

IN THE NAME OF THE KYRGYZ REPUBLIC
JUDGMENT OF THE CONSTITUTIONAL CHAMBER OF THE
SUPREME COURT OF THE KYRGYZ REPUBLIC

City of Bishkek, of 29 March 2017 N 5-r

in the case concerning the review of constitutionality of the provisions of Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" in connection with the communication of the Akyikatchy (Ombudsman) of the Kyrgyz Republic.

Constitutional Chamber of the Supreme Court of the Kyrgyz Republic composed of:

Presiding Judge - Judge Mamyrov E.T., Judges Abdiev K., Aidarbekova Ch.A., Bobukeeva M.R., Kasymaliev M.Sh., Kirgizbaev K.M., Narynbekova A.O., Oskonbaev E.Zh., Osmonova Ch.O., Saaliev Zh.I.,

with the secretary Jolgokpaeva S.A.,

with participation of:

applicant party - Aralbaev Urmat Sagynalievich, representative of Akyikatchy (Ombudsman) of the Kyrgyz Republic acting based on a power of attorney;

defendant party - Yrysbekov Talantbek Yrysbekovich, Turdugulov Maken Sajdivalievich, representatives of the Jogorku Kenesh of the Kyrgyz Republic acting based on a power of attorney;

other parties - Apilov Ernest Myktybekovich, representative of the Secretariat of the Commission on the Matters Concerning Citizenship under the President of the Kyrgyz Republic acting on the basis of a power of attorney; Elgondiev Nurlan Toktobekovich, Aksakalov Adilet Kasymbekovich, representatives of the State Committee for National Security of the Kyrgyz Republic acting on the basis of a power of attorney; Bakaev Azat Djumgalbekovich, representative of the Ministry of Justice of the Kyrgyz Republic acting on the basis of a power of attorney,

guided by parts 1, 6, 8, 9 and 10 of Article 97 of the Constitution of the Kyrgyz Republic, Articles 4, 18, 19, 37 and 42 of the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic", having considered in an open court session the case of examination of constitutionality of Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism".

The reason for the consideration of the case was the communication of the Akyikatchy (Ombudsman) of the Kyrgyz Republic.

The ground for the consideration of the case was the discovered uncertainty in the question of whether legislative provisions of Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" are in conformity with the Constitution of the Kyrgyz Republic.

Having heard the report of Judge-Rapporteur Oskonbaev E.Zh., having prepared the case for the court hearing and having examined submitted materials, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic

ESTABLISHED:

Constitutional Chamber of the Supreme Court of the Kyrgyz Republic has received communication of the Akyikatchy (Ombudsman) of the Kyrgyz Republic concerning recognition of Articles 6, 7 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism", item 1 of Article 26 of the Law "On Citizenship of the Kyrgyz Republic" as unconstitutional and contradicting part 1, item 8 of part 6 of Article 20, Article 26

, part 2 of Article 50, part 1 of Article 53 of the Constitution

Article 6 of the contested Law introduces amendments to item 1 of Article 26 of the Law "On Citizenship of the Kyrgyz Republic" concerning the loss of citizenship of the Kyrgyz Republic as a result of

undergoing training outside the Kyrgyz Republic aimed at building skills and know-how on committing an offense of terroristic or extremist nature.

The petitioner gives notice that item 1 of Article 26 of the Law "On Citizenship of the Kyrgyz Republic" lacks lawful grounds for deprivation of nationality, since these grounds are stated without indication of the fundamental provision - legally effective court sentence. It violates the constitutional principle of legislative recognition and substantiation of guilt by legally effective court judgment (part 1 of Article 26).

In the opinion of the petitioner the right of the state for arbitrary termination of citizenship, by annulling the right of a citizen for allegiance to the Kyrgyz Republic, shall not be referred to as permissible limitation of the rights of citizens under the Constitution of the Kyrgyz Republic (part 2 of Article 20). It is related to the fact that after passing of a sentence the person will be deprived of liberty, and evidences of his/her future (after serving a sentence) unlawful activities will be missing as of the moment of arbitrary termination of citizenship.

The petitioner is of opinion that arbitrary deprivation of nationality violates the supreme values of the Kyrgyz Republic - rights of a person born or residing in the Kyrgyz Republic on legal grounds, his/her allegiance to the state (citizenship), which is not subject for deprivation in accordance with the Constitution of the Kyrgyz Republic, equally as the right to change citizenship (part 2 of Article 50).

Considering the aforesaid, the petitioner requests to recognize Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" as unconstitutional and contradicting to part 1, item 8 of part 5 of Article 20, Article 26, part 2 of Article 50, part 1 of Article 53 of the Constitution of the Kyrgyz Republic.

In addition, according to the applicant party Article 7 of the contested Law amends Article 31 of the Law of the Kyrgyz Republic "On State Pension Social Insurance" by adding part 2, which prohibits accounting and payment of pensions to persons involved in terrorist and extremist activities or in spread of weapons of mass destruction as from the effective date of the judgment of conviction until release due to completion of sentence.

In the opinion of the petitioner the amendments to the Law revokes the right of a person, who was deprived of nationality, for accounting and payment of pension allowance. Arbitrary deprivation of nationality causes damage to the family of such a person, since his/her pension allowance forms a part of aggregate family income. This contradicts the constitutional guarantee of social security in old age of citizens of the Kyrgyz Republic (part 1 of Article 53).

The petitioner also points out that according to the ILO Convention No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security ratified by the Resolution of the Jogorku Kenesh of the Kyrgyz Republic of 12 January 1994 N 1412-XII the Kyrgyz Republic has undertaken obligations to provide social assistance to stateless persons.

Considering the aforesaid, the applicant party requests to recognize Article 7 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" as unconstitutional and contradicting to part 1, item 8 of part 5 of Article 20, Article 26, part 2 of Article 50, part 1 of Article 53 of the Constitution of the Kyrgyz Republic.

On 6 December 2016 the petitioner has changed the subject of the claim in accordance with Article 32 of the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic". The petitioner requests to consider as the subject of the claim the recognition of Articles 6, 7 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" as contradicting parts 1 and 2, item 8 of part 5 of Article 20, part 1 of Article 26, part 2 of Article 50, part 1 of Article 53 of the Kyrgyz Republic Constitution.

The Constitutional Chamber of the Supreme Court of the Kyrgyz Republic by Ruling of 17 January 2017 accepted for hearing the communication of Akyikatchy (Ombudsman) of the Kyrgyz Republic to the extent of examination of conformity of Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" to item 8 of part 5 of Article 20, part 1 of Article 26, part 2 of Article 50 of the Kyrgyz Republic Constitution. However, the panel of judges of the Constitutional Chamber finds the arguments of the Ombudsman insufficient in matters of lack of conformity of Article 7 of the Law of the Kyrgyz Republic "On the

Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" with parts 1 and 2, item 8 of part 5 of Article 20, part 1 of Article 26, part 2 of Article 50, part 1 of Article 53 of the Kyrgyz Republic Constitution, and, therefore, claims of the petitioner in this respect were not admitted for consideration.

In the course of the hearing the applicant party has reasserted the claim. In addition, the petitioner pointed out that in the light of the amendments to the Kyrgyz Republic Constitution adopted in referendum of 11 December 2016 the matters concerning deprivation of nationality shall be governed by a constitutional law.

Representative of the defendant party Yrysbekov T.Y. disagreed with the arguments of the applicant party and is of the opinion that terrorism, as a phenomenon posing the ultimate level of danger to society, constitutional order and fundamental human rights and freedoms, carries violent ideology and practice of influencing public consciousness, and demands adequate response measures by the governmental agencies.

Not less danger for the state poses extremism, which can be described as pursuance of radical objectives by mass unrests, threats and other manifestations of tough forms of conflict settlement.

While enjoying all the rights granted to citizens of the Kyrgyz Republic a person, who has received training on building skills and expertise of committing an offense of terroristic or extremist nature, represents an object of threat for not only Kyrgyzstan, rights and freedoms of man and citizen, but for security across the globe.

Representative of the defendant party points out that the contested legal provision does not limit the constitutional right of man to judicial protection since the legislator defined that a person can be restored in citizenship upon a written application, and the decisions on the matters concerning citizenship can be appealed in a judicial procedure (Article 15, part 1 of Article 41 of the Law "On Citizenship of the Kyrgyz Republic").

In the opinion of the representative of the defendant party public security, stability and development of the country, protection of the rights and freedoms of man and citizen, life and health, all being the supreme values of the humankind, as well as objectives of prevention of threat became the basis for the amendments provided for in part 2 of Article 50 of the Kyrgyz Republic Constitution.

The second representative of the Jogorku Kenesh of the Kyrgyz Republic Turdugulov M.S. has reasserted the arguments of Yrysbekov T.Y.

Considering the previously mentioned, representatives of the defendant party believe that the contested provision of the Law does not contradict to the Kyrgyz Republic Constitution and request to dismiss the claim stated by the applicant party.

In the opinion of the representative of the Secretariat of the Commission on the Matters Concerning Citizenship under the President of the Kyrgyz Republic Apilov E.M. part 2 of Article 20 of the Kyrgyz Republic Constitution establishes the possibility for limitation of the rights and freedoms of man and citizen with the purpose of maintenance of national security, public order, public health and morals, protection of the rights and freedoms of other persons. In this regard, the amendment introduced to the Law "On Citizenship of the Kyrgyz Republic" is conditioned by the need for maintenance of national security of the Kyrgyz Republic, including protection of the state and the population of the country against terrorist and extremist offenses, which are well-known for the danger their pose and the urgent character of the need to fight against not in Kyrgyzstan, but all over the globe.

According to part 1 of Article 41 of the Law "On Citizenship of the Kyrgyz Republic" decisions on the matters concerning citizenship shall be appealable in a court proceeding, for which reason the contested legal provision does not limit the constitutional right of citizens to judicial protection (item 8 of part 5 Article 20). Contrasting the contested legal provision with the principle of presumption of innocence established under part 1 of Article 26 of the Kyrgyz Republic Constitution is not justified, since the contested provision does not set the degree of guilt of a citizen in the specified activities. Only specific juridical facts of commission of activities by a citizen are to be established, which in turn entail loss of citizenship of the Kyrgyz Republic.

With regard to contradiction of the contested provision to part 2 of Article 50 of the Kyrgyz Republic Constitution representative of the Secretariat points out that the constitutional prohibition on deprivation of

nationality and the procedure of loss of nationality referred to in the contested law are not identical by their legal nature. There are known cases in the world's practice of coexistence of the specified procedures within legal system of a particular country, for which reason the representative believes that there are no contradictions between the contested Law and the specified constitutional provision.

Representatives of the State Committee for National Security of the Kyrgyz Republic Elgondiev N.T., Aksakalov A.K. are of opinion that the contested Law is adopted in aid of effective measures on countering terrorism and extremism, as well as for upgrading of penalties for the specified offenses.

Systematic interpretation of part 2 of Article 20 and part 1 of Article 50 of the Kyrgyz Republic Constitution reads that the state by granting man rights and freedoms guarantees him/her the possibility to exercise interests and capabilities, protection from misconduct by virtue of jurisdiction of this state. In turn, the state requires from man to observe the set rules of conduct in the best interests of person, society and state. This requirement is based on the principle of sovereignty of the state and is directed at execution by the state of its functions.

Within this scope the provision corresponds to part 1 of Article 15 of the Universal Human Rights Declaration, which provides for the right to nationality of every person. Part 2 of the named Article stipulates that no one shall be arbitrarily deprived of his/her nationality.

According to part 2 of Article 50 of the Kyrgyz Republic Constitution constitutional law shall establish the grounds for and procedure of deprivation of nationality, which would eliminate the risk of arbitrariness of actions in this regard.

The Kyrgyz Republic, being a State Party to the International Convention for the Suppression of the Financing of Terrorism (the Kyrgyz Republic has accessed to the Convention in accordance with the Law of 15 April N 79), the Shanghai Convention on Combating Terrorism, Separatism and Extremism (has been ratified via the Law of 10 April 2002 N 50), the Convention Against Terrorism of the Shanghai Organization for Cooperation (has been ratified via the Law of 11 July 2011 N 90), has agreed to condemn terrorist activities in all the of its aspects, recognizing that terrorism, separatism and extremism pose threat to international peace and security, evolution of friendly relations between the states and enjoyment of fundamental human rights and freedoms.

The first two of the listed conventions establish that State Parties shall undertake such measures as can be necessary, including in the sphere of national legislation, to ensure that the actions covered by the conventions are in no event subject for justification on the grounds of political, philosophical, ideological, racial, ethnic, religious or any other nature, and to ensure that such actions entail a penalty consistent with the level of gravity.

Termination of citizenship is aimed at protection of other citizens of the Kyrgyz Republic and, in general, of the state by hindering access to the territory of the country and movements within it to persons, who have chosen the criminal path. The objective of termination of citizenship is to ensure national security of the country, particularly in the cases where the principle of the inevitability of punishment does not work and security risks remain relevant.

Considering the nature of damages and possible consequences, acts of undergoing training outside the Kyrgyz Republic aimed at building skills and expertise on committing an offense of terroristic or extremist nature, participation in armed conflicts or hostilities in the territory of a foreign state should be also referred to as to such criminal conduct.

In this regard, the Kyrgyz Republic, guided by the right of sovereignty enshrined in part 1 of Article 1 of the Kyrgyz Republic Constitution is independent in selection of legal means for regulation of the matters concerning citizenship. In this aspect the issue of termination of citizenship cannot be considered as a discriminatory provision or an impermissible limitation of rights and freedoms of man and citizen.

In the opinion of the representative of the Ministry of Justice Bakaev A.J. the Law of the Kyrgyz Republic "On the Introduction of Amendments to the Constitution of the Kyrgyz Republic" adopted in referendum of 28 December 2016 has introduced amendments to Article 50 of the Kyrgyz Republic Constitution. This Article, as opposed to the previous statutory wording, provides for the cases and procedure of deprivation of nationality in constitutional Law.

Communication of Akyikatchy (Ombudsman) of the Kyrgyz Republic of the Kyrgyz Republic has been admitted into production of the Constitutional Chamber of the Supreme Court of the Kyrgyz

Republic before the introduction of the amendments to the Kyrgyz Republic Constitution. In this regard, taking into consideration that the legislation is based on the legal provisions enshrined in the the Kyrgyz Republic Constitution, representative of the Ministry of Justice believes that the issue raised in the communication has lost its relevance.

In addition to that Bakaev A.J. points out that for the purpose of implementation of the aforementioned constitutional provision the Ministry of Justice in cooperation with the Ministry of Foreign Affairs, the State Committee for National Security and the State Registration Service develop a draft of the constitutional law, which will establish the grounds for deprivation of nationality and respective consequences of such deprivation.

The Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, having discussed the arguments brought by the parties, explanations of the third parties and having examined materials of the case, has arrived at following conclusions.

In accordance with part 4 of Article 19 of the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic" the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic renders judicial acts on the subject raised in a request only in regard of the part of a normative legal act constitutionality of which is contested.

Therefore, the subject of consideration by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic in the frames of this case is Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism", read as follows:

"Article 6.

To introduce the following amendment to the Law of the Kyrgyz Republic "On Citizenship of the Kyrgyz Republic" (Vedomosti of the Jogorku Kenesh of the Kyrgyz Republic, 2007, N 5, p. 461):

Item 1 of Article 26 be hereby amended to read as follows:

"1) As a result of a person's entry into military or intelligence service of a foreign state; undergoing training outside the Kyrgyz Republic aimed at building skills and know-how on committing an offense of terrorist or extremist nature; participation in armed conflicts or hostilities in the territory of a foreign state, except for the cases of execution of official duties on supporting international peace and security;

The Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" of 2 August 2016 N 162 was adopted in accordance with the procedure established under the legislation, was published in "Erkin Too" newspaper on 16 August 2016 N 71, was introduced to the State Registry of Regulatory Legal Acts of the Kyrgyz Republic and is effective.

2. The Kyrgyz Republic Constitution declares that the Kyrgyz Republic is a sovereign, democratic state (part 1 of Article 1), which means that the country is independent, including in the matters concerning the choice of legal and organizational mechanisms for the functionality of the institute of its nationality.

It refers to the standards of the international legal practice based on recognition of developed general democratic principles on the matters concerning citizenship, within the frames of which every state can independently regulate the matters concerning its nationality based on its domestic legislation.

Following the international trends and the settings of its Constitution, the Kyrgyz Republic has adopted the Law "On Citizenship of the Kyrgyz Republic", which established the grounds, terms and procedure of acquisition and termination of citizenship the Kyrgyz Republic, where "citizenship" is defined as stable legal relation of a person with the Kyrgyz Republic that manifests itself in an aggregate of their mutual rights and duties (Article 3).

In the constitutional legal meaning citizenship represents a fundamental element, on the basis of which political and legal allegiance of a person to the state is defined, legal grounds for recognition after a person certain legal status originate, a person is vested with a scope of rights, freedoms and duties specified in the Constitution and laws of the country, as well as state protection granted to a person both inside and outside the Kyrgyz Republic.

In the meantime, due to its jurisdiction, state has the right to require of a person to obey the rules of conduct established by the state and to maintain the principle of loyalty to the state of his/her nationality,

and in case of violation of these duties state has the right to bring a person to responsibility. In a reverse situation, state functions on ensuring every citizen's right to exercise his/her rights and freedoms, as well as on protection of such against any potential trespasses would lose its meaning, which underlies the relations between a state and a person.

3. The current dynamics of development of states is indicative of increasing openness of the world and globalization of public relations on the issue of citizenship. Origination of the institutes of dual and multiple citizenship means that citizenship may not be considered anymore as exclusively intrastate phenomenon, since it goes beyond the legal regulation of a single state and requires interstate legal regulation.

The major premise of democratic process in this sphere was implementation of the provisions enshrined in the Universal Human Rights Declaration of 10 December 1948 in a majority of countries of the world, in particular, implementation of Article 6 providing for everyone's right "to recognition everywhere as a person before the law", which has resulted in wide spread of the right to freedom of movement and choice of place of stay and residence.

Together with that, Article 15 of the Universal Human Rights Declaration provides for the right of every person to a nationality and does not allow arbitrary deprivation of nationality.

UN General Assembly in its Resolution 50/152 has recognized the nature of prohibition of arbitrary deprivation of nationality. According to explanatory notes to articles of the Universal Human Rights Declaration, made by the UN Human Rights Council, arbitrary deprivation of nationality shall be only permitted based on a law. It means that law shall clearly establish the grounds and procedures related to the deprivation of citizenship. Having said so, deprivation of nationality shall be substantiated, reasonable and shall comply with the principle of proportionality.

As it follows from the above, provisions of the international law nevertheless concede deprivation of nationality on the initiative of a state.

The established international practice provides evidence of development of specific grounds and procedures of deprivation of nationality. For example, European Convention on Nationality provides for deprivation of nationality on the initiative of a state in cases involving acquisition of nationality by fraud, presenting false information or suppression of any fact about the applicant that is related to the case, voluntary military service in the armed forces of a foreign state, conduct causing serious hazard to critically important interests of the state.

With that, international law considers deprivation of nationality as a measure of last resort, which can be used by state only in exceptional cases, which are clearly defined in domestic legislation and executed only through national courts.

Thus, international law refers to as one of its key principle the observance by states in dealing with the matters concerning deprivation of nationality such standards, which would allow to eliminate arbitrary deprivation of nationality through the legislatively established grounds, terms and procedures of deprivation of nationality, including the right for an impartial judicial examination.

Similar legal position was expressed by Constitutional Chamber of the Supreme Court of the Kyrgyz Republic in the Conclusion to the Draft Law of the Kyrgyz Republic "On the Introduction of Amendments to the Constitution of the Kyrgyz Republic" of 11 October 2016, which provides for a possibility of application of deprivation of nationality as a measure of last resort and the need for establishment in the provisions of a constitutional law the grounds and procedure of deprivation of nationality that would eliminate arbitrariness of such actions.

The Kyrgyz Republic being a part of the global community shall adhere to generally recognized principles and norms of international law. In this regard, for the purpose of elimination of arbitrariness of deprivation of nationality it is necessary to establish clear grounds and unambiguous procedure of deprivation of nationality in a constitutional law, which would provide for judicial proceeding of establishment of the facts of legal significance when settling a question of deprivation of nationality.

4. The Kyrgyz Republic, possessing all the characteristics of sovereignty, has amended the legal grounds for termination of nationality of the Kyrgyz Republic, having made deprivation of nationality and limitation of the right to change of nationality possible based on constitutional law.

The Law "On the Introduction of Amendments to the Constitution of the Kyrgyz Republic" adopted in referendum of 11 December 2016 introduced amendments to the Kyrgyz Republic Constitution in respect of the regulation of the matters concerning citizenship. In particular, part 2 of Article 50 of the Kyrgyz Republic Constitution states: "No citizen may be deprived of his/her citizenship and denied the right to change his/her citizenship, unless in the cases and in accordance with the procedure established under a constitutional law."

First, it must be noted that the constitutional novelty does not worsen in any way the position of a person in matters concerning citizenship. The prior constitutional norm stating that "no person may be deprived of his/her citizenship and denied the right to change his/her citizenship" could be considered as unalienable right of a person only upon observance by the person of the principle of loyalty and if the person observes and non-infliction of harm to vital interests of the state of his/her citizenship. Any other interpretation would contradict the essence of citizenship as relations between a person and a state based on mutual obligations.

Therefore, the introduced amendments have only raised the requirements on regulation of the issue of deprivation of citizenship and the right to change citizenship by means of a constitutional law, which has precedence over codified or organic law that corresponds to the increasing significance of this issue in the society.

Citizenship, irrespective of the grounds of naturalization, has particular significance for the consequences of its acquisition and termination, since results in emergence and termination of the scope of the rights, freedoms, duties and tools for protection of a particular person.

Termination of citizenship, being a form of termination of relations between a person and a state, by its legal nature entails possibility of termination of citizenship in two ways: through renunciation of citizenship and through loss (deprivation) of citizenship.

Renunciation of citizenship, based on voluntary expression of will of a person, represents the procedure of termination of citizenship on the initiative of the person him/herself.

Deprivation of citizenship is a sanction resorted to by a state when the conduct of a person is not consistent with interests and laws of a state.

Such difference between the causes and grounds for termination of citizenship leads to the need of different legal regulation mechanisms for renunciation and deprivation of citizenship.

At the same time, the Kyrgyz Republic Constitution provides for regulation of the matters concerning citizenship by laws, which have different legal status. Specifically, according to paragraph 2 of part 3 of Article 50 of the Kyrgyz Republic Constitution the procedure and terms of granting citizenship of the Kyrgyz Republic shall be defined by law, and the issues of deprivation of citizenship and limitation of the right to change citizenship, in the light of part 2 of the same Article, shall be governed by constitutional law.

Along with that, in the opinion of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic legal regulation of the matters concerning citizenship by different legislative acts can create prerequisites to ineffectiveness of the regulatory methods in the sphere of implementation of the constitutional provisions concerning citizenship. In this vein, all the issues related to citizenship may be regulated by a single regulatory legal act of higher legal status that is by constitutional law.

With regard to the stated above, in development of the draft constitutional law governing the matters of citizenship, legal positions of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic set out in items 3,4 of this Judgment should be taken into consideration.

5. The contested Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" introduces amendments to item 1 of Article 26 of the Law "On Citizenship of the Kyrgyz Republic" with respect to the grounds of loss of citizenship, and in addition to: entry of a person into military or intelligence service of a foreign state; participation in armed conflicts or hostilities in the territory of a foreign state, except for the cases of execution of official duties on supporting international peace and security, was complemented with: undergoing training outside the Kyrgyz Republic aimed at building skills and know-how on committing an offense of terroristic or extremist nature.

The norms on loss of citizenship enshrined in the Law "On Citizenship of the Kyrgyz Republic", due to absence of specific constitutional law regulating the said issue, represent the only legal contradiction emerged as a result of the amendments to the Constitution, when the said issue cannot be anymore regulated by the adopted procedure, and the new procedure has not been developed yet. However, the resulting conflict of laws cannot serve as a ground for recognition of the contested norm of the Law as unconstitutional. In this case, in accordance with the rules of operation of law in time and in accordance with part 3 of Article 2 of the Law "On the Introduction of Amendments to the Constitution of the Kyrgyz Republic" the Law "On Citizenship of the Kyrgyz Republic" of 21 May 2007 with respective amendments as of 2 August 2016 shall be applicable to the extent that does not contradict part 2 of Article 50 of the Kyrgyz Republic Constitution.

Thus, Article 6 of the the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" does not deny and does not impair rights and freedoms of man and citizen, including the right to nationality and the right to change nationality, does not violate the right of everyone to judicial protection, and, respectively, may not be considered as contradicting item 8 of part 5 of Article 20, part 1 of Article 26, part 2 of Article 50 of the Kyrgyz Republic Constitution.

Proceeding from the above and guided by item 1 of part 6, parts 8 and 9 of Article 97 of the Kyrgyz Republic Constitution, Articles 46, 47, 48, 51 and 52 of the Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic" the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic

HELD:

1. To recognize Article 6 of the Law of the Kyrgyz Republic "On the Introduction of Amendments to Certain Legislative Acts in the Sphere of Countering Terrorism and Extremism" as not contradicting item 9 of part 5 of Article 20, part 1 of Article 26, part 2 of Article 50 of the Kyrgyz Republic Constitution to the extent of the constitutional legal interpretation that has been exercised by the Kyrgyz Republic Constitution in the present Judgment.

2. To the Jogorku Kenesh of the Kyrgyz Republic and the Government of the Kyrgyz Republic, in development and adoption of the constitutional law governing the matters concerning citizenship, to take into consideration the legal positions of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic set out in items 3, 4 of the statement of reasons for this Judgment.

3. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement.

4. The present Judgment shall be compulsory for all governmental agencies, local government authorities, officials, public associations, legal entities and individuals, and is subject for execution in the entire territory of the Republic.

5. To publish the present Judgment in all official publications of the governmental agencies, on the official website of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic and in the "Bulletin of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic".

Presiding Judge

Judges:

E. Mamyrov

K. Abdiev

Ch. Aidarbekova

M. Bobukeeva

M. Kasymaliev

K. Kirgizbaev

A. Narynbekova

E. Oskonbaev

Ch. Osmonova

Zh. Saalaev