

## On Introduction of Amendments and Supplements to the Constitutional Law of the Republic of Kazakhstan "On Judicial System and Status of Judges of the Republic of Kazakhstan"

### *Unofficial translation*

Constitutional Law of the Republic of Kazakhstan dated December 11, 2006 N 199

### Unofficial translation

**Article 1.** Constitutional Law of the Republic of Kazakhstan "On Judicial System and Status of Judges of the Republic of Kazakhstan" dated December 25, 2000 (Bulletin of the Parliament of the Republic of Kazakhstan, 2000, N 23, Article 410) should be introduced with the following amendments and supplements:

1) in item 3 of Article 1:  
part two should be worded as follows:

"Any interference in the court's activity concerning administration of justice shall not be allowed and shall entail liability pursuant to the law. Judges shall not be accountable for specific cases. Petitions on court cases filed against the established order legal proceedings, as well as on matters not within the competence of the court, shall be left by the court without consideration or they shall be sent to the corresponding agencies.

Contempt of court or judge shall entail liability stipulated by the law";  
in part three the words "decisions" and "of the decisions" should be substituted for the words "acts" and "of the acts";

2) Article 3:

in sub-item 1) of item 2 the words "The Martial Court of Forces of the Republic of Kazakhstan" should be substituted for the words "The Martial Court of the Republic of Kazakhstan, specialised financial courts";

in item 3 the word "martial" should be supplemented with the word "financial";

3) item 2 of Article 7 should be deleted;

4) sub-item 2) of item 2 of Article 8 should be deleted;

5) sub-item 5) of item 1 of Article 9 should be worded as follows:

"5) provide the work on anti-corruption and compliance with the rules of judicial ethics";

6) sub-item 2) of Article 12 should be deleted;

7) in item 1 of Article 14:

sub-item 6) should be worded as follows:

"6) provide the work on anti-corruption and compliance with the rules of judicial ethics";

in sub-item 8) the words "keeping of judicial statistics," should be deleted;

8) in sub-item 4) of item 1 of Article 15 the words "and analysis of judicial statistics" should be deleted;

9) Article 16 should be supplemented with the following sub-item 9-1):

"9-1) discuss the issue of transfer of the materials in the Trial Jury against the judge, who has low rates on administration of justice, or two and more disciplinary penalties for violation of the law in considering of legal cases, and issue corresponding decisions based on the results of discussion";

10) Article 19 should be worded as follows:

"Article 19. The Collegiums of the Supreme Court

1. The supervisory collegium, the collegium for civil cases and the collegium for criminal cases of the Supreme Court shall be headed by the chairmen of the collegiums.

2. The number of judges in each collegium shall be established on a plenary session pursuant to the proposal of the Chairman of the Supreme Court.

3. The Chairman of the Supreme Court may form specialised panels in the collegiums";

11) Article 20:

item 1:

in sub-item 2) the words "head the supervisory collegium," should be deleted;

in sub-item 4) the words "application of the legislation in judicial practice" should be substituted for the words "of judicial practice and proposal for the reconsideration of judicial acts in the order of supervision on the grounds stipulated by law";

in sub-item 6) the words "(except for the supervisory collegium)" should be deleted;

sub-item 8) of item 2 should be deleted;

12) sub-item 2) of item 1 of Article 21 should be worded as follows:

"2) organize work on studying and summarising the judicial practice";

13) in item 1 of Article 22:

sub-item 1) should be worded as follows:

"1) establish the numerical and personnel membership of the collegiums";

in sub-item 3) the words "application of the legislation in judicial practice" should be substituted for the words "of judicial practice and submit proposals to improve the legislation"

; and

should be supplemented with the following sub-item 3-1):

"3-1) consider legal cases in the order of supervision in accordance with the law";

sub-item 7) should be supplemented with the words "and elect by secret ballot the Trial Jury"; and

should be supplemented with the following sub-item 7-1):

"7-1) discuss the issue of transfer of the materials in the Trial Jury against the judge, who has low rates on administration of justice, or two and more disciplinary penalties for violation of the law in considering of legal cases, and issue corresponding decisions based on the results of discussion";

14) item 4 of Article 25, the word "financial" should be supplemented with the words "and social";

15) part one of item 2 of Article 26 should be worded as follows:

"2. Judges, members of their family and their property shall be under the protection of the state. Agencies of Internal Affairs shall take timely and exhaustive measures to provide for the security of a judge and members of his family and the safety of their property, if the judge files the corresponding application";

16) in Article 27:

item 1 should be supplemented with the following sentence:

"Immunity of a judge includes the inviolability of his person, property, residential and office premises occupied by him, personal and official vehicles used by him, documents, baggage and other property belonging to him";

item 2 should be supplemented with the following sentence:

"Special operational search measures against a judge may be held only with the approval of the prosecutor";

17) in item 1 of Article 28:

sub-item 1) should be supplemented with the words ", be faithful to the oath of the judge";

sub-item 2) the words "cause doubt about his" should be supplemented with the words "honesty, fairness";

sub-item 3) the word "any" should be supplemented with the words "attempts of corruption and";

18) Article 29 should be worded as follows:

"Article 29. Requirements for Candidate Judges

1. A citizen of the Republic of Kazakhstan may be appointed as a judge of a district court who:

is at least twenty-five years of age;  
has a higher education in Law, an impeccable reputation and has a working experience in legal profession of not less than two years;  
has passed the qualifying examination in the Qualification Collegium of Justice or in a specialised magistracy;

has passed a medical examination confirming the absence of diseases preventing the execution of professional duties of a judge;

has successfully passed an internship in court and received a positive opinion of a plenary session of a court. Persons who have completed education in a specialised magistracy shall not be required to pass an internship.

2. A citizen who meets the requirements of item 1 of this Article and has a working experience in the legal profession of not less than ten years of which not less than five years as a judge may be appointed as a judge of a regional court.

3. A citizen who meets the requirements of item 1 of this Article and has a working experience in the legal profession of not less than fifteen years of which not less than ten years as a judge may be appointed as a judge of the Supreme Court.

4. The conditions and procedure of passing an internship by a candidate judge shall be determined by the Regulation to be approved by the President of the Republic of Kazakhstan.

19) should be supplemented with the following Article 29-1:

"Article 29-1. Medical Examination of a Candidate for the Position of a Judge

1. To confirm that a candidate to be a judge does not have diseases which prevent the execution of the professional duties of a judge, he shall pass a medical examination.

2. The list of diseases, which prevent the execution of professional duties of a judge, shall be established by the joint regulatory legal act of the authorised agency for organisational and material support of the local courts, and the authorised agency in health care";

20) in part two of item 2, part one of item 4 and part one of item 5 of Article 30 the words "subject to" should be supplemented with the words "a positive";

21) in Article 31:

item 7 should be supplemented with the following part two:

"In the absence of vacant positions of judges in the corresponding court, chairman and chairman of the collegium which have not been repeatedly elected or appointed to a similar position, based on their consent judges of an equivalent or lower court shall be submitted for appointment to the position without a competition";

should be supplemented with the following item 8:

In reorganising or abolishing of a court, the judges of this court may be submitted with their consent for appointment to the position of a judge of an equivalent or lower court without a competition";

22) item 1 of Article 33 should be supplemented with the following sub-item 3-1):

"3-1) there is a decision of the Disciplinary Qualification Collegium on the necessity of termination of the powers of a judge on the grounds provided by item 2 of Article 34 of this Constitutional Law;

23) Article 34:

in item 1:

sub-item 1) should be worded as follows:

"1) judge's resignation"; and

should be supplemented with the following sub-item 1-1): "discharge from judge's office pursuant to his own wish";

in sub-item 5) the word "loss" should be substituted for the word "termination";

should be supplemented with the following sub-items 9) and 10):

"9) the opinion of the Trial Jury;

10) reaching of the retirement age";

item 6 after numbers "3)-7)" should be supplemented with numbers ",9) and 10)";

24) Article 35 should be worded as follows:

"Article 35. Resignation of a Judge

1. Resignation shall be recognised as a special form of termination of powers of the judge

who has an impeccable reputation and experience of judicial work for not less than fifteen years, retaining the title of a judge, belonging to the judicial community, with guarantees of personal inviolability and other material and social guarantees stipulated by this Constitutional Law.

Discharge from office in the form of resignation shall be carried out on the grounds provided by sub-items 1-1), 2) 8) and 10) of item 1 of Article 34 of this Constitutional Law.

2. When retiring a judge shall be paid a lump-sum severance allowance in the amount of twenty-four months official salary with the experience of judicial work for twenty or more years, with the experience of judicial work from fifteen to twenty years in the amount of eighteen-months official salary according to the latest position.

3. A judge's resignation shall be effective in the following cases:

- carrying out an entrepreneurial activity, being a member of an administrative agency or supervisory board of a commercial organisation and taking up a paid position, except for teaching, research or another creative activity.

- commission of a crime or misdemeanor which brings the authority of the judiciary into disrepute ;

- on his own request ;

- termination of citizenship of the Republic of Kazakhstan;

- death or the entering into legal force of a court decision to declare him deceased;

4. In the event of termination of resignation the judge shall be deprived of the guarantees of personal inviolability and the guarantees stipulated by Articles 51, 53 and 55 of this Constitutional Law " ;

25) should be supplemented with the following Article 35-1:

"Article 35-1. Pension Provision of a Judge

1. Pension provision of a judge shall be carried out following the procedure and conditions stipulated by the legislation of the Republic of Kazakhstan on Pension Provision.

2. Compulsory pension contributions shall be established additionally for judges from the national budget in the amount stipulated by the legislation of the Republic of Kazakhstan on Pension Provision .

When discharging a judge from office on negative grounds, the referred contributions shall be referred to the national budget";

26) part one of Article 38 after the words "qualifications," should be supplemented with the words "approval of the judge's right on resignation and its termination";

27) should be supplemented with the following Article 38-1:

"Article 38-1. Trial Jury

1. The Trial Jury consisting of 7 judges shall be formed in order to determine the professional competence of the current judge.

2. The grounds for consideration of the materials by the Trial Jury against a judge shall be the decision of the plenary session of the regional or the Supreme Court.

The procedure for consideration of the materials in the Trial Jury shall be determined by the Regulation approved by the President of the Republic of Kazakhstan";

28) Article 41 should be worded as follows:

"Article 41. Right to Initiate Disciplinary Proceedings

The right to initiate disciplinary proceedings shall belong to the:

1) National Disciplinary Qualification Collegium against any judge of the Republic of Kazakhstan ;

2) regional disciplinary qualification collegiums against the judge of a regional court, the chairman and the judge of a district court";

29) in Article 43 :

item 1 after the words "collegiums shall consider" should be supplemented with the words "the issue on initiation of disciplinary proceedings";

item 2 after the words "collegiums shall consider" should be supplemented with the words "the issue on initiation of disciplinary proceedings";

30) in Article 44 :

sub-item 1) should be worded as follows:

"1) on imposing of a disciplinary penalty provided by item 1 of Article 40 of this Constitutional Law " ;

sub-item 3) should be deleted;

sub-item 4) should be supplemented with the words ",or on the leaving the decision without a change " ;

31) item 2 of Article 47 should be supplemented with the words "subject to the status of a judge, procedure of his appointment or selection and functions carried out by him";

32) Article 54 should be worded as follows:

"Article 54 Compensations in case of injury (trauma, wound, contusion, and professional disease) or fate (death) of a judge

1. If a judge receives an injury (trauma, wound, contusion, and professional disease) while performing his official duties he shall be paid lump-sum compensation in the amount established by this article.

2. In the event of fate (death) of a judge while performing official duties or within one year after termination of the judge's powers due to injury (trauma, wound, contusion, and professional disease), which has been received while performing official duties, the persons entitled to compensation shall be paid a lump sum compensation in the amount of sixty months official salary according to the latest occupied position.

3. In determining disability to a judge, which occurred as a result of injury (trauma, wound, contusion, and professional disease), which has been received while performing official duties, he shall be paid a lump sum compensation in the following amounts:

1) for the disabled person of the Group I - thirty months official salary;

2) for the disabled person of the Group II - eighteen months official salary;

3) for the disabled person of the Group III - six months official salary.

4. If a judge while performing his official duties receives a serious injury (trauma, wound, contusion, and professional disease) which has not entailed the establishment of disability, he shall be paid lump sum compensation in the amount of six weeks official salary and for slight injury - a half months official salary.

5. The payment procedure of lump-sum compensation shall be determined by the Government of the Republic of Kazakhstan.

6. Lump-sum compensation shall not be paid if in the procedure established by legislation of the Republic of Kazakhstan it is proved that injury (trauma, wound, contusion, and professional disease) or fate (death) of the judge occurred due to circumstances irrelevant to the performance of official duties.

33) should be supplemented with the following Article 55-1:

"Article 55-1. Deprivation of Judges of Guarantees on Material and Social Security

The judge upon termination of his powers by a decision of the Disciplinary Qualification Collegium of Judges due to commission of a crime or misdemeanor, which brings the authority of the judiciary into disrepute, failure to comply with the requirements of judicial ethics and failure to comply with other requirements stipulated in Article 28 of this Constitutional Law and according to the decision on professional incompetence shall be deprived of :

1) the right of resignation and the guarantees of personal inviolability;

2) all the material and social guarantees, stipulated in Articles 51, 53, 54 and 55 of this Constitutional Law " ;

34 ) Article 56 :

in item 1 :

part one: the words "of the Supreme Court of the Republic of Kazakhstan" should be supplemented with the words ", and keeping of judicial statistics";

part two: the words "of local courts" should be supplemented with the words", and keeping of judicial statistics in courts";

in item 5 the words "and keeping of judicial statistics" should be deleted.

**Article 2.** This Constitutional Law shall be enforced on January 1, 2007.

*P r e s i d e n t o f*

*the Republic of Kazakhstan*