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Reference and Training Manual for the Resolution of Election Disputes in Tajikistan (in English)

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A Reference and Training Manual for The Resolution of Election Disputes in Tajikistan

Produced with the Cooperation of the Central Commission for Elections and Referenda with the Assistance of the United States Agency for International Development by the International Foundation for Election Systems

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FORWARD

Election disputes inevitably accompany elections. This interaction is caused by the universal participation of different layers of the population, social groups, and political forces in the establishment of representative bodies.

Actually, the judiciary of the Kyrgyz Republic is also at the beginning of its relationship with the elections process. Not only citizens but even practicing lawyers do not have enough knowledge about electoral law. The laws are new, and there was not enough practice in the resolution of election disputes under the previous legislation.

Election disputes are caused by different reasons. There is a lack of legislation on some points. There are contradictions in the law. And there are violations of electoral legislation by voters, candidates, political parties, election officials, other participants of the elections process, and illegal interference of state bodies into the activity of election commissions.

One of the main reasons for election disputes is a lack of high level of civic understanding of the law and the electoral process.

It is evident therefore that this Manual is necessary for the practical application of the law in resolving disputes that arise in preparation and conduct of elections.

_____ Davlatov
Chairman of the Supreme Court

INTRODUCTION: HOW TO USE THIS MANUAL

This manual is designed as a guide for the resolution of electoral disputes. It does not presume to answer every conceivable question about the nomination, registration, campaigning or election of candidates to public office. It provides instead summaries of the law relevant to the rights associated with voting, as well as extracts of the applicable law in a format that is easy to use. In short, it provides the decision maker with the tools for making informed, reasoned and accurate decisions.

The manual is divided into two parts. The first part consists of six chapters, each devoted to a separate issue or cluster of issues. Each of these chapters contains summaries of the law relevant to its subject, and in the interests of thoroughness, that law includes international and constitutional standards, as well as the requirements of the various election laws and other related domestic legislation. The summaries are short and issue-specific, and for quick reference, each summary is separately entitled. Each summary title is additionally included in the Detailed Table of Contents that begins this volume.

The second part of the manual is an appendix containing the actual law required for the resolution of election disputes. Included in the appendix are relevant selections of treaties and international conventions, the constitution of Tajikistan, its election laws and excerpts of other relevant legislation. Although all of this law is summarized in the first part of the book, it is included in the appendix to permit independent interpretation and in anticipation of issues that have not been summarized.

Given this organization of the manual, the decision maker is advised to begin his research with the Detailed Table of Contents. Once the general subject area has been identified, he should proceed to identify those issues that relate to his particular complaint, and from there read the relevant issue summaries and excerpted law. Following this order will hopefully save the decision maker time and worry about the accuracy of his decision.

Finally, a manual of this sort invites revision as the law it describes becomes settled. Recommendations for its improvement therefore are encouraged and welcomed.

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1.0 The Subjects of the Law

The right to elect and be elected is a fundamental right in a democracy and the foundation of republican government, and as such sits at the center of a constellation of laws. Those laws affect not merely the abstract rights of voting and running for office, of course, affecting instead the rights of individuals and groups and the powers of government. This chapter therefore summarizes the election law in effect in Tajikistan in regards to private individuals and groups and organs of the government. Following the distinction made in the Civil Code, private individuals are classified as "natural persons," whereas entities created by law are classified as "legal persons."

1.1 Natural Persons

The Civil Code of Tajikistan defines "natural persons" as including citizens of the republic, citizens of other states and stateless persons. (Civil Art. 17) The distinction is significant because while the constitution declares the "life, honor, dignity and other rights of the individual" as "sacred" (Const. Art.5), it reserves to citizens the rights associated with voting.

1.1.a Citizens of Tajikistan

The constitution defines citizens as persons who were citizens of the republic on the day the constitution was adopted, i.e. November 6, 1994. (Const. Art. 15) Although the Civil Code indicates that a citizen has rights and duties from the moment of his birth until his death (Civil Art.18), the constitution limits the right to vote and be elected to citizens who have attained the age of 18 (Const. Art. 27), and specific election laws establish minimum and maximum ages for election to office. (*See* 4.2.a; 4.2.b; & 4.3.a.2, *below*) The right to vote and be elected is exclusive to citizens, as is the right to form political parties (Const. Art. 28) and the right to participate in meetings, rallies, demonstrations and peaceful processions. (Const. Art. 29) Finally, the constitution appears to limit the right of appeal for violation of the law to individual citizens or groups of citizens. (Const. Art. 31) Additional rights associated with voting, however, are shared with non-citizens.

1.1.b Non-Citizens

The constitution and law distinguish between two types of non-citizens: foreign citizens and stateless persons. Nevertheless, the constitution guarantees the inviolability of the "person," regardless of his citizenship (Const. Art. 18), promising him equality before the law and courts (Const. Art. 17), as well as having a right to be represented in criminal proceedings. (Const. Art. 19) It obligates the state to protect the civil and human rights of individuals, without distinguishing between them on the basis of their citizenship. (Const. Art. 5) Among the rights associated with voting that non-citizens are permitted to exercise is the freedom of speech (Const. Art. 30), although the right seems to be narrowly limited to speech, publishing and the use of mass media, not participation in meetings, rallies or demonstrations. (*Compare* Const. Art. 29) The Law on Political Parties, however, expressly prohibits foreign citizens and stateless persons from forming or being members of political parties (Pol.Part.

Art. 5), as it prohibits branches of the political parties of other states from engaging in the activities of political parties. (Pol.Part. Art. 3)

1.2 Legal Persons

The Civil Code defines "legal person" as "an organization that has separate property." (Civil Art. 48) A simpler definition might be an entity created by law and registered by the state. Examples of legal persons relevant to elections include public associations, political parties and international organizations.

1.2.a Public Associations

According to the Law on Public Associations, such associations are "voluntary, self-controlled and non-commercial" and may be formed by natural or legal persons or combinations of the two. (Pub.Assn. Art. 5) The law details the organizational formalities of public associations, including political parties, their registration and permitted purposes and activities.

1.2.a.1 Organization of Public Associations

The Law on Public Associations requires that at least three citizens be founders of a public association. (Pub.Assn. Art. 10) The age of the founding citizens depends on the type of association being formed (Pub.Assn. Art. 12), but presumably is 18 for associations founded to pursue political ends, as it is for membership in political parties (Pol.Part. Art. 5). The law also indicates that foreign citizens and persons without citizenship can be among the "founders, members and participants of public associations" unless prohibited by other law. (Pub.Assn. Art. 12) Recent amendments to the constitution appear to exclude non-citizens from at least founding public associations, including political parties, although not so clearly from participating in them. (Const. Art. 28) That exclusion also presumptively extends to foreign non-commercial organizations, although elsewhere the law permits their participation in the formation and activities of public associations. (Pub.Assn. Art. 11; Arts. 31-32) The amendments would not however affect the right of legal persons composed of Tajik citizens from either forming or participating in the activities of an association, including a political party.

1.2.a.2 Classification of Public Associations

Notwithstanding the foregoing, the law distinguishes three categories of public associations. International public associations are those active in the whole territory of the republic and one or more foreign states, or they are branches, committees, or organizations of international organizations. (Pub.Assn. Arts. 9, 32) Republican public associations are those that carry out their activities in the whole of the republic or a majority of its areas, and local public associations are those that carry out their activity in a limited area of the republic. (Pub.Assn. Art. 9)

1.2.a.3 Permissible and Impermissible Purposes

The law permits public associations to form for the purposes of realizing and protecting "civil, political, economic, social and cultural rights and freedoms of citizens." (Pub.Assn. Art. 6) It prohibits the formation of associations dedicated to inciting racial, national, social or religious hatred, advocating war or violent overthrow of the constitutional structure of government. (Pub.Assn. Art. 6)

1.2.a.4 Charter Requirements

The Law on Public Associations indicates that a public association comes into being at the moment its charter is accepted by a general meeting of its founders or members. (Pub.Assn. 10) The contents of that charter are as follows:

1) name, purpose and problem of the association;
2) its structure, including the geographical limits of its activity;
3) conditions for the acquisition, maintenance and loss of membership;
4) a statement of the rights and duties of the association;
5) the competence and term of service of the managing body;
6) procedure for modifying and changing the charter;
7) financial sources of the formation of the association;
8) order of reorganization and/or liquidation of association assets.

1.2.a.5 Registration Requirements

Though a public association is constituted by the adoption of its charter, both the Civil Code (Civil Art. 51) and a separate law on the registration of legal persons require that a protocol of the general meeting adopting the charter and additional documents, must be filed with the appropriate organ of government. Local public associations must be registered by local governments (Hukumat), with the exception of associations chartered for activity in Dushanbe, which must be registered in the Ministry of Justice, as must republican and international public associations. (Pub.Assn. Art. 14) Regardless of locale, the association must file the following documents within three months of its founding:

1) an application, signed by the members of the managing body of the association, and including their home addresses;
2) two copies of the charter of the association;
3) the protocol of the general assembly adopting the charter;
4) biographic information on the founders':
   - family name;
   - given name;
   - father's name;
   - address;
5) proof of paying a filing fee;
6) the legal address of the association. (Pub.Assn. Art. 14) (*See also* Civil Art. 55)

Until all of the required documents are filed, the registering body is not obligated to take any action on the application, and can neither register nor refuse to register an

association. (Pub.Assn. Art. 15) Upon the filing of all of these documents, the registering body has 30 days to make a decision. (Pub.Assn. Art. 14)

1.2.a.6 Refusal of Registration

The Ministry of Justice or a local government (Hukumat) may refuse to register the name of a public association that has previously been registered for the same territory or offends the morals, national and religious feelings of citizens. (Pub.Assn. Art. 15) In addition, a public association may be refused registration if its charter violates the constitution or the law. (Pub.Assn. Art. 15) A refusal of registration must be submitted to the association in writing and must contain a statement of reasons for the refusal, and can be challenged by the association with a complaint to the Supreme Court. (Pub.Assn. Art. 15)

1.2.a.7 Permitted Activity of a Public Association

For the realization of their legitimate purposes, public associations are permitted to engage in the following election-related activities:

1) freely distribute information on their activities;
2) participate in the decision making processes of state bodies;
3) carry out meetings, assemblies, demonstrations and peaceful processions;
4) establish mass media and print publications;
5) represent the lawful interests of members and other citizens in court;
6) propose initiatives on public life to state bodies, etc. (Pub.Assn. Art. 20)

1.2.a.8 State Interference Prohibited

The Law on Public Associations forbids state bodies from being founders, members or participants of public associations (Pub.Assn. Art. 12), and likewise prohibits state funding of the activities of associations and political parties. (Pub.Assn. Art. 8) More generally, the law disallows "interference" by the state in the lawful interests and activities of public associations, including political parties, except in instances permitted by law. (Pub.Assn. Art. 8) Unfortunately, the Law on Public Associations does not define those instances.

1.2.a.9 Penalties

For violations of the law, a public association can be penalized by either a stay in its activities or outright liquidation. The Law on Public Associations gives the public prosecutor the responsibility for controlling the activity of public associations. (Pub.Assn. Art. 26) If an association is found to be in violation of the law, it is to be given a written warning to correct the violation within 30 days (Pub.Assn. Art. 28), after which its activities can be suspended (Pub.Assn. Arts. 17, 29) or the association itself terminated and its assets liquidated. (Pub.Assn. Arts. 19, 30)

1.2.b Political Parties

The law on political parties consists of explicit references in the constitution and a specific statute.

1.2.b.1 Constitutional Provisions

The Constitution of Tajikistan explicitly mentions political parties twice. The first reference is in recently amended Article 28, which declares that the right to create political parties lies with citizens only. (Const. Art. 28) Nevertheless, the article goes on to emphasize that following from a right to unite, citizens may freely join and quit such parties.

The only other mention of political parties in the text of the constitution is a membership restriction. The prosecutor general may not belong to any political party. (Const. Art. 97)

1.2.b.2 The Law on Political Parties

A specific law on political parties reiterates the constitution's concerns about the right of citizens only to form, freely join and leave political parties. (Pol.Part. Art. 1) It also provides a definition of a party missing from other law, namely a species of public association with the objectives of participating in political life and electing representatives. (Pol.Part. Art. 2)

1.2.b.2.a Formation of Political Parties

As with other public associations, political parties are obligated to have a charter, but in addition are obliged to publish a program or platform of their activities. (Pol.Part. Art. 2) Unfortunately, the law does not describe the content or form of this platform, nor does it indicate what publication is adequate.

Otherwise, the political parties law follows the law on public associations closely, setting very few additional requirements for the formation of parties. There are several, however, and they are significant. For instance, regional or local parties are not allowed. Only republican parties, i.e. parties active across the country, can be formed. In addition to the documents required for registration, a political party must include a signature list showing the support of 1,000 citizens residing in most of the cities and districts of the country. Unfortunately, the law does not elaborate on this requirement, remaining silent on how residency is to be proved and omitting how many cities and districts constitute "most" Finally, assuming a party meets these additional requirements of public associations and is registered, the law obligates it to have its primary organizations established within one month of registration, without defining what such organizations might be and perhaps more importantly, the consequences for not establishing them. (Pol.Part. Art. 3)

1.2.b.2.b Membership in Political Parties

The Law on Political Parties permits only natural persons, who are citizens and at least 18 years of age to be members of political parties. The law also hints at a registration requirement, but does not explain whether a party member is to register with an organ of the state or merely the party organization. (Pol.Part. Art. 5) The law is clearer in its prohibitions of membership.

In addition to membership by the public prosecutor prohibited by the constitution (*See above*, 1.2.b.1), the political parties law forbids judges, other prosecutors, servicemen, and representatives of the ministries of Interior, State Security, Tax Police, Customs and Justice from being members of parties, and as previously mentioned (*See above*, 1.1.b), foreign citizens and stateless persons are also prohibited from being members. (Pol.Part. Art. 5)

1.2.b.2.c Prohibited Activities

As for the prohibited activities of parties, the law reiterates the constitution's prohibition of inciting national, social and religious hostility, curiously neglecting racial hatred mentioned by both the constitution and the Law on Public Associations, but adding regional hostility. (*Compare* Const. Art. 8 and Pub.Assn. Art. 6 *with* Pol.Part. Art.4) The political parties law follows the constitution, however, in prohibiting the organization of armed groups and activities aimed at the forcible overthrow of the constitutional system. (Const. Art. 8, Pub.Assn. Art. 6 and Pol.Part. Art. 4)

1.3 Government Organs

There are three main divisions of the government responsible for election disputes: the Central Commission for Elections & Referenda, the Prosecutor's office and the Courts. The law affecting each will be discussed in turn.

1.3.a Electoral Commissions

The Constitution of Tajikistan gives responsibility for the creation of an elections commission to the new Assembly of Representatives. (Const. Art. 57) The Assembly is charged with appointing and recalling the chair, vice-chair and members of the commission upon the recommendation of the president. (Const. Art. 57) No provision is made for the establishment of other commissions, and the specific duties and responsibilities of the central commission are left to statute.

The Law on Elections to the Majlisi Oli indicates that for elections to both houses of the national parliament, the following electoral commissions are to be created:

- Central Commission on Elections and Referenda of the Republic of Tajikistan;
- District electoral commissions on the election of members of the National Assembly;
- District electoral commissions on the election of deputies of the Assembly of Representatives;

- Polling station commissions on the election of deputies to the Assembly of Representatives. (Maj.Oli Art. 10)

The organization and powers of each level of commissions will be discussed briefly, below.

1.3.a.1 Central Commission for Elections and Referenda

As mentioned in the previous section, the constitution directs the Assembly of Representatives to appoint the chairman and members of the Central Commission on Elections and Referenda. (Const. Art. 57) The charge is repeated in the Law on Elections to the Majlisi Oli, where it is elaborated. The total number of commissioners is 15, consisting of a chair, deputy and 13 members. (MO Art. 11) The law makes the commission responsible for administering elections in the republic, charging it with everything from ensuring equal treatment of candidates to administering funds to subordinate commissions. (MO Art. 12) In relation to its powers in areas of likely dispute, the Central Commission submits certificates to candidates registered in the single, republican constituency, submits certificates to representatives of political parties (MO Art. 12, 13)), sums up the results of elections and registers elected deputies (MO Art. 12, 14)), solves problems in repeated elections for seats in the Majlisi Oli (MO Art. 12, 15)) and calls elections to fill vacancies (MO Art. 12, 16)) Just as significantly, the Central Commission serves a judicial function in receiving complaints about the decisions and actions of other electoral commissions and ruling on them. (MO Art. 12, 17))

1.3.a.2 District Electoral Commissions

The Law on Elections to the Majlisi Oli describes three types of district election commissions. The first is for election of members to the National Assembly. Consisting of a chairman, deputy, secretary and not less than 8 members, these commissions are created by the Central Commission. The chairs of the various oblasts and Dushanbe shall propose members for the commissions within their territory, while the government shall propose members for the commissions of the cities and districts within the republican subordination.

The second type of district election commission is for the election of members of the Assembly of Representatives from single-mandate constituencies. Consisting of a chairman, deputy, secretary and not less than 6 members, this commission is likewise created by the Central Commission. Members are to be proposed, however, by local executive organs, with the input of political parties.

The third type of district commission is for the election of deputies to the Assembly of Representatives from the single, republican constituency. Rather than being the responsibility of a separate commission, however, the election of deputies from the republican constituency is an additional responsibility of the Central Commission. (MO Art. 13)

Among the most significant responsibilities of district electoral commissions in elections to the Assembly of Representatives are supervising the compilation of voters' lists and making them available for public acquaintance (MO Art. 14, 5), rendering assistance in the nomination of candidates (MO Art. 14, 6), registering

candidates and their proxies (MO Art. 14, 9), arranging meetings between candidates and voters (MO Art. 14, 10), organizing runoff elections and elections to fill vacancies in the Assembly of Representatives (MO Art. 14, 13). In addition, the electoral commissions also have the judicial function of receiving complaints about the actions or decisions of precinct electoral commissions and ruling on them. (MO Art. 14, 14)

The responsibilities of district electoral commissions in elections to the National Assembly include compiling the list of electors (MO Art. 15, 3), receiving and ruling on complaints (MO Art. 15, 8) and organizing runoff elections for the National Assembly. (MO Art. 15, 9)

1.3.a.3 Precinct Electoral Commissions

Precinct commissions are formed by district election commissions and consist of not less than 5 and not more than 19 members, including a chair, deputy and secretary. (MO Art. 16) Among the most significant responsibilities of precinct commissions are the compilation of voters' lists, familiarization of the public with the lists, informing the public about the location of the precinct, date of voting and polling station hours, organizing the voting and counting returns. (MO Art. 16, 1-6) In addition, the precinct commission considers applications and complaints about the preparation and conduct of voting and rules on them. (MO Art. 16, 7)

1.3.b The Prosecutor Office

1.3.b.1 Constitutional Provisions

The Constitution of Tajikistan makes the prosecutor general and subordinate prosecutors responsible for observance of the law in the republic. (Const. Art. 93) It describes the prosecutor's office as a single, centralized agency, responsible only to the president and the Majlisi Oli (Const. Art. 94), and competent to exercise its functions independently, without interference from other state bodies and officials. (Const. Art. 96) In the words of the constitution, prosecutors are subordinate only to the law. (Const. Art. 96)

As mentioned previously, the constitution forbids the prosecutor general from being a member of any political party (Const. Art. 97), and the Law on Political Parties extends that prohibition to subordinate prosecutors. (Pol.Part. Art. 5) Interestingly, though prohibited from belonging to political parties, prosecutors are not prohibited from being nominated for public office. (MO Art. 33)

1.3.b.2 Offenses

Being generally responsible for the control and observation of election law, the prosecutor's office is charged with prosecuting a host of potential violations created by the Law on Elections to the Majlisi Oli and the Law on Elections to Local

Majlises. These two laws describe the following causes of action against the following persons:

- Persons, disturbing citizens in their rights to vote, be elected and campaign through force, deception, threats or other means;
- Members of electoral commissions, officials of state agencies or political parties who either falsify election documents, intentionally count votes wrongly, infringe the secrecy of voting or otherwise violate the election law;
- Persons who humiliate the dignity of a candidate by publishing or spreading false information or insult members of an electoral commission. (MO Art. 58)

Perhaps significantly, the Law on Elections to Local Majlises adds representatives of political parties to this list of persons liable for violations of the law and omits insulting commissions from its list of offenses. (Local Art. 50)

1.3.c The Courts

1.3.c.1 Constitutional Provisions

The Constitution of Tajikistan makes the judiciary independent and responsible for the protection of the rights and freedoms of persons and the interests of the state. (Const. Art. 83) It declares judges subordinate only to the law and prohibits interference in their activities. (Const. Art. 57) To preserve the independence of the courts, the constitution gives judges immunity from criminal prosecution (Const. Art. 91) and prohibits them from being members of political parties. (Const. Art. 90)

Although the constitution mentions a number of courts comprising the judiciary, only two of them are given jurisdiction by electoral legislation to resolve election disputes. These two are the Constitutional Court and the Supreme Court.

1.3.c.2 Constitutional Court

1.3.c.2.a General Requirements & Immunities

The constitution describes a Constitutional Court, consisting of seven judges and comprised of citizens between the ages of 30 and 60 with a minimum of 10 years experience in the legal profession. (Const. Art. 89) The constitution empowers the court to determine the conformity to the constitution of legislation, presidential decrees and decisions of other courts and public authorities. (Const. Art. 89, 1) The court apparently also bears the responsibility of resolving disputes between competing branches of government. (Const. Art. 89, 2) Finally, the constitution declares that decisions of the court are not subject to further appeal. (Const. Art. 89, 3)

Only broadly defined by the constitution, the powers of the Constitutional Court are given in more detail in specific laws. For instance, the Law on the Judicial System describes the Constitutional Court as the organ of the judiciary for the protection of the constitution. (JS Art. 44), and the Law on the Status of Judges reiterates the age limits, experience requirements and immunity from prosecution of

judges (Status Arts. 3 & 9), while repeating the constitution's prohibition of judges being members of political parties. (Status Art. 4) While the separate Law on the Constitutional Court repeats these requirements and immunities (ConCt. Arts. 8-9), it also explicitly gives the Constitutional Court jurisdiction over "elections and referenda." (ConCt. Art. 14 d)

1.3.c.2.b Jurisdiction

The Constitutional Court enjoys three classes of jurisdiction: original, appellate and interlocutory.

As it relates to elections, the Constitutional Court has original jurisdiction over election disputes brought by the president; deputies, commissions or the presidium of the Majlisi Oli; the government; or the Supreme or High Economic Court. (ConCt. Art. 37, 1)

The court has appellate jurisdiction over the complaints of citizens against the violation of their constitutional rights. (ConCt. Art. 37, 5) The law requires such cases to be brought before other decision-making bodies, but it does not specifically require citizens to exhaust their administrative or judicial remedies before filing a case with the Constitutional Court.

The court also has jurisdiction to resolve discrete questions of constitutional interpretation submitted to it by the Supreme Court. (SCt. Art. 4) In these instances, the jurisdiction of the Constitutional Court is interlocutory. Being actions filed in one court by another, the pleading requirements of interlocutory appeals are presumably different than in actions submitted by government organs and officials or by private citizens.

1.3.c.2.c Pleading Requirements

Though the pleadings of government organs or officials are called "presentations" and those of private litigants "petitions," the contents are the same:

- the name of the Constitutional Court;
- biographical data (name, address and other necessary facts) of the appellant;
- biographical data of the appellant's representative, as well as a power of attorney or other documents authorizing the representative to act on the appellant's behalf;
- the name, site and address of the state branch or official person whose acts are being complained of, or the normative act being challenged;
- the exact name, number, date of receiving, source of publication citation
- a statement of the jurisdiction of the court and the standing of the appellant
- a statement of the facts in the case
- a substantiated challenge to the law or action at issue;
- a demand for relief. (ConCt. Art. 40)

1.3.c.2.d Time of Decision-making

The law provides that within ten days of the submission of a complaint, the court shall decide whether it will hear the case (ConCt. Art. 41), and if it elects to hear it, has six months to consider the case. (ConCt. Art. 45)

1.3.c.2.e Finality

As previously discussed, the constitution makes decisions of the Constitutional Court final. (Const. Art. 89, 3) Elaborating, the Law on the Constitutional Court states that acts declared unconstitutional and other acts based on them immediately lose their force and are cancelled. (ConCt. Art. 16)

1.3.c.3 Supreme Court

1.3.c.3.a Constitutional Provisions

The constitution similarly describes a Supreme Court, composed of citizens between the ages of 30 and 60 with a minimum of 5 years' experience in the legal profession. (Const. Art. 85) The constitution, however does not describe the powers of the Supreme Court, leaving the matter to statute.

1.3.c.3.b Other Legislation

The Law on the Judicial System describes the Supreme Court's function as supervisory, giving it authority over the judicial activity of the courts in the republic. (JS Art. 43) The Law on the Status of Judges repeats the age and experience requirements given in the constitution (Status Art. 3), as well as repeating the prohibition against judges being members of political parties. (Status Art. 4) The law also adds a significant qualification to the criminal immunity of judges.

1.3.c.3.c Immunity from Prosecution

While the constitution and other law extend a general immunity to judges (Const. 91), it does not afford them a license to break the law. As the Law on the Status of Judges makes clear, the immunity is intended to preserve the independence of the judiciary and serves to inure individual judges from politically motivated interference with their official duties. (Status Art. 5) The immunity however is not absolute and can be waived for judges of various courts by different authorities:

- Judges of the Constitutional Court, Supreme Court and High Economic Court cannot be tried without the consent of the Majlisi Oli.
- Judges of other courts cannot be tried without the consent of the president of the republic. (Status Art. 9)

In the event that immunity is waived, the Supreme Court has exclusive jurisdiction to hear criminal prosecutions of judges. (Status Art. 9)

1.3.c.3.d General Jurisdiction

The jurisdiction of the Supreme Court is general, the Law on the Supreme Court giving it the power to hear cases as a court of first instance and to take cases filed in lower courts. (SCt Art. 4) Unfortunately, the law does not describe the criteria for such transfers, indicating only that the cases should be important. (SCt. Art. 4) An additional, curious power of the Supreme Court is its ability to issue explanations for the application of a particular law without there being a case or controversy in court. (SCt. Art. 5)

1.3.c.3.e Election Related Appellate Jurisdiction

The Law on Elections to the Majlisi Oli provides for appeals to the Supreme Court in the following instances:

- Decisions of the Central Commission for Elections and Referenda (MO Art. 20);
- Refusals by the CCER to affirm a list of candidates submitted by a political party (MO Art. 31);
- Refusals by the CCER to register a deputy elected to the National Assembly or the declaration of the election as invalid (MO Art. 52);
- Refusals by the CCER to register a deputy election to the Assembly of Representatives or the declaration of the election as invalid (MO Art. 54)

1.3.c.3.f Time Period of Decisions

The general time periods for decision-making apparently apply to the Supreme Court as well, with a notable exception: for appeals against the refusal of the Central Commission to register a list of candidates, the Supreme Court must consider the issue within 6 days of its submission. (MO Art. 31) Otherwise, rulings by the Supreme Court on decisions of the commission are to be made within 10 days of receiving the complaint. (MO Art. 21)

1.3.c.4 Other Courts

The Law on the Judicial System, like the constitution, lists other courts of the republic, but unlike the constitution describes their structure and composition in more detail. It does not indicate, however, what election disputes are to be heard by which courts. In general then, the law describes city and district courts (JS Art. 24-30), oblast and Dushanbe city courts (JS Art. 31-40), military courts (JS Art. 41) and economic courts (JS Art. 42), along with the previously described Supreme Court (JS Art. 43) and Constitutional Court. (JS Art. 44)

1.3.c.4.a Complaints Against Electoral Commissions

Both the Law on Elections to the Majlisi Oli and the Law on Elections to Local Majlises describe a similar process for complaints against the decisions of electoral commissions. Complaints may be brought by:

- political parties that have nominated candidates;
- candidates themselves or their trustees, as well as
- voters. (MO Art. 20; Local Art. 18)

The Law on Elections to the Majlisi Oli additionally includes "observers" in its list of persons with standing to challenge the decisions of election commissions. (MO Art. 20) Both laws, however, establish the period during which a complaint must be brought at 10 days from the commission decision. (MO Art. 20; Local Art. 18) Both laws also require a court considering such a complaint to rule within 3 days of its receipt, unless there are less than 6 days remaining before the election, in which case the court must rule immediately. (MO Art. 20; Local Art. 18)

1.3.c.4.b Specific Complaints

The Law on Elections to the Majlisi Oli mentions a few specific complaints that can be filed with a court. It does not, however, specify which court has jurisdiction over these complaints.

- Resolutions of election commissions contradicting the constitution or other law (MO Art. 10);
- Omissions or mistakes in voters' lists. (MO Art. 25)

The time period for filing complaints against the acts or resolutions of electoral commissions is 10 days from the decision of the commission, and the time within which the court must rule is 3 days from the receipt of the complaint, or if the complaint is received within 6 days of the election, immediately. (MO Art. 20) Rulings on complaints about omissions or mistakes in voters' lists are final. (MO Art. 25) Appeals from rulings on other complaints, not being prohibited, presumably are permitted.

2.0 Voter Registration & Voters' Lists

2.1 International Standards

2.1.a Applicability of International Law

According to the Constitution of Tajikistan, international legal documents recognized by the republic are a constituent part of its legal system, and in the event of a conflict between recognized international law and republican laws, the international law controls. (Const. Art. 10) The Civil Code elaborates on this provision, adding that both principles of international law as well as express agreements signed by the republic are a part of its legal system. (Civil Art. 7, 1) The code continues that international treaties to which Tajikistan is a signatory apply directly in cases involving inalienable rights and freedoms. (Civil Art. 7, 2, referring to Art. 1, 5) Finally, reiterating the requirement of the constitution, the Civil Code provides that if civil legislation conflicts with international law, the international law controls. (Civil Art. 7, 2)

2.1.b International Conventions on Voting

Regarding the right to vote, the Universal Declaration of Human Rights provides that "everyone has the right to take part in the government of his country" (Decl. Art. 21:1) The relationship of the individual to his country will be explored in the discussion of citizenship below, but for the moment, the Declaration bases its conception of voting on a right of participation. That participation may be direct or indirect, "through freely chosen representatives." (Decl. Art. 21:1) The Declaration then elaborates on the basis of the voting right and its implications. The right of participation exists because the "authority of government" itself rests on the "will of the people." The breadth of this basis means that all people are entitled to vote, and therefore the Declaration decrees that suffrage shall be universal and equal. (Decl. Art. 21:3) It further provides that elections shall be "periodic and genuine" because without being periodic, a change in the will of the people could not be discerned, and without being genuine, it could not be discerned accurately. Thus the International Convention on Civil & Political Rights, reiterating the Declaration declares that every citizen shall have the right and opportunity to take part in public affairs either directly or through freely chosen representatives and to vote at periodic and genuine elections, which guarantee the free expression of the will of the voters. (CPR Art. 25:a, 25:b) Though there are minor differences in emphasis between the two documents, it is the Convention that makes clear that the rights of participation and voting are to be enjoyed by citizens.

2.1.c International Conventions on Citizenship as a Condition of Voting

International documents refer to nationality, residency and the freedom of movement in their treatment of the aspects of citizenship. While not attempting to define the conditions of citizenship, the Universal Declaration of Human Rights states

that "everyone has the right to a nationality." (Decl Art. 15:1) It further provides that a person may not be "deprived of his nationality" arbitrarily, and that commensurate with the right to a nationality is the right to exchange nationalities. (Decl. Art. 15:2) Elaborating on these general rights, the Convention on the Elimination of All Forms of Discrimination Against Women requires that state parties grant women equal rights in the acquisition, retention and exchange of their nationality, regardless of marital status. (Art. 9:1) That is, a woman does not automatically acquire her husband's nationality whether he was a foreign national at the time of their marriage or changed his nationality subsequent to it because the right of nationality is an individual right.

2.1.d International Conventions on Residency as a Condition of Voting

An equally individual right is the right to free movement and residence. The Universal Declaration of Human Rights acknowledges that right in "everyone" and adds that the right to freedom of movement includes the "right to leave" any country and the right "to return" to his own. (Decl. Art. 13:1, Art. 13:2) In respects to residence, as it may be a condition of voting, the International Convention on Civil & Political Rights likewise recognizes the right to leave, though it slightly qualifies the right to return by adding that the right may not be denied "arbitrarily." (CPR Art. 12:2, Art. 12:4) Moreover, the Convention further narrows the definition of who has the right to free movement. While the Declaration simply states that "everyone" has the right, the Convention limits the right to "everyone lawfully within the territory of a state." (CPR Art. 12:1) Though a subtle distinction, it is one with significant consequences as it acknowledges the legitimacy of legal conditions to the exercise of otherwise fundamental freedoms, and is all the more significant since nationality and residency requirements are often conditions of the right to vote.

2.2 National Constitution

2.2.a Generally

The Constitution of Tajikistan declares that every citizen has the right to elect and be elected. (Const. Art. 27) Other than disqualifying citizens under the age of 18 and citizens either incarcerated or declared mentally incompetent by court decrees (Const. Art. 27), the constitution itself does not impose any additional requirements on the exercise of the franchise. Specifically, the constitution does not require registration as a condition on the exercise of the right to vote, nor does it prohibit it, leaving the matter to other law.

2.2.b Residency

In respects to residency as a condition of voting, the constitution is silent. It mentions only the right of citizens to choose their place of residence and to leave and return to the republic. (Const. Art. 24)

2.2.c Marital Status

Following international law, the constitution provides that husbands and wives are to have equal rights, and it prohibits polygamy. (Const. Art. 33)

2.3 Elections Law

The Law on Elections to the Majlisi Oli and the separate Law on Elections to Local Majlises describe similar procedures for the composition of voters' lists. Voters' lists are compiled by each polling station based on calculations of voters prepared by:

- Commanders of military units for servicemen and their dependents living in their units,
- Governors of cities and districts for voters residing within their administrative units,
- Chiefs of rest homes, sanitoria, hospitals and similar institutions for voters presently residing in these institutions,
- Heads of diplomatic missions for citizens residing outside the territory of the republic but within their jurisdiction.

The voters' lists compiled are to include the voter's:

- Name – first, family and father's;
- Date of birth (including day and month of 18 year olds)
- Address

The data is to be arranged in alphabetical or other convenient order, and each voter can be included in only one voters' list. (MO Arts. 23-24, Local Arts. 19-20)

2.3.b Familiarization with Lists

Once the voters' lists are compiled, the polling stations must inform voters when and where they can check the lists and correct any inaccuracies. Generally, lists must be made available 15 days before an election. The time period for familiarization of lists in temporary places differs depending on the level of the election involved.

For elections to the Majlisi Oli, lists must be made available in remote areas, diplomatic missions on foreign soil, and in sanatoria, rest homes, hospitals and other medical institutions 5 days before the election.

For elections to the local majlises, lists must be made available 2 days before the election. Precincts outside the republic are not mentioned in elections for local majlises, presumably because citizens must reside within the territory of a majlis to vote for candidates to it.

The time period for familiarization with lists in military units is not mentioned in either law.

Regardless of the time required for familiarization, voters have a right to correct errors in the lists. Citizens can complain of:

- Inaccurate information about themselves, or
- Improper exclusion from a list. (MO Art. 25, Local Art. 21)

The citizen must complain to the precinct commission responsible for the list, and the commission must decide on the complaint within two days of its submission, or if submitted on election day, immediately. A commission agreeing with the

complaint must correct the list, while a commission disagreeing must present the citizens with a rejection stating the reasons for its decision. A rejection entitles the citizen to appeal to a city court whose decision in the matter is final (MO Art. 25, Local Art. 21) If the court rules in favor of a citizen, the commission must correct the voters' list accordingly.

Finally, though corrections to the list may be made on the day of voting, any attempt to alter the contents of a list once counting has begun is prohibited. (MO Art. 23)

2.3.c Early Voting

Citizens unable to be in their precinct on election day, may vote early provided:

They appear at their polling station within the period designated for familiarization with voters' lists, and

They can produce a passport or other document establishing their identity.

A citizen permitted to vote early shall express his will in regards to a candidate, place it in an envelope and deliver it to the precinct commission. The commission in turn must make a note of the early voting in the voters' list, seal the envelope in the presence of the voter and safeguard the envelope until election day when it will be opened and counted. (MO Art. 26, Local Art. 22)

2.3.d Unique Procedures for Elections to the National Assembly

While the foregoing sections describe the general procedures common to elections for the Majlisi Oli and local majlises, there are a few unique requirements for elections to the National Assembly.

The individuals who elect deputies to the National Assembly are deputies of the local majlises, rather than ordinary citizens. (MO Art. 6) Therefore voters' lists for elections to the National Assembly consist of the biographical data of elector deputies, proposed by the chairs of the local assemblies. (MO Art. 23)

The lists are compiled by district rather than precinct commissions 15 days before the election (MO Art. 23) and must be published in the local media 7 days before the elections. (MO Art. 25) Deputies of the following assemblies are to be included in the list:

- Districts and cities within the Gorno-Badakhshan Autonomous Oblast, with the exception of towns of district subordination;
- Badakhshan;
- Oblasts (MO Art. 24, 1);
- Dushanbe and districts located in the capitol (MO Art. 24, 2);
- Cities and districts of the republican subordination, with the exception of the towns of the district subordination. (MO Art. 24, 3)

2.4 Other Relevant Law

2.4.a The Civil Code

2.4.a.1 Capacity

The Civil Code distinguishes between the legal and dispositive capacity of citizens. Legal capacity comes into existence at the time of birth and continues until the citizen's death. (Civil Art. 18, 2) Dispositive capacity on the other hand comes into existence when the citizen either attains the age of 18 (Civil Art. 18, 1) or marries. (Civil Art. 22, 2)

The distinction in effect between legal and dispositive capacity is very simple. Citizens with legal capacity can exercise the pre-existing, general rights of citizens (Civil Art. 18, 1) whereas citizens with dispositive capacity can assume additional obligations. (Civil Art. 22, 1)

Interestingly, the right to elect and be elected is omitted from the code's examples of the content of legal capacity.

2.4.a.2 Residency

The Civil Code likewise defines the residence of citizens. Simply, the place where a citizen permanently or primarily resides is considered his residence. (Civil Art. 21, 1) While acknowledging the possibility of multiple residences, the code does not provide criteria for what makes one of several residences a citizen's primary one.

2.5 Hypothetical Problems & Discussion Questions

Discussion and hypothetical problems are designed to reinforce the information presented in the summaries. They are also intended to highlight gaps in the law, vagueness and contradictions that require resolution by amendments to the elections code or by administrative regulations or judicial interpretation.

2.5.a The New Bride

2.5.a.1. Facts

Zarina is a 16 year old student in a secondary school. Two months ago, she attracted the attention of Behzod, a soldier then living in the barracks closest to her school. He had first noticed her walking to class when he was on guard duty. Flattered by the attention, she soon began skipping class so she could pass by the post when Behzod was on duty.

Both of the young people were reprimanded for their flirtation, Zarina getting in trouble at school, and Behzod eventually being transferred to another post in another military unit. Impressed with her power over men, Zarina resumed her normal class routine and forgot about the lovelorn soldier. He, however, did not forget her, and within a month of his transfer, kidnapped her and forcibly married her.

Yesterday, Zarina obtained a divorce.

2.5.a.2 Questions Presented

1. Can Zarina vote in the upcoming elections?
   a. Would the answer be any different if Zarina's divorce had been filed but not granted by the date of the elections?
   b. Would it be different if she were Behzod's second wife?
2. If she were otherwise qualified to vote, in which precinct should her name be listed:
   a. the precinct of her father's residence or the precinct of her ex-husband's?
3. If otherwise qualified, how many days does she have to add herself to a list?

2.5.b The Returning Refugee

2.5.b.1 Facts

During the civil war, Dilshod's father left the territory of the republic, hoping to find a better life for his children. They moved in with a relative who had left the country before independence, and there, Dilshod grew to adulthood. Though he was born in the territory he has not set foot in it in more than 8 years, has never paid taxes, never served in the army nor voted in the elections. He resents his father bitterly, however, for having taken him away from his homeland, and resolves to show his father's cowardice and error and reclaim his birthright.

2.5.b.2 Questions Presented

1. If Tajikistan has established a consular office in the country of Dilshod's exile, can he vote in elections in the local majlis of his hometown?
2. If so, how many days in advance of the election can Dilshod put his name on a voters' list?
3. If Dilshod returns to Tajikistan and his hometown and presents himself to the precinct electoral commission responsible for the territory of his family's abandoned home, can he be added to the voters' list?
4. Would the answer be different if his passport expired during his years in exile?

3.0 Formation & Registration of Political Parties

3.1 International Standards

3.1.a Applicability of International Law

According to the Constitution of Tajikistan, international legal documents recognized by the republic are a constituent part of its legal system, and in the event of a conflict between recognized international law and republican laws, the international law controls. (Const. Art. 10) The Civil Code elaborates on this provision, adding that both principles of international law as well as express agreements signed by the republic are a part of its legal system. (Civil Art. 7, 1) The code continues that international treaties to which Tajikistan is a signatory apply directly in cases involving inalienable rights and freedoms. (Civil Art. 7, 2, referring to Art. 1, 5) Finally, reiterating the requirement of the constitution, the Civil Code provides that if civil legislation conflicts with international law, the international law controls. (Civil Art. 7, 2)

3.1.b Freedom of Expression, Association and Assembly: Political Parties

The Universal Declaration of Human Rights provides that everyone has "the right to freedom of opinion and expression" and adds that the right includes the freedom to seek, receive and impart information and ideas "without interference." (Decl. Art. 19) Acknowledging separately that everyone has the right to freedom of peaceful assembly and association (Decl. Art. 20), the Declaration suggests that the "right to seek, receive and impart information and ideas" may be exercised socially. If the information being sought and imparted is political, obviously, the Declaration requires that it be sought and imparted "without interference." In the view of the Declaration, then, the freedom of opinion includes political opinion and the freedom of expression includes political expression, and coupled with the freedom of association, these freedoms prohibit state interference with the peaceful activities of political assemblies, associations and parties.

3.1.c Permissible Restrictions

The freedom of expression of associations and assemblies is not absolute, however, although the very few legitimate restrictions recognized by the International Covenant on Civil & Political Rights indicate the high degree of respect due political expression in a democratic society. For instance, expression generally can only be restricted when "provided by law and necessary" to safeguard the rights and reputations of others, national security or the public order, or public health and morals. (CPR Art. 19:3 (1), (2)) Particularly, "propaganda for war" and "incitement" to religious, racial or national discrimination, hostility or violence may be prohibited. (CPR Art. 20:1, Art. 20:2)

That only these circumstances may justify interference with the freedom of expression by political entities is indicated when the Covenant declares that

"everyone shall have the right to freedom of association with others" (Art. 22:1) and that no restrictions may be placed on the exercise of this right except if "prescribed by law and necessary" to protect the interests of national security, public safety, public order, public health or morals or the rights and freedoms of others. (Art. 22:2)

3.2. National Constitution

The Constitution of Tajikistan declares that public life is to develop on the basis of political and ideological diversity, specifically forbidding the establishment of a state ideology. (Const. Art. 8) It likewise provides that social associations and religious organizations are permissible within the framework of the law.

Elaborating that framework, the constitution further declares that "citizens have the right to unite into social associations, such as trade unions and political parties, and that membership in such organizations is to be completely voluntary. That is, citizens are free to form, join and leave political parties. (Const. Art. 28)

What the constitution does not very clearly prohibit is two-fold. First, it prohibits religious organizations from interfering in state affairs, though it does not offer a definition of "interference." Second, it prohibits social associations, including political parties, from being founded for the purposes of inciting racist, nationalist, social or religious hatred or advocating the forcible overthrow of the constitutional structure of government. Once formed, parties are also prohibited from engaging in such incitement. (Const. Art. 8)

3.3 Election Law

Neither the Law on Elections to the Majlisi Oli nor the Law on Election to Local Assemblies addresses the conditions for or process of forming or registering political parties. Rather, they mention a single function of parties – the nomination of candidates. (MO Art. 30, Local Art. 24) In order to nominate candidates, however, a political party must have:

- Registered with the Ministry of Justice before the appointment of elections, and
- Filed documents establishing its source of income. (MO Art. 30)

The details of those requirements are left to other law.

3.4 Other Relevant Law

3.4.a Law on Political Parties

As was discussed previously (1.2.b.2.a), a specific law on political parties resembles the law on public associations. Nevertheless, the political parties law establishes a few unique requirements for the creation, registration, activities and termination of political parties. These are discussed in turn below.

3.4.a.1 Generally

Following recent amendments to the constitution (Const. Art. 28), the Law on Political Parties reiterates citizens' right to create, join and leave parties voluntarily. (Part. Arts. 1, 5) The law classifies a party as a species of public association, organized as a vehicle for citizens to participate in public life and express their will through elected representatives.

3.4.a.2 Creation of Parties

The Law on Political Parties sets several criteria for the creation of political parties. In summary, a party may be:

- formed by citizens, without the participation of political parties of other states,
- at a founding conference which was:
  - publicized through the local media at least one month before the conference was convened and where
  - a charter was adopted, and
  - the management structure of the party was established. (Party Art. 3)

The charter of the party should include:

- an initial membership of at least 1000 inhabitants of the majority of cities and regions of the republic (Party Art. 3),
- its name, purposes and goals,
- a description of its management structure, including the terms of their powers and primary location,
- a description of the process by which a member joins or leaves the party,
- a statement of the equality of all members of the party,
- a statement of the conformity of its purpose and activity to the constitution and the law,
- a description of the process of adopting or modifying the charter,
- a statement of the party's sources of income,
- a description of the process of termination of the party's activity and liquidation of its assets,
- a description of the election of delegates;
- other descriptions of the party's activity. (Party Art. 6)

The law also sets numerous restrictions on the formation of political parties. In addition to parties whose charters do not conform to the foregoing requirements, the law disallows parties:

- formed for or engaged in activities directed at the violent overthrow of the constitutional structures of government,
- involved in religious organizations or
- created within any of the following bodies:
  - state security,
  - internal affairs,
  - prosecutors' office
  - custom's house,
  - tax police,
  - justice department,
  - courts,

- armed forces,
- state authority,
- high schools or higher educational institutions. (Party Art.4)

3.4.a.3 Registration of Political Parties

Assuming a party conforms to the foregoing requirements, it still must be registered with the Ministry of Justice. Though the time period between the creation of a party and the filing of its registration is unclear, to register, the party must file an application, along with a copy of its charter. The application is to include the following:

- an extract from the protocol of the conference adopting the charter,
- the legal address of the party,
- the names of at least 10 founders present and in favor of the adoption of the charter,
- a copy of the notice announcing the convening of the conference,
- proof of payment of a state duty, and
- a list of a minimum of 1,000 charter members. (Party Art.7)

The law forbids the ministry from requiring any other documents from a party. (Party Art.7)

Two additional points need to be made about registration. First, the law unfortunately does not set the amount of the deposit that must be made by a new party before it applies for registration, indicating only that it is to be determined by the government. Neither does the law designate the place of deposit or other formalities.

Finally, changes and additions to a charter must also be filed with the ministry (Party Art. 7), as well as an annual report on the current legal address and continued activity of a party, regardless of changes to its charter. (Party Art. 10)

Incidentally, election blocs, composed of two or more political parties, likewise must be registered. They, however, are registered by electoral commissions, their constituent parties already being registered by the Ministry of Justice. (Party Art. 18)

3.4.a.4 Refusal of Registration

As discussed in Chapter 1 (*See above* 1.2.a.6), the Ministry of Justice can refuse to register a party if its charter contradicts the constitution or the laws, or otherwise fails to conform to the requirements listed above. (*See* 3.4.a.2) It can also refuse to register a party whose legal address is outside the territory of the republic. Refusals by the ministry are to be in writing and to contain a statement of the reasons for a refusal.

Decisions by the ministry presumably can be appealed to the Supreme Court. The matter is slightly uncertain because the political parties law permits appeals from decisions of the ministry but does not indicate what court has jurisdiction to hear such appeals. (Part. Art. 9) However, a political party is a species of public association, and the law on public associations expressly gives the Supreme Court power to hear refusals of the ministry to register associations. (PubAssn Art. 15)

3.4.a.5 Consequences of Registration

Assuming a party is registered, it becomes a legal person from the date of registration, capable of the same rights and responsible for the same duties as any other legal entity. (*See above* 1.2) (*See also* Party Arts. 3 & 7) It also must establish offices in the majority of areas, cities and rayons of the republic. (Party Art. 3) The managing bodies of those offices must notify the local authorities, though the timing of the notification is not certain. (Party Art. 8) Finally, a registered party has the rights and obligations expected of a political party. Those rights and duties are discussed in the next section.

3.4.a.6 Rights of Registered Parties

The law gives registered political parties the right to:

- nominate candidates (Party Art. 10),
- create and participate in the activity of:
  - party branches (Party Art. 10),
  - party blocs (Party Arts 10 & 17),
  - international associations and unions (Party Art. 10),
  - other associations in representative bodies. (Party Arts. 10 & 19)
- campaign, including:
  - the distribution of information in oral, written or other form,
  - the organization of meetings, assemblies, demonstrations and other public measures,
  - the establishment of printing houses and mass media,
- the receipt of public funds to use electronic and print media. (Party Arts. 10 & 15) (*See also*, Chapter 5 *below*),
- own separate property. (Party Art. 11)

3.4.a.7 Duties of Registered Parties

The law likewise obligates a registered party to:

- inform the Ministry of Justice annually about its current legal address and activity,
- publish an annual summary of its financial condition and sources of income. (Party Art. 12)

That financial report is to be prepared by the managing body of the party, is to be delivered to unspecified tax authorities and is to contain information on the sources and size of contributions received by the party in the past year. Those sources of income may include:

- initiation fees and membership dues, if provided in the charter,
- voluntary donations,
- receipts from publications, lectures, exhibitions or other activity within its authorized purposes. (Party Art. 12)

The law also permits a party to receive material contributions from:

- natural persons,
- enterprises,
- public associations,
- funds, and
- other legal entities (Party Art. 13), and
- the state (for campaign funds). (Party Art. 15)

The law prohibits a party from accepting contributions from:

- charitable and religious organizations,
- state enterprises,
- anonymous persons,
- political parties not in association with the recipient party, or
- enterprises with the participation of foreign states, citizens, enterprises, organizations or capital. (Party Art. 13)

Unfortunately, the law does not provide a time period when such reports are to be submitted, nor does it describe the consequences of an untimely filing.

3.4.a.8 Suspension and/or Termination of Political Parties

The law recognizes the termination of a political party by voluntary and involuntary means. As for voluntary termination, the law acknowledges that a party may be terminated by:

- liquidation, by the terms of its charter, or
- reorganization (merger, acquisition or division) by a majority decision of its board of directors. (Party Art. 25)

As for involuntary termination, the law provides it in the event a political party:

- violates the laws of the republic, or
- receives economic or political help from abroad. (Party Art. 20)

The Ministry of Justice or the Prosecutor General can issue a warning that if the party does not cease its illegal conduct or contact, its activity can be suspended for a period of 6 months by order of the Supreme Court. (Party Art. 20) A suspended party loses its status as a legal person and cannot:

- organize meetings, demonstrations or other public measures,
- participate in elections,

and may only expend funds to pay its contractual obligations and fines imposed on account of its illegal activity. (Party Art. 21)

The Supreme Court can also order a political party terminated (Party Art. 22):

- if the party continues its illegal activity after being suspended, or
- if the party promotes the violent overthrow of the constitutional structure. (Party Art. 23, *citing* Art. 4)

Apparently, parties advocating violent overthrow can be terminated without a warning or a suspension.

Whether a party is terminated voluntarily or involuntarily, the consequences of termination are the same. A terminated party:

- loses the rights of a legal person (*See also* 1.2 *above*)
- has its registration certificate cancelled,

- has its property distributed after the satisfaction of its debts. (Party Art.26)

If the party was terminated voluntarily, its property is distributed according to its charter if liquidated while it is assigned to its successor association if reorganized. If on the other hand, the party was terminated involuntarily, its property is distributed in accordance with a decree of the Supreme Court. (Party Art. 26)

3.4.b The Law on Public Associations

Political parties are a species of public association. (*See above* 1.2 *et seq.*) As such, general requirements for their formation, registration and termination can be found in the Law on Public Associations in addition to the political parties law. For instance, the associations law requires the founders and members of public associations to be citizens of Tajikistan. (PubAssn. Art. 12) (*See also* 1.2.a.1), gives the body registering an association 30 days to make a decision (PubAssn. Art. 14) (1.2.a.5), permits associations whose registrations have been refused to appeal to the Supreme Court (PubAssn Art. 15) (1.2.a.6), and summarizes the process by which the acitvities of an association can be suspended or terminated. (PubAssn Arts. 17, 19, 26, 18, 19, 30) (1.2.a.9)

3.5 Hypothetical Problems & Discussion Questions

Discussion and hypothetical problems are designed to reinforce the information presented in the summaries. They are also intended to highlight gaps in the law, vagueness and contradictions that require resolution by amendments to the elections code or by administrative regulations or judicial interpretation.

3.5.a The Dual National

3.5.a.1 Facts

Instead of a man without a country, Baktior is a man with two. His mother was French, his father Tajik, and in addition to giving him life and a name, each of them gave him a nationality. Baktior therefore has two passports, and he takes advantage of his dual nationality by spending his summers in France and the school year in Dushanbe where he is studying at the university.

During last summer's vacation, he began exploring his French heritage, and inspired by the ideas of "libertē, egalitē and fraternitē," returned to Tajikistan a bit of a political radical. While the semester before he had worn his hair short and his beard long, he returned with just the opposite, wearing no beard and an unkempt mop of hair that hung almost to his shoulders. His changes did not stop at his appearance, however.

Resolved to change the status of women in his country, Baktior formed a feminist reading group at his university, which, after a short while, determined to become a political party in order to nominate candidates for the upcoming elections.

3.5.a.2 Questions Presented

1. Can Baktior form a political party?
2. Can he found it on behalf of women even though he is a man?
3. Can he found it if he has no other source of income except the money given to him by his parents?
4. Can he found it if he did not resume his studies when he returned to Tajikistan?
5. If Baktior founds a party, can it have branches and affiliations in France?

3.5.b The Day & Night Party

3.5.b.1 Facts

The Day & Night Political Party emerged out of a union of security guards who originally banded together to bargain collectively for better working conditions, such as shorter shifts when it snows and more bullets. Since its formation however, the political party itself has needed guarding since it has experienced problems with its registration and activity.

3.5.b.2 Questions Presented

1. Could the party be refused registration . . .
    a. If its founders publicized the founding congress of the party by walkie-talkie radio?
    b. If 5 of its 10 charter board members at that founding conference were not physically present but sent proxies?
    c. If some of its charter members had been killed on duty between the time the party was formed and the time its registration application came before the Ministry of Justice?
2. If registered, could the Night & Day Party be suspended or terminated . . .
    a. If one of its members, angry with the outcome of a case he read about in the newspaper, declared that the prosecutor who tried it should be thrown out of office?
    b. If some of its members guard the residence of international consultants?
    c. If the party buys a campaign banner with money collected from entrance fees to a marksmanship contest and plof festival or a donations box set up there?
    d. If it has members in Dushanbe, the Republican Subordination, and GBAO but not Khatlon and Leninabad?

4.0 Nomination of Candidates

4.1 International Standards

4.1.a Applicability of International Law

According to the Constitution of Tajikistan, international legal documents recognized by the republic are a constituent part of its legal system, and in the event of a conflict between recognized international law and republican laws, the international law controls. (Const. Art. 10) The Civil Code elaborates on this provision, adding that both principles of international law as well as express agreements signed by the republic are a part of its legal system. (Civil Art. 7, 1) The code continues that international treaties to which Tajikistan is a signatory apply directly in cases involving inalienable rights and freedoms. (Civil Art. 7, 2, *referring to* Art. 1, 5) Finally, reiterating the requirement of the constitution, the Civil Code provides that if civil legislation conflicts with international law, the international law controls. (Civil Art. 7, 2)

4.1.b Candidates

The Universal Declaration of Human Rights and the International Covenant on Civil & Political Rights address the nomination of candidates indirectly by asserting a right to be elected.

As the protection of political parties follows logically from the protections of freedom of expression and association in the Declaration and the Covenant, so too the nomination of candidates is logically protected. The Declaration provides that everyone has a right to participate directly in government (Decl.Art. 21:1), and adds that "everyone has the right to equal access to public service." (Decl.Art. 21:2) Expanding on these rights, the Covenant bestows them on "citizens," whom, it declares, have a right to take part directly in the conduct of public affairs (CPR.Art. 25:a), to have equal access to public service (CPR. 25:c) and to be "elected at genuine periodic elections" (CPR. 25:b) Although the right protected is the right to run for office, rather than actually be elected, it would necessarily require a free and fair nominations process when, to be elected, candidates must be put forward by political parties. In other words, the rights recognized and protected by the Declaration and the Covenant -- rights of voting, running for office, the freedoms of association and expression – do not begin and end on election day but extend to the entire process of gauging the will of the people upon which the authority of legitimate government rests. (Decl.Art. 21:3)

4.2 National Constitution

The Constitution of Tajikistan echoes this general recognition of a right to be elected, explaining that citizens have a right to take part in political life and state administration directly. (Const. Art. 27) It also recognizes a right to be elected, perhaps better described as a right to seek election, and declares that citizens have equal rights to state service. (Const. Art. 27)

These equal rights, however are not without qualification, and the constitution establishes age and residency requirements for election to various assemblies.

4.2.a National Assembly

Recent amendments to the constitution create a National Assembly consisting of deputies who have: attained

- the age of 35, and
- a higher education, or are
- former presidents of the republic. (Const. Art. 49)

Interestingly, in contrast to judges, the constitution does not establish a maximum age for deputies. (Compare Const. Arts. 85, 89) In addition, the constitution does not adequately define the education requirement, neither specifying the level or type of degree required. Finally, the constitution describes the right of former presidents to be members of the National Assembly as an option and not an obligation. (Const. Art. 49)

According to the constitutional formula, 3/4s of the deputies of the National Assembly are to be elected by deputies of the local assemblies, the remaining ¼ being appointed by the president. (Const. Art. 49) Regardless of whether elected or appointed however, all candidates for deputy to the National Assembly must meet the same age and educational requirements. (Const. Art. 49) They also bear the same restrictions, being prohibited from serving as members of the government, as judges, servicemen or employees of law enforcement bodies. Also the constitution prohibits a deputy appointed or elected to the National Assembly from simultaneously serving as a deputy in the Assembly of Representatives. They may however simultaneously serve in local assemblies. (Const. Art. 50)

4.2.b Assembly of Representatives

The recent amendments to the constitution create an Assembly of Representatives consisting of citizens who have attained at least 25 years of age. As with the National Assembly, but in contrast with the courts, the constitution establishes only a minimum but not a maximum age for deputies. (Compare Const. Art. 49 with Arts. 85 & 89) In contrast also to the National Assembly, deputies to the Assembly of Representatives are elected directly by the voters rather than indirectly by deputies of local assemblies. Likewise the constitution does not describe the method of direct election of deputies, leaving the distinction to be made by specific election law.

4.2.c Local Assemblies

The constitution describes local government as consisting of local executive authorities appointed by the president (Const. Art. 78) and representative authorities elected directly by the citizens. (Const. Art. 76) Interestingly, the constitution fails to establish a minimum age requirement for deputies to the local assemblies.

4.2.d Term of Deputies

The term of service of all deputies, regardless of their assembly is 5 years. (Const. Arts. 48 & 77) Terms do not appear to be staggered, all apparently beginning and ending simultaneously.

4.2.e Residency Requirements

Though addressed by other law (*See below* 4.3.b.2 *and* 4.3.c.2), the constitution almost omits any residency requirement for service in a national or local assembly. It does, however, oblige deputies in the National Assembly and Assembly of Representatives to reside permanently within the republic by terminating their authority if they move. (Const. Art. 51)

4.3 Election Law

The Law on Elections to the Majlisi Oli and the Law on Election to Local Assemblies detail the process of nominating and registering candidates to deputy. The general process is the same regardless of whether a candidate is seeking election to the National Assembly, Assembly of Representatives or a local assembly.

4.3.a Local Assemblies

The Law on Election to Local Assemblies describes the procedure for nominating and registering candidates for deputy in cities, districts, regions and oblasts.

4.3.a.1 Time Periods

The law requires the president to appoint elections to local assemblies within 75 days of the expiration of a term. (Local Art. 23) Though the constitution empowers the Majlisi Oli to dissolve local assemblies if they do not constantly fulfill the demands of the law and appoint new elections (Const. Art. 80), it does not specifically empower the legislature to appoint new elections. Recent amendments give the Assembly of Representatives the power to set the date of referenda (Const. Art. 57)), but setting a date and calling elections are not necessarily the same thing. Furthermore, the Law on Elections to the Majlisi Oli does not mention this power.

Once elections are appointed, the Law on Election to Local Assemblies provides that candidates can be nominated between 50 and 35 days before the appointed election. (Local Art. 25) Citizens nominated are to be notified within 2 days of their nomination (Local Art. 25), and nominated candidates can be registered by various election commissions between 35 and 20 days before the election. (Local Art. 27) The responsible commission is to issue registered candidates a certificate within 3 days of their registration, and candidates who are refused registration have 3 days to appeal to a superior commission. (Local Art. 27)

4.3.a.2 Qualifications of Nominees

Though the Law on Elections to Local Assemblies does not specify an age requirement for deputies, it does a number of other qualifications for candidates nominated for deputy. Among these are citizenship, capacity, residency and certain unique provisions or conflicts of interest.

The law limits nomination to citizens, with legal and dispositive capacity (*See above* 1.2 and 2.4.a.1), specifically prohibiting citizens who have either been incarcerated or declared incompetent by a court order. (Local Art. 26)

In respects to its residency requirement, the law restricts nomination to candidates who

- work or
- reside in the territory they seek to represent.

The conflict of interest restrictions are a bit more complicated, the law distinguishing between citizens who must resign from other positions if nominated from those who must resign if elected. The following persons must resign to be nominated:

- professional attendants of religious organizations (Local Art. 26);
- election commissioners (Local Art. 27);
- citizens in military service;
- soldiers;
- warrant officers;
- other officers
- personnel of
  - Military Forces
  - Ministry of the Interior
  - Ministry of Emergency Management
  - President's Guard
  - State Border Protection Committee
  - State Property Committee
- Officials of
  - Tax Police
  - Customs House
- And other non-retired servicemen.

The following persons must execute and file a promise to resign if elected:

- members of the government,
- judges,
- prosecutors,
- chiefs and deputies of ministries or departments. (Local Art. 26)

4.3.a.3 Persons Who Cannot be Nominated

The law prohibits outright the nomination of candidates:

- who are nominated as a candidate in another constituency (Local Art. 25)
- who have been sentenced by a court for a particularly grave crime, regardless of the completion of that sentence,
- who were convicted but the convictions have not been expunged, or

- who are under investigation for particularly grave offenses or offenses against the constitution order that have not been granted amnesty. (Local Art. 26)

Unfortunately, the law does not define grave offenses, nor does it establish a period in which prior convictions become remote and are therefore considered irrelevant.

4.3.a.4 Who Can Nominate

The law permits registered political parties to nominate candidates (Local Art. 24) as well as otherwise qualified individuals. To be self-nominated, however an individual must collect the signatures of at least 100 residents of the territory he hopes to represent. (Local Arts. 24 & 25) Though not explicitly addressed by the election laws, the law on political parties at least recognizes the possibility that candidates can also be nominated by party blocs. (Party Art. 18, *See also* 3.4.a.3 *above*)

4.3.a.5 Nominations Process

Individual citizens nominate themselves must simply collect the requisite number of signatures. (Local Art.. 25)

Political parties (and presumably party blocs) nominate candidates may do so according to their own internal procedures, but may not nominate any more than one candidate per constituency. Whatever its procedure, a party nominating candidates must execute a protocol containing biographical data on their nominees and must notify their candidates within two days of their nomination. (Local Art. 25)

4.3.a.6 Registration Process

The law requires that certain documents be submitted to the commission responsible for conducting elections to a specific assembly between 35 and 20 days before a scheduled election, and obliges the commission to register or refuse to register nominated candidates.

The documents to be submitted are as follows:

- a protocol of a party nominated a candidate (not required for self-nominated candidates),
- pledge to resign from certain positions considered to conflict with the status of deputy (*See* 4.3.a.2 *above*)
- a written statement of consent of the nominee to be a candidate. (Local Art. 27)

In contrast to the requirements for registration of candidates to the Majlisi Oli, a financial statement of the nominee is apparently not required. (*See* 4.3.b.6.a *and* 4.3.b.6.b *below*)

Provided all of these documents are in order and are timely filed, the commission must either register or refuse to register the nominee. If the commission registers the nominee, it must:

- issue the candidate a certificate within 3 days of registration,

- publish the following biographical information about the candidate within 4 days of his registration:
  - name, including first, family and father's,
  - date of birth,
- occupation,
- party membership,
- place of work,
- place of residence. (Local Art. 27)

On the other hand, if the commission refuses to register a nominee, it presumably must notify the nominating party or individual, though the law does not specifically so provide. The law does provide that political "parties" can appeal a commission's refusal to register a nominee to a superior electoral commission, but it fails to indicate whether individuals have the same right. Moreover, though the law gives a political party 3 days to appeal a refusal to register candidates (Local Art. 27), it does not indicate whether that period is 3 days from the commission's refusal or 3 days from the party's notice of that refusal. The law does not describe the contents of the required certificate nor the acceptable means of publication of the biographical data.

4.3.a.7 Withdrawal and its Consequences

A candidacy may be withdrawn at any time after being registered. A candidate who nominated himself may withdraw himself, and a political party may withdraw its nominees. Presumably, the candidate nominated by a political party can also withdraw himself although the law does not explicitly so provide.

In any event, the individual or party wishing to withdraw a candidacy must apply to the election commission that registered the candidate. The law does not describe the contents of that request for withdrawal nor does it establish any criteria for a commission considering it or any consequences for a commission that refuses to permit it. Instead, the law requires the commission to inform the public of the withdrawal without describing what method of publication is required. (Local Art. 28)

The consequences of a withdrawn candidacy can be even more involved, depending on when it occurs. If a candidacy is withdrawn:

- more than 15 days before the expiration of the period for registration, then the party can presumably nominate new candidates;
- less than 15 days before the expiration of the registration period, then elections for that constituency are to be postponed for 2 months after the scheduled elections;
- after the expiration of the period for registration, and
  - there are no candidates left, and
  - the respective city, district or oblast commission consents, then the registering commission requests new nominations from voters and political parties. (Local Art. 29)

4.3.b Assembly of Representatives

The Law on Elections to the Majlisi Oli describes the procedure for the nomination and registration of candidates for deputy to both the Assembly of Representatives and the National Assembly. Although the law treats the different requirements for candidates to the two houses together, the following sections deal only with the nomination and registration of candidates to the Assembly of Representatives. The requirements for candidates to the National Assembly are treated separately below. (4.3.c *et seq.*)

4.3.b.1 Time Periods

The law requires the president of the republic to appoint elections within 75 days of the expiration of a normal term. (MO Art. 27) If the Majlisi Oli has been dissolved before the end of a normal term, then the president is to appoint elections within 80 days of the dissolution. (MO Art. 27) In either event, the date of elections is to be published within 3 days of their appointment. (MO Art. 27)

Nomination of candidates for deputy of the Assembly of Representatives begins 60 and ends 45 days before the elections. (MO Art. 31)

Nominated candidates are to be registered between 45 and 20 days before the election (MO Art 35), and the commission registering them is to publish biographical data about the candidates within 7 days of their registration. (MO Art. 35)

4.3.b.2 Qualifications of Nominees

To serve in the Assembly of Representatives, and therefore presumably to be nominated as a candidate, an individual must:

- have been a citizen of the republic for the past 5 years;
- must have attained the age of 25; and
- must have attained a higher education. (MO Art. 28)

The law does not set specific residency requirements, though it implies them since 65% of the membership of the Assembly of Representatives are to be elected from single-mandate constituencies. (MO Art. 28)

Otherwise, the law limits nomination to individuals with legal and dispositive capacity (*See above* 2.4.a.1) prohibiting the nomination of persons who have either been incarcerated or declared incompetent by court order. (MO Art. 33)

Moreover, the law requires the following persons to resign or retire from their positions to be nominated:

- professional attendants of religious organizations;
- election commissioners;
- citizens in military service;
- soldiers;
- warrant officers;
- other officers;
- personnel of
  - Military Forces
  - Ministry of the Interior
  - Ministry of Emergency Management
  - President's Guard

- State Border Protection Committee
- State Property Committee
- Officials of
  - Tax Police
  - Customs House
- And other non-retired servicemen.(MO. Art. 33)

Interestingly, the Law on Elections to the Majlisi Oli does not distinguish between persons who must resign from certain positions to be nominated and persons who must resign if elected. (*Compare* 4.3.a.2)

In addition the law prohibits a citizen from simultaneously being a deputy in the Assembly of Representatives and:

- the National Assembly,
- any other representative or local government organ. (MO Art. 34)

It does not explicitly prohibit deputies in other assemblies from being candidates for the Assembly of Representatives, however.

4.3.b.3 Persons Who Cannot be Nominated

In addition to citizens deemed incompetent by court order, the law prohibits the nomination of candidates:

- who are nominated as a candidate in another constituency;
- who have been sentenced by a court for a particularly grave crime, regardless of the completion of that sentence;
- who were convicted but the convictions have not been expunged; or
- who are under investigation for particularly grave offenses or offenses against the constitution order that have not been granted amnesty. (MO Art. 33)

4.3.b.4 Who Can Nominate

The law gives political parties the right to nominate candidates for deputy of the Assembly of Representatives, regardless of whether an individual nominee is a member of the party. The law sets 2 qualifications on this right of political parties. First, they must have received their registration from the Ministry of Justice before the appointment of the election in which they want to promote candidates. Second, they must have filed required documents about their sources of income. (MO Art. 30) (*See also* 3.4.a.2 *and* 3.4.a.7, *above*)

The law also allows citizens to nominate themselves. (MO Art. 30)

4.3.b.5 Nominations Process

The law distinguishes the process of nomination for candidates nominated in single mandate constituencies and the all-republican constituency s well as self-nominated candidates.

4.3.b.5.a Single Mandate Constituencies

Candidates from single mandate electoral districts are to be nominated at a congress of the political party branch in that district. Members of the responsible district electoral commission may attend the nominating convention, but the nomination decision shall be conducted by secret vote. The order of nomination is an internal matter to be determined by the party itself, but regardless of method, only 1 candidate is to be proposed for each electoral district. (MO Art. 31)

The nominating congress shall execute a resolution and protocol memorializing its nominations. The resolution shall contain:

- the name of the party body;
- the date, place, name and number of the constituency;
- the issues considered and their resolution; and
- the signature of the presiding officer and party seal.

The protocol itself shall contain:

- the name of the party body;
- number of its members;
- place, date and number of participants at the congress;
- name and number of the constituency;
- record of proposals and discussions of candidates;
- form of voting;
- text of the decision;
- signatures of the chair and secretary, and
- seal. (MO Art. 31)

After its nominating convention, the party body must inform all candidates nominated within 2 days. (MO Art. 31)

4.3.b.5.b All-Republican Constituency

The procedure for nominating a list of candidates for deputy in the all-republican constituency differs slightly. As with nomination of candidates to single-mandate constituencies, the procedure for nominating candidates is an internal matter of the party. Likewise, the contents of the resolution and protocol nominating candidates is the same. (See 4.3.b.5.a above) A significant difference however is the restriction that the party nominate no more than 23 candidates. (MO Art. 31) Though the party can order the names in its list in any way it chooses, it cannot change the order after submitting it to the Central Commission for Elections & Referenda for registration. The commission then has the responsibility of approving the list and giving the party a copy of it or refusing it and giving the party a copy of its decision. Refusals by the commission can be appealed to the Supreme Court within 6 days of the refusal. (MO Art. 31)

Unfortunately, the law does not give the criteria the commission must use when evaluating candidate lists, nor does it clearly indicate whether the commission can approve or disapprove parts of a list. It implies the latter, however by permitting parties to change the order of a list submitted to the commission only when nominees have been eliminated. (MO Art. 31)

4.3.b.5.c Self-Nominated Candidates

The law permits candidates for deputy in single-mandate constituencies to nominate themselves by submitting an application to the responsible electoral commission along with a subscription list of supporters. Following the format established by the Central Commission on Elections & Referenda, the self-nominated candidate must collect at least 500 signatures from voters residing in the district he hopes to represent. The subscription list should include:

- biographical information on the candidate:
  - family, given and father's name,
  - place of residence,
  - series and number of his passport or other document proving the identity of the candidate;
- signature list containing:
  - family, given and father's name,
  - date of birth,
  - place of residence,
  - series and number of passport or other documents proving the identity of the signatory,
  - signature of the supporter, and
  - date of signing. (MO Art. 31)

4.3.b.6 Registration Process

The law distinguishes between candidates nominated by political parties and self-nominated candidates in setting registration requirements.

4.3.b.6.a Candidates Nominated by Parties

The law requires that the following documents be submitted to the responsible electoral commission regardless of whether the candidates are running in a single-mandate constituency or the all-republican constituency:

- the protocol and resolution of the nominating convention,
- the consent of the candidate,
- a promise by the candidate to cease activity inconsistent with the status of deputy if elected,
- biographical information on the candidate, including his:
  - name and surname,
  - date of birth,
  - place of work and position,
  - permanent address;
- information on the property of the candidate,
- other documents required by law. (MO Art. 35)

The law elaborates that the property information requirement can be satisfied with a tax declaration or if the citizen is not obligated to compile a tax report, then a certificate indicating the total income earned by his employer for a year preceding the

appointment of elections. The law also defers to the Central Commission on Elections & Referenda to promulgate what information it requires on a candidate's property.

4.3.b.6.b Self-Nominated Candidates

Self-nominated candidates for deputy of the Assembly of Representatives must submit the following documents to the responsible electoral commission:

- information regarding his property,
- an application containing his consent to be a candidates, and
- his subscription list and signatures of supporters. (MO Art. 35) (*See also* 4.3.b.5.c, *above*)

4.3.b.6.c Registration Decisions

For self-nominated candidates, the electoral commission receiving an application for registration shall inspect the submitted signature lists. Although the commission has discretion to check all the signatures, or some of them randomly, it cannot register any self-nominated candidate if it finds more than 3% of a list inaccurate.

For candidates nominated by parties, the receiving commission shall inspect the correctness of the nominations process. The law does not describe how this is done, though presumably it is through attendance at nominating conventions and inspections of the protocols and other documents submitted to register a candidate.

Either way, the law apparently obliges the responsible commission to decide within 3 days of receiving the necessary documents. If it decides to register a candidacy, it must publish the following within a week of registration:

- name and surname;
- date of birth;
- party affiliation, if any;
- occupation;
- place of employment;
- permanent residence. (MO Art. 35)

It must also issue a registered candidate a certificate indicating his date of registration. (MO Art. 35)

If, on the other hand, a commission refuses to register a candidacy, it must notify the candidate or political party that nominated him within 24 hours of its decision. That notification is to include a copy of the resolution of the commission and a statement of its reasons for refusing to register the candidate.

While a refusal by the Central Commission on Elections & Referenda to register a list of candidates is appealable to the Supreme Court (MO Art. 31) and the court has 6 days from when the appeal is filed to rule, appeals from the decisions of other commissions are not so clear. Though the law gives superior electoral commissions the authority to hear complaints about the actions and decisions of a subordinate commission (MO Art. 14, 14), it does not adequately define the jurisdiction of the courts over electoral disputes, nor clearly delineate their relationship to the commissions.

4.3.b.7 Withdrawal and its Consequences

A candidacy can be withdrawn at any time by either the candidate himself or the party or party body that nominated him. An individual candidate withdrawing must simply apply to the electoral commission that registered him. The law does not require any statement of reasons for a decision to withdraw and unfortunately does not describe the form of the withdrawal application.

A party wishing to withdraw a candidate must follow the same procedure it used to nominate him. The law does not provide any details, leaving it uncertain if a similar party congress must be convened or simply a protocol and resolution must be execute. Whatever the details, the party must submit its decision to the commission that registered the candidate. The commission apparently has no discretion in the matter, and must cancel the candidacy and strip the candidate of his status.

Whether a candidacy is withdrawn by an individual candidate or a party organ, the commission receiving the application must inform the Central Commission on Elections & Referenda, the population of the electoral district, and the organs of the political party of the withdrawal. (MO Art. 36) The law does not define the form or content of that notice, however.

4.3.c National Assembly

The procedures for nomination and registration of candidates for deputy to the National Assembly resemble those of other assemblies, but there are some significant differences.

4.3.c.1 Time Periods

The law provides that elections to the National Assembly are to b held 25 days after elections to the Assembly of Representatives. (MO Art. 27) This at least is the time for elections if the Majlisi Oli has completed a normal term. If the Majlisi Oli is dissolved, the law does not certainly set a time for the appointment of elections to the National Assembly, saying instead that the president is to appoint elections to the Majlisi Oli within 80 days of its dissolution, suggesting that elections to both houses are to be held at the same time. (MO Art. 27)

Whatever the resolution of this issue, the date of elections is to be published in the press and other mass media within 3 day of its appointment. (MO Art. 27)

Candidates for the National Assembly can be nominated any time between 10 days after the election of deputies to the Assembly of Representatives and 7 days before the election to the National Assembly. (MO Art. 32) Since, under normal circumstances, elections to the National Assembly are to be 25 days after elections to the Assembly of Representatives (MO Art. 27), the period for nominating candidates to the National Assembly would be 8 days, or between 15 and 7 days before the election.

Candidates nominated are to be informed within 3 days of their nomination (MO Art. 32), and if an inadequate number of candidates have been nominated, the Central Commission for Elections & Referenda can extend the period of nominations by up to 30 days. (MO Art. 32) Additional extensions are not mentioned in the law.

Unfortunately, the law does not clearly establish a time period for the registration of nominated candidates, providing only that responsible electoral commissions are to register candidates for deputy of the National Assembly within 3 days of receiving their applications but not later than 4 days before the election. (MO Art. 35) Under normal circumstances then the earliest candidates could apply for registration would be 15 days before the election (MO Art. 27), the latest being 4. The law does not specifically address the possibility of a commission refusing to register a candidate for deputy to the National Assembly, let alone set a deadline for the filing of such appeals.

4.3.c.2 Qualifications of Nominees

The law establishes certain qualifications for deputies to the National Assembly which candidates necessarily must possess. Otherwise identical to the general qualifications required of deputies to local assemblies and the Assembly of Representatives (*See above* 4.3.a.2 and 4.3.b.2), deputies to the National Assembly must meet the following unique qualifications. They must be:

- at least 35;
- a citizen for at least the last 7 years;
- the recipient of a higher education; and
- a permanent resident of the district they hope to represent. (MO Art. 29)

4.3.c.3 Persons Who Cannot be Nominated

The persons who cannot be nominated candidates for deputy to the National Assembly are identical to those disqualified from being candidates to the Assembly of Representatives. (*See above* 4.3.b.3)

In addition to citizens deemed incompetent by court order, the law prohibits the nomination of candidates:

- who are nominated as a candidate in another constituency;
- who have been sentenced by a court for a particularly grave crime, regardless of the completion of that sentence;
- who were convicted but the convictions have not been expunged; or
- who are under investigation for particularly grave offenses or offenses against the constitution order that have not been granted amnesty.

Also, a citizen cannot simultaneously be a deputy in the National Assembly and the Assembly of Representatives, although the law clearly anticipates a member of the National Assembly simultaneously being a deputy in a local assembly, but no more than one. (MO Art. 34)

4.3.c.4 Who Can Nominate

Only local assemblies can nominate candidates for deputy to the National Assembly. (MO Art. 30) The law provides an interesting restriction on the nomination of candidates, saying first that of the total of 25 elected deputies to the National Assembly, 5 each are to come from:

- Khatlon oblast;
- Leninabad oblast;
- GBAO;
- Dushanbe, and
- the cities and districts of republican subordination. (MO Art. 29)

A separate article, however, excepts assemblies in the cities of the republican subordination from nominating candidates for deputy to the National Assembly. (MO Art. 30)

4.3.c.5 Nominations Process

The law provides very little detail about the nominations process by local assemblies. It states simply that each assembly must have a quorum present and that the selection of nominees should be done by majority vote and secret ballot. (MO Art. 32) Beyond that, the law states only that the assemblies can nominate candidates beginning 10 days after the election to the Assembly of Representatives and ending 7 days before the election to the National Assembly. It also limits local assemblies, except Dushanbe, to nominating only 1 candidate. The assemblies in Dushanbe and its districts may nominate up to 2. (MO Art. 32) Finally, the Central Commission for Elections & Referenda can extend the nominations period for up to 30 days if not enough candidates have been nominated. (MO Art. 32)

4.3.c.6 Registration Process

Since the election law does not clearly distinguish the registration requirements of candidates for deputy to the National Assembly from candidates to the Assembly of Representatives, it must be presumed that the requirements are identical. In fact, the relevant article of the law only mentions 1 additional requirement on commissions registering candidates to the National Assembly, namely that they decide to register or refuse to register a candidate within 3 days of receiving the necessary documents but no later than 4 days before the election. (MO Art. 32)

4.3.c.7 Withdrawal & its Consequences

While the law clearly permits a candidate to withdraw at any time, without making a distinction between the two houses of the Majlisi Oli, it omits entirely the withdrawal of a candidacy by a local assembly. (MO Art. 36) However, as previously mentioned, the law lets the Central Commission for Elections & Referenda extend the period for nomination of candidates for deputy to the National Assembly when not enough have been nominated. (MO Art. 32) One of the causes it anticipates is the withdrawal of candidates. (MO Art. 32)

4.3.d Trustees

Both the Law on Elections to the Majlisi Oli and the Law on Election to Local Assemblies permits candidates to have trustees, empowered to represent the interests of the candidate. On the national level, political parties are also allowed to appoint trustees.

4.3.d.1 Contests for Local Assemblies

The Law on Elections to Local Assemblies describes the power of trustees sparsely, saying simply that trustees are authorized to campaign on behalf of their candidate and to represent the interests of their candidate before state bodies, electoral commissions and voters. (Local Art. 33) As for their appointment, the law says only that they are appointed at the discretion of the candidate, who must inform the district election commission. The commission in turn registers the trustees and issues them certificates.

The number of trustees a candidate can have depends on the level of contest. Candidates for deputy of a city or district assembly can have up to 2 trustees, while candidates for the oblast assembly can have up to 3.

Although the law says nothing about the termination of trustees, it does provide that trustees can be released with pay from their normal employment, upon the request of the candidate who appointed them.

4.3.d.2 Contests for the Majlisi Oli

The Law on Elections to the Majlisi Oli permits candidates and parties who have nominated lists of candidates to have trustees. (MO Art. 38) While it does not define a trustee adequately, the law describes the powers of a trustee. Essentially, trustees stand in the stead of the candidates they represent and may:

- campaign or promote the program of the candidate;
- participate in pre-election assemblies, meeting and debates;
- obtain the assistance of government organs and bodies for conferences and meetings with voters;
- attend sessions of electoral commissions;
- be present at polling stations during voting, counting and summarizing the results of the vote;
- acquaint themselves with documents of election commissions, including the outcome protocol;
- bring complaints against election commissions. (MO Art. 38)

Trustees however may not interfere with the work of commissions. The law unfortunately does not establish criteria for distinguishing permissible from interfering acts of trustees.

The law does however establish the permissible number of trustees. An individual candidate can have a maximum of 5 trustees, while a political party nominating a list of candidates can have up to 15. Evidently, a party nominating a candidate in a single-mandate constituency is not entitled to have trustees.

Regardless, trustees must be registered with the electoral commission that registered the candidate they represent. Before it can register a trustee, however, an electoral commission must receive:

- a written request from an individual candidate or proposal from a political party;
- an application from the proposed trustee indicating his consent.

Curiously, the law does not say who must submit these materials, give any more definition of their contents or indicate whether a commission has any discretion in deciding to register a trustee, let alone address a right of appeal for parties or individual candidates whose applications are denied.

If the process of registering trustees is unclear, however, at least the law clearly states that a trustee cannot exceed the authority given to him by his candidate or party. The law permits the termination of trustees for exceeding their authority or otherwise violating the law. In either instance, the powers of a terminated trustee end at the moment of his termination, as they do at the recall or withdrawal of the candidate or list of candidates he represents. (MO Art. 38) In addition, although the law does not mention it, a trustee's authority also presumably ends at the announcement of the results of the election.

4.4 Other Relevant Law

4.4.a Civil Code

Although the election law does not specifically require an executed power of attorney to be filed along with the application for the appointment of a trustee, it implies it. In the event therefore that a power of attorney is necessary, several sections of the Civil Code address the creation of such a relationship, its period of validity, the delegation or transfer of the authorization and its termination and consequence of termination. (Civil Arts. 210-213)

4.5 Hypothetical Problems & Discussion Questions

Discussion and hypothetical problems are designed to reinforce the information presented in the summaries. They are also intended to highlight gaps in the law, vagueness and contradictions that require resolution by amendments to the elections code or by administrative regulations or judicial interpretation.

4.5.a The Venture Capitalist

4.5.a.1 Facts

Iskender grew up with nothing. He worked for every ruble he ever earned, and he reportedly now owns millions. He has a strange business however, developing thriving businesses which get taken over by the mafia.

Iskender does not work for the mafia, however, at least not directly. Instead, he starts businesses and loses them, possessing an extraordinary talent for business but just as extraordinary bad luck. Accustomed to being muscled out of his firms and forced to start over, Iskender is extraordinarily secretive about his money, hiding his

profits so he will have enough venture capital to start a new business once the mob moves in.

He does not know it, but the mafia has no interest in his capital, being content instead to take only his operations, which always continue to perform well and show a profit after their change in ownership. In short, the mob lets Iskender take the risks, preferring to take the rewards.

Tired of the unending cycle, however, Iskender nominates himself for a seat in the assembly.

4.5.a.2 Questions Presented

1. Given his understandable concern, must Iskender reveal all of his sources of income to be:
   a. A candidate for deputy to a local assembly?
   b. A candidate for deputy to either house of the Majlisi Oli?
2. If Iskender must reveal his sources of income, would it be enough if he showed receipts from his last company:
   a. If he paid himself a wage?
   b. If he lost his last business more than a year before the scheduled dated of elections?
3. If Iskender actually keeps most of his capital in a secret, numbered bank account in another country, must he include that in his income statement?

4.5.b A Life in Politics

4.5.b.1 Facts

Moukim wants a life in politics. He has another job, however, and does not object to starting his career slowly. He decides therefore to gain valuable experience by getting involved in the current campaign.

4.5.b.2 Questions Presented

1. Can Moukim be nominated as a candidate for deputy to a local majlis if he will not be 18 until the day of the election?
   a. Can he be nominated by a party?
   b. Can he nominate himself?
   c. Would it matter what time he was born?
2. If he cannot be nominated as a candidate, can he be appointed as a trustee?
3. If he is appointed and registered as a trustee, can he be ejected from a polling place on election day for:
   a. Chewing gum?
   b. Listening to a personal stereo?
   c. Asking the precinct commissioner repeatedly to watch his personal belongings while he goes to the toilet?
   d. Sleeping?
   e. Talking to voters in line to vote because he is bored?

5.0 Campaigning

5.1 International Standards

5.1.b The Universal Declaration of Human Rights: Freedom of Expression

For instance, the Universal Declaration of Human Rights acknowledges a "right to freedom of opinion and expression." (Decl Art. 19) As it involves the right to "impart information and ideas," this right could be easily interpreted to include information and ideas about, for or against certain political parties or candidates. Indeed, given the right to take part in government either directly or through freely chosen representatives (Decl Art. 21:1), that right itself would be meaningless without the complementary right of a candidate or campaigner to "impart information and ideas." Furthermore, if as the Declaration states, everyone has the right to freedom of peaceful assembly and association (Decl Art. 20:1), then those assemblies and associations should enjoy the right of imparting information also.

5.1.c The International Convention on Civil & Political Rights: Freedom of Expression & Restrictions

The International Convention on Civil & Political Rights accepts that, though it likewise accepts the occasional need to restrict the freedom of expression, while setting out the very limited circumstances in which such restrictions would be permissible. Like the Declaration, the Convention conceives of the freedom of opinion as inviolable. No power may interfere with it. (Decl.Art. 19, CPR. Art19:1) The Convention again tracks the Declaration in its conception of the freedom of expression, adding that the freedom to impart information shall include the freedom to impart "ideas of all kinds." (CPR Art. 19:2) Presumably, political ideas, information about candidates and parties, and information against them cannot be restricted. In fact, the only restrictions the Convention recognizes as legitimate are those which are "provided by law and are necessary" to protect the rights and reputations of others, to protect national security or public order, or to protect public health or morals. (CPR Art. 19:3 (a), (b)) The Convention goes on to indicate what it considers justifiable restrictions, limiting them to merely "propaganda for war," and incitement to national, racial or religious "discrimination, hostility or violence." (CPR Art. 20:1, Art. 20:2) Other than in these instances, international law certainly requires very free and open expression of ideas and information, and therefore other than in these circumstances, international law would appear to prohibit the expression of ideas and information by candidates, campaigners or political associations or assemblies.

5.2 National Constitution

5.2.a A Right to Campaign, generally

The Constitution of Tajikistan does not create or acknowledge a right to campaign. It does not even create or acknowledge an explicit right to the free expression of political opinion. Instead, it recognizes general rights of privacy, a right

to participate in politics and a right to speak, publish and use mass media. Combined, these various rights could be interpreted to support a right to campaign.

5.2.b Rights Associated with Campaigning

As for general privacy rights, the constitution acknowledges a right of conscience, describing it in terms of the right to profess and practice religious beliefs. (Const Art. 26) Such a right of conscience however could easily support a right to participate or refrain from participating in political life, which the constitution also explicitly acknowledges. (Const Arts. 27 & 28) Other rights of privacy that could be used to support the necessary activities of campaigning include a right to private communication (Const Art. 23) and the inviolability of the home. (Const Art. 22)

While rights of conscience, communication and inviolability of private spaces would support the development of campaign strategies and the preparation of campaign materials, the constitution's express recognition of a right to free speech should ensure that such ideas and materials prepared in privacy are distributed publicly. The text addresses two general categories for disseminating ideas: public gatherings and publication by electronic and print media. Citizens have a right to participate in meetings, rallies, demonstrations and peaceful processions (Const Art. 29), while the freedom of speech extends to all persons. According to the text, "every person" is guaranteed the freedom of speech, publishing and use of the mass media. (Const Art. 30)

5.2.c Limitations on the Freedom of Speech

As would be expected, the foregoing rights are not absolute. For instance, the constitution permits all of these rights to be suspended during states of emergency. (Const Art. 47), except the inviolability of the home (Const Art. 22) and the right to unite (Const Art. 28), although even the home can be invaded in cases prescribed by law. (Const Art. 22) Perhaps only the mind, implied as the freedom of conscience that underlies professions of religious faith, could remain free of state intrusion or regulation in times of emergency. In such an extreme circumstance, political thought could not be regulated, but political action, and certainly campaigning could.

The constitution provides another complex limitation on the rights that could support a right to campaign. The restriction is on the content of campaigning, prohibiting material and spiritual damage to individuals. (Const Art. 32) Though undefined, it is significant that the constitution conceives of this damage as being suffered by individuals and not organs of the state. (Const Art. 32) A separate article elaborates on this protection, declaring the honour and dignity of the individual as sacred and the responsibilities of the state. (Const Art. 5) The constitution, however, never describes what damage is spiritual nor how honour or dignity might be harmed. It is only presumed that can be hurt in the course of campaigning.

A clearer limitation on the rights associated with campaigning is the constitution's prohibition of incitement. Social associations, including political parties, cannot encourage racial, national, social or religious hatred, nor may they advocate the forcible overthrow of the constitutional structure of government. (Const Art. 8) Agitation for war is separately prohibited. (Const Art. 11) Curiously, the constitution imposes its prohibition of incitement on public associations, omitting

similar prohibitions from its catalogue of duties of individuals. (Const Art. 8) Agitation for war, on the other hand, seems to apply to all: the state, public associations and individuals. (Const Art. 11)

5.3. Election Law

Both the Law on Election to the Local Assemblies and the Law on Elections to the Majlisi Oli treat campaigning. The differences between the two are slight, but nevertheless, they are discussed separately below.

5.3.a Law on Elections to Local Assemblies

The Law on Elections to Local Assemblies describes a general framework for campaigning by candidates, political parties, trustees and citizens, but leaves much to be elaborated by specific law.

5.3.a.1 Who May Campaign

The Law on Elections to Local Assemblies permits the following to campaign:

- candidates;
- their trustees; and
- political parties that have nominated candidates for deputy to the local assembly. (Local Art. 34)

Though the campaign activities of the foregoing are not unlimited, the law gives what appears to be an extremely limited right to campaign to:

- citizens;
- political parties;
- labour collectives; and
- organs of government. (Local Art. 34)

It gives them the right to argue for or against a candidate in:

- meetings;
- print media; or
- electronic media (television & radio). (Local Art. 34)

Otherwise, they enjoy the unhindered right to discuss the professional and personal qualities of candidates.

5.3.a.2 Period of Campaigning

The law declares that no campaigning should take place on the day of elections. (Local Art. 34) This unfortunately leaves uncertain whether campaigning is to cease at 0:01 hours, when the election day begins, or at 6:00, when the polls open. Whatever the answer, more difficult questions attend when the campaign period begins.

The law only clearly establishes when candidates can begin campaigning, making it their moment of nomination. (Local Art. 31) While it seems unrealistic that an individual seeking nomination would not campaign to be nominated, the law does

not recognize it. The law also does not recognize when a time when political parties and trustees can begin campaigning. It is presumed however that a party cannot begin campaigning until it has nominated a candidate and that a trustee cannot campaign before being registered. (Local Art. 33)

5.3.a.3 Permitted Campaigning

Whatever the time period allowed, the activities allowed are clearer. The law states that all candidates for deputy to local assemblies are to enjoy equal conditions for campaigning, without elaborating a crierion for that equality. Nevertheless, candidates may engage in the following activities:

- delivering speeches;
- appearing in print and electronic media. (Local Art. 31)

While mentioning only two activities, the law omits less formal appeals for votes. The omission alone, however, is not enough of an indication that these activities are prohibited.

A candidate is also permitted to announce a campaign platform or program. When promising what he will do if elected, however, a candidate may not promise things that are in violation of the constitution or the laws, nor should he promise things that he cannot deliver. The law quite admirably declares that if elected, a deputy is responsible to fulfil his campaign promises. Though admirable, this obligation is impractical, especially considering that the law provides no mechanism for the removal of deputies who disappoint the expectations of those who elected them.

5.3.a.4 Prohibited Campaigning

In addition to prohibiting campaign promises that would require a breach of the law or cannot be fulfilled, the law also obligates everyone to campaign with decorum. Though more admonishing than restricting, the law states that campaigns and campaigners should proceed without disrespect to a candidate. (Local Art. 34) Unfortunately, however, the law fails to provide any further definition of disrespect or any consequences for breaches of this obligation.

Something that surely complicates this latter obligation is the immunity from prosecution enjoyed by candidates. They cannot be arrested or detained without the consent of the electoral commission that registered them, unless caught at the scene of a crime. (Local Art. 37) In combination then, this obligation of campaigners and the immunity of candidates could result in a limitation of the right to discuss a candidate's personal and professional qualities thoroughly. (Local Art. 34)

Finally, while not repeated in the Law on Elections to Local Assemblies, it is assumed that the incitement of hatred or agitation for war is not permitted. (*See above* 5.2.c *and* 5.3.b.4 *below*)

5.3.b Law on Elections to the Majlisi Oli

The Law on Elections to the Majlisi Oli resembles the Law on Elections to the Local Assemblies, but provides more clarity in several details.

5.3.b.1 Who May Campaign

The law lists who may and who may not campaign. Those allowed to campaign consist of:

- citizens;
- candidates;
- political parties (MO Art. 39); and
- trustees of candidates and political parties. (MO Art. 38)

Those not allowed to campaign consist of:

- members of election commissions;
- members of religious organizations;
- judges;
- law enforcement personnel;
- military service personnel;
- foreign states, organizations and citizens;
- stateless persons;
- international organizations and movements. (MO Art. 39)

In addition, the law prohibits journalists and other employees of mass media companies from even covering the news of the elections process if they are either candidates or trustees. They can participate like any other candidate or trustee however in free radio and television debates and discussions. (MO Art. 39)

The long list of persons prohibited from campaigning seems to contradict at least one constitutional guarantee. As was discussed previously (*See above* 5.2.b), the constitution affords the freedom of speech to all "persons." (Const. Art. 30) While this right could invalidate the restrictions on campaigning listed above, another interpretation is possible. As the constitution itself differentiates between a general freedom of speech guaranteed to all persons and a right to participate in the political life of the republic, guaranteed to citizens only (Const. Art. 27), other legislation could permissibly restrict certain political activities, such as campaigning to specific categories of citizens. More simply, the constitution could be read as permitting grades of political speech.

5.3.a.2 Period of Campaigning

The Law on Elections to the Majlisi Oli states that campaigning may begin at the registration of a candidate or list of candidates and must end 24 hours before the elections.

The start period for candidates to the Majlisi Oli differs from that of candidates for deputy to the local assemblies. (*See above*, 5.3.a.2) Considering the period as commenced from the time the candidate is registered, as opposed to nominated, still does not address the inevitable campaigning for nomination that is even more likely at the national level. This restriction, as well as the list of permissible campaign activities discussed in the next section, indicates how narrowly the law conceives of campaigning.

Also different from the Law on Election to Local Assemblies is the time when campaigning must cease. Stopping campaign activity 24 hours before the elections could be interpreted as either 0:01 or 6:00 the day before election day begins. (*Compare* 5.3.a.2)

5.3.a.3 Permitted Campaigning

The law guarantees citizens and political parties the conditions necessary for unhindered campaigning, and it ensures candidates and political parties with equal access to mass media. Beyond these general guarantees, the law permits the following campaign activities:

- public conferences;
- voters' meetings;
- debates and discussions;
- publication and distribution of printed materials;
- promotion through electronic and print media. (MO Art. 39)

Distinct from the Law on Election to Local Assemblies, the Law on Election to the Majlisi Oli also permits other campaign activities that are not prohibited by law, therefore permitting less formal means of campaigning. (*Compare* 5.3.a.3)

Distinct as well from the Law on Election to Local Assemblies, the Law on Election to the Majlisi Oli allows candidates, parties and citizens to discuss the program, personal and professional qualities of a candidate at any time during a campaign. (*Compare* 5.3.a.1) Though it conspicuously omits labor collectives and organs of government from persons permitted to discuss the qualities of a candidate, these would presumably be permitted to engage in such discussions by virtue of their citizenship, but as individuals.

Finally, the law permits candidates and parties to determine the form, and presumably content, of their campaign strategy and materials.

5.3.b.4 Right to Free Broadcast

One campaign activity permitted to candidates and political parties that deserves further comment is the right to "give a talk" on radio and television. (MO Art. 39) The law does not elaborate much beyond this bare statement of the right, indicating nothing about whether the talk is a speech, an interview or participation in a broadcast discussion or debate. It also is not clear whether a candidate or political party has a right to give a talk on privately owned or state-owned stations, whether they can give their talk on only one radio station and one television station or one free talk on each station in the republic, regardless of ownership. (This matter is clarified by an election commission resolution. *See* 5.4.a *below*)

5.3.b.4 Prohibited Campaigning

The law provides that electoral commissions shall monitor campaigning, and that violations of the rules can result in the disqualification of a candidate or list of candidates. Prohibited activities that can result in disqualification are as follows:

- incitement of social, racial and national hatred;
- calls for the seizure of power and forcible change of the constitutional structure of government;
- agitation for war. (MO Art. 39)

It is significant that these activities are prohibited when conducted through the mass media, and are indeed classified as "misuses" of media. (MO Art. 39) In addition, these prohibitions seem to be directed at citizens, candidates and political parties, who would bear the liability for breaking the law, rather than the media companies that broadcast such statements. This interpretation is supported by an additional, separate restriction on media companies themselves, which are denied the right to publish information discrediting the honor, dignity and business reputation of a candidate. (MO Art. 39) Thus the law seems to permit the media to broadcast incendiary statements without liability but not defamatory ones. The problem with this of course is that incitement is easier to recognize than offense. It is also probable that some amount of offense is inevitable when the free and full discussion of a candidate's professional and personal qualities is guaranteed. (*See above* 5.3.b.3)

5.3.b.5 Opinion Polls

A final word should be said about the law's treatment of opinion polls. In the first place, opinion polls, surveys and forecasts of outcomes are permitted provided they:

- include the organization that conducted the poll;
- the place and time of polling;
- the number of participants;
- the method of collecting responses;
- the exact wording of the question; and
- the percentage of error. (MO Art. 39)

Second, for 5 days before an election and on the election day itself, no polls or forecasts can be published. (MO Art. 39)

5.4 Other Relevant Law

One administrative resolution and two pieces of legislation elaborate on the framework for campaigning established by the election laws.

5.4.a Resolution on Mass Media

In early 2000, the Central Commission for Elections and Referenda promulgated a resolution clarifying the use of mass media by candidates. The commission based its resolution on Articles 37 and 39 of the Law on Elections to the Majlisi Oli and articles 31 and 34 of the Constitution of Tajikistan. The resolution clears up some of the confusion created by the election law's very cursory treatment of media access.

In summary, the resolution provides free space in print media and free time on broadcast media. Republican provincial and district newspapers are to permit candidate representatives to publish articles about their candidates. The resolution

appears to permit each candidate to submit 8, doubled spaced pages. (Res. b, 1) It is uncertain whether the representatives can write several articles, not exceeding a total of 8 pages, or simply one. Suggesting that the answer is one rather than multiple articles, the resolution states that articles are to be published immediately after the registration of candidates. (Res. b, 2) Finally, in contrast to the use of electronic media, the commission's resolution does not give a state agency the responsibility for monitoring such publications.

In respects to free access to the electronic media, the resolution gives authority over the distribution of time and the maintenance of order to the State Committee of TV and Radio. The committee is responsible for providing the following amounts of broadcast time:

- 5 minutes to political parties nominating candidates and their trustees (Res. a, 1)
- 10 minutes to the candidate individually to speak about his program (Res. a, 2);
- 15 minutes to a candidate debate. (Res. a, 3)

While the resolution still does not answer the question whether a candidate can have 10 minutes on television and another on radio, it does emphasize that the candidates involved shall have equal time in any broadcast. (Res. a, 4 & 5)

5.4.b Legislation on Mass Media

At least 3 pieces of legislation address mass media and its relationship to political campaigns. The first of these is general however, dealing with the conception and regulation of media. The second deals with campaigning specifically.

5.4.b.1 The Law on the Press and Other Means of Mass Media

The law defines media as including periodical publications, television and radio, information agencies and other institutions distributing mass information. (Press Art. 1) It expands the definition of free speech guaranteed by the constitution to include the right of citizens to express their opinions and distribute them through the press or other media, specifically forbidding censorship. (Press Art. 2) Recognizing both private and state-subsidized media (Press Art. 4), the law requires each type of media company to be registered (Press Art. 9), while permitting businesses, organizations and scientific institutions to publish and distribute their information without registration. (Press Art. 11)

Various articles of the law affect the rights involved in campaigning, and therefore provide additional meaning to the election law's restrictions against incitement and defamation. First, while the press law recognizes the freedom of speech, that right is not absolute, and it holds the publisher or broadcaster liable for the distribution of:

- state secrets;
- incitement of racial, religious or national hatred; or
- obviously false information damaging to the honor of citizens, state bodies, public associations and other organizations. (Press Art. 6)

This greatly clarifies the liability of the press for the distribution of statements made in the course of discussions of various candidate's personal and professional qualities, seeming to relieve the publisher or broadcaster of blame for statements made by others, unless those statements were "obviously false." (*See above* 5.3.b.3) Practically, the liability for such utterances is more likely to lie with print media since statements made live on television and radio could not be edited before their broadcast.

A more significant obligation elaborates on the election law's insistence that candidates receive equal time and access to the media. (*See above* 5.3.a.3) The press law gives citizens a right to refute and/or answer information published in the media that they deem discrediting to their honor and dignity. (Press Art. 24) For publications, the refutation or answer is to appear in the same font as the original statement within a month of its publication if originally published in a newspaper and in the next issue if originally published in a periodical. (Press Art. 24) For electronic media, the refutation or answer is to be read in the same program at the same time as the original statement within a month of its broadcast. (Press Art. 24) Regardless of format, however, the refutation or answer cannot be edited. (Press Art. 24)

Finally, for failing to broadcast or publish a refutation or answer, the broadcaster or publisher can be sued. The complaint must be filed before the expiry of a year from the date of the original broadcast or publication, and the remedies available are defined by other law. (Press Art. 27)

5.4.b.2 The Law on Assemblies, Meetings, Demonstrations & Public Processions

If the press law elaborates on the distribution of campaign information through electronic and print media, the demonstrations law elaborates on its distribution through mass actions and public events. The law defines various types of demonstrations, and then articulates a procedure for their organization and conduct.

5.4.b.2.a Types of Demonstrations

The Law on Assemblies, Meeting, Demonstrations & Public Processions defines the following categories of demonstrations:

- assembly – a predetermined gathering of citizens to discuss and decide questions of mutual interest;
- meeting – a predetermined gathering of citizens to express an opinion or support a resolution;
- demonstration – an organized expression on questions of public and state life;
- street procession – a movement of citizens along predetermined routes;
- picketing – a public expression of group or individual opinion through placards;
- manifestation – a combination of the foregoing measures. (Demo Art. 3)

Although these definitions generally appear to restrict expressions of various kinds to citizens of the republic, a separate article of the law indicates that non-citizens have the right to participate in public events unless prohibited by specific limitations of the demonstrations law. (Demo Art. 4) That would likely mean that foreigners and

stateless persons may demonstrate or picket, but may not be able to participate in any other kind of demonstration.

The second thing that is striking about the foregoing list is its omission of any spontaneous demonstrations. The requirements for the organization of demonstrations is the subject of the next section.

5.4.b.2.b The Organization of Demonstrations

Regardless of type, demonstrations apparently must be organized by the same procedure. Demonstrations can be organized by natural and legal persons. Natural persons must additionally be citizens and cannot have been declared incompetent by court decree. Neither can they be presently incarcerated, though the law does not appear to disqualify former convicts from organizing demonstrations. As for legal persons, the law explicitly recognizes political parties and other public associations as capable of organizing demonstrations. (Demo Art. 6) Moreover, the law likewise acknowledges that members of political parties, as well as unaffiliated citizens can participate in the demonstrations. (Demo Art. 7)

The organizer then must submit an application to the executive body responsible for the city, region or oblast where the demonstration is to take place. Significantly the law describes this application as a notice rather than a request for permission, but nevertheless, that notice must be submitted at least 15 days before the scheduled event, and it must contain the following information:

- the purpose of the event;
- the type of demonstration contemplated;
- the place of the event or the route of the procession;
- the beginning and ending times of the event;
- the anticipated number of participants; and
- biographical information on the organizers, including:
  - their first, last and patronymic names;
  - their places of residence;
  - their places of work or study;
- a contact phone number, underlined; and
- the date of submission of the notice. (Demo Art. 8)

The local executive body responsible for the territory of the proposed demonstration must then decide whether the event is authorized.

5.4.b.2.c Prohibition of Demonstrations

The executive authority notified of a proposed demonstration can prohibit it if:

- the purpose of the event is forbidden by the constitution or the laws (Demo Art. 15);
- the place proposed is forbidden (Demo Art. 15), such as:
  - unsafe places;
  - places near to:
  - manufactures of dangerous or harmful substances;
  - railways;

    - airports;
    - bridges,
    - power stations;
    - high-voltage electrical lines;
    - natural gas lines;
    - etc.;
  - historical or cultural monuments;
  - cemeteries;
  - reserves and national parks, etc. (Demo Art. 10)
  - the place proposed is too close to state offices as defined by the local majlis. (Demo Art. 10);
  - the time proposed:
    - conflicts with the time already reserved for another demonstration (Demo Art. 15); or
    - would be conducted outside the authorized hours of 8:00 and 20:00 (Demo Art. 11);
  - the event would unreasonably interrupt the movement of transport or population;
  - the event would threaten to stop the work of enterprises connected with life-support of the population;
  - the event would create a real threat to the life, health and safety of the population;
  - the would result in the violation of the law. (Demo Art. 15)

If in the judgment of the local executive body, the proposed event would disrupt traffic, disturb work in an essential enterprise or occur in an unauthorized time or place, the organizers of the event are to be offered the opportunity to propose a new time or place for their demonstration. If they accept, the organizers are obligated to express their consent to the change in writing within 3 days of the proposed demonstration.

Two additional comments are necessary about this provision. First, the executive body is apparently under no obligation to propose alternative times or places for the conduct of prohibited demonstrations. Second, a decision of an executive body prohibiting a demonstration can be appealed to court, which must rule on the matter within 3 days of its receipt of the complaint. (Demo Art. 16)

5.4.b.2.d Conduct of Demonstrations

The law emphasizes that participation in demonstrations is voluntary (Demo Art. 21) and that the participants enjoy the right to express their opinions freely (Demo Art. 23) and without state interference. (Demo Art. 22) At the same time, the law obliges both the organizers and participants in a demonstration to act consistently with the purposes of the event and with the law. (Demo Art. 24) The responsibilities of both organizers and participants are discussed separately, below.

5.4.b.2.d.1 Responsibilities of Participants

The law obliges participants in demonstrations to respect the law, imposing liability on them for its violation. (Demo Art. 24) Moreover, participants bear specific duties for the conduct of demonstrations, among them to observe public order, to carry out the lawful requests of event organizers and law-enforcement bodies. They are also obligated to refrain from possessing weapons or objects that can be used as weapons or engaging in vandalism. (Demo Art. 24)

5.4.b.2.d.2 Responsibilities of Organizers

Organizers of demonstrations are obligated by the law to ensure the safety of the premises for the demonstration, to ensure compliance of the event with any conditions imposed on its conduct, to ensure observance of order by the event's participants, to stop the demonstration in case of violations of the law or the instructions of the organizer, to execute the lawful requests of law-enforcement bodies, and to provide information to authorities in case of violations of the law. (Demo Art. 17)

The most interesting of these responsibilities is the termination of demonstrations. Additional sections of the law provide that in case of violations of law or order, law-enforcement bodies first must direct the event organizer to stop the illegal activity and provide a deadline for its correction. If the deadline passes or the organizer otherwise cannot stop the illegal activity, the law-enforcement representatives may then repeat the instruction to the event's participants and warn of the use of force if the activity continues. No deadline is apparently required, but if the participants still do not desist, the law-enforcement bodies can apply force. (Demo Art. 20) A preliminary instruction to the event organizer is not necessary when a demonstration has turned into a riot and immediate action is required. (Demo Art. 20)

5.5 Hypothetical Problems & Discussion Questions

Discussion and hypothetical problems are designed to reinforce the information presented in the summaries. They are also intended to highlight gaps in the law, vagueness and contradictions that require resolution by amendments to the elections code or by administrative regulations or judicial interpretation.

5.5.a A Bad Name

5.5.a.1 Facts

Farangiz is the editor-in-chief of a small, privately owned newspaper. Her paper was founded to provide an alternative perspective to local politics, and almost since its beginning, it has been at the center of controversy. The current election cycle is no different, and in fact, the present crisis at the paper may force it to shut down. To solicit the advice of her board of directors and staff lawyers, Farangiz calls an emergency meeting.

In the meeting she explains what has happened. Approximately 3 weeks ago, a Dilron was registered as a candidate for deputy to the local majlis. She submitted 6

pages of biographical information and a campaign program which she promised to implement if she were elected. Understanding herself obligated to publish the information but simultaneously obligated to give Dilron's opponent equal space in the newspaper, Farangiz did not publish Dilron's article until a week after her registration, and she did not publish the full 6 pages. Farangiz had waited until Dilron's opponent was also registered, and she edited Dilron's article to be the same length and the same number of words as the article submitted by her opponent. She published both articles side by side, and trying to be completely fair, Farangiz determined which article would on the right and left by lot.

When she saw her shortened article, Dilron was furious. She called the paper and demanded to speak with Farangiz whom she accused of sabotaging her campaign. Dilron's opponent was also furious, objecting to the content of Dilron's article and demanding the opportunity to answer some of its accusations. On her reading of the law, Farangiz understands that she is obligated to publish whatever Dilron's opponent submits. Having read the article, however, Farangiz decided to call the meeting of her board and advisors, because in the text of the article, Dilron's opponent has called her a bad name.

5.5.a.2 Questions Presented

1. Can Farangiz edit the insulting word out of the article?
2. If she does not edit the word, is the newspaper responsible for the damage it might cause to Dilron's honor and dignity?
3. Was Farangiz right to delay publication of Dilron's article?
4. Was Farangiz right to edit Dilron's article?
5. Can the newspaper publish any more promotional articles written by either candidate?

5.5.b The Picnic

5.5.b.1 Facts

The Picnic Party is a registered political party having as its central goal the establishment of a National Picnic Day. Underwritten by a wealthy financier with a mysterious past, the party claims to want to re-unite the country and its various ethnic groups by sponsoring picnics of brotherhood and tolerance. To promote is cause, the party submits notices to the executive authorities in all of the major cities of the republic, expressing its intention to have a national picnic on a holiday one week before the elections. The notices submitted contain all of the requirements of law.

5.5.b.2 Questions Presented

1. Can the local authorities refuse to let the party sponsor a picnic:
   a. If one of the proposed locations of a picnic is on the plaza next to city hall?

b. If it is assumed that there will already be picnics in the park because of the holiday?
c. If the law does not recognize picnics as a type of permitted demonstration?

2. Can the local authorities recommend that the party hold its picnic the week after the election?

6.0 Voting & Counting

6.1 International Standards

Other than the general principles of free and fair elections contained in the Copenhagen Document, which is binding on Tajikistan by virtue of its membership in the Organization for Cooperation & Security in Europe (OSCE), specific treaty signed by the republic directly addresses the voting or counting process.

6.2 National Constitution

Although the Constitution of Tajikistan expressly supports the right to elect and be elected, it does not elaborate on these rights in respects to voting or counting. (Const. Art. 27) Indeed, its extensive treatment of the powers of the Majlisi Oli contrasts with the very limited reference it makes to the necessary processes of becoming a deputy.

6.3 Election Law

The Law on Elections to Local Assemblies and the Law on Elections to the Majlisi Oli describe similar processes for voting and counting. Because there are differences, however, the approaches of the separate laws are discussed separately in the following sections.

6.3.a Law on Elections to Local Assemblies

The Law on Elections to Local Assemblies unfortunately provides only a summary of the requirements of the law for voting and the counting of votes.

6.3.a.1 Voting

The law states that precinct commissions shall notify voters at least 10 days in advance of the election day as to the time and place for voting. They have discretion in respects to the place, but the law requires that the polls open at 6:00 and close at 20:00, except in places of temporary residence when the polls may close as soon as all voters on the list have voted. (Local Art. 38)

The law also makes the precinct election commission responsible for the organization of the polling place, providing only that in its arrangement of the room, the commission must ensure the secrecy of a voter's ballot. The booths or cabinets or other places for voting appear to be up to the discretion of the commission.

At the start of the election, the ballot boxes are to be checked and sealed by the chairman of the precinct commission in the presence of all the commissioners. (Local Art. 39) Oddly, the law does not require the commission to execute any proof of the integrity of the boxes.

The law likewise describes the voting process sparely. A voter is to check his name on a voters' list, produce a passport or other document proving his identity, sign for a single ballot and vote. The law is clear that voting is to be personal, and prohibits the issuance of more than one ballot to any voter. (Local Art. 39) Once he

has received a ballot, a voter is to strike out the family names of the candidates he is voting against. He is to do this personally, unless he is unable to do so independently. In such cases, the voter may ask anyone, other than an election commissioner, for assistance in completing his ballot. (Local Art. 40) The voter ends the process by placing his executed ballot in a ballot box.

While the law acknowledges the possibility of voting outside of the polling station premises, it unfortunately does not describe how a voter who is unable to come to the polls can request a ballot, nor the process by which election commissioners are to assist the voter.

6.3.a.2 Counting

After voting has ended, the results are calculated. The law does not indicate that counting begins immediately after the polls close, nor does it say that counting must continue uninterrupted until completed. These problems aside, the law briefly treats most of the counting process in a single article.

Previously completed ballots are removed from their envelopes and placed in the still sealed ballot boxes in the presence of all election commissioners.

Unused ballots are then counted and canceled by the commission.

After this, the seals on the ballot boxes are broken, the boxes opened and their contents counted.

The commission then prepares a summary of the total number of voters who have voted in the election, the total number of invalid ballots, and the total number of votes cast for and against each candidate. A separate article makes commissioners responsible for intentionally miscounting votes. (Local Art. 50)

Though the law states that doubts about the validity of ballots are to be resolved by the precinct commission, it provides inadequate standards for such resolution, indicating only that ballots with all the names crossed out are valid as votes against all the candidates. (Local Art. 41)

The results are then entered into a protocol, which must be signed by the chair, secretary and other members of the commission before being forwarded to the constituency commission, which determines results. (Local Art. 41)

The constituency commission is to declare the candidate elected who receives more than half of the votes. The constituency commission can also declare an election invalid for irregularities during the voting or counting process. (Local Art. 42) *(See below* 6.3.a.3) Inexplicably, the law omits any proof requirement for such a declaration, apparently leaving it to the discretion of the constituency commissioners. Furthermore, a constituency commission can declare that the election never took place if:

- less than half of the voters in the list voted, or
- all the candidates withdrew. (Local Art. 42)

It is not clear from the law whether the voters' list at issue is the list for the precinct or the list for the entire constituency. It is also not clear why an election would be held at all if all of the candidates had withdrawn from the contest. Whatever the answer, the results from the constituency commission are entered into a protocol and forwarded to the next level commission.

Oblast, district and city commissions are to register elected deputies (Local Art. 43), while the constituency commission will issue them certificates and badges. (Local Art. 45) The responsible election commission is to publish biographical data

on the elected deputies, although the law does not make clear which level of commission bears this responsibility. The information to be published however is clear and consists of:

- the elected deputy's family, given and father's name;
- place of work and occupation;
- place of residence;
- political party affiliation;
- constituency from which he was elected. (Local Art. 44)

6.3.a.3 Repeat Voting

If more than two candidates for deputy were registered in a race, but none of them won more than 50% of the vote, the electoral commission may hold a run-off election between the two candidates receiving the largest number of votes. (Local Art. 46) The repeated election is to be held within 2 weeks of the first contest, and to be elected in a runoff, a candidate must receive a simple majority of votes. At least 50% of the voters entered in the voters' list for that constituency must vote in the second election however for it to be valid.

6.3.a.4 Repeated Elections

A constituency electoral commission can also order repeated elections within 2 months of the original race for any one of three occurrences:

- 2 or fewer candidates were running and none of them was elected;
- no candidate was elected in a run-off;
- the original election was deemed invalid. (Local Art. 47)

Interestingly the law basically requires the entire elections process to be repeated from the formation of electoral commissions to the registration of deputies, but it insists that the election be conducted on the basis of the same voters' list.

6.3.b Law on Elections to the Majlisi Oli

In contrast to the Law on Elections to Local Assemblies, the Law on Elections to the Majlisi Oli provides detailed requirements for the voting and counting process. Because the law addresses both elections to the Assembly of Representatives and the National Assembly, the requirements for elections to each will be discussed separately, after a general discussion of the requirements common to both.

6.3.b.1 General Requirements

Some basic principles are common to the voting process in elections for either house of the Majlisi Oli. First, the law requires local executive bodies to make premises available free of charge to the precinct election commissions. Those premises are to be equipped with booths that ensure the secrecy of voting.

Next, the ballots prepared for an election should contain an alphabetical listing of the candidates running in that constituency and the following personal details:

- family and given name of the candidate;
- date of birth;
- occupation and place of work;
- place of residence;
- party affiliation, if any. (MO Art. 41)

The ballots are to be delivered to the polling stations not less than 2 days before the elections, and the chairman of the election commission is responsible for the safe delivery of the ballots. (MO Art. 41) It is not clear if the responsible chairman in this instance is the chairman of the precinct commission or some higher level commission. Once delivered, ballots are to be stored and guarded by representatives of the Ministry of Internal Affairs. (MO Art. 41)

Finally, if candidates or political parties have withdrawn in the time since the ballots were printed, the polling station commission shall strike out their names upon instruction from the responsible superior commission. (MO Art. 41)

6.3.b.2 Voting for Deputies to the Assembly of Representatives

6.3.b.2.a Places for Voting

The law permits voting in several types of polling stations, mobile voting and absentee voting. Each will be discussed in turn.

First, the election law permits the establishment of polling stations in:

- premises provided by the local executive authority;
- places of temporary residence;
- difficult to access locations;
- diplomatic missions outside the territory of the republic.

In the ordinary circumstance, voting will occur in a polling place organized by the precinct election commission and provided by the local executive authority. The hours of voting in such places are 6:00 to 20:00 (MO Art. 42) For other kinds of polling stations, the law gives no specific opening time, but states that voting may cease as soon as all voters on the list for that station have voted. (MO Art. 42)

Second, a voter who cannot come to the polling place can request that commissioners come to him, although the law does not provide any details. (MO Art. 42)

Finally, absentee voting is also possible, but only for elections of deputies to the Assembly of Representatives. (MO Art. 44) To vote absentee, a voter must appear at the precinct headquarters and presumably follow the same process of identifying himself, signing for a ballot and completing it required of voters on election day. (*See* 6.3.b.2.b *below*) The process differs, however, in that once completing his ballot the voter must place it in an envelope and seal it in the presence of 2 members of the relevant election commission. The ballot is then guarded until just before the polls open on election day, when it is opened and placed into the ballot box before voting begins. Interestingly, the law fails to mention how many days in advance of an election a voter can vote absentee. The matter is involved and not capable of any

simple answer since the law only requires ballots to be in the precincts two days before an election. (MO Art. 41)

6.3.b.2.b Process of Voting

Ballots for election of deputies to the Assembly of Representatives are to be printed at least 10 days before the election, delivered to the constituent election commission at least 7 days before and to the respective polling stations at least 2 days before the elections. (MO Art. 41)

As for the actual process of voting, the precinct commission must inform voters at least 10 days in advance of the election as to the time and place of voting. On election day itself, the chair of the precinct commission shall inspect the ballot boxes and seal them in the presence of members of the commission and observers, representatives of the mass media and other persons. In contrast to the Law on Elections to Local Assemblies, it does not appear that all commissioners must be present at the sealing of the boxes. (*Compare* 6.3.a.1)

Each voter is to receive one ballot only upon the presentation of a passport or other identifying document and signing the voters' list. The voter is to complete his ballot personally, but if he is unable for some reason, he can request the assistance of another person. That other person, however cannot be:

- an election commissioner;
- an observer;
- a representative of the media. (MO Art. 42) (*Compare* Local Art. 40, *See above* 6.3.a.1)

The voter should vote for only one candidate and one political party, presumably in each contest. The voter votes against candidates and parties by crossing out their names. In the event a voter makes a mistake, he can request another ballot from a precinct commissioner who will note it in the voters' list and cancel the used ballot.

Finally, after completing his ballot, the voter places it in a ballot box.

6.3.b.3 Voting in Elections for Deputies to the National Assembly

6.3.b.3.a Places for Voting

Voting for deputies to the National Assembly takes place in the buildings where the local assemblies meet. (MO Art. 40) Voting outside the premises and absentee voting are not allowed. (MO Art. 43)

6.3.b.3.b Procedure for Voting

Ballots for the election of deputies to the National Assembly must be printed at least 3 days before the scheduled election and must be in a form approved by the election commissions. (MO Art. 41) The law does not address when the ballots are transferred to the local assemblies or precinct commissions responsible for them, the general rule of 7 days in advance of the elections obviously being impossible.

Whatever the resolution of this issue, voting is to take place in a joint session of the assembly, chaired by the head of the respective constituency commission. Voting cannot occur unless a quorum exists, and the law defines a quorum as 50% plus 1 of the delegates of the local assembly. (MO Art. 43) Voting can be delayed until a quorum is present, but the law does not indicate how long a vote can be delayed.

Interestingly, the law says that the assembly shall remain in session until the electoral commission announces the result. (MO Art. 43)

6.3.b.4 Counting

The Law on Elections to the Majlisi Oli describes a counting process that must be presumed to apply to elections of deputies to both houses. Counting begins immediately after voting has ended and continues without interruption until a result is reached. (*Compare* 6.3.a.2) The counting and tabulations process is also open to observers and other persons, and commissioners are personally responsible for intentionally miscounting the vote. (MO Art. 58)

Once voting has ended, unused ballots are cancelled by cutting the lower right corner of the ballot. The number of cancelled ballots is then entered in a protocol.

Following the cancellation of unused ballots, the chairman of the precinct commission inspects the seals on the stationery and mobile ballot boxes and gives other commissioners the opportunity to do likewise. After inspection, the mobile boxes are opened first and their contents counted and entered into the protocol. The same procedure follows for the stationery boxes.

Invalid ballots are separated from valid ones and their total entered into the protocol. A ballot is to be considered invalid if:

- more than one candidate or party remains;
- none of the candidates or parties have been crossed out;
- it is impossible to ascertain the will of the voter; or
- the ballot violates other parts of the law. (MO Art. 46)

If a ballot's validity or invalidity is not obvious, the precinct commission must resolve the matter by vote. Ballots invalidated by this method must have the reason for their invalidation marked on their backs. (MO Art. 46)

Once ballots have been sorted and counted, the commission must enter the following data into a protocol:

- Number of protocol copies.
- Indication of the relevant electoral commission;
- The word "Protocol";
- The name of the electoral commission with an indication of the number of the polling station for elections of deputies of Assembly of Representatives.
- The lines of the protocol where shall be the following records:
  a) the number of electors, the delegates of the electors enrolled into the list of voters and also the list of the electors added to the main list.
  b) The number of ballots received by the election commission.
  c) The number of ballots given to the electors who have voted beforehand
  d) The number of ballots excluded from the account;

e) The number of ballots, which were given to the electors of the polling station and to the electors delegates on the joint sessions of the local representative bodies in the day of voting.
f) The number of ballots in the voting the ballot boxes.
g) The number of valid ballots.
h) The number of ballots which were considered as valid.
i) The number of the votes of electors, the delegates of electors given for the candidate, political parties which were included into the ballot.
j) The number of electors votes, who have voted against all the candidates and all the political parties.

The following information summarizing the results of voting should also be entered:

- the name, the surname of the chairman, the secretary and other members of the electoral commission
- the date of the signing of the minutes;
- the seal of the electoral commission.

Throughout, numbers are to be written in words and in figures. (MO Art. 45)

Two copies of the protocol are to be executed and signed by all member of the commission present. A protocol will not be valid unless signed by more than ½ of the commissioners. Commissioners who do not agree with the results entered into the protocol can add a written dissent, stating their reasons for disagreeing with the results. The protocol, which must also indicate the location and date of execution, is then forwarded to the higher election, which will determine an election's results.

6.3.b.5 Determining Results

6.3.b.5.a Assembly of Representatives

As the law distinguishes between single-mandate constituencies and a unified republican constituency for candidates to deputy, it likewise divides the responsibility for determining the results in elections between constituency electoral commissions and the Central Commission on Elections & Referenda.

Constituency commissions definitively determine the results of single-mandate races. In a single-mandate constituency, a candidate is considered elected if:

- he received more than 50% of the votes cast in the election, and
- at least half of the voters enrolled in the voters' list for that constituency voted. (MO Art. 48)

On the other hand, the Central Commission on Elections & Referenda determines the results in the unified republican constituency based on protocols forwarded by inferior commissions. The distribution of mandates is proportional to the number of votes received by a list of candidates. (MO Art 50) To participate in the distribution of mandates, however:

- a party must have received a minimum of 5% of the vote; and
- at least 50% of the voters enrolled in the voters' lists must have voted. (MO Art. 48)

It is not made clear by the law whether the 50% of the voters enrolled in voters' lists must have cast ballots in every constituency or whether a nation-wide turnout of 50% would suffice.

If more than two candidates for deputy were registered in a race, but none of them won more than 50% of the vote, the electoral commission may hold a run-off election between the two candidates receiving the largest number of votes. (MO Art. 49) The repeated election is to be held within 2 weeks of the first contest, and to be elected in a runoff, a candidate must receive a simple majority of votes. At least 50% of the voters entered in the voters' list for that constituency must vote in the second election however for it to be valid.

Repeated elections are also possible in the following instances:

- in a single-mandate constituency:
  - if no candidate received at least 50% of the vote, or
  - the election was otherwise declared invalid (MO Art. 53);
- in the unified republican constituency:
  - if no party received at least 10% of the vote. (MO Art. 48)

In these instances, the entire electoral process is evidently repeated from the formation of commissions to the registration of candidates. However, the law seems to disqualify candidates who were nominated to deputy in the first election from running again in the repeated election. (MO Art. 53) No justification for this peculiarity is given in the law.

6.3.b.5.b National Assembly

The counting process in elections of deputies to the National Assembly is considerably simpler. Counting begins as soon as voting ends, and candidates are considered elected if they have received a majority of the votes of delegates participating. In the event of a tie, the older candidate is deemed elected. (MO Art. 51)

After counting, the election commission must enter the results in a protocol and forward it immediately to the Central Commission, which can declare the election invalid if it finds irregularities in the voting or counting process. Decisions by the commission invalidating the outcome in a contest can be appealed to the Supreme Court. (MO Art. 52)

The commission is also obligated to publish the results of elections to the National Assembly within 2 weeks of the election (MO Art. 55), and to issue certificates to elected deputies. (MO Art. 56)

6.4 Other Relevant Law

6.5 Hypothetical Problems & Discussion Questions

Discussion and hypothetical problems are designed to reinforce the information presented in the summaries. They are also intended to highlight gaps in the law, vagueness and contradictions that require resolution by amendments to the elections code or by administrative regulations or judicial interpretation.

6.5.a The Bad Leg

6.5.a.1 Facts

Bahridin has a bad leg. He injured it trying to outrun his jealous spouse, Ramsia when she discovered that he had drilled a hole through the wall at the back of their dacha in order to spy on their lovely young neighbor, Gulnoz. Though Ramsia did not succeed in catching her wandering husband, she did succeed in scaring him so badly that he considers it unwise at the moment to return home.

Unfortunately, for Bahridin, however, he has given a solemn promise to Gulnoz's father that he will vote for him in the upcoming elections.

6.5.a.2 Questions Presented

1. If it is 10 days before the election, can Bahridin vote absentee at his precinct commission's headquarters?
   a. Can he if Gulnoz's father is seeking election to the Assembly of Representatives?
   b. Can he if Gulnoz's father is seeking election to an oblast assembly?
2. If Bahridin's leg is so badly injured that he checks himself into the hospital, can he vote from his wheelchair if a polling station has been set up in the reception area of the hospital?
3. If Bahridin is hiding from his wife in a hay shed on the farm of a friend, can he get an electoral commissioner to bring him a ballot and a ballot box so he can vote without being detected?

6.5.b The Invalid Ballot

6.5.b.1 Facts

A polling station official presents ballots with the following problems to the precinct commission for a determination of their validity.

- three ballots have been marked with a red pen, each of the marks being a small check in the appropriate square on the ballot;
- one ballot with marks on the names of the candidates but no marks in the squares;
- a ballot which is otherwise properly filled out except that the voter marked both of the squares for two competitors for the same office.

6.5.b.2 Questions Presented

1. How should the electoral commission rule in each case?
2. If the commission invalidates a ballot, can its decision be challenged in court, and if so on what grounds?

APPENDIX

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UNIVERSAL DECLARATION OF HUMAN RIGHTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right to equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 22

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

THE COPENHAGEN DOCUMENT OF PARTICIPATING STATES OF OSCE

DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE

The participating States welcome with great satisfaction the fundamental political changes that have occurred in Europe since the first Meeting of the Conference on the Human Dimension of the CSCE in Paris in 1989. They note that the CSCE process has contributed significantly to bringing about these changes and that these developments in turn have greatly advanced the implementation of the provisions of the Final Act and of the other CSCE documents.

They recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.

The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe. They therefore reaffirm their commitment to implement fully all provisions of the Final Act and of the other CSCE documents relating to the human dimension and undertake to build on the progress they have made.

They recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives. In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

(1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

(2) They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

(4) They confirm that they will respect each other's right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) — free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

(5.2) — a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;

(5.3) — the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;

(5.4) — a clear separation between the State and political parties; in particular, political parties will not be merged with the State;

(5.5) — the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;

(5.6) — military forces and the police will be under the control of, and accountable to, the civil authorities;

(5.7) — human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;

(5.8) — legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

(5.9) — all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

(5.10) — everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and
ensure legal integrity;

(5.11) — administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;

(5.12) — the independence of judges and the impartial operation of the public judicial service will be ensured;

(5.13) — the independence of legal practitioners will be recognized and protected, in particular as regards conditions for recruitment and practice;

(5.14) — the rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;

(5.15) — any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;

(5.16) — in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

(5.17) — any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(5.18) — no one will be charged with, tried for or convicted of any criminal offence unless the offence is provided for by a law which defines the elements of the offence with clarity and precision;

(5.19) — everyone will be presumed innocent until proved guilty according to law;

(5.20) — considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments, if they have not yet done so;

(5.21) — in order to supplement domestic remedies and better to ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) — hold free elections at reasonable intervals, as established by law;

(7.2) — permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) — guarantee universal and equal suffrage to adult citizens;

(7.4) — ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) — respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) — ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) — provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(7.9) — ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

III

(26) The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavors and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:
— constitutional law, reform and development,
— electoral legislation, administration and observation,
— establishment and management of courts and legal systems,
— the development of an impartial and effective public service
where recruitment and advancement are based on a merit system,
— law enforcement,
— local government and decentralization,
— access to information and protection of privacy,
— developing political parties and their role in pluralistic societies,
— free and independent trade unions,
— co-operative movements,
— developing other forms of free associations and public interest groups,
— journalism, independent media, and intellectual and cultural life,
— the teaching of democratic values, institutions and practices in educational institutions and the fostering of an atmosphere of free enquiry. Such endeavors may cover the range of co-operation encompassed in the human dimension of the CSCE, including training, exchange of information, books and instructional materials, co-operative programs and projects, academic and professional exchanges and conferences, scholarships, research grants, provision of expertise and advice, business and scientific contacts and programs.

(27) The participating States will also facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law, which may also serve as focal points for co-ordination and collaboration between such institutions in the participating States. They propose that co-operation be encouraged between parliamentarians from participating States, including through existing inter-parliamentary associations and, inter alia, through joint commissions, television debates involving parliamentarians, meetings and round-table discussions. They will also encourage existing institutions, such as organizations within the United Nations system and the Council of Europe, to continue and expand the work they have begun in this area.

(28) The participating States recognize the important expertise of the Council of Europe in the field of human rights and fundamental freedoms and agree to consider further ways and means to enable the Council of Europe to make a contribution to the human dimension of the CSCE. They agree that the nature of this contribution could be examined further in a future CSCE forum.

(29) The participating States will consider the idea of convening a meeting or seminar of experts to review and discuss co-operative measures designed to promote and sustain viable democratic institutions in participating States, including comparative studies of legislation in participating States in the area of human rights and fundamental freedoms, inter alia drawing upon the experience acquired in this area by the Council of Europe and the activities of the Commission "Democracy through Law".

IV

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities. They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

DRAFT GENERAL PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS

DRAFT GENERAL PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS

VIII. Genuine Character of Elections and Other Public Consultations

(d) The conduct of elections and other public consultations, including the preparation and periodic revision of the electoral roll, shall be supervised by authorities whose independence and impartiality are ensured and whose decisions are subject to appeal to the judicial authorities or other independent and impartial bodies.

XIX. Recourse to independent tribunals

Any denial or violation of these rights and freedoms shall entitle the aggrieved person or persons to recourse to independent and impartial tribunals.

ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF PERIODIC AND GENUINE ELECTIONS: FRAMEWORK FOR FUTURE EFFORTS

ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF PERIODIC AND GENUINE ELECTIONS: FRAMEWORK FOR FUTURE EFFORTS

III. Operational aspects: National Institutions.

National institutions should ensure universal and equal suffrage, as well as impartial administration. There is particular need for independent supervision, appropriate voter registration, reliable balloting procedures and methods for preventing electoral fraud and resolving disputes.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

U.N.T.S. No. 20378, vol. 1249 (1981), p. 13

Article 9. 1.

States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

CONSTITUTION
OF
TAJIKISTAN

CONSTITUTION OF TAJIKISTAN

Adopted by the government of Tajikistan on November 06, 1994
"Text of Tajik Constitution" Originally published in Russian. 30 Nov 1994 Leninabadskaya Pravda (Khudzhand, Tajikistan) FBIS-SOV-94-243

Last Amended September 1999.

Preamble

We, the people of Tajikistan, as an inseparable part of the world community; seeing ourselves responsible and duty bound to past, present, and future generations; wishing to ensure the sovereignty, development, and perfection of our state; recognizing the rights and freedoms of the individual as sacred; affirming the equality of rights and friendship of all nationalities and peoples of Tajikistan; seeking to built a just society; adopt and declare as valid this constitution.

Chapter One: Fundamentals of the Constitutional Structure

Article 1.

The Republic of Tajikistan is a sovereign, democratic, law-governed, secular, and unitary state. Tajikistan is a social state; its policy is aimed at providing relevant living conditions for everybody. The names Republic of Tajikistan and Tajikistan are of equal validity.

Article 2.

The state language of Tajikistan is Tajik. Russian is a language of communication between the nationalities. All nationalities and peoples living on the territory of the republic are entitled freely to use their mother tongue.

Article 3.

The state symbols of the Republic of Tajikistan are the flag, emblem, and national anthem.

Article 4.

The capital of Tajikistan is the city of Dushanbe.

Article 5.

The life, honor, dignity, and other rights of the individual are sacred. Recognition, observance, and protection of human and civil rights and freedoms is the obligation of the state.

Article 6.

In Tajikistan the people are the expression of sovereignty and the sole source of power of the state, and they exercise them directly or through their representatives. The citizens of Tajikistan, despite their nationalities, make up the people of Tajikistan. No social association, group of people, or individual has the right to seize state power. The seizure of power is the gravest crime. Only the president and the Supreme Assembly [Majlis-e Oli] has the right to speak on behalf of all the people of Tajikistan.

Article 7.

The territory of Tajikistan is indivisible and inviolable. Tajikistan consists of Gornyy Badakhshan Autonomous Oblast, oblasts, towns, rayons, settlements, and villages. The state ensures the sovereignty, independence, and territorial integrity of the republic. Agitation and actions aimed at disunity of the state are prohibited. The constitutional law defines the procedure of establishing and changing of administrative and border units.

Article 8.

In Tajikistan public life is to develop on the basis of political and ideological diversity. No ideology, including religious ideology, is granted the status of state ideology. Social associations are established and will function within the framework of the constitution and laws. The state provides equal opportunities for their activities. Religious organizations are separate from the state and cannot interfere with state affairs. The establishment and functioning of social associations that encourage racism, nationalism, social and religious enmity, and hatred, as well as advocate the forcible overthrow of the constitutional structures and the formation of armed groups is prohibited.

Article 9.

State power is exercised on the basis of the separation of legislative, executive, and judicial powers.

Article 10.

The Constitution of Tajikistan has supreme legal authority and its norms have direct application. Laws and other legal acts that run counter to the constitution are of no legal validity. The state and all its bodies, officials, citizens, and their associations are duty bound to observe and implement the constitution and laws of the republic. International legal documents recognized by Tajikistan are a constituent part of the legal system of the republic. If republican laws do not conform to the recognized international legal documents, the norms of the international documents apply. International laws and documents recognized by Tajikistan apply following official publication.

Article 11.

Tajikistan will implement a peaceful policy, respecting the sovereignty and independence of other states of the world and will determine foreign relations on the basis of international norms. Agitation of war is prohibited. Proceeding from the supreme interests of the people, Tajikistan can join or withdraw from international associations and organizations and establish relations with foreign countries. The state will cooperate with compatriots living abroad.

Article 12.

The economy of Tajikistan is based on various forms of ownership. The state will guarantee freedom of economic activity, entrepreneurship, equality of rights, and the protection of all forms of ownership including private ownership.

Article 13.

Land, bowels of the earth, water, airspace, animal and vegetable kingdoms, and other natural resources are owned by the state, and the state guarantees their effective use in the interests of the people.

Chapter Two: Basic Duties of Individuals and Citizens

Article 14.

The freedoms and rights of individuals and citizens are protected by the constitution, the laws of the republic, and international documents recognized by Tajikistan. In implementing rights and freedoms, limitations in the constitution and laws are allowed only to ensure the rights and freedoms of others, public order, and to safeguard the constitutional structure and the territorial integrity of the republic.

Article 15.

A person will be regarded as a citizen of Tajikistan if he is a citizen of the Republic of Tajikistan on the day of adoption of the constitution. Any connection between the citizenship of Tajikistan and the citizenship of another state is not recognized, except in cases indicated by the law and interstate treaties of Tajikistan. The procedure for acquiring and forfeiting citizenship is defined by law.

Article 16.

A citizen of Tajikistan outside the country will be protected by the state. No citizen of the republic will be extradited to a foreign state. Extradition of a criminal to a foreign state will be resolved on the basis of mutual agreement. Foreign citizens and stateless persons enjoy the rights and freedoms and have the responsibilities and duties of citizens of Tajikistan except in cases stipulated by law. Tajikistan will offer political asylum to foreign citizens whose human rights are violated.

Article 17.

All are equal before the law and the courts. The state guarantees the rights and freedoms of every person regardless of nationality, race, sex, language, religious beliefs, political persuasion, social status, knowledge, and property. Men and women have the same rights.

Article 18.

Every person has the right to life. No one can be deprived of life except by order of the court for the gravest crime. The state guarantees the inviolability of a person. No one will be subjected to torture, punishment, and inhuman treatment. It is prohibited to subject a person to forced medical or scientific experiments.

Article 19.

Every person is guaranteed judicial protection. Every person is entitled to demand that his case be considered by a competent and impartial court. No one can be arrested, kept in custody, and exiled without a legal basis. Every person is entitled to legal assistance from the moment of his arrest.

Article 20.

No one is adjudged guilty of a crime except by the sentence of a court in accordance with the law. No one carries responsibility if the term of investigation expires or his committed action is not regarded as a crime. No one can be tried twice for a crime. A law that is adopted after the commission of an illegal act by a person and that envisages severe punishment for that act shall not be retroactive. If, after the commission of an illegal act a punishment is not envisaged or a light punishment is envisaged, the new law is applicable. Total confiscation of the property of a convicted person is prohibited.

Article 21.

The law shall safeguard the rights of the victim. The state guarantees judicial protection and compensation to the victim.

Article 22.

The home of a person is inviolable. It is prohibited to enter the home of a person by force and deprive a person of a home except in cases prescribed by law.

Article 23.

Privacy of correspondence, telephone conversations, and the postal and communication rights of each person are ensured, except in cases prescribed by law. The collection, storage, utilization, and dissemination of information about a person's private life without his consent is not permitted.

Article 24.

Every citizen has the right freely to choose his place of residence, to leave the republic, and to return to it.

Article 25.

State bodies, social associations, and officials are obliged to ensure that every person has the opportunity to seek and see documents affecting their rights and interests except in cases prescribed the by law.

Article 26.

Every person has the right freely to determine their position toward religion, to profess any religion individually or together with others or not to profess any, and to take part in religious customs and ceremonies.

Article 27.

Every citizen has the right to take part in political life and state administration directly or via their representatives. Citizens have equal rights to state service. Every citizen has the right to elect and be elected from the age of 18. Citizens deemed incompetent by a court or who have been deprived of liberty in accordance with a court sentence do not have the right to take part in the elections and referendums. Elections and referendums are held on the basis of universal, equal, and direct suffrage in a secret ballot.

Article 28.

The citizens have right to unite. The citizens have right to participate in the creation of political parties, including those with a democratic, religious and atheistic character; in the creation of trade unions and other social organizations; have right to join them by their own free will and also leave them (amended in the Referendum of September, 26, 1999.)

Article 29.

Citizens have the right to take part in meetings, rallies, demonstrations, and peaceful processions prescribed by law. No one can be forced to take part in the aforementioned activities.

Article 30.

Every person is guaranteed freedom of speech, publishing, and the right to use means of mass information. State censorship and prosecution for criticism is prohibited. The list of information constituting a state secret is specified by law.

Article 31.

A citizen has the right to apply personally or together with a group of people to the authorities.

Article 32.

Every person has the right to ownership and inheritance. No one is permitted to suspend and limit the individual's right to ownership. The property of an individual is taken away only on the basis of the law, with the consent of the owner and to meet the requirements of the state and society, and with the state paying full compensation. Any material and spiritual damage inflicted on an individual as a result of illegal actions by state bodies, social associations, or individuals will be compensated in accordance with the law.

Article 33.

The state protects the family as the basis of society. Every person has the right to form a family. Men and women who have reached the age of marriage have the right freely to marry without any hindrance. In marriage and in divorce, husband and wife have equal rights. Polygamy is prohibited.

Article 34.

A mother and child are entitled to special care and protection by the state. Parents are responsible for the upbringing of children, and adult children of working age are responsible for care and provision of parents. The state cares for the protection, upbringing, and education of orphaned children.

Article 35.

Every person has the right to work, to choose their profession or job, and to have work protection. Wages for work cannot be less than the minimum wage. Any limitation is prohibited in labor relations. Equal wages shall be paid for the same work. Forced labor is not permitted, except in cases defined by law. Using women and child labor is prohibited in heavy and underground works and in harmful conditions.

Article 36.

Every person has the right to housing. This right is ensured by means of construction of state, public, cooperative and private housing.

Article 37.

Every person has the right to leisure. This right is ensured by establishing working weeks, hours and days, paid annual leaves, weekly days off, and other conditions prescribed by law.

Article 38.

Every person has the right to health care. This right is ensured by providing free medical assistance in state medical establishments and by measures aimed at protecting environment, developing mass sport, physical training, and tourism. Other types of medical assistance one can receive are defined by law.

Article 39.

Every person is guaranteed social security in old age, in the event of sickness and disability, loss of ability to work, or loss of a guardian or other instances prescribed by law.

Article 40.

Every person has the right freely to take part in the cultural life of society; artistic, scientific, and technical creation; and to use their achievements. The state protects cultural and spiritual riches. Intellectual property is protected by law.

Article 41.

Every person has the right to education. The basic general education is compulsory. The state guarantees access to free general, vocational, and according to abilities based on competition, general specialized and higher education in the state educational establishments. Other forms of acquiring education are defined by law.

Article 42.

On the territory of Tajikistan every person is obliged to observe the constitution and the laws and to recognize the rights, freedoms, dignity, and honor of others. Ignorance of the law is no defense.

Article 43.

The protection of the homeland; safeguarding the interests of the state; and strengthening the independence, security, and defense capabilities of the homeland are the sacred duties of citizens. The procedure for military service is specified by law.

Article 44.

The protection of natural, historical, and cultural heritage are the duties of every person.

Article 45.

Every person is obliged to pay taxes and duties specified by law. Laws introducing new taxes or making the economic situation of the taxpayer difficult cannot retroactive.

Article 46.

A state of emergency is declared as a temporary measure to ensure the citizens' and state's security in instances of direct threat to the rights and freedom of citizens, the state's independence, its territorial integrity, and natural disasters, that result in the republic's constitutional authorities being unable to act normally. The period of a state of emergency is up to three months. The president of Tajikistan can prolong this period in necessary circumstances.

Article 47.

During a state of emergency the rights and freedoms stipulated in Articles 16, 17, 18, 19, 20, 22, 25, and 28 of the constitution are not limited. The Supreme Assembly is not dispersed during the period of a state of emergency. The law determines the legal regime of a state of emergency.

Chapter Three: The Supreme Assembly [Majlis-e Oli]

Article 48.

Majlisi Oli - the parliament of the republic of Tajikistan is the supreme representative and legislative organ of the republic of Tajikistan.

Majlisi Oli consists of two majilises (assemblies) - the National Assembly and the Assembly of representatives. The terms of office of the Majlisi Oli is five years. The authority of the National Assembly and the Assembly of the representatives is stopped in the first activity day of the Majlisi Oli of new convocation.

The organization and the activity of the Majlisi Oli is determined by the by Constitutional law (amended in the Referendum of September, 26, 1999.)

Article 49.

The Assembly of representatives is elected on the basis of universal, equal and direct suffrage by secret ballot. The Assembly of representatives functions on the constant and professional basis. The citizen not younger than 25 can be elected the deputy of the Assembly of representatives.

Three fourth of the members of the National Assembly is elected in an indirect way by secret ballot on the joint meetings of people's deputies of the Gorno-Badahshan autonomous oblast and its towns and regions, of oblasts and their towns and regions, of Dushanbe and its regions, towns and regions of republican subordination (jointly). The Gorno-Badahshan autonomous oblast, other oblasts. Dushanbe, towns and regions of republican subordination have the equal number of their representatives in the National Assembly.

One fourth of the members of the National Assembly are appointed by the President of the republic of Tajikistan.

The National Assembly functions on a convocational basis.

The citizen, who has reached the age of 35 and having higher equation can be elected and appointed as the member of the National Assembly.

Every former President of the republic of Tajikistan is the member of the National Assembly for all his life, if he does not refuse to use this right.

The quantity of the members of the National Assembly and the Assembly of representatives, the order of their election, the order of non-being elected and their incompatibility with the mandate of the Majlisi Oli members is determined by the Constitutional Law. (amended in the Referendum of September, 26, 1999.)

Article 50.

The members of the Government, judges, the employees of law-enforcement agencies, servicemen and other persons, envisaged by the constitutional law can not be the members of the National Assembly.

The citizen can not simultaneously be the member of the National Assembly and be the deputy of the Assembly of representatives.

The member of the National Assembly can not be the deputy of more than two representative organs.

The deputy of the Assembly of representatives can not be the deputy of any other representative organ, to occupy any other post, to attend to an entrepreneur activity, with the exception of scientific and creative work. (amended in the Referendum of September, 26, 1999.)

Article 51.

The member of the National Assembly and the deputy of the Assembly of representatives does not depend on the voter's will, he has right to express his opinion freely, to vote by his own belief.

The member of the National assembly and the deputy of the Assembly of representatives has the right of inviolability, he can not be arrested, be detained, be taken into custody, be brought to a court, be imposed to a search with the exception of cases when he (she) is detained on the scene of the crime. The member of the National Assembly and the deputy of the Assembly of representatives can not also be imposed to a personal examination, with the exception of cases, when it is envisaged by the Law for the provision of other people safety. The issues of inviolability deprivation of the member of the National Assembly and of the deputy of the Assembly of representatives are determined by the declaration of the General Procurator to the relevant Assembly.

The authorities of the members of the National Assembly and of the deputies of the assembly of representatives are ceased in the cases when he (she) tenders his resignation, if he (she) is declared by court as incapable, when the court's verdict of 'guilty' comes into legal force, in the time of disfranchisement; in the time of his departure outside the republic for permanent residence, in the time of dissolution of Majlisi Oli and in the time of his (her) death.

The legal statutes of the member of the National Assembly and the deputy of the Assembly of representatives is determined by the Constitutional Law (amended in the Referendum of September, 26, 1999.)

Article 52.

The first session of the National Assembly and of the Assembly of representatives is convoked by the President of the republic of Tajikistan during one month after the elections.

The oldest member or the oldest deputy opens the first session of the National Assembly and conducts it until the election of the chairmen of these Assemblies.

The activity the National Assembly is implemented in the form of sessions. The sessions of the National Assembly are convoked by the Chairman of the National Assembly not less than twice a year.

The activity of the Assembly of representatives is implemented in the form of sessions. The regular session of the Assembly of representatives is conducted once a year, beginning from the first working day of October till the last working day of June.

If it is necessary, the President of the republic of Tajikistan can convoke extraordinary sessions in the period between sessions of the National Assembly and of the Assembly of representatives. On these sessions only those issues are examined, which have caused for the convocation of these sessions. (amended in the Referendum of September, 26, 1999.)

Article 53.

The National Assembly and the Assembly of representatives elect the chairmen and vice-chairmen of these Assemblies from their members and deputies. One of the vice- chairmen of the National Assembly is elected from the representatives of Gorno-Badahshan autonomous oblast.

The chairman of the National Assembly and the chairman of the Assembly of representatives are elected by secret ballot by the majority of votes from the total quantity of their members and deputies. The order of the election of the vice-chairmen of the National Assembly and of the vice - chairmen of the Assembly of representatives is determined by the Regulations of these Assemblies.

The chairmen of the National Assembly and of the Assembly of representatives are accountable to the relevant Assemblies and they can be recalled from their position by two thirds of votes from the total number of the members and deputies of these Assemblies.

The chairmen of the National Assembly and the Assembly of representatives and their vice-chairmen conduct meetings and resolve other relevant issues.

The National Assembly and the Assembly of representatives form their coordination and working organs independently on their own, and they also form relevant committees and commissions, conduct parliament hearings of issues relevant to the conducting of these Assemblies.

The National Assembly and the assembly of representatives accept their Regulations of work. (amended in the Referendum of September, 26, 1999.)

Article 54.

The National Assembly and the Assembly of representatives conduct their meetings separately.

The meetings of the National Assembly and of the Assembly of representatives are powerful only that time, if not less than two thirds of the total number of their members and deputies are present on these meetings. The meetings of the National Assembly and of the Assembly of representatives are open (public). In some case, envisaged by the law and by the Regulations of the National Assembly and the Assembly of representatives, there also can be conducted closed meetings. (amended in the Referendum of September, 26, 1999.) .

Article 55.

The National Assembly and the Assembly of representatives conduct joint meetings in the following cases:

1. When the President accepts the oath, in the time of his resignation, in the time of listening to the messages of the President of the republic of Tajikistan.
2. In the time of speech of the leaders of foreign countries.
3. In the time of approval of President's decrees about martial state and state of emergency.
4. In time of giving consent for using of Armed Forces of the republic of Tajikistan outside the bounds of the republic for the fulfillment of the international obligations of Tajikistan.

5. The approval of President's decrees about appointment and relieving of their posts of the Prime minister and the members of the Government.
6. The consideration of President's messages about principal trends of internal and foreign policy of the country without passing a resolution.
7. The establishment of the salary for the President.
8. The appointment of the date of the election of the President.
   The consideration of the issues about the President's inviolability. (amended in the Referendum of September, 26, 1999.)

Article 56.

The authority of the National Assembly

1. The forming, abolition and the alterations of the administrative - territorial units;
2. The election and the recall of the chairmen, vice-chairmen and the judges of the Constitutional Court, of the Supreme Court and of the High economic Court by the statement of the President;
3. Taking decision on the issues of deprivation of the chairman, vice-chairmen and judges of the Constitutional Court, Supreme Court and High economic court of their inviolability.
4. Giving a consent for the appointment and the relieving of the General procurator and his deputies of their positions;
5. The fulfillment of other authorities, determined by the Constitution and by laws.

The National Assembly passes the resolution on these issues within the limits of its authority. The resolutions of the National Assembly are accepted by the majority of votes from the total number of its members, if any other order for the passing of resolutions is not established by the Constitution. (amended in the Referendum of September, 26, 1999.)

Article 57.

The authorities of the Assembly of representatives

1. The formation of the Central Commission on the elections and referenda of the republic of Tajikistan, the election and the recall of the chairman, vice-chairmen and of the members of the commission on the statement of the President;
2. The submitting of the projects of laws and of other state and social issues for the nation - wide discussion;
3. The approval of social - economical programs;
4. Giving of the permission for giving and receiving of the state credit;
5. The ratification and denouncement of the international contracts;
6. The appointment of the referendum date;
7. The formation of courts;
8. The approval of state symbols;
9. The approval of state awards;
10. The approval of President's decrees about the appointment and the relieving of the chairman of the National bank and his deputies from their positions;
11. The establishment of military titles , diplomatic ranks and other special titles;
12. The fulfillment of other authorities determined by the Constitution and laws.

The Assembly of representatives passes resolution on considered issues within the limits of their authorities. The resolutions of the Assembly of representatives are passed by the majority of votes from the total number of deputies, if other order of passing of resolutions is not established by the Constitution. (amended in the Referendum of September, 26, 1999.)

Article 58.

The right of the legislative initiatives belongs to the member of the National Assembly, to the deputy of the Assembly of representatives, to the President of the republic of Tajikistan, to the Assembly of people's deputies of Gorno-Badanshan autonomous oblast. The Constitutional Court, supreme Court and High Economic Court have right of the legislative initiative on the issues of their conducting. (amended in the Referendum of September, 26, 1999.)

Article 59.

The bills are brought in to the Assembly of representatives.

The bill about amnesty is brought in to the Assembly of representatives by the President of the republic of Tajikistan.

The bills about the budget, about the establishment and the abolition of taxes are brought in to the Assembly of representatives by the Government of the republic of Tajikistan. (amended in the Referendum of September, 26, 1999.)

Article 60.

The laws are passed by the Assembly of representatives. The law is passed by the majority of votes from the total number of the deputies, if other order is not envisaged by the Constitution.

The laws passed by the Assembly of representatives, with the exception of the Law about the state budget, are submitted to the National Assembly.

The law is considered as approved by the National Assembly, if the majority of the total number of its members have voted for it. In the case if the Law is declined by the National Assembly, the Law should be repeatedly considered by the Assembly of representatives.

In the case, if the Assembly of representatives does not agree with the resolution of the National Assembly, the law is considered as accepted, if in the time of repeated voting not less than two thirds of the total number of the deputies of the Assembly of the representatives have voted for it.

The law about the state budget is passed only by the Assembly of representatives. The Assembly of representatives implements control over the fulfillment of the state budget. (amended in the Referendum of September, 26, 1999.)

Article 61.

The Constitutional laws are accepted on the issues, envisaged by the Constitution. The constitutional laws are passed by not less than two thirds of votes of the total number of the deputies of the Assembly of representatives, and are approved by not less than two thirds of votes from the total number of members of the National Assembly.

If the Assembly of representatives does not agree with the resolution of the National Assembly, the Constitutional law is considered as accepted, if in the time of repeated voting not less than two thirds from the total number of deputies of the Assembly of representatives have voted for it.

The interpretation of the Constitution is given by Majlisi Oli in the same order, as the constitutional laws are passed. (amended in the Referendum of September, 26, 1999.)

Article 62.

The laws are submitted to the President of the republic of Tajikistan for signing and promulgation. If the President does not agree with the law or with a part of it, he gives it back with his objections to the

Assembly of representatives in the period of 15 days. The National Assembly and the Assembly of representatives repeatedly consider this law, in the order, established by the Constitution. If in the time of repeated consideration the Law is approved in the editing, accepted earlier, by the majority i.e. by not less than two thirds of the votes from the total number of the members of the National Assembly and the Assembly of representatives, then the President shall sign the constitutional law and promulgate it. (amended in the Referendum of September, 26, 1999.)

Article 63.

Majlisi Oli can be dismissed by their own on the consent of not less than two thirds of their members and deputies.

Majlisi Oli can not be dismissed in the period of state of emergency and martial state. (amended in the Referendum of September, 26, 1999.)

Chapter Four: The President

Article 64.

The president of the Republic of Tajikistan is the head of state and executive authority. The president is the protector of the constitution, laws, and rights and freedoms of the citizens; the guarantor of national independence, unity, territorial integrity, stability, and continuity of the state; and the ensurer of the functioning of the bodies of state power and Tajikistan's observance of international treaties.

Article 65.

The President is elected by the citizens of Tajikistan on the basis of universal, equal and direct suffrage by secret ballot, for the period of seven years.

Every citizen of Tajikistan, in the age of 35 to 65 years, speaking state language, and who has been living on the territory of Tajikistan for not less than 10 last years, can be proposed as the candidate to the post of the President of the republic of Tajikistan.

Only the person, for whose candidature there have been gathered signatures of not less than 5% of all the voters, only such person can be registered as a candidate for the President's post.

The same person can not be the President for more than one period in succession. (amended in the Referendum of September, 26, 1999.)

Article 66.

The election of the president is deemed valid if more than half of the electorate take part in it. A candidate who wins votes with more than half of the voters taking part in the elections shall be the president. The procedure for the election of the president is specified by law.

Article 67.

The president, before assuming office, takes the following oath in the Supreme Assembly: "I, as president, do solemnly swear to comply with the constitution and the laws of the republic; to guarantee the rights, freedoms, honor, and dignity of the citizens; to protect territorial integrity and political, economic, and cultural independence of Tajikistan; and to sincerely serve the people." The authority of the president terminates with the swearing-in of the new president.

Article 68.

The president cannot take up any other job. He cannot serve as a deputy of representative bodies and cannot engage in entrepreneurial activity. The salary of the president is fixed by the Supreme Assembly.

Article 69.

The President's authorities:

1. Determines principal trends of home and foreign policy of the country.
2. Represents Tajikistan inside the country and in the international relations.
3. Establishes and abolishes ministries and state committees.
4. Appoints and relieves the Prime minister and other members of the Government; submits decrees about the appointment and the relieving of the prime-minister and of other members of the Government to the Majlisi Oli for approval.
5. Appoints and relieves the chairmen of Gorno-Badahshan autonomous oblast; of other oblasts, of Dushanbe of cities and regions, submits their candidatures to the relevant Assemblies of people's deputies for approval.
6. Abolishes or suspends the operation of the acts of state government organs in the case, when there are contradictions with the Constitution and laws.
7. Appoints and relieves the chairman of the National bank, his deputies and submits decrees about it to the Assembly of representatives for approval.
8. Submits to the National Assembly the candidatures for the election and the recall of the chairman, vice-chairmen and judges of the Constitutional Court, Supreme Court and High economic court.
9. Appoints and relieves the General procurator and his deputies with the consent of the members of Majlisi Oli.
10. Establishes the executive apparatus of the President.
11. Establishes the security council and manages it.
12. Establishes the Council of Justice.
13. On the statement of the Council of Justice appoints and relieves the judges of martial courts, of the court of Gorno-Badahshan autonomous oblast, of Dushanbe, of city and region courts; and also judges of economic courts of Gorno-Badahshan autonomous oblast, of other oblasts and of Dushanbe.
14. Appoints data for referendum, for elections of the Majlisi Oli and of local representative organs.
15. Signs laws;
16. Determines the monetary system and informs the National Assembly and the Assembly of representatives about it;
17. Deals with the reserve fund
18. Manages the implementation of foreign policy, signs international contracts and submits them to the Assembly of representatives for the approval.
19. Appoints the heads of the diplomatic representatives in foreign countries and the representatives of the republic in international organizations.
20. Accepts letters of credence from the heads of diplomatic representatives of foreign countries.
21. Is the Supreme Commander of the Armed Forces of Tajikistan, appoints and relieves the troops' commanders of the Armed Forces of Tajikistan/
22. Declares the military state in the time of real danger to the state security and submits the decree about it to the Majlisi Oli for the approval/
23. Uses the Armed Forces of the republic Of Tajikistan outside its borders for the fulfillment of international obligations of Tajikistan.
24. Declares the state of emergency on all the territory of Tajikistan or in some localities, immediately submitting the decree about it to the Majlisi Oli for approval and the report about it to the United Nations organization.
25. Resolves the issues of citizenship.
26. Gives the political asylum.
27. Implements the forgiveness.
28. Awards the high military tittles, diplomatic ranks and other special titles.
29. Rewards citizens with state awards, appropriates state premiums and honorary titles of Tajikistan.

Fulfills other authorities, envisaged by the Constitution and laws (amended in the Referendum of September, 26, 1999.)

Article 70.

The president adopts orders and decrees within the framework of his authority, informs the Supreme Assembly about the country's situation, and submits necessary and important issues for discussion to the Supreme Assembly.

Article 71.

In the time of the President's death, or his resignation, or if he is declared incapable, his duties, until the newly elected President occupies his post, are fulfilled by the chairman of the National Assembly and the authorities of the chairman of the National Assembly pass to one of his vice-chairman.

In these cases the elections of the President are conducted in a three mouths period.

The authorities of the President may be stopped by the statement about his retirement, maid by him on the joint meeting of the National Assembly and the Assembly of representatives, it the majority of the members of Majlisi Oli vote for it.

If the President is not able to fulfill his duties because of the illness, then both Assemblies on the basis of the resolution of the state medical commission, formed by them, take a decision about the early dismissal of the President from his post by not less than two thirds of votes from the total number of the members and deputies of each Assembly. (amended in the Referendum of September, 26, 1999.)

Article 72.

The president enjoys immunity. In the circumstances of breaking his oath and committing a crime, the president can be removed from his office by the Supreme Assembly, taking into account conclusions of the Constitutional Court and the special commission of the Supreme Assembly with the support of at least two-thirds of the people's deputies. Issues related to the breaking of the presidential oath and commission of a crime should be put forward by at least one-third of people's deputies. In such circumstances the duties of the chairman of the Supreme Assembly's special session are laid upon the chairman of the Supreme Court. The people's deputies take an oath that they will act with a clear conscience and within the framework of the law and justice during the discussion of this issue. The investigation continues after the president is removed from his office; he is accused and his criminal case is sent to court.

Chapter Five: The Government

Article 73.

The composition of the government consists of the prime minister, his first deputy, deputies, ministers, and chairmen of state committees. The government ensures the successful leadership of economic, social, and spiritual spheres and the implementation of laws and decrees of the Supreme Assembly and orders and decrees of the president of Tajikistan. The members of the government cannot perform any other duties, be deputies of representative authorities, or engage in entrepreneurship.

Article 74.

The government issues orders and decrees in accordance with the constitution and laws of the republic, the implementation of which is compulsory in the territory of Tajikistan. The government leaves office when a new president is elected. The government can ask the president for its resignation if it deems necessary that it cannot function normally. Every member of the government has the right to resign. The law determines the structure, activity, and authority of the government.

Article 75.

The government submits to the Supreme Assembly economic and social programs, policies of granting state loan and economic assistance to other countries, draft state budgets, and issues related to an acceptable amount of the state budget deficit and its compensation source.

Chapter Six: Local Government

Article 76.

Local government consists of representative and executive authorities and functions within the framework of its authorities. They ensure the implementation of the constitution, laws, and decrees of the Supreme Assembly and the president.

Article 77.

The local representative authority in oblasts, towns, and rayons is the assembly of people's deputies, which is chaired by the chairman. The people's deputies of the local assembly are elected for a five-year term. The assembly of people's deputies approves the local budget and reports on its implementation, determines the ways of economic and social development of the area, determines in accordance with the law local taxes and their payments, determines the ways of ruling and possessing communal properties within the framework of the law, and implements other powers prescribed in the constitution and laws.

Article 78.

The local executive government is governed by the president's representative chairman of oblast, town, and rayon. The representative and executive authority in administrative and border units is headed by the chairman. The president is to appoint and dismiss chairmen of the Gornyy Badakhshan Autonomous Oblast, oblasts, city of Dushanbe, towns, and rayons and to propose them for approval to the relevant assemblies of people's deputies. The chairman is responsible before the higher executive bodies and relevant assembly of people's deputies. The self government authority of a settlement and village is local organization [jamoat]. The law regulates the structure, authorities, and activity of local government.

Article 79.

The representative authority and the chairman adopt legal documents within the framework of their authority, the implementation of which is compulsory in that territory. In the case of the documents not conforming to the constitution and law, the documents of the representative authorities and the chairman are revoked by the aforementioned authorities or the court.

Article 80.

If Majlises of the people's deputies of Gorno-Badahshan autonomous oblast, of oblasts, Dushanbe, cities and regions systematically don't observe the Constitution and Laws, then the National Assembly has right to dissolve them.

Chapter Seven: The Gornyy Badakhshan Autonomous Oblast

Article 81.

The Gornyy Badakhshan Autonomous Oblast is an integral and indivisible part of the Republic of Tajikistan. The territory of the Gornyy Badakhshan Autonomous Oblast cannot be changed without the consent of the assembly of people's deputies.

Article 82.

Majlis of people's deputy of Gorno-Badahshan autonomous oblast has a right of the legislative initiative. (amended in the Referendum of September, 26, 1999.)

Article 83.

The law regulates the powers of the Gornyy Badakhshan Autonomous Oblast in social, economic, and cultural spheres and other powers of the oblast.

Chapter Eight: The Court

Article 83.

The judicial power is independent and protects the rights and freedom of a person, the state's interests, organizations and establishments, legality, and justice.

Article 84.

The judicial power is implemented by the Constitutional Court, Supreme Court, Supreme Economic Court, Military Court, Court of Gornyy Badakhshan Autonomous Oblast, courts of oblasts, the city of Dushanbe, towns, and rayons. The law determines the structure and activity of the court. The term of authority of the judges is five years. The creation of emergency courts is not permitted.

Article 85.

The lawyers not younger than 30 and not older than 60 , with the length of service as a judge not less than 5 years, are elected and appointed to the post of the judge of the Supreme Court, High Economic Court, Military Court, oblast courts, and court of Dushanbe - city.

To the post of the judges of city and region courts, economic court of Gorno-Badahshan autonomous oblast, of oblasts and Dushanbe - city, the persons are appointed, who are not younger than 25 and not older than 60, with the professional length of service not less than three years. (amended in the Referendum of September, 26, 1999.)

Article 86.

The judges of the military court, the judges of the Court of Gorno-Badahshan autonomous oblast, other oblasts and Dushanbe-city are appointed and relieved by the President on the statement of the Council of justice. (amended in the Referendum of September, 26, 1999.)

Article 87.

Judges are independent and are subordinate only to the constitution and law. Interference in their activity is not permitted.

Article 88.

Judges consider cases collectively or individually. Court proceedings are carried out on the basis of the adversarial system and the equal rights of the parties. The examination of cases in all courts is open except the cases that are stipulated in law. Court proceedings take place in the official language or the language of the majority of the population of the place. Those people who do not know the language of the court proceedings are provided with translators.

Article 89.

The Constitutional Court consists of seven judges, one of whom is a representative of the Gornyy Badakhshan Autonomous Oblast. Citizens who have attained the age of 30 and are no older than 60 and who have 10 years' experience in the legal profession may be judges of the Constitutional Court. The powers of the Constitutional Court are:

1. To determine the conformity of laws and legal documents of the Supreme Assembly, the president, government, Supreme Court, Supreme Economic Court, and other state and social authorities, as well as agreements that have not entered into force in Tajikistan.
2. To resolve disputes between the state power on their authority;
3. To implement other duties stipulated by law. A decision of the Constitutional Court is final.

Article 90.

Judges cannot perform other duties; be deputies of representative authorities, members of political parties and organizations; or engage in entrepreneurship except scientific, teaching, and creative work.

Article 91.

Judges enjoy immunity. A judge may not be subjected to arrest and criminal proceedings without the permission of that authority that has elected him. A judge may not be arrested except while committing a crime.

Article 92.

Legal assistance is recognized in all stages of court proceedings. The law regulates the structure, ways of legal profession, and other types of legal assistance.

Chapter Nine: The Procurator's Office

Article 93.

The procurator general and procurators who are subordinate to him ensure the thorough control and observance of laws within the framework of their authority in the territory of Tajikistan.

Article 94.

The united and centralized system of the organs of the office of public prosecutor is headed by the General procurator. The General procurator is accountable to the National Assembly and to the President. (amended in the Referendum of September, 26, 1999.)

Article 95.

The procurator general of Tajikistan is elected for a five-year term. The procurator general appoints and removes from office those procurators who are subordinate to him. The term of authority of procurators is five years. The law regulates the activity, authority, and structure of the Procurator's Office.

Article 96.

The procurator general and procurators who are subordinate to him function independently without interference from state bodies and officials; they are only subordinate to law.

Article 97.

The procurator may not perform other duties, be a member of political parties and organizations, or engage in entrepreneurship except scientific, teaching, and creative work.

Chapter Ten. Procedure for Introducing Amendments to the Constitution

Article 98.

Amendments and addenda to the constitution take place by means of a referendum. A referendum takes place with the support of two-thirds of the people's deputies. The procedure for a referendum is determined by law.

Article 99.

The president or at least one-third of people's deputies of Tajikistan submit addenda and amendments to the constitution. Proposals related to addenda and amendments to the constitution are published in the press three months before the referendum.

Article 100.

The form of public administration; the territorial integrity; and the democratic, law-governed, and secular nature of the state are irrevocable.

LAW ON ELECTIONS TO THE MAJLISI OLI

Unofficial translation

THE CONSTITUTIONAL LAW OF THE REPUBLIC OF TAJIKISTAN "ABOUT THE ELECTIONS TO THE MAJLISI OLI OF THE REPUBLIC OF TAJIKISTAN"

Adopted December 1999

1. GENERAL PROVISIONS:

Article 1. Relations, regulated by this Law

This Law regulates the suffrage, its guaranties, the order of preparing and conducting elections to the Majlisi Oli of the Republic of Tajikistan in accordance with the Constitution of the Republic of Tajikistan.

Article 2. The structure of the Majlisi Oli of the Republic of Tajikistan

Majlisi Oli of the Republic of Tajikistan consists of two chambers – the National Assembly and the Assembly of Representatives.

Article 3. The principles of citizens' participation in the elections

Deputies of the Assembly of Representatives are elected on the basis of universal, equal and direct suffrage, by secret voting and by combined voting. No quota is prescribed.
Elections of the members of the National Assembly are conducted in a secret voting on the basis of indirect suffrage and the President of the Republic of Tajikistan appoints one fourth of its members.

Article 4. The universal suffrage

Citizens of the Republic of Tajikistan, who have attained the age of 18 by the time of elections, have the right to vote irrespective of their social and property status, political belonging, race and nationality, sex, language, education, religion and occupation.
Citizens, who have attained the age, defined in the Constitution and in this Law, can be elected and appointed as members of the Assembly of Representatives and the National Assembly.
Persons recognized incapable by court, or kept in places of detention do not have the right to participate in elections.

The Constitution and the present Law determine the order and conditions for not being elected and the disparity of posts occupied by citizens, with the deputy status.

Article 5. Equal suffrage

Electors participate in elections on the basis of equal right.

Article 6. Direct and indirect suffrage

People's deputies to the Assembly of Representatives are elected directly by the citizens of the Republic of Tajikistan.
The deputies of the local representative bodies elect members of the National Assembly.

Article 7. Secret ballot

Voting at the elections of the members of the National Assembly and the deputies of the Assembly of Representatives shall be secret. Interference to the will expression of citizens is prohibited.

Article 8. Publicity while preparing and conducting elections to the National Assembly and the Assembly of Representatives

Preparation and conduct of elections of the members of the National Assembly and deputies of the Assembly of Representatives shall be held by electoral commissions in a transparent and open way.

Electoral commissions inform the population about their work, formation of electoral districts, polling stations, their composition, location and working hours of electoral commissions and acquaint people with voters list, list of political parties, participating in elections and give information about candidates, results of voting and elections.

One representative from each political party, which have nominated its candidates to deputies, also a representative of a person, who has nominated himself as a candidate, proxies, representatives of press, television and radio, observers from other states and international organizations can participate in the meetings of electoral commissions and attend voting premises on the election day and during the counting. Their authority shall be confirmed by the appropriate documents. Political parties, which have nominated their candidates, shall introduce their representatives to the district electoral commissions of not later than five days before elections.

Interference of these representatives and observers with the process of voting and activity of the electoral commissions is prohibited. They have rights to put questions and demand explanations only with the permission of the chairman of the corresponding electoral commission, draw attention of the members of the commission and those present to the cases of violation of the Law. Mass Media shall cover the course of preparation and conduct of elections.

Article 9. Material maintenance of elections

Expenses related to preparing and conduct of elections of the members of the National Assembly and deputies of the Assembly of Representatives shall be covered by the Central Commission on Elections and Referenda from a common fund established on the account of the Government. (Funds, allocated voluntarily by enterprises, organizations and institutions, political parties, social associations and citizens of the Republic of Tajikistan, shall be accepted by the Central Commission on Elections and Referenda and used during election campaign with a view to ensure equal conditions for each candidate)[1]. Financing and material support of candidates from other sources is prohibited.

Government organs, enterprises, institutions and organizations shall put premises and facilities for preparation and conduct of elections at the disposal of electoral commissions free of charge. Premises and facilities of non-government organizations and enterprises for the work of electoral commissions shall be rented out on the account of the state budget.

II. ELECTORAL COMMISSION

Article 10. Types of electoral commissions

To organize and conduct elections of members of the National Assembly and deputies of the Assembly of Representatives the following electoral commissions shall be formed:

- Central Commission on Elections and Referenda of the Republic of Tajikistan;
- District electoral commissions on the election of members of the National Assembly;
- District electoral commissions on the election of deputies of the Assembly of Representatives;
- Polling station commissions on the election of deputies to the Assembly of Representatives.

Electoral commissions are independent from any government organs. Resolutions and other official documents of the electoral commissions, assumed within their authority, are obligatory for all government

[1] Deleted

organs, local self-government organs, political parties, social associations, organizations and officials, electors, deputies and also for the lower electoral commissions.

Resolutions of electoral commissions contradicting to the Constitution, the present Law and other normative and legal documents, or those assumed out of their authority shall be canceled by the higher electoral commission or by the court.

Article 11. Formation of Central Commission on Elections and Referenda

The Central Commission on Election and Referenda administers the system of electoral commissions of the Republic of Tajikistan and is the legal and constantly acting organ. A term of office of Central Commission on Elections and Referenda is five years. It expires in the time of election of new members of the Central Commission on Elections and Referenda.

The Central Commission on Elections and Referenda consists of a chairman, deputy chairman and 13 members.

The Assembly of Representatives elects the Chairman, deputy chairman and members of the Central Commission on Elections and Referenda on the proposal of the President of the Republic of Tajikistan within three days after the date of elections has been set.

The Central Commission on Elections and Referenda publishes the information about its staff, address and telephone members in the official Media of the Republic of Tajikistan.

The Central Commission on Election and Referenda has its own working organ.

The Central Commission on Elections and Referenda and its organs are financed from the Republican budget.

Article 12. Powers of the Central Commission on Elections and Referenda

The Central Commission on Elections and Referenda:

1) implements controls over execution of the present Law and secures its uniform application throughout the territory of the Republic, within its authority issues instructions and interprets the implementation of the present Law;
2) forms single mandate constituencies for the election of deputies of the Assembly of Representatives and gives them names and numbers;
3) forms district electoral commissions for the election of members of the National Assembly and deputies of the Assembly of Representatives and publishes information on their location;
4) organizes the work of electoral commissions, determines the order of altering their staff; cancels resolutions of district electoral commissions on elections of members of the National Assembly and deputies of the Assembly of Representatives by its own or by representation of the Prosecutor General of the Republic of Tajikistan in cases these resolutions contradict the present Law;
5) resolves questions of attaching of polling stations to constituencies formed outside the Republic of Tajikistan;
6) guarantees equal conditions for candidates to participate in election campaign;
7) allocates funds to electoral commissions, controls providing of election commissions with premises, transport and means of communication and settles other questions concerning the logistical support of elections;
8) determines the form of ballot-papers on election of the members of the National Assembly and deputies of the Assembly of Representatives, of voters lists, of protocols of sessions of electoral commissions and other election related documents, the type of ballot-boxes and stamps of electoral commissions, the order of storage of election documents;
9) prepares ballot papers for elections of the members of the National Assembly and the deputies of the Assembly of Representatives in the single all-republic constituency;

10) listens to reports of heads of Ministries, State Committees, organs of local executive power, local self-governing organs, representatives of political parties on the preparation and conduct of elections;
11) determines the order of participation of observers, foreign observers, representatives of local and foreign media, and provides them with necessary documents;
12) registers the list of candidates from political parties nominated in the single all-republic constituency and their proxies;
13) submits appropriate certificates to the candidates registered in the single all-republic constituency and to the empowered persons of political parties;
14) sums up the results of elections throughout the country, registers the elected deputies, publishes reports on the results of elections and list of the elected members of the National Assembly and the deputies of the Assembly of Representatives;
15) solves problems concerning repeated elections of the members of the National Assembly and the deputies of the Assembly of Representatives;
16) sets the date of elections for the Assembly of Representatives and the National Assembly instead of those, who have quitted;
17) considers applications and complaints about decisions and actions of electoral commissions and renders decisions on them;
18) provides forwarding of election related documents to the archives;
19) carries out other functions in accordance with the present Law and other laws of the Republic of Tajikistan.

Article 13. Formation of district electoral commissions

District electoral commissions on election of members of the National Assembly and deputies of the Assembly of Representatives are the following:

1. a district electoral commission on election of members of the National Assembly;
2. a district electoral commission (the Central Commission on Elections and Referenda) on elections of deputies to the Assembly of Representatives from the single all-republic constituency;
3. a district electoral commission on election of deputies of the Assembly of Representatives from single mandate constituencies.

District electoral commissions of Autonomous Mountainous Badahshan Oblast (GBAO), regions (oblasts), districts, Dushanbe, cities and districts of republican subordination all together (cities and districts of the republic subordination) shall be formed by the Central Commission on Elections and Referenda not later than two mouths before elections of members of the National Assembly. Each commission consists of chairman, deputy chairman, secretary and not less than 8 members. These commissions operate as district electoral commissions on election of members of the National Assembly.

Single mandate district electoral commissions on election of deputies of the Assembly of Representatives shall be formed by the Central Commission on Elections and Referenda not later than two months before elections, consisting of a chairman, deputy chairman, secretary and not less than 6 members.

District electoral commissions on election of deputies of the Assembly of Representatives shall be formed upon the proposal of local executive organs with the consideration of the suggestions of political parties.

District electoral commissions on election of members of the National Assembly shall be formed upon the proposal of chairmen of GBAO (Badahshan oblast), oblasts, Dushanbe. District electoral commissions on election of members of the National Assembly from cities and districts of the republican subordination shall be formed upon the proposal of the Government of the Republic of Tajikistan.

Article 14. Powers of district electoral commissions on election of deputies of the Assembly of Representatives

A district electoral commission on elections of deputies of the Assembly of Representatives:

1. controls the implementation of the present Law;
2. forms polling stations, determines their numeration, forms precinct electoral commissions and regulates their activity;
3. listens to reports of local executive bodies, managers of enterprises, institutions and organizations on preparation and conduct of elections;
4. distributes financial means among precinct electoral commissions, controls the providing of the precinct electoral commissions with premises, transport and communication means and resolves other issues of logistical support of elections in its constituency;
5. implements supervision for compiling voters lists and making them available to the public;
6. renders assistance to nomination of candidates to the Assembly of Representatives;
7. ensures equal conditions for participation of candidates of the Assembly of Representatives in election campaign;
8. accepts appropriate documents from political parties and citizens (as self - nominated) who have proposed the candidates;
9. registers candidates nominated to the Assembly of Representatives and their proxies, and issues appropriate identification cards for them, issues placards with biography of candidates to the Assembly of Representatives;
10. arranges meetings of candidates to the Assembly of Representatives with electors;
11. confirms the content of ballot-papers according to the samples, approved by the Central Commission on Elections and Referenda, prepares ballot-papers and supplies precinct electoral commissions with them;
12. defines the results of elections in the constituency and submits them to the Central Commission on Elections and Referenda; issues certificates for elected deputies of the Assembly of Representatives;
13. organizes repeated voting and elections, as well as elections of deputies to the Assembly of Representatives instead of those quitted;
14. considers applications and complaints about decisions and action of polling station commissions and takes decisions on them;
15. exercises other powers in accordance with the present Law and other legislative acts of the Republic of Tajikistan.

Article 15. Powers of district electoral commission on election of members of the National Assembly

A district electoral commission on election of members of the National Assembly:

1) controls the implementation of the present Law within the constituency;
2) listens to reports of local executive bodies on preparation and conduct of elections;
3) compiles the list of electoral deputies;
4) attends sessions of the assemblies of people's deputies of regions, cities and districts;
5) accepts appropriate documents from local executive bodies;
6) confirms the content of the ballot-papers on election of members of the National Assembly in accordance with the samples, approved by the Central Commission on Elections and Referenda;
7) defines the results of election in constituencies and submits it to the Central Commission on Elections and Referenda, issues certificates for elected members of the National Assembly;
8) considers received applications and complaints and takes decisions on them;
9) organizes repeated elections of members of the National Assembly;
10) exercises other powers in accordance with present Law and other legislative acts of the Republic of Tajikistan.

Article 16. Formation of precinct electoral commissions

A precinct electoral commission on election of deputies of the Assembly of Representatives shall be formed by a district electoral commission on election of deputies of the Assembly of Representatives from a single mandate electoral district not later than 45 days before elections consisting of not less than 5 and not more than 19 members, including a chairman, deputy chairman and a secretary. When it is necessary a number of members of polling station commission can be increased or reduced. In the representations of

the Republic of Tajikistan in foreign countries the head of the office exercises the functions of the chairman of the precinct electoral commission.

Article 17. Powers of precinct electoral commissions

A precinct electoral commission:

1. compiles the voter list of the polling station;
2. acquaints electors with the voter list, considers applications and complaints on mistakes and inaccuracies made in the list and decides on amending it;
3. informs the population about location of the precinct electoral commission, its working hours, date of elections and place of voting;
4. prepares premises for voting, ballot-boxes and other election equipment;
5. organizes voting in the polling station on the election day;
6. counts the number of cast votes in the polling station;
7. considers applications and complaints about the preparation of elections and conduct of voting and takes decisions on them;
8. exercises other powers in accordance with the present Law and other legislative acts of the Republic of Tajikistan.

Article 18. Membership in the electoral commissions

A member of an electoral commission must be impartial and unbiased while implementing his/her authority.

A member of the commission may be relieved of his/her obligations upon personal application about refusal of his/her powers or in case of deprivation of his/her powers.

The organ, which have formed the electoral commission, has the right to strip a member of the commission of his/her powers, if he/she does not observe the requirements of the present Law or does not regularly fulfill his/he duties. In case of necessity a new member of the electoral commission shall be appointed in accordance with the procedure established by the present Law.

Candidates to the National Assembly and the Assembly of Representatives, judges, prosecutors, servicemen of law-enforcement forces, proxies of candidates may not be members of electoral commissions. A person nominated as a candidate to the National Assembly or the Assembly of Representatives, but being a member of an electoral commission shall be released from obligations in the commission after he/she is registered as a candidate

One and the same person can be a member only of one electoral commission.

Article 19. Organization of the work of electoral commissions

A meeting of an electoral commission shall be considered competent if not less than two thirds of the commission members participate in it. Decisions of the commission shall be taken and accepted by open polling by majority votes from the total number of the present members of the commission.

If a member of the commission disagree with its decision, he/she has the right to express his/her opinion in written form, which is to be attached to the session protocol. If the votes are equally divided, the chairman's vote will be deciding.

Government organs, political parties, enterprises and institutions, organizations and officials are obliged to assist the electoral commissions in implementing their authorities and provide them with the necessary information.

Any electoral commission is entitled to apply for consideration of questions on preparation and conduct of elections to the government organs, political parties and social associations, enterprises and institutions. They shall consider these issues and reply to the electoral commission in the period of not more than 3 days.

The chairman, deputy chairman, secretary or any other member of the commission may be released for the period of preparation and conduct of elections from his/her practical or service duties. In this case he/she will receive the average salary from the amount allocated for conducting elections.

District electoral commissions and precinct electoral commissions terminate their activity after members of the National Assembly and deputies of the Assembly of Representatives have been elected.

Article 20. Consideration of complaints on decisions of electoral commissions

Organs of political parties, which have nominated candidates, candidates themselves, proxies, observers and voters may apply to higher electoral commissions or to the court about decisions of electoral commissions within ten days after decisions have been taken.

Decisions of the Central Commission for Elections and Referenda may be appealed to the Supreme Court of the Republic of Tajikistan within ten days after these decisions have been taken.

A complaint shall be considered within three days, but if there are less than 6 days left before elections, it shall be considered immediately.

III. CONSTITUENCIES AND POLLING STATIONS

Article 21. Formation of constituencies

Territorial constituencies are formed for election of the members of the National Assembly and the deputies of the Assembly of Representatives.

For elections of the members of the National Assembly five multi-mandate constituencies are formed on the territory of the Republic of Tajikistan including one constituency in the GBAO, one in each oblast (region), one in Dushanbe and one for all cities and districts of the republic subordination.

District electoral commissions on elections of the members of the National Assembly from GBAO and oblasts are located accordingly in the administrative centers of oblasts - Khorog, Hodjent and Kurgan-Tube, and from Dushanbe, cities and districts of the republican subordination – in Dushanbe.

For election of the deputies of the Assembly of Representatives 41 single-mandate territorial constituencies shall be formed and for election of the deputies of the Assembly of Representatives according to the list, proposed by political parties, one all-republican constituency shall be formed.

The President of the Republic of Tajikistan determines the size of each constituency for every particular election for the Assembly of Representatives.

The Central Commission on Elections and Referenda forms constituencies upon the proposal of the President of the Republic of Tajikistan.

In the period of formation of constituencies the following requirements shall be taken into account:

1. approximately equal number of electors may range between plus-minus 15%. This figure may reach 20% in remote regions;
2. constituencies form the unit boundaries on the territory of GBAO, oblasts, Dushanbe, cities and districts of the republican subordination. Formation of constituencies from regions not bordering each other may not be possible.

When executing the requirements of paragraphs 1 and 2 of this Article the code of the territorial and administrative division of the Republic shall be taken into account.

The Central Commission on Elections and Referenda publishes the list of constituencies with indication of borders, number of voters, location of district electoral commissions 5 days after setting the date of elections.

Article 22. Order and standards of the formation of polling station commissions

In order to provide favorable conditions for voters, polling stations are formed within the borders of districts, cities and districts of the republic subordination. The borders of polling stations may not cross the borders of constituencies.

Polling stations may be formed at representative offices of the Republic of Tajikistan in foreign states, sanatoriums, rest houses, medical institutions, remote and difficult to access populated localities, which form a part of constituencies according to their location.

The Central Commission on Election and Referenda settles questions of attaching polling stations formed outside the Republic of Tajikistan, to constituencies.

District electoral commissions form polling stations by proposals of the chairmen of cities and districts.

The Central Commission on Elections and Referenda forms polling stations in the representative offices of the Republic of Tajikistan in foreign states upon proposals of the Ministry of Foreign Affairs of the Republic of Tajikistan.

Polling stations are formed within 25 days after setting the date of the election. In the representative offices of the Republic of Tajikistan in foreign states and also in remote and difficult to access populated localities polling stations may be formed within the same time limit but in exceptional cases – not later than 10 days before elections.

Polling stations are formed in populated areas with not less than 20 and not more than 3000 voters.

The chairman of a city or district provides each polling station with the voting premises.

District Electoral Commission informs voters of the borders of each polling station indicating the location of a precinct electoral commission and premises for voting.

IV. VOTER LISTS

Article 23. Voter list and order of its making

A voter list for elections of deputies of the Assembly of Representatives shall be compiled in each polling station and signed by a chairman and secretary of the precinct electoral commission. A precinct electoral commission may involve representatives of the public to participate in compiling a voter list.

Local executive authorities counts the total number of voters and submit information about electors living in the appropriate territory to precinct electoral commissions for compiling voter lists.

The fact of permanent residence in the constituency is essential for including of a voter into the voter list.

Voter lists are compiled in alphabetical order or in any other orders convenient for voting.

In voter lists shall be indicated the voter's name and surname, date of birth (for those attained 18 years also the day and month of birth) and address.

Voter lists are compiled 15 days after the formation of precinct electoral commissions.

Lists of elector deputies are compiled 15 days before elections by district electoral commissions for elections of the members of the National Assembly upon proposal of chairmen of people's deputies of oblasts, Dushanbe, cities and districts of the republican subordination and signed by chairmen and secretaries of commissions.

List of elector deputies is compiled in alphabetical or any other order and indicate name, date of birth, name of the organ, represented by the elector and his/her home address.

Entering of any alteration to the voter list after the beginning of counting of votes is prohibited.

List of voters, serving in military units, as well as members of their families and other electors who live in the areas of dispositions of military units shall be made on the basis of information provided by commanders of military units. Servicemen living outside their military units locations shall be included into voter lists according to their place of residence on common ground.

List of voters of polling stations formed within representative offices of the Republic of Tajikistan in foreign countries, sanatoriums, rest houses, hospitals and other medical institutions shall be compiled on the basis of information, provided by the heads of these institutions.

Article 24. Procedure of including citizens to the list of voters

All the citizens of the Republic of Tajikistan, who have attained the age of 18 by the election day and at the time of compiling voter lists live permanently or temporarily in the territory of the given polling station and have the right to vote, shall be included into the voter lists.

A voter may be included to the voter list only in one polling station. Voters living in the territory of the given polling station but omitted in the list due to some reasons shall be included into it according to the decision of the precinct electoral commission. Deputies of the following organs shall be included into the list of electors of the National Assembly:

1) deputies of Assemblies people's deputies of districts and cities (with the exception of towns of district subordination) in the territory of GBAO and also deputies of Assemblies of people's deputies of Badakhshan and oblasts;
2) deputies of Assemblies of people's deputies of districts, located in Dushanbe and deputies of Assemblies of people deputies of Dushanbe;
3) deputies of Assemblies of people's deputies of cities (with the exception of the towns of district subordination) and districts of the republican subordination.

Article 25. The way of acquainting citizens with the voter lists and the right to complaint about error inaccuracies made in the voter lists

Voter lists shall be submitted for the public acquaintance 15 days before elections. Polling stations formed in representative offices of the Republic of Tajikistan in foreign countries, sanatoriums and rest homes, hospitals and other constant medical institutions, remote and difficult to access populated areas – 5 days before elections.

Lists of elector deputies for the election of the members of the National Assembly shall be submitted for public acquaintance trough local media 7 days before elections.

Citizens shall be given an opportunity to get acquainted with the list of voters and check up the correctness of its compilation in the working premises of the electoral commission.

Each citizen shall have the right to complain about incorrect inclusion to the list or exclusion from the list, incorrect information about the elector. An electoral commission shall consider an application about

omissions and mistakes in the list of voters in the course of two days, but if a complain received the day before elections or just in the day of elections, the commission shall consider it immediately and make necessary corrections in the list, or give a copy of the decision on declining of the application to the applicant. The decision of the election commission may be appealed to a court in accordance with the established procedure. The decision of the court shall be final. According to the decision of the court any correction shall be made in the voter list by the election commission.

Article 26. The securing citizens while changing place of residence

In the period of getting acquainted with the list of voters and up to the date of elections if a voter has no possibility to stay at the place of residence (departure for an official trip status in hospital or any other reason) he/she has the right to get a ballot-paper from the polling station commission on presentation of his/her passport or identity card, express his/her will with regard to a candidate, give the ballot-paper placed into an envelope to the electoral commission.

The electoral commission shall register it in the list of voters with indication of the date. The sealed envelope shall be stamped in the presence of the voter. The election commission shall be responsible for safe keeping of the envelope.

V. NOMINATION AND REGISTRATION OF CANDIDATES AND GUARANTIES OF THEIR ACTIVITY

Article 27. Appointment of elections of member of National Assembly and deputies of Assembly of Representatives:

Elections of members of National Assembly and deputies of Assembly of Representatives shall be appointed by the President of the Republic of Tajikistan not later than 75 days before expiration of the term of office of deputies of previous Majlisi Oli. Elections for National Assembly shall be conducted 25 days after the elections for the Assembly of Representatives.[2]

In case of anticipate dissolution of Majlisi Olli in situations determined by the Constitution of the Republic of Tajikistan, President of republic of Tajikistan shall appoint elections of Majlisi Oli not later than 80 days after the dissolution.

The date of election shall be published through the press and other Mass Media within three days after setting of elections.

Article 28. Elections of deputies of Assembly of Representatives

Deputy of Assembly of Representatives shall be elected for the period of five years.

A person, who has attained the age of 25 years and has been the citizen of the Republic of Tajikistan minimum for the last five years, and with higher education, may be elected a deputy of the Assembly of Representatives.

The Assembly of Representatives shall consist of 63 deputies:

1) 65% of the deputies (41 persons) of the Assembly of Representatives shall be elected from single-mandate constituencies;
2) 35% of the deputies (22 persons) of the Assembly of representatives shall be elected from the single all-republican electoral district in proportion with the number of votes, which were given to the roll of candidates, nominated by political parties.[3]

Article 29. Elections and appointment of the members of the National Assembly

[2] Amended
[3] Amended

A member of the National Assembly shall be elected and appointed for the five years term.

The National Assembly consists of 25[4] members elected on the basis of territorial interests, of former presidents, if they have not refused such a right, and of 8[5] members, appointed by the President of the Republic of Tajikistan for the period of the authority of National Assembly.

Three fourth of members of the National Assembly (25[6] members) shall be elected by local representative organs on the basis of representation of territorial interests. These members shall be elected in equal proportion of five[7] persons from Gorno-Badakhshan Autonomous Oblast, each oblast (region), Dushanbe, and cities and districts of the republican subordination.

Each former President of the Republic of Tajikistan becomes the life member of National Assembly, if he does not refuse of such a right.

One fourth of members of National Assembly (8[8] persons) shall be appointed by the President of the Republic of Tajikistan.

A citizen, who has attained the age of 35 years, received higher education and has been a citizen of the Republic of Tajikistan for the last seven years minimum may be elected and appointed a member of National Assembly.

A member of National Assembly elected by the local representative organ should have the permanent residence in the corresponding electoral district.

Article 30. The right for the promotion of candidates

Political parties have the right to nominate candidates to the deputies of the Assembly of Representatives. Citizens also have the right to nominate themselves (self-nomination).

Political parties can also nominate the person as a candidate, if he is not a member of any political party.

Political parties can nominate their candidates to the deputy of the Assembly of Representatives provided they have received registration from the Ministry of Justice in the prescribed order before the setting of the date of elections and if they have presented documents about the sources of their income.

Assemblies of people deputies of cities (with the exception of cities of the republican subordination) and districts, Dushanbe, GBAO and regions have the right to nominate candidates to the membership of the National Assembly.

Article 31. Procedure of the nomination of candidates to Assembly of Representatives

Nomination of candidates to Assembly of Representatives from the list of candidates in single-mandated electoral districts shall start 60 days before elections and shall finish 45 days before elections.

Candidates to Assembly of Representatives in single-mandated electoral districts from political parties shall be nominated by city (with the exception of party organ of Dushanbe), and regional organs of political parties on their plenary sessions (conferences) with the indication of the electoral district, from which their candidates are proposed.

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[4] Amended
[5] Amended
[6] Amended
[7] Amended
[8] Amended

Members of the electoral district commission have the right to participate in these plenary sessions (conferences).

City and regional organs of political parties shall propose one candidate for each electoral district which is located on the territory of city and region. Decisions about nomination of candidate shall be taken in a secret way.

In cases when an electoral district embraces two or more districts or cities, nomination of candidates from political parties in this electoral district shall take place on the joint city and district party organs plenary sessions (conferences). In this case one candidate to this electoral district shall be proposed.

Order of nomination of candidates to Assembly of Representatives shall be determined by political parties. Nomination of candidates to the Assembly of Representatives shall be registered in a resolution adopted by the political party and recorded in a protocol. The resolution shall contain: a title of the resolution and the name of the party body, date, place, name and number of the constituency, exposition of the considered issues, signature of the chairperson and the seal. The protocol shall contain: the name of the party body, the number of its members, place and date, the number of participants, considered issues, name and number of the constituency, record of proposals concerning candidates, record of discussions about candidates, form of voting, results of voting, the text of the decision, signatures of the chairperson and secretary of the gathering, the seal. [9]Political parties shall inform the candidate to the Assembly of Representatives of the adopted decision not later than within two days.

List of candidates to Assembly of Representatives in the single all-republican electoral district shall be prepared by political parties on their gatherings (conferences).

Political parties shall determine the order of listing of candidates.

List of candidates and the order of placing of candidates in the list may not be changed after its submission to the Central Commission on Elections and Referenda, with the exception of exclusion of a candidate from the list.
The total number of candidates nominated by political parties may not exceed 35% of the total number of seats in the Assembly of Representatives.
List of candidates, proposed by political parties, a protocol and the resolution of the congress (conference) of a political party, where the list of candidates have been proposed, shall be submitted to the Central Commission on Elections and Referenda. The resolution shall contain:
the name of the party body and the title of the resolution, date and place, record of the considered issues, the signature of the chairperson and the seal. The list of the nominated candidates shall be attached to the resolution. The protocol shall contain: the name of the party body, the number of its members, place and date, the number of participants, considered issues, name and number of the constituency, record of proposals concerning candidates, record of discussions about candidates, form of voting, results of voting, the text of the adopted resolution, signatures of the chairperson and secretary of the meeting, the seal.[10]
After the consideration of these documents the Central Commission on Elections and Referenda shall give the political party a copy of the approved list or its decision about the refusal of this list.

If the list of candidates is not affirmed the political party can apply to the Supreme Court of the Republic of Tajikistan, and the Supreme Court is obliged to consider this application in the period of not more than 6 days.

Central Commission on Elections and Referenda shall publish through media the list of candidates of the political parties, who will participate in elections from single republican electoral district.

Nomination of a candidate to Assembly of Representatives in single-mandated electoral districts in a self-proposed way shall take place through submitting to the district election commission an application about

[9] Added.
[10] Added.

his nomination as a candidate. The candidate should collect not less than 500 signatures of electors from this electoral district. Each elector may give his signature only to one candidate from the electoral district of his residence. Subscription lists shall contain surname, name and father's name of the candidate and of his/her empowered person, place of residence, series and number of a passport or any other document proving the identity of the empowered person, ordinal numbers, surnames, names and father's names of signatories, dates of birth, series and numbers of passports or other document proving the identity of signatories, places of their residence, their signatures and the date of signing. The Central Commission on Elections and Referenda shall fix the samples of the subscription lists[11].

Article 32. Procedure for candidates' nomination for the membership of National Assembly

Nomination of candidates to the membership of the National Assembly shall start 10 days after the elections for the Assembly of Representatives and finish 7 days before the elections for the National Assembly.[12]

Candidates to National Assembly shall be proposed in the sessions of assemblies of people deputies of cities (with the exception of cities of regional subordination) and districts, Dushanbe, GBAO and regions when there is a quorum.

Resolution of the session concerning nomination of the candidates shall be taken by the majority of voices of the deputies of the local representative organs in a secret ballot, and the candidate shall be informed about the decision in the period of three days.

Local representative organs may propose only one candidate from an electoral district, where they are located. The local representative organs of Dushanbe and its districts may propose not more than two candidates from electoral districts of their location. At the same time several local representative organs may propose one candidate.

If no candidate has been proposed, or the number of proposed candidates is less than the established number, or when the proposed candidates have withdrawn their candidacy before their registration or when they have been excluded, in this case the Central Commission on Elections and Referenda upon proposal of district election commission can extend the time of the nomination of candidates for not more than 30 days.

Article 33. Citizens who do not have the right to be nominated as candidates to National Assembly and Assembly of Representatives

The following citizens do not have the right to be nominated as candidates to National Assembly and Assembly of Representatives:

- citizens, who do not meet the requirements established by the Constitution Republic of Tajikistan and the present Law;
- citizens recognized incapable by court, or kept in detention by a court verdict, or have been placed in the institutions of forced treatment by the decision of a court;
- citizens on military service, officers, warrant officers, the staff of Military Forces, Ministry of Security, Ministry of Interior, Ministry of Extraordinary Situations, President's Guard, Committee for defense of state borders of the Republic of Tajikistan, the State Property Committee, the officials of Tax Police, Custom House and other regular servicemen, who have not retired or have been transferred to the reserve;
- professional servants of the religious organizations and unions, who continue exercise their duties;[13]

citizens, who have been sentenced by a court for the committing of intentionally grave and especially grave crimes, irrespective of completion of the term of imprisonment;

[11] Added.
[12] Amended.
[13] Added.

- citizens whose previous conviction have not been expunged;
- citizens wanted by investigation organs in connection with a suspected criminal offence against the basis of the Constitutional order and state security, and other intentionally grave and especially grave crimes, with the exception of participants of political and military resistance, who have been amnestied[14].

Article 34. The requirements to the candidates

A citizen may not be a member of National Assembly and at the same time - a deputy of Assembly of representatives;

A deputy of Assembly of Representatives at the same time can not be a deputy of other representative organs and of the local self-government organs;

A member of National Assembly at the same time can not be a deputy of more than 2 state representative organs;

Members of the Government, judges, Prosecutor General, his deputies, prosecutors and other officials from the office of Public Prosecutor; deputies of the ministers and chairmen of State Committees, attached to the Government of the Republic of Tajikistan, heads of state organs attached to the Government of the Republic of Tajikistan, chairman of corporations and companies, associations and state corporations and their deputies, and also directors and officials of banks can not be members of National Assembly at the same time and they can be registered as the candidate to deputy only in that case when they right in their application that they will relieve from the post after being elected as the member of the National Assembly.

Article 35. Registration of candidates

For registration of candidates (the list of candidates) the following documents shall be submitted to the election commissions:

1) the protocol of the resolution of the congress (conference) of a political party, of the plenary session (conference) of city and regional organs of political parties about the nomination of candidates (the list of candidates); resolutions of the local representative organs about the nomination of candidates;
2) the application of the candidate about his consent for voting for his candidature, in this application his obligation to stop his activity in case if this activity does not correspond to deputy's mandate should be indicated;
3) information about the biography of the candidate with the indication of his name and surname, date of birth, place of work, his post and his permanent address;
4) information about the property, belonging to the candidate;
5) other documents, prescribed by this Law.

The information about the size and the sources of income of a citizen, who is a candidate, shall be available in a declaration on incomes of the candidate during a year before the appointment of elections (with the note from tax agency). If a citizen, candidate, in accordance with the Law of the Republic of Tajikistan about taxes is not obliged to present a declaration, than he shall bring the certificate about the total size of the income received by the organization where he works, the income during a year before the appointment of elections.

Information about property, belonging to the candidate according to the right of ownership shall be submitted in a way, established by the Central Commission on Elections and Referenda of the Republic of Tajikistan.

In case of self-proposal for the registration a candidate should present the documents, indicated in point 3 of this article, and also the application about his consent for being voted for and the list with signatures.

[14] Amended.

Respective electoral commissions shall check the correctness of the signatures of voters, collected for the candidate. All signature lists or some of them, taken selectively, can be checked.

If any incorrectness in the signature list is found, which totals more than 3%, the candidate shall be refused of registration.

Respective election committee after checking the correctness of the process of nomination of the candidate and its conformity to this law, shall register the candidates or issues the proved resolution about the refusal of registration.

A candidate shall be registered only in one electoral district. One candidate is included only into one list of voters. This rule shall not be applicable to the candidate, included by the political party into single-mandated electoral district, or into the list of voters.

During the registration of candidates proposed by a political party, the fact of his nomination by the political party shall be marked in the resolution of the electoral commission.

A candidate nominated by the local representative organ has the right to speak about his independent status or his relation to a political party.

If registration of a candidate (the list of candidates) is turned down, the respective electoral commission shall give within 24 hours to the candidate or the political party a copy of the resolution of the electoral commission with the indication of reasons for refusal.

The information about registered candidates shall be submitted to the Central Commission on Elections and Referenda on the day of registration.

Respective election commission during one week after registration of candidates in single-mandated electoral districts shall publish in press the information about the registration of candidates, their names and surnames, date of birth, belonging to any political party, their posts, working place and permanent addresses.

The Central Commission on Elections and Referenda shall publish in press the list of candidates from political parties not later than 7 days after the registration of list of candidates in the single all-republican electoral district.

The respective electoral commission in the period of three days shall give the candidate the corresponding candidate's certificate with the indication of the electoral district and the date of registration.

The registration of the candidates to the deputies of the Assembly of representatives shall start 45 days before the elections and finish 20 days before the elections.

The registration of the candidates for the National Assembly shall be completed within 3 days after receiving of all the necessary documents but not later then 4 days before elections.[15]

Article 36. The cancellation of the resolution about nomination of a candidate. Declination of the candidature by the candidate.

The organ of political party, who has proposed the candidate has right to cancel its own decision about the nomination of the candidate any time. According to this issue the decision shall be taken in the same way, which was prescribed for the nomination and then presented to the respective election commission. The district election commission shall strip this candidate of the candidate's status. The candidate can bring the application to the respective electoral commission and decline his candidature any time.

[15] Amended.

District election commission, which have registered the candidate shall inform the Central Commission on Elections and Referenda, the population of the electoral district, the organs of the political party, which has nominated the candidate about the repeal of the resolution on nomination of the candidate or withdrawal of candidature by the candidate.

Article 37. Status of candidates. All candidates shall have equal rights and obligations

The administration of enterprises, institutions and organizations where registered candidate works, shall release him from his duties any time and any day, beginning from the day of candidate's registration by the respective election commission up to the day of official announcement of the results of elections, and during this period they are obliged to preserve his average salary at the expense of organisation, enterprises and institution irrespective of the kind of property.

During conducting of elections the registered candidate may not be dismissed from his job or responsibilities by the initiative of the administration or transfer him to another post without his consent.

The time of the participation of the registered candidate in the elections is included into the length of service of the candidate.

The registered candidate may not be brought to prosecution, arrested or given the administrative punishment without the consent of the Central Commission on Elections and Referenda, with the exception of cases when he is caught in the time of committing a crime.

The candidates from the moment of their registration shall participate in elections on equal basis and have equal rights of participation in conducting of meetings before the elections and other meetings, equal rights for the use of media means, including radio and television.

Article 38. Proxies of candidates and political parties

Candidates and political parties, who have proposed the list of candidates shall be entitled to have trustees.

Trustees shall be registered by the election commission, which have registered the candidate (the list of candidates) upon the written request of the candidate, proposal of a political party and the application of the citizen with his/her consent to become a trustee. The election commission shall provide the trustee with prescribed certification.

A candidates may have up to 5 trustees and political parties which have proposed the list of voters may have up to 15 trustees..

Members of election commissions, personnel of law enforcement bodies, judges, military servicemen and foreign citizens may be trustees.

Trustees shall act within the authorities given them by candidates and political parties.

Trustees have rights:

- to agitate in all legal forms and ways for the election of the candidate (list of candidates), advertise the pre-election program of the candidate;
- to participate in pre-election assemblies, meeting with the electors, and take part in pre-election debates;
- to use the assistance of government organs and local self - government bodies for the conducting of pre-election conferences and meetings with voters;
- to attend sessions of election commissions;
- to be present in polling stations in the time of voting, counting of votes and summarizing of the results of voting;

- to get acquainted with the documents of election commissions as well as the protocol of the vote count and the outcome of elections;
- to complain about the acts of the election commissions and participate in the consideration of complaints and applications.

Trustees of the candidates, political parties may not have right to interfere into the work of election commissions.

Candidates, political parties have a right to recall their trustees any time and inform of it the election commissions.

The election commission shall invalidate the prescribed identifications, given to trustees, if they violate the requirements of the present Law.

The authority of trustees shall be ceased simultaneously with the revocation of the status of registered candidates, who have appointed these trustees, or recalling of the list of candidates, or withdrawal of political parties from elections.

Article 39. Conduct of pre-election agitation

The Government shall ensure conditions for free agitation to citizens and political parties during elections in accordance with the present Law.

Citizens, candidates, political parties may agitate freely and in legal forms and ways for participation in elections; discuss the pre-election programmes, political, business and personal characteristics of candidates as well as pre-election programmes of political parties, agitate for or against candidates in meetings and media

Commissions with local power organs and local self-government bodies shall assist in conducting these meetings, provide premises, inform in advance about the time and location of meetings and other necessary arrangements.

Equal conditions of access to Mass Media shall be guaranteed to candidates and political parties.

Agitation during elections shall be conducted in the following ways:

- through Mass Media;
- conducting of public campaign (conferences, meetings with citizens, debates and discussions);
- publishing and distributing of the printed agitation materials;
- in other forms, prescribed by the present law.

Candidates and political parties can determine independently forms and peculiarities of their agitation through Mass Media.

Members of election commissions, religious organizations, judges, personnel of law-enforcement bodies and military servicemen may not participate in pre-election agitation.

Participation in pre-election agitation is not possible for foreign states, organizations and citizens, persons without citizenship, international organizations and movements.

Journalists, other individuals engaged in creative work, staff members of Mass Media enterprises, if they are candidates or trustees, may not use these Mass Media for the coverage of news of election process.

This regulation does not concern agitation, conducted by the mentioned persons when state and local radio and television channels are used for free by a candidate.

When publishing the results of the opinion poll regarding the elections, Mass Media shall be obliged to indicate the organization which conducted the poll, place and time of polling and number of participants, the ways and principles of collecting information, exact exposition of questions, assessment of eventual inaccuracies.

Pre-election agitation shall start from the date of the registration of the candidate (the list of the candidates) and finish twenty four hours before the elections.

The results of the opinion polls, forecasts of the elections outcome and other election related data may not be published in Mass Media in the course of five days before voting and on the election day.

Candidates and political parties have rights to give a talk on the Radio and Television once for free of charge.

Election commissions shall monitor the pre-election agitation in accordance with the established order.

Misuse the freedom of media, the agitation, which inspires hatred and social, race and national dissentions, calls to the seizure of the power and forcible change of the constitutional system and destruction of the country's integrity, agitation for war and other forms of misuse of the freedom of media, prohibited by the law of the Republic of Tajikistan may not be allowed in the agitation campaign.

Mass Media, which participate in pre-election campaign, have no right to publish information discrediting honor, dignity and business reputation of the candidates.

Violation of the requirements envisaged in this article shall be a reason for revocation of the decision on registration of a candidate (list of candidates)

VI. THE ORGANIZATION AND THE ORDER OF VOTING

Article 40. Premises of voting.

Local executive bodies shall put premises for voting at the disposal of polling station commission free of charge.

Voting in the elections to National Assembly shall take place in the buildings, where sessions of the local representative Assembly election of members of National Assembly are conducted.

These buildings must be located within the territory of those cities, where district election commission on elections of members of National Assembly are settled.

Premises for voting shall be equipped with polling booths and other special places for secret ballot. Ballot boxes shall be installed in such a way, that voters approaching them should go through the polling booths or rooms intended for secret ballot.

Article 41. Ballot-papers

For conducting of elections a voter shall take a ballot-papers, which is the special accounting document. Number of ballot-papers should be adequate to the number of registered voters.

In the ballot-papers shall be written in alphabetical order name and surname, date of birth, occupation (position), place of work and address of the registered candidate and information on those, who have nominated the candidate.
In case of election being conducted according to the list of candidates, names of political parties shall be written in the ballot-papers in alphabetical order of the Tajik alphabet.

The ballot-papers for elections to the Assembly of Representatives shall be printed not later than 10 days before elections and for the National Assembly not later then 3 days before elections in state language and in the language of the majority of population of the constituency. [16] Election commissions shall pass ballot-papers by written act

The ballot-papers shall be delivered to the relevant election commission not later than 7 days before the elections and to the polling station commission – not later than 2 days before the elections.

Chairman of the election commission shall be responsible for the proper delivery of ballot-papers.

If some of the candidates or political parties withdraw from elections after the ballot-papers have been prepared polling station (district) commissions upon the instructions of higher commissions shall cross out all the data concerning the above mentioned candidates and political parties from the ballot-papers.

Premises where the ballot-papers are stored shall be locked and sealed and guarded by organs of the Ministry of Internal Affairs.

Article 42. Order of voting to Assembly of Representatives.

Voting shall be conducted in the election day from 6 a.m. to 8 p.m. In the polling stations attached to representative offices of the Republic of Tajikistan in foreign countries, sanatoriums, resorts, hospitals and other medical institutions, in remote and difficult to access localities polling station commission may announce the voting finished if all the voters included to the list have counted their votes.

Polling station commission informs the voters about the time and place of voting not later than 10 days before the elections.

Each voter should vote by himself. To vote instead for other is prohibited.

On the election day before the beginning of voting the chairman of the polling station commission shall examine the ballot-boxes and seal them with the sealing-wax in the presence of members of the commission, observers and other persons, representatives of mass media.

Polling station commission shall give ballot-papers on the basis of the list of voters upon presentation of a passport or other identity documents. Each voter shall receive a ballot-paper and sign the list of voters next to his/her name. Additional ballot-paper may not be given to a voter.

A voter shall fill in the ballot-paper no other persons shall be present except for the voter. A voter who unable fill in a ballot-paper by himself has a right to invite another person to the polling booths or room on his/her discretion except members of the election commission, observers, media representatives.

A voter should vote only for one candidate and for one political party. When voting for one candidate and one political party the voter should cross out names of candidates and political parties, against whom he/she votes.

A voter vote against all candidates and all political parties he/she shall cross out all candidates and all political parties.

If a voter have made a mistake when filling in the ballot-paper, he/she may ask from a member of the commission another ballot-paper. The member of the commission shall give him/her a new ballot-paper, make the proper note about it in the list of voters. The spoiled ballot-paper shall be taken out of accounting by written act.

A voter shall put the filled in ballot-paper into the ballot box.

[16] Amended.

If some voters are not able to come to the premises for voting due to their disease or other reasons at their request the polling station commission shall charge particular members of the commission to conduct member the voting at the place of residence of these voters and a note about it shall be made in the list of voters.

Those voters, that have not been included into the list of voters by any reason shall be included to the supplementary list of voters upon presentation documents of identity.

If a member of the election commission, observers and other persons break the work of the electoral commission or create obstacles to the citizens' suffrage and disturb the secret ballot, then such people shall be immediately striped out from the participation in the work of the commission and other people shall be withdrawn from the voting building. The commission shall take a relevant decision about it and has a right to apply to relevant organs in accordance with the laws of the Republic of Tajikistan about bringing these people to responsibility.

Article 43. The voting procedure in the election of members of National Assembly.

The election of the members of National Assembly shall be conducted on the joint session of all the representative bodies of Badakhshan, oblasts, Dushanbe, cities and districts of republican subordination.

This session shall be opened by the chairman of the constituency commission and preside it. On this session the minutes shall be written, which shall be signed by the chairman and secretary of the commission.

The joint session of the local representative bodies for the elections of National Assembly shall be considered authorized in case if more than a half of all the voters delegates from each local representative organ have participated. In case of non-presence of the required number of voters delegates, the session shall be delayed. The building, where the general session of the voters delegates was conducted, shall be used by the constituency commission for voting.

One may not vote for the election to National Assembly outside the voting premises.

The election of the member of National Assembly on the sessions of relevant local representative organs shall be considered valid in case when more than a half of the voters delegates have voted. The session shall be closed after the announcement of the results of voting by the chairman of the constituency.

Article 44. The order of absentee voting.

If the voter cannot come to the polling station, where he is included in the list of electors, in the day of elections, he has right to come beforehand to the building of relevant constituency commission and vote by filling of the ballot paper. The electoral commission shall provide the secrecy of his voting and not allow the incorrect expression of his will and also provide the protection of ballot and counting of electors' vote in the time of identifying of voting results and determining the outcome of the elections.

The ballot paper filled up by the voter beforehand shall be put into the envelope, glued up and signed in glued place by two members of the relevant electoral commission and then it shall be confirmed by the seal of the electoral commission and the signature of the voter. The glued envelope shall be preserved by the secretary of the relevant electoral commission in the building of the constituency commission prior to the moment of passing of ballots to the polling station commission. In the day of voting, before the beginning of voting, the chairman of the polling station commission in the presence of the member of polling station commission, observers and other persons shall give the information about the number of electors, who have voted beforehand and then show the envelopes with the ballots and the list of electors, who have voted beforehand. After that he shall open the envelopes keeping the secrecy of the voters' will and cast the ballots into the ballot boxes. The number of electors who have voted in advance, shall be registered in the

minutes about the results of voting before the beginning of voting. In the list of electors against the name of the electors, who have voted in advance there shall be put the note "Voted beforehand".

The absentee voting shall not be allowed in the election of the members of National Assembly.

Article 45. The minutes of the polling station commission about the voting results.

Polling station commission and constituency commission for the elections to the National Assembly shall draw the protocol about the summarizing of the voting results.

These items shall be covered in the protocol of the commissions:

1) Number of protocol copies.
2) Indication of the relevant electoral commission;
3) The word "Protocol";
4) The name of the electoral commission with indication of the number of the polling station for elections of deputies of Assembly of Representatives.
5) The lines of the protocol where shall be the following records:
   a) the number of electors, the delegates of the electors enrolled into the list of voters and also the list of the electors added to the main list.
   b) The number of ballots received by the election commission.
   c) The number of ballots given to the electors who have voted beforehand
   d) The number of ballots excluded from the account;
   e) The number of ballots, which were given to the electors of the polling station and to the electors delegates on the joint sessions of the local representative bodies in the day of voting.
   f) The number of ballots in the voting the ballot boxes.
   g) The number of valid ballots.
   h) The number of ballots which were considered as valid.
   i) The number of the votes of electors, the delegates of electors given for the candidate, political parties which were included into the ballot.
   j) The number of electors votes, who have voted against all the candidates and all the political parties.

The following lines should be also written in the minutes about the summarizing of the results of voting:
a) the name, the surname of the chairman, the secretary and other members of the electoral commission
b) the date of the signing of the minutes;
c) the seal of the electoral commission.

The numbers, which come in this part of this article are written in the minutes about the summarizing of the results of voting in figures and in letters.

VII. Sealing of the results of voting.

Article 46. Counting of electors votes and drafting of minutes on summarizing of the results of elections by election commissions.

The counting of the votes of electors and the delegates of the voters begins after the completion of the voting and continues without break until the identifying of the results of voting. After the expiry of the voting time and before the opening of ballot boxes the member of the polling station (constituency) commission excludes the unused ballots in the presence of observers and other persons. The exclusion of the unused ballots is made by cutting of the right side of the lower part of the ballot. The number of these ballots is announced and then it is included into the minutes. Then the chairman of the relevant election commission checks the safety of the seal and sealing-wax of the mobile ballot boxes and gives the members of the commission the possibility to make sure about the safety of the seal and seal-wax and then opens the mobile ballot boxes.

A member of the polling station (constituency) commission counts the ballots and inserts the relevant numbers accordingly to the lines of minutes about the summarizing of the results of voting. The direct count of electors votes and the votes of the electors delegates is conducted in the places specially equipped for it and where the members of the commission do not have the access. The Members of the election commissions with the exception of the chairman and the secretary of the commission are not allowed to have any writing tolls during vote count. At the same time the activity of the members of the commission during the vote count should be transparent for the people present there.

The ballots of unordinary form are not taken into account. Those ballots are considered as unordinary, where the contents and their form does not correspond to the contents and form of the ballots, confirmed in accordance with this law.

Members of polling stations and constituency commissions select the ballots given for every candidate and for every political party and at the same time segregate the unordinary invalid ballots. After that the votes of the electors according to the ballots of ordinary form are accounted according to each candidate and each political party. Invalid ballots are counted and kept separately. Those ballots are considered as invalid where more than one candidate or more than one political party is left or where all the candidates and all the political parties are left and also those ballots where it is impossible to identify the voter's will. If there are any doubts on the invalidity of the ballots, then polling station (constituency) commission resolves this issue by voting and then on the back side of the ballot indicates the reason why it was considered invalid

The members of the polling station (constituency) commissions at first include the number of invalid ballots into the minutes and then the number of ballots of ordinary form, which have come out from ballot boxes. The minutes about the summarizing of the results of voting is drafted in two copies and all the present members of the polling station (constituency) commission sign it with the indication of the date and the location. The minutes are considered valid if they are signed by more than a half of the members of the commission. During the signing of the minutes those members of the commission who do not agree with the contents of the minutes have right to add their special opinion to the minutes and there should be done the relevant note about it in the minutes.

The first copy of the minutes about the summarizing of the results of voting after being signed is immediately submitted to the higher election commission together with other election documents, including ballots, applications and complaints, the resolutions accepted on them and acts, drawn by the polling station and constituency commissions.

Article 47. Order of the defining of results of voting by the higher electoral commission.

The first copies of the minutes of the polling station (constituency) commissions about the results of voting after being signed by the members of the commission are directly submitted to the higher commission.

On identification of omissions and mistakes of the minutes and if there are any doubts about the correctness of drafting of minutes received from the lower electoral commission, the lower electoral commission has right to take the decision about the repeated vote count by the lower commission. The repeated vote count shall take place with the obligatory participation of the member of higher election commission. On the results of the repeated vote count of the electors (electors delegates) the electoral commission drafts the minutes about the results of voting with the mark "The repeated vote count". The minutes is immediately submitted to the higher election commission.

Article 48. Order of determination of the results of elections to Assembly of Representatives.

On the basis of the minutes of the polling station commission the constituency commission determines the results of the elections of the deputies to the Assembly of Representatives in one-mandate constituencies and the results of voting in the unified republican constituency within their territory and then immediately submit them to the Central Election Commission.

In one-mandate constituency the candidate is considered elected, if he has gained more than 50% of the votes of electors participated in the elections.

The election in the one-mandate constituency is considered invalid if less than half of the voters, enrolled in the list, have participated in the elections.

The Central Commission on Election and Referenda determines the results of the voting in one-mandate constituencies all over the republic on the basis of minutes of constituency commissions.

On the basis of the minutes of constituency commissions the Central Commission for Elections and Referenda counts the electors votes according to the unified republican constituency by collecting the information from the minutes. The election in the unified republican constituency is considered invalid, if less than a half of electors enrolled into the lists have participated in it.

Political parties, which have gained less than 5%[17] of the elector votes, are deprived of getting the deputy mandate of the unified all-republican constituency.

Those political parties, which have gained 5%[18] and more of the votes of electors, participated in elections, in accordance with the stipulated provisions of this law, receive deputy mandates.

The distribution of the deputy mandates among the candidates is done in accordance with the list of candidates from political parties according to the order of their enrollment in the list, which was confirmed by the Central Electoral Commission.

The deputies that have been elected from the one-mandate constituencies to the Assembly of Representatives are excluded from the lists of candidates. In this case the deputy mandate is given to the candidates by the order of their enrollment in the list

Central Commission for Elections and Referenda drafts the minutes about the distribution of deputy mandates among the political parties from the unified republican constituency in accordance with the rules, stipulated by this law.

These points are included into the minutes:

- the name of the political party which has right for distribution of deputy mandates;
- the name and surname of the elected deputies from each list of candidates.

If none of political party has gained 10% of votes, the Central Commission for Elections and Referenda considers the deputy mandates according to unified republican constituency undistributed.

In this case the Central Commission for Elections and Referenda appoints the repeated election in the unified republican constituency.

Article 49. Repeated voting for Assembly of Representatives.

If in one-mandate constituency more than two candidates for the deputy of Assembly of Representatives were proposed for voting and no one was elected, the constituency commission takes a decision to hold the repeated voting for two candidates who have gained the majority of votes. The constituency commission informs the Central Commission for Elections and Referenda and the electors of the constituency about this resolution. The repeated voting is held in the constituency in the period no later than two weeks within the territory of those polling stations and according to those lists of electors and in accordance with the requirements of this law.

[17] Amended.
[18] Amended.

That candidate is considered the elected deputy of the Assembly of Representatives, who has gained more votes than the other candidate in the repeated voting under the terms that more than a half of the electors enrolled in the list have participated in this voting.

If during the repeated voting one of the candidates is excluded by any reason, the voting is held for one candidate. In this case the candidate for becoming the deputy should gain more than a half of the votes of electors who had participated in this voting.

During the repeated voting the polling station commission can announce the voting finished any time, if all the electors enrolled into the list have voted.

Article 50. Deputy mandates distribution order.

The Central Electoral Commission counts the votes of the electors given for the political parties if they constitute 5% or more from the amount of votes of electors, participated in the voting in unified republican constituency. The result is the number of votes necessary for one deputy mandate. Then the number of votes gained by each political party participated in the distribution of deputy mandates is divided to the number of votes, necessary for each deputy mandate. The result is the number of deputy mandates which will be received by relevant list of candidates.

If after this there are remaining undistributed mandates, they are divided for the second time. The undistributed mandates are given one per each political party, having the majority of vote balance. In case of equal number of votes the advantage is given to that list of candidates, who has gained more elector's votes. If the number of electors votes is equal then the advantage is given to that list of candidates, who were registered earlier.

Article 51. Determination of the results of elections to National Assembly.

The constituency commission for the election of the members of National Assembly, which is conducted in the place of voting, counts the votes. The vote count begins immediately after the finishing of voting. The candidates are considered elected if they have gained the major number of the votes of delegate deputies who have participated in the voting. If the number of votes is equal, the advantage is given to the older candidate.

The results of the elections is written in the minutes summarizing the results of elections in the constituency and it is signed by the chairman and all the present members of the constituency commission and then it is immediately submitted to the Central Commission for the Elections and Referenda.

Article 52. Order of appointment and registration of members of National Assembly.

One fourth of the members of the National Assembly is appointed by the President of the Republic of Tajikistan by his order not later than 30 days after the election of the Assembly of Representatives. Elected and appointed candidate to the members of the National Assembly should inform within three days in written form the Central Commission for Elections and Referenda about cessation of his position which does not correspond the status of the member of the National Assembly in the period of three days.

The Central Commission for Elections and Referenda after receiving of the application from the elected and appointed candidate about the cessation of the position which does not correspond to the status of the member of National Assembly, register the candidates and the former presidents, who have not refused of being the member of the National Assembly. If during the elections or during the vote count or identification of the results of elections the law have not been observed, the Central Commission for Elections and Referenda has right to consider the election invalid and not to register the member of the National Assembly. It is possible to apply to the Supreme Court of the Republic of Tajikistan about the Resolution about the recognition of elections invalid.

Article 53. Repeated elections.

If in one-mandate constituency for the Assembly of Representatives not more than two persons have promoted their candidacies for the deputy of the Assembly of Representatives and if none of them has been elected, of if the elections have been recognized invalid or in the unified republican constituency none of the political parties has gained the right for the distribution of deputy mandates, then Central Commission for Elections and Referenda charges the constituency commission to hold the repeated elections. In this case the Central Commission for Elections and Referenda can take a decision of holding of repeated elections with a new staff of constituency and polling station commission. The voting is held in the same polling station and according to the list of voters which were prepared for the main elections.

The person whose candidacy was promoted for the deputy of the Assembly of Representatives during the main elections and who was registered that time, can not be promoted as a candidate from this constituency during the repeated elections. The repeated elections are held at least two months after the main elections. The electoral commissions are formed in accordance with the order, defined by this law and the promotion and registration of candidates, political parties and other election relevant activities take place in an order stipulated by this law.

Article 54. Registration of deputies of Assembly of Representatives.

The relevant constituency commission informs the elected candidate after the signing of the minutes of summarizing of the election results. The deputies, who were elected in the result of distribution of mandates according to the list of candidates are informed by the Central Commission for Elections and Referenda. Central Commission for Elections and Referenda registers the elected candidates to the Assembly of Representatives in the period of 3 days after the official publication of the of the election results.

If during the elections or during the vote count or in the time of identification of the results, the law has not been observed, the Central Commission for Elections and Referenda can consider the election invalid and not register the deputy of the Assembly of Representatives. It is possible to appeal to the Supreme Court of the Republic of Tajikistan over the resolution about the consideration of election invalid in the period of 10 days.

If the election is considered invalid in some polling stations, then by the resolution of Central Commission for Elections and Referenda the voting results in these polling stations are excluded from the general results of election on the terms that the election should be considered valid without them.

Article 55. Publication of the results of elections of the members of the National Assembly and the deputies of the Assembly of Representatives.

The Central Commission for Elections and Referenda publishes the information about the results of election all over the republic and the list of the deputies of the members of the National Assembly and the Assembly of Representatives not later then two weeks after elections.

Article 56. Certificates of the members of National Assembly and the deputies of Assembly of Representatives.

After the publication of the list of the deputies of the Assembly of Representatives registered by the Central Commission for Elections and Referenda, the constituency commission gives each elected candidate the certificate about being elected. After the confirmation of the authority of the members of the National Assembly and deputies to Assembly of Representatives by the Central Commission for Election and Referenda, this committee gives them the certificates of the members of the National Assembly and the Deputy of Assembly of Representatives.

Article 57. The conducting of elections of the members of National assembly and the deputies of the Assembly of Representatives instead of excluded members and deputies.

In case when the authority of the member of the National Assembly and the Deputy of the Assembly of Representatives is prematurely terminated, the new election is conducted in the period of three months after the termination of the authority. The election is appointed by the Central Commission for Elections and Referenda at least two months before the time of election and it is held with the observation of the requirements of this law. The constituency commission is formed 50 days before the elections and the polling stations commissions are formed one month before the elections and the registration of candidates to the members of the National Assembly and the deputies of the Assembly of Representatives is finished one month before the elections.

If the authorities of the deputy, elected in the result of distribution of deputy mandates among the political parties, is prematurely terminated, then his mandate is given by the decision of the Central Commission for Elections and Referenda to the candidate who is enrolled into the list after the elected persons. If there are no more candidates, then the mandate is vacant until the next elections.

If the authority of the member of the National Assembly and the deputy of the Assembly of Representatives is terminated at least one year before the termination of the National Assembly of Representatives, then the elections are not held.

Article 58. Responsibility for non-observation of this law.

Persons who disturb the citizens of Republic of Tajikistan to free use of their suffrage and of their right to be elected and the right of conducting of pre-electoral propaganda through force, deceptions, threats and by other ways and also the members of the electoral commissions, officials from the state agencies and political parties, who commit falsification of the electoral documents and intentionally count the votes in a wrong way, infringe the secrecy of voting and infringe this law in other ways are brought to responsibility in accordance with this law. Also persons who humiliate the honor and dignity of the candidate by publication and spreading of false information in press or by other means, or insulting the members of the electoral commission are also brought to responsibility.

LAW ON ELECTIONS TO LOCAL ASSEMBLIES

POLITICAL PARTIES LAW

THE LAW OF THE REPUBLIC OF TAJIKISTAN ON POLITICAL PARTIES

Chapter 1. THE GENERAL PROVISIONS

Article 1. The right of the citizens on association in political parties

The right of the citizens to be united in political parties is realized by means of:

Creations of political parties according to the belief of the voluntary introduction in political parties under condition of a recognition entering of their charters:

Participation in activity of political parties according to the purposes determined by their programs and in the forms established by their charters:

Free exit from political parties.

Article 2. A political party

The concept of a political party is understood as public association, a main problem of which is participation in political life of a society by means of formation of political will of the citizens, and also realization of authority through the representatives.

The purposes and the problems of a political party are reflected in its charter and program, published for the general item of information.

Chapter 2. CREATION And ACTIVITY of POLITICAL PARTIES

Article 3. Creation of political parties

In Republic a Tajikistan republican political parties can be created only.

The political parties form by the citizens of Republic a Tajikistan freely, without any sanctions, on constituent congress on which charter is accepted and managing bodies of a party are formed.

For state registration the political parties represent the lists not less than thousand citizens - supporters, being the inhabitants of the majority of cities and regions of Republic a Tajikistan.

The party admits by the legal person from the date of its state registration.

In current of three months after state registration the political party should have in the majority of areas, cities and regions primary organizations.

About city, region and date of realization of constituent congress, and also about the basic rules of the charter of a party инициативная the group on a political party informs through a mass media not later than a month before convocation of constituent congress.

On territory of Republic a Tajikistan the action of political parties of other states, including in its structures, is forbidden.

Article 4. Restriction on creation and activity of political parties

Creation and activity of political parties is forbidden, purpose or the actions of which are directed on a violent overthrow constitutional building and organization of armed groups, propagation местничества, national, social and religious вражды.

Political parties and their members in the political activity have not the rights to use religious organizations.

Creation and activity of political parties in bodies of state safety, internal businesses, прокуратуры, customs house, tax police, justice, courts, Armed Forces and other armed formations of Republic a Tajikistan, and also in bodies of state authority, high schools and maximum educational institutions is not allowed.

Article 5. Membership in a political party.

Membership in political party is only on a voluntary basis for the citizens of Republic of Tajikistan.

Judges, public prosecutors, military men, workers of bodies of internal businesses, state safety, tax police, customs house and justice, and also foreign citizens and the persons without citizenship cannot be the members of political parties.

The political parties have fixed individual membership. The members of a party can be the citizens, достигшие 18 years.

Article 6. The charter of a political party.

The charter of a party should contain the following rules:

1) About the name, purposes and problems of a political party:
2) About structure of a political party and its bodies:
3) About conditions and order of purchase and loss of membership in a party, about the rights and duties of the members of political parties:
4) About equality of the members of a political party:
5) About conformity to activity of the purpose of a political party of the Constitution of Republic a Tajikistan:
6) About the order of choices and competence of managing bodies of a political party, terms of their powers, place of their presence(finding):
7) About publicity of all activity of parties and its bodies:
8) About the order of acceptance and modification in the charter of a party:
9) About property and material means of a political party, sources of its financing and its economic activity:
10) About symbols of parties:
11) About the order of the termination of activity and reorganization of activity of a party:
12) About the order of the decision of receivership proceeding, connected to the termination of activity of a party:
13) About выборности and reporting:

In the charter can contain and other rules, relating to activity of a political party.

Acceptance of the charter, program of a political party, выдвижение of the candidates from the given political party in bodies of state authority of Republic a Tajikistan and the decision of other important questions of life of a political party comes true under the decision of congress, conference, plenum, assembly or by results of referenda of members of a party.

Article 7. State registration of a political party.

The state registration of political parties comes true by Ministry of the justice of republic a Tajikistan.

For state registration of a political party in a recording body during one month a application, signed by the person, moves. Уполномоченным by constituent assembly, created party, with the indication of legal address of a managing body. To a application, besides the charter, extract from the protocol of constituent assembly accepting charter is applied, and list no less than ten participants of constituent assembly with the indication of their nameplate date & and place them жительства with the application of the copy of a mass

media, in which message on a place and date of realization of constituent congress, bank document, confirming entering of the state duty, and list of one thousand of the members of parties according to a part 3 articles 3 of the present Law, and also basic rules of the charter of a political party is placed.

The recording body is forbidden to require of a party of representation of other documents, not specified in parts of the second present article.

The state registration of a political party is made by a recording body in current of one month from the date of submission of the documents. The infringement of the specified term is not allowed.

Changes and the additions, brought in to the charter of a political party, are subject to state registration by the same body and in the same term, as state registration of the party.

For state registration of a political party, changes and additions, brought in to its charter, admission fee in the order and sizes, determined by Government of Republic a Tajikistan is raised.

The document, certifying the fact of state registration of a political party, and also entering it in the state register of public associations, is the certificate on its state registration.

Истребование at political parties of any other documents, confirming the fact of its state registration, it is forbidden. The political party gets the rights of the legal person from the date of its state registration.

Article 8. Structures of a political party.

The local structures of political parties will be formed in the order, established by the charter of a political party.

The managing body of a political party after creation of structure of a party in city, region notifies in writing bodies of local authority on places.

Article 9. The basis for a refusal in state registration of a political party.

In state registration of a political party can be отказано, if:

The rules(situation) of its charter contradict the Constitution of Republic a Tajikistan, present Law and legislation of Republic a Tajikistan.

The charter of a party does not correspond to the requirements of article 6 of the present Law;

The requirements of a part of the second article 3 and parts of the fifth article 7 of the present Law are not carried out;

Earlier the charter of other party with the same name or with the same symbols is registered;

The legal address of a managing body of a party is outside of territory of Republic a Tajikistan, a motivated refusal in registration of the charter of a political party is given in writing and can be appealed against in the judicial order.

Chapter 3. THE RIGHTS of POLITICAL PARTIES And FORMS of the CONTROL FOR THEIR ACTIVITY

Article 10. The rights and duties of political parties.

Each party in the order, stipulated the legislation, has the right:

To put forward the candidates for a choice of the President of Republic a Tajikistan and in elective bodies of state authority;

To participate in preparation and realization referenda and choices in bodies of state authority;

To be united in constant or temporary депутатские of group and to create other associations in representative bodies;

Freely to distribute in the oral, written and other form the information on the activity, to propagandize the purposes and problems, to have the program documents;

To establish own publishing houses and mass media;

To use the public funds of the mass information, including press, radio and TV;

To carry out(spend) assemblies, meeting, demonstrations and other public measures according to the current legislation of Republic a Tajikistan;

To establish and to support international communications and contacts to foreign political parties and associations;

To enter international unions and associations;

To create branches and representations according to the authorized purposes and problems;

To carry out according to the legislation of Republic a Tajikistan and charter economic, financial and other activity;

To conclude unions with other political parties and public associations of Republic a Tajikistan and to establish with them the contractual relations;

To inform annually in Ministry of the justice of Republic a Tajikistan on continuation of the activity and place of a presence.

Article 11. Property of political parties

In the property of political parties can be: structures and structures, housing fund, equipment and stock, printing house, money resources, and also other property, necessary for maintenance for their activity, stipulated by the charters of parties and legislation of Republic a Tajikistan.

The property of a political party is used only for realization of the authorized purposes and problems of a party.

The political parties annually publish the items of information on a material situation of a party.

Article 12. Money resources of political parties

Money resources of political parties is formed from;

Introductory and member payments, if they are stipulated by the charter of a party;

The voluntary donations;

Receipts from realization according to the charters of lectures, exhibitions and other measures;

The incomes of publishing and other activity, appropriate to the authorized purposes and problems;

Other receipts, not forbidden by the legislation.

Article 13. The material help for needs of political parties.

The political parties may accept the material help, as property and money resources from the physical persons, enterprises and organizations, public associations, funds and other legal негосударственных of the persons.

The material help from is not allowed;
Charitable and religious organizations, state enterprises both organizations, and also enterprises and organizations with participation of the state, foreign states, citizens, enterprises and organizations, and also enterprises with participation of the foreign capital, Anonymous persons, Political parties, not included in association with a party, which appear the financial help.

Article 14. Economic activity of political parties.

The political parties according to the legislation of Republic a Tajikistan and charters have independence in acceptance of the decisions in economic questions, in questions of payment of labour of the employees of the given party, use of financial and material resources.

With the purposes of creation of financial and material conditions for realization of the authorized purposes and rights, fixed by article 10 of the present Law, the political party may create the enterprises and organizations in the order established(installed) by the legislation of Republic a Tajikistan.

Article 15. State support of political parties.

The bodies of state authority of Republic a Tajikistan render support to political parties, which are registered:

Providing them equal access to the public funds of the mass information,
Providing equality of opportunities for realization selective кампаний.

The state support temporarily stops in case of stay of activity of a party on the basis of situations of article 21 of the present Law.

In case of the interdiction of activity of a political party the state support stops from the date of the introduction into lawful force of the decision of Supreme Court of Republic a Tajikistan about an interdiction of activity of a party.

Article 16. The control for financial activity of political parties.

The managing body of a party is obliged to publish the financial report on sources, sizes and расходования of means, arriving in партийную cash department during an accounting year, and also about property of a party and paid taxes.

The financial report of a political party is checked by the appropriate bodies of a tax service of Republic a Tajikistan.

Chapter 4. PARTICIPATION of POLITICAL PARTIES In CHOICES.

Article 17. The forms of participation of a party in choices.

The parties participate in choices:

Independently;

Concluding предвыборные of the agreement with other political parties;

Entering in selective blocks with other political parties; the Parties according to the legislation on choices have the right on:

Выдвижение of the candidates is independent or from selective blocks,
Realization pre-election campaigning with observance of equal conditions;

Supervision over a course of choices and definition when due hereunder of their results,
Representation in selective commissions,
Equal access to the public funds of the mass information, and also to means of weight of the information with participation of the state.

Article 18. Participation of political parties in selective blocks

After registration of selective blocks by the appropriate selective commissions the party putting forward the candidates under the lists of the selective block has no right to put forward the candidates independently or under the lists from other selective block at the same level. if in the contract other conditions are not stipulated.

Article 19 Партийные of a faction in representative bodies

Партийные of a faction in representative bodies will be formed and work according to the normative acts determining the order of activity of these bodies and charters of political parties.

Chapter 5. STAY the TERMINATION And INTERDICTION of ACTIVITY of a POLITICAL PARTY

Article 20. Stay of activity of a political party

In case of infringement by a political party of the Constitution of Republic a Tajikistan of the constitutional laws of Republic a Tajikistan of the laws of Republic a Tajikistan and also receptions of the economic and political help from abroad by Ministry of the justice of Republic a Tajikistan or General public prosecutor of Republic the Tajikistan is taken out the warning of the termination of illegal activity. If the party in десятидневный term will not carry out the requirement about the termination of illegal activity its activity a Tajikistan for the term of till six month can be stopped by the decision of Supreme Court of Republic.

Article 21. Consequences of stay of activity of a political party

In case of stay of activity of a party of the present Law in time established by article 20 its rights stop as of the founder the mass media to it(her) is forbidden to use the status of the legal person to organize meetings of demonstration and other public measures to participate in choices to use the bank contributions except for accounts on economic activity and under the labour contracts (contracts) indemnification caused by its actions and уплате of the penalties.

Article 22. The termination of activity of a political party

Activity of a political party a Tajikistan about an interdiction of its activity and also by way of reorganization or liquidation can be stopped under the decision of Supreme Court of Republic.

Article 23. The basis of the interdiction of activity of a political party

By the basis of the interdiction Supreme Court of Republic a Tajikistan of activity of a political party are:

Activity of a political party, forbidden by a part of the first article 4 of the present Law;

Illegal activity of a political party after stay of its activity under the decision of Supreme Court of Republic a Tajikistan according to article 20 of the present Law.

Article 24. The decision on prohibition of activity of a political party

The decision on prohibition of activity of a political party is allowed under the decision of Supreme Court of Republic a Tajikistan and only on the basis, stipulated by article 23 of the present Law.

Article 25. The termination of activity of a party by way of reorganization or liquidation

The termination of activity of political parties can be spent by reorganization (merge, connection, division) or liquidation of a party. The decision on reorganization accepts a maximum managing body of a political party.

The registration of the charter of reorganization again formed(educated) the ambassador of a political party comes true in the order, established by article 7 of the present Law.

The liquidation of a political party comes true by self-dissolution according to its charter.

Article 26. Consequences of the termination of activity of a party

The property of a political party, stopping the activity, after satisfaction of the property claims is directed:

In case of liquidation - on the purpose, stipulated in its charter;
In case of the interdiction Ц under the decision of Supreme Court of Republic a Tajikistan;
In case of reorganization - in the property of that public association, which is the assignee of a political party, stopping the activity.

The termination of activity of a political party entails exception of a party of the appropriate State register of public associations, cancellation of the certificate about state registration of a political party and loss of the rights of the legal person.

The president of Republic a Tajikistan E. Rahmanov