the same time, the finality of the decision of the arbitration court and impossibility of its appeal, arise from the legal nature of the institution of arbitration courts, which are based on the principle of autonomy of will and freedom of the contract. Also, these provisions are some kind of result of the assumed liabilities under the arbitration agreement or the arbitration clause which is a constituent part of the contract.

It should be noted that the activities of the arbitration courts must be strictly defined by the law, and their decisions has to be based on the legislation, without allowing at the same time any derogation of the rights and freedoms of citizens.

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

According to the legislation of the Kyrgyz Republic public officials for their illegal actions can be brought to administrative, civil and criminal liability. As for practice of Constitutional Chamber in particular on this issue, involvement of officials to responsibility for their illegal actions is not included into its powers. This is a prerogative of the general jurisdiction courts, in practice of which there are many cases of involvement of officials to the responsibility stipulated by the legislation.

It should be noted that inviolability of officials isn't an obstacle for fight against corruption and accountability in case of commission of illegal actions by them. It should be noted that immunity of officials is not an obstacle for fighting corruption and bringing to justice if they commit illegal acts.

For example, in its decision dated December 27, 2013 No. 17-P, the Constitutional Chamber has made very important explanations concerning content and meaning of the principle of the inviolability of judges and has specified that constitutionally fixed guarantee of independence and inviolability of judges can not be considered as a lack of responsibility of the judge and does not mean that the principle of equality of all before the law and court do not extend to them. If there are sufficient grounds and with observance of the procedures established in the legislation, a judge can be involved both to criminal, and to other responsibility. But any responsibility for his opinions or decisions

expressed or made during justice implementation is excluded, if otherwise established by the court verdict.

In its decision, the Constitutional Chamber notes that initiation of criminal proceedings against a judge in accordance with the current legislation is not an intrusion into the activities and independence of the judges if there are reasonable suspicions of committing a crime.

Granting judicial immunity is an essential guarantee of exclusiveness and completeness of the judiciary. Judicial immunity consists of a set of rules exempting the judges from performing certain legal responsibilities and establishing special procedures for bringing them to justice in order to ensure the constitutional status and the proper performance of their functions.

At the same time immunity of judges is not absolute and can not be interpreted as an absolute obstacle. In particular, the judges are not immune to initiation of criminal proceedings and implementation of operational search activities in regard to them.

IV. The law and the individual

15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

Item 7 of Article 97 of the Constitution provides for the possibility of individual constitutional complaints, namely, according to it "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".

According to the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic" (hereinafter - the Constitutional Law), the reason for consideration of a case in the Constitutional Chamber shall be an Appeal to the Constitutional Chamber in the form of presentment, petition or inquiry that meets the requirements of the 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, and an international agreement which has not entered into force for the Kyrgyz Republic or a draft law on changes to the Constitution.

The procedure of Appeal to the Constitutional Chamber is indicated in the Constitutional Law and detailed in the Rules of Procedure of the Constitutional Chamber.

Thus, the Appeal (hereinafter - petition) to the Constitutional Chamber should correspond to the requirements envisaged in Constitutional Law. Petitions as well as materials attached thereto shall be submitted in the state (Kyrgyz) or the official (Russian) language.

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

The examination of petition and documents attached thereto shall be entrusted to one judges of the panel. The ruling on acceptance of petition for proceedings or rejection thereof shall be adopted by the majority vote of the panel members.

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

A panel shall reject to accept the petition for proceeding:

- In the event that the petition in its format and content does not meet the requirements of the Constitutional Law;

- In the event that the petition was sent by a non-eligible agency or person (subject);

- 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 Constitutional Law;

- In the event that the claim of the petition is not subject to the jurisdiction of the Constitutional Chamber;

- 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.

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.

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.

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.

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

The principle of ensuring access to justice has exclusive value, since all other principles of justice lose meaning if the right of citizens for access to justice is not provided and an opportunity to appeal to court in case of any legal dispute is not realized. The content of this principle is that the state organizes the implementation of the judiciary so that every citizen had an opportunity to appeal to the judicial authorities for protection of their violated rights.

For example, there is the decision of the Constitutional Chamber (dated December 19, 2014 №60-P), regarding regulatory provisions of the Criminal Procedure Code of the Kyrgyz Republic, which stipulate the ban on the appeal against the resolution of court of first instance concerning petitions of process participants, applying, change or vacating of a measure of restraint.

In its decision, the Constitutional Chamber has noted that the ban specified in the Criminal Procedure Code does not mean impossibility of appeal in general, because the different understanding of the challenged legal provision would lead to a violation of the constitutional right to judicial protection.

Having subjected to a comprehensive analysis the specified regulatory provisions of the Criminal Procedure Code, the Constitutional Chamber has found that the legal regulation of procedure for appealing against resolutions of court of first instance specified in the challenged regulatory provisions has insufficiently clear character.

Inaccuracy and vagueness of the law give rise to the possibility of ambiguous interpretation and, consequently, arbitrary application of its provisions, and therefore, there was a contradictory law enforcement practice, when in some cases complaints against such resolutions are considered, and in other cases are left without consideration

In this regard, the Constitutional Chamber has specified to the legislator on the need to take timely measures for creation of appropriate procedural mechanisms which would allow citizens, whose rights and freedoms have been violated, to achieve their real protection, using all methods that are not prohibited by law

17. Has your Court developed case-law on other individual rights related to the rule of law?

Analysis of the decisions of the Constitutional Chamber shows that its attention was also focused on the various issues of the rights and freedoms of citizens.

In the report of the Venice Commission about the rule of law (CDL-AD (2011) 003) it was noted that respect for the rule of law and respect for human rights are not necessarily synonymous. However, there is a great deal of overlap between the two concepts and many rights enshrined in documents such as the ECHR also expressly or impliedly refer to the rule of law.

The rights most obviously connected to the rule of law include: the right of access to justice, the right to a legally competent judge, the right to be heard, inadmissibility of double jeopardy (*ne bis in idem*), the legal principle that measures which impose a burden should not have retroactive effects, the right to an effective remedy for any arguable claim, anyone accused of a crime is presumed innocent until proved guilty, and the right to a fair trial.

In this connection, we will cite as an example the following decision of the Constitutional Chamber (dated May 7, 2014 No. 28-P) which concerns the principle *ne bis in idem*.

According to the Constitution no one shall be twice held legally responsible for the same offense.

Constitutional Chamber in its decision noted that this constitutional principle is applied only in case the person has been brought to legal liability and the legal act of a court or other authorized body has gained final character.

By this principle, first of all, the impossibility of revision of the judicial act in relation to the convicted is ensured, that he will not be exposed to new criminal prosecution, recognition as a guilty person and condemnation for the same offense. Such approach allows expanding the scope of the law, covering by it to some extent administrative legal proceedings also.

The main condition for the implementation of the right not to be re-condemned for the same crime is the identity (sameness) of offense which is newly imputed to a person with the offense for which he has already been acquitted or convicted.

At the same time it should be noted that when assessing the two crimes as identical, it is necessary to distinguish them not only according to the denomination of offenses, but also, that is the most important - according to their nature and purpose, and whether these offenses have the same essential elements.

In this regard, the provision of the Constitution, providing for the inadmissibility of double jeopardy (*ne bis in idem*) should be considered only within the framework of one type of legal liability.

Thus, involvement of the person to criminal liability and administrative responsibility is not contrary to the constitutional provisions of the impossibility of bringing the person to legal responsibility for the same offense due to the nonidentity of evidences (elements) of the specified offenses.

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

In Kyrgyz Republic rights and freedoms established in the Constitution are not exhaustive and must not be interpreted as denial or derogation of other

universally recognized human and civil rights and freedoms. Therefore, in national legal system the primacy of the rights and freedoms of the person and citizen is established.