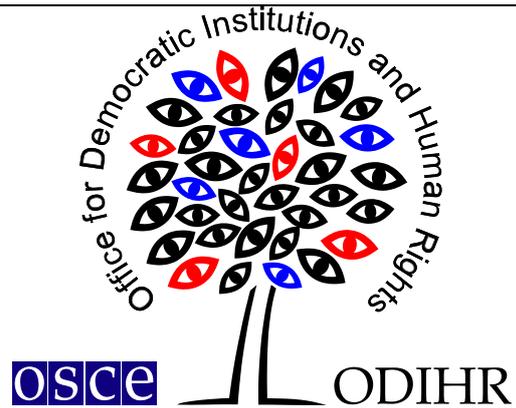


Warsaw, 16 December 2013

Opinion-Nr.: JUD -KAZ/240/2013 [LH]

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## COMMENTS

# ON THE DRAFT LAW ON AMENDMENTS AND ADDENDA TO THE LAW ON THE JUDICIAL SYSTEM AND STATUS OF JUDGES OF KAZAKHSTAN

**Based on an unofficial English translation of the Draft Law**

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**Annex 1:** Draft Law on Amendments and Addenda to the Law on the Judicial System and Status of Judges of Kazakhstan (*unofficial translation*)

## **I. INTRODUCTION**

1. *On 22 October 2013, the Head of the OSCE Centre in Astana sent a letter to the OSCE/ODIHR Director, requesting a review of the draft Law “On Amendments and Addenda to the Constitutional Law on the Judicial System and Status of Judges of the Republic of Kazakhstan” and an assessment of its compliance with relevant international standards, including OSCE commitments and the OSCE/ODIHR “Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia”. This request was based upon an earlier, similar request for comments, which the OSCE Centre in Astana had received from the Supreme Court of the Republic of Kazakhstan in early 2013.*
2. *These Comments are provided in response to the above-mentioned entreaty, by virtue of OSCE/ODIHR’s mandate to, upon request, provide assistance to legislative reforms in OSCE participating States. The Comments have been the subject of informal consultations with the Secretariat of the European Commission for Democracy through Law of the Council of Europe (hereinafter “Venice Commission”).*

## **II. SCOPE OF REVIEW**

3. The scope of these Comments covers the draft Law “On Amendments and Addenda to the Constitutional Law on the Judicial System and Status of Judges of the Republic of Kazakhstan” (hereinafter, the “Draft Law”), which was submitted for review. Thus limited, the Comments do not constitute a full and comprehensive review of all framework legislation related to the judiciary in Kazakhstan.
4. The Comments raise key issues and indicate areas of concern. In the interests of concision, they focus on problematic areas rather than on the positive aspects of the Draft Law. The ensuing recommendations are based on relevant international human rights and rule of law standards and OSCE commitments, and reiterate relevant recommendations made in the 2011 Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan, prepared by OSCE/ODIHR and the Venice Commission.<sup>1</sup>
5. The Comments are based on an unofficial English translation of the Draft Law. Errors from translation may result.
6. In view of the above, the OSCE/ODIHR would like to mention that these Comments are without prejudice to any written or oral recommendations or comments on the respective Draft Law or related legislation that the OSCE/ODIHR may make in the future.

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<sup>1</sup> See the OSCE/ODIHR – Venice Commission Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan (CDL-AD(2011)012 / JUD-KAZ/186/2011), adopted on 17 June 2011, available online at <http://www.legislationline.org/documents/id/16560>.

### **III. EXECUTIVE SUMMARY**

7. The Draft Law raises concerns related to judges' freedom of expression, and judicial independence in general. A detailed analysis supporting this view can be found in the ensuing written text. To ensure compliance with international standards and good practices, it is recommended as follows:

#### ***1. Key Recommendations***

- A. To remove the amendment which provides that judges must refrain from expressing opinions on state policy issues, if their opinion does not correspond to the main trends of the state policy [par 17];
- B. To ensure that the restriction on judges' freedom of expression aimed at safeguarding the "interests of justice, its independence and impartiality", if indeed retained, is not applied in an abusive or arbitrary manner, and does not preclude judges from commenting on matters of public interest related to the functioning of the judiciary [pars 15-16];
- C. To reconsider the establishment of the Public Council which would assess the moral qualities of candidates for judicial posts [pars 11-14];

#### ***2. Additional Recommendations***

- D. To reconsider the amendments providing that judge candidates who have successfully completed a specialized master's degree course would be exempted from taking the qualification exam and also from completing an internship with the court [par 18];
- E. To clearly define the type of diseases which would interfere with the profession of a judge, and confine such diseases to those which evidently may affect the clear reasoning of a person [par 19];
- F. When revising the procedures for the appointment of court chairpersons, to follow the relevant recommendations from the 2011 OSCE/ODIHR–Venice Commission Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan [par 20].

### **IV. ANALYSIS AND RECOMMENDATIONS**

#### **1. Preliminary Remarks**

8. At the outset, it should be noted that several provisions of the Draft Law submitted for review encroach upon both judicial independence and freedom of expression (of judges), and for that reason, it is from the perspective of these key principles that most of the subsequent analysis is conducted.

9. Judicial independence is a fundamental principle and an essential element of any democratic state based on the rule of law, and is enshrined in key international human rights instruments, such as Article 10 of the Universal Declaration of Human Rights (hereinafter “the UDHR”) and Article 14 of the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”).<sup>2</sup> It is also reflected extensively in OSCE commitments.<sup>3</sup>
10. At the same time, freedom of expression is a fundamental human right and a basic component of any democratic society. This right is laid down in Article 19 of the UDHR and Article 19 of the ICCPR, as well as in relevant OSCE commitments.<sup>4</sup>
11. At the domestic level, both independence of the judiciary, and freedom of expression are enshrined in the Constitution and constitutional legislation of Kazakhstan.<sup>5</sup>
12. In this context, it should be recalled that the OSCE/ODIHR, jointly with the Venice Commission, has already reviewed the existing Constitutional Law on the Judicial System and Status of Judges of the Republic of Kazakhstan, in its entirety, in 2011.<sup>6</sup> That review had been prepared based on a direct request that the OSCE/ODIHR had received from the Chairman of the Supreme Court of the Republic of Kazakhstan, in the context of the country’s efforts to enhance the independence and effectiveness of the judiciary and strengthen the rule of law.
13. The ensuing 2011 Joint Opinion (hereinafter “the 2011 Joint OSCE/ODIHR-Venice Commission Opinion”) noted that while the Constitutional Law does feature positive aspects, it still requires amendments before it could be said to be fully compliant with relevant international standards. In it, the OSCE/ODIHR and the Venice Commission sought to assist the authorities in their legal reform efforts, by putting forward a list of specific recommendations on the composition of the High Judicial Council; the appointment, suspension and dismissal of judges; the operation of disciplinary boards; the nature, status and functions of the Authorized Body for

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<sup>2</sup> International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966). The Republic of Kazakhstan ratified this Covenant on 24 January 2006.

<sup>3</sup> For judicial independence, see par 5 of the OSCE Copenhagen Document (1990); pars 19-20 of the OSCE Moscow Document (1991); par 45 of the OSCE Istanbul Document (1999); see also the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010).

<sup>4</sup> For freedom of expression, see pars 9-10 of the OSCE Copenhagen Document (1990); and par 36 of the OSCE Budapest Document (1994).

<sup>5</sup> For judicial independence, see Section VII of the Constitution of Kazakhstan (of 30 August 1995), and Article 1 of the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan. For freedom of expression, see Article 20 of the Constitution of Kazakhstan.

<sup>6</sup> See the OSCE/ODIHR – Venice Commission Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan, 17 June 2011, available online at <http://www.legislationline.org/documents/id/16560>.

organizational and logistic support to the Supreme Court; the case distribution system; the supervisory powers of court chairpersons; the immunity of judges; and other issues. It is unfortunate that so far, most of these recommendations have not been incorporated in relevant draft legislation, including the draft Law. The OSCE/ODIHR reiterates their validity, and once again strongly encourages the relevant authorities of Kazakhstan to reflect the 2011 recommendations, along with the ones outlined in the current review, in their legal reform efforts aimed at strengthening the judiciary.

## **2. Analysis of the Draft Law**

### ***2.1 Establishment of the Public Council***

14. Article 1 of the Draft Law begins with, *inter alia*, an amendment which would see the establishment of a Public Council (*Общественный совет*), by the regional court. This Council would have the task of “assessing the moral qualities of candidates for judicial posts”, to which effect it would issue conclusions of an advisory nature. The functioning of the Public Council would be regulated by a Standard Regulation (*Типовое положение об Общественном совете*), adopted by the Chairperson of the Supreme Court. The main goal behind the establishment of the Public Council appears to be “enhancing the role of society in the selection of candidates to judicial posts”, according to the Explanatory Note which accompanies the Draft Law.
15. Enhancing the role of society in judicial appointments, and, more generally, ensuring high moral standards in the judiciary corps, are of course perfectly legitimate, in fact commendable, goals. However, it remains unclear how exactly the new Public Council would conduct its assessment and reach its “conclusions”. In the absence of clear criteria and procedures prescribed by law, the “moral” assessment might therefore introduce an element of uncertainty and arbitrariness, and, in the worst case, even open the door to corruption, in the process of judicial selection and appointments. It should also be noted that, from a procedural standpoint, such an important regulation should be adopted, if at all, not by the Chairperson of the Supreme Court alone, but rather by the Plenary of the Court or by a judicial council.
16. Of note, international standards recommend that societal input to judicial appointments be ensured through the participation of non-judicial members, e. g. law professors or advocates, on judicial councils.<sup>7</sup> A recommendation to this effect was already put forward in the 2011 OSCE/ODIHR–Venice

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<sup>7</sup> See the Venice Commission CDL-AD(2007)028 Judicial Appointments (Report), paras. 33 and 35, and the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), pars. 7-8.

Commission Joint Opinion,<sup>8</sup> and its validity can only be reiterated here. Adding non-judicial members to the Judicial Council of Kazakhstan would promote inclusiveness and help ensure that not only the interests of the judiciary, but those of the society at large, are accounted for in the administration of the judiciary.

17. Also of relevance in the context of “moral” checks on candidate judges are the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, which stress that any kind of background checks on candidates for judicial posts “should be handled with utmost care and strictly on the basis of the rule of law”.<sup>9</sup> For instance,

“The selecting authority can request a standard check for a criminal record and any other disqualifying grounds from the police. The results from this check should be made available to the applicant, who should be entitled to appeal them in court. No other background checks should be performed by any security services. The decision to refuse a candidate based on background checks needs to be reasoned”.<sup>10</sup>

18. Therefore, in the interests of ensuring transparency and also with a view to preventing arbitrary “moral” assessments, it is recommended to reconsider the establishment of the respective Public Council. Instead, the legitimate aim of ensuring an adequate societal role in judicial appointments should be pursued through the appointment of non-judicial members to the Judicial Council. At the same time, the goal of ensuring high moral standards within the judiciary should be pursued through more standardized means such as the judicial training curriculum, written and oral examinations for candidates to judicial posts, and the periodic performance evaluation of sitting judges.

## ***2.2 Restrictions on Judges’ Freedom of Expression***

19. Article 1 of the Draft Law further provides that Article 28 of the Constitutional Law on the Judicial System and Status of Judges shall be revised to include several new paragraphs, which introduce new “requirements” for judges. Under the new provisions, amongst others,

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<sup>8</sup> See the OSCE/ODIHR–Venice Commission Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan (available online at <http://www.legislationline.org/documents/id/16560>), par. 20.

<sup>9</sup> See the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), par. 22.

<sup>10</sup> *Ibidem*.

“4. A judge shall refrain from making public statements or comments able to affect interests of justice, its independence and impartiality.

5. A judge shall refrain from expressing his or her opinion on state policy issues, if such opinion does not correspond to the main trends of the state policy”.

20. Both of these paragraphs impinge upon judges’ freedom of expression. As regards the first one, it seemingly aims at safeguarding the interests of justice, as well as “enhancing the independence and the reputation of the judiciary” – as stated in the Explanatory Note – which are perfectly legitimate goals. Such a restriction on judges’ freedom of expression, however, should not be applied in an arbitrary or abusive manner. It has to be stressed that modern democratic societies do allow judges to make comments on matters of public interest related to the functioning of the judiciary, including its independence and impartiality – without reference to specific cases or judges, and without statements which are unnecessarily prejudicial and defamatory.<sup>11</sup> This is based on the recognition of the fact that such statements, by judges, contribute to especially important public debates. Particularly relevant in this context are the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, which prescribe that judges should not be held disciplinarily liable for “criticism of the courts”.<sup>12</sup> If the proposed restriction on judges’ freedom of expression is retained, then it should be implemented only under careful scrutiny and in strict compliance with the above principles. In case of doubt, the judge should retain his or her freedom of expression. The only danger that should be averted in this respect is that a judge makes a statement that would cast doubt upon his or her impartiality in a future adjudication of a case. General statements about the judiciary, not related to individual cases, should be permissible.

21. The second cited paragraph, on the other hand, is manifestly at odds with international standards. While that particular restriction is left unaddressed in the Explanatory Note to the Draft Law, its aim appears to be to silence judges who might hold opinions which are at odds with the official state policy. This can be inferred from the fact that only criticism of the state policy is prohibited, while expressions of opinions which are in line with the official state policy are allowed. As such, paragraph 5 cannot be justified with reference to the need to avert a danger to judicial independence and impartiality, which was seemingly sought to be achieved through paragraph 4.

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<sup>11</sup> See D. J. Harris, M. O’Boyle, E. P. Bates and C. M Buckley, “Law of the European Convention on Human Rights” (Oxford University Press, 2009; second edition), pages 488-490.

<sup>12</sup> See the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), par. 25.

It bears recalling that under Article 19 of the International Covenant on Civil and Political Rights, the right to freedom of expression may be subject only to such restrictions “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”. Thus, preventing judges from expressing opinions which do not correspond to the main trends of state policy, falls clearly beyond the remit of permissible limitations under Article 19 of the ICCPR. It may be pointed out, in this context, that the UN Human Rights Committee has likewise stated that restrictions should never be applied, amongst others, to discussion of government policies and political debate, or to reporting on human rights, government activities and corruption in government.<sup>13</sup> The UN Human Rights Committee has also held that persecution for [advocacy of multi-party democracy and] an expression of opinions inimical to a state party’s government, violates the right to freedom of expression.<sup>14</sup> Moreover, the proposed restriction is also worrisome from the perspective of judicial independence, in so far as it may empower the executive to silence and persecute judges who might express opinions critical of the Government. As such, the proposed new par 5 to Article 28 is evidently incompatible with international standards, and it is strongly recommended that it be discarded.

### ***2.3 Provisions Pertaining to Judge Candidates***

22. The Draft Law also proposes some amendments to Article 29 of the Constitutional Law on the Judicial System and Status of Judges, which slightly alter the requirements which have to be met by judge candidates. Under the new version of Article 29, judge candidates who have successfully completed a specialized master’s degree course would be exempted – for a period of five years from the completion of the specialized master’s course – from taking the qualification exam and also from completing an internship with a court. These amendments might also benefit from some reconsideration. While it is accepted that the specialized master’s course may be of undeniable benefit and value to judge candidates, it is not entirely certain that the final examination undertaken upon its completion is equivalent to that of the qualification examination; it is also unclear whether the master’s degree provides any sort of practical experience comparable to that of an internship. It is therefore suggested to reassess these amendments.

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<sup>13</sup> See the UN Human Rights Council Resolution 12/16, Freedom of Opinion and Expression, A/HRC/RES/12/16 12 October 2009, para. (p), available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/12/L.14/Rev.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/12/L.14/Rev.1)

<sup>14</sup> See *Mukong v. Cameroon*, Communication No. 458/1991 (UN Human Rights Committee), 21 July 1994.

23. It is also noted that the proposed new version of Article 29 would retain the requirement of a medical examination to confirm that judge candidates do not have any “disease which would prevent the carrying out of professional duties as a judge”. On this point, it has to be stressed that the 2011 Joint OSCE/ODIHR-Venice Commission Opinion recommended defining the type of diseases which would interfere with the profession of a judge, and confine them to those which evidently may affect the clear reasoning of a person.<sup>15</sup> It is recommended to clarify the wording of the revised Article 29 accordingly.
24. The Draft Law also revises the procedures for the appointment of court chairpersons. In this context, the relevant recommendations from the 2011 OSCE/ODIHR-Venice Commission Joint Opinion remain equally valid.<sup>16</sup> In particular, the High Judicial Council’s recommendations for appointment should only be rejected by reasoned decision, and upon the rejection of a recommended candidate, the High Judicial Council should be entitled to propose a different candidate or additionally be vested with powers to override the veto by a qualified majority vote.<sup>17</sup> Additionally, court chairpersons should only be re-eligible for a renewed appointment once.<sup>18</sup> These concerns should be borne in mind when amending the Law on the Judicial System and Status of Judges.
25. The OSCE/ODIHR further reiterates the continued validity of all other recommendations made in the 2011 OSCE/ODIHR–Venice Commission Joint Opinion, and urges the authorities of Kazakhstan to strongly consider reflecting those recommendations in all applicable legislation.

[END OF TEXT]

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<sup>15</sup> See the 2011 OSCE/ODIHR–Venice Commission Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan (available online at <http://www.legislationline.org/documents/id/16560>), par. 39.

<sup>16</sup> *Ibidem*, pars. 40-42.

<sup>17</sup> See the Kyiv Recommendations, *op. cit.*, note 10, par. 16.

<sup>18</sup> *Ibidem*, par. 15.

**Annex 1:** Draft Law on Amendments and Addenda to the Law on the Judicial System and Status of Judges of Kazakhstan (*unofficial translation*)

*Draft*

**CONSTITUTIONAL LAW OF THE REPUBLIC OF KAZAKHSTAN  
On Introduction of Amendments and Addenda to the Constitutional Law  
of the Republic of Kazakhstan  
On Judicial System and Status of Judges of the Republic of Kazakhstan**

*Submitted for consideration to the Majilis of the RK Parliament [by resolution № 902 of the RK Government of August 29, 2013](#)*

**Article 1.** The following amendments and addenda shall be introduced into the [Constitutional Law](#) of the Republic of Kazakhstan on Judicial System of Status of Judges of the Republic of Kazakhstan dated December 25, 2000 (Bulletin of the Parliament of the Republic of Kazakhstan, 2000, № 23, p. 410; 2006, № 23, p. 136; 2008, № 20, p. 77; 2010, № 24, p. 147, 2012 p, № 5, p. 38):

1) Article 11:

Insert into para 3 subparagraph 1-1) to read as follows:

“1-1) intermediate session;”;

Insert para 6 to read as follows:

“6. An advisory and consultative body – Public Council shall be established at the regional court to assess moral qualities of candidates for judicial offices.

Public Council conclusions shall be of advisory nature.”;

2) Para 3, article 14 shall be revised to read as follows:

“3. In the temporary absence of the chairman of a regional court, he shall assign his duties to a chairman of an appellate judicial board of the regional court. With that, cassation judicial board sessions shall be chaired by a judge of the cassation judicial board of the regional court.

In the absence of the chairmen of the appellate judicial boards, the regional court chairman shall assign chairman’s duties to a judge of the cassation judicial board of the regional court.”;

3) Article 16:

Para 1:

Subparagraph 7) shall be revised to read:

“7) Consider candidates for a vacancy of a judge of a district and regional courts, chairperson of a regional court, and, based on its results, issue corresponding conclusions;”;

Subparagraph 9) shall be revised to read as follows:

“9) Consider, with account of the Public Council’s conclusion, results of internship of the candidates for the judicial office and provide the corresponding conclusions;”;

Insert para 4 to read as follows:

“4. Intermediate sessions may be convened between plenary sessions of a regional court to consider issues related to the judicial system activities, except issues related to the competence of the plenary session of the regional court.

An intermediate session shall be legally competent providing no less than two thirds of the total number of the judges of the regional court attends it.

The procedure of work of an intermediate session of a regional court shall be determined by the rules of procedure approved by a plenary session of the regional court.”;

4) Subparagraph 3-1), para 2, article 17 shall be revised to read:

“3-1) in coordination with the High Judicial Council, form a candidate pool for vacancies of chairmen and chairmen of judicial boards of local and other courts, judges and chairmen of judicial boards of the Supreme Court (hereinafter – candidate pool);”;

5) Para 3, 18 shall be revised to include subparagraph 1-1) to read as follows:

“1-1) intermediate session;”;

6) para 1, article 20 shall be revised to include subparagraphs 9-3) and 9-4) to read as follows:

“9-3) approve Standard Statute on the Public Council;

9-4) approve Standard Statute on the Procedure of Work of intermediate sessions of regional courts and the Supreme Court;”;

7) Article 22 shall be revised to include para 4 to read as follows:

“4. Intermediate sessions may be convened between plenary sessions of the Supreme Court to consider issues related to the judicial system activities, except issues related to the competence of the plenary session of the Supreme Court.

An intermediate session shall be legally competent providing no less than two thirds of the total number of the judges of the Supreme Court attends it.

The procedure of work of the intermediate session of the Supreme Court shall be determined by the rules of procedure approved by the plenary session of the regional court.”;

8) Article 28 shall be revised to include paragraphs 3, 4, 5 to read as follows:

“3. A judge shall not have right to publicly express his opinion about a case, judicial decision on which has not come into effect.

4. A judge shall refrain from making public statements or comments able to affect interests of justice, its independence and impartiality.

5. A judge shall refrain from expressing his opinion on public policy issue if it disagrees with the basic trend of public policy.”;

9) Para 1, article 29 shall be revised to read as follows:

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

1) is at least twenty-five years of age;

2) has a higher legal education, an impeccable reputation, and has a working experience in legal profession of no less than two years;

3) passed the qualification examination (a candidate, who completed a specialized master's program course and passed the qualification examination in this program shall be freed from the examination during five years from the day of completion of the course);

4) passed medical examination and confirmed the absence of a disease, preventing the fulfillment of professional duties of a judge

5) completed successful internship in court and received **an opinion by the Public Council** and a positive evaluation by the plenary session of the court. A candidate who completed the specialized Master's program course **and passed a qualification examination** in it shall need no internship in court for five years from the day of completion of the course.”;

10) Para 3, article 30 shall be revised to read as follows:

“3. A candidate for the vacant position of a chairman of a district court shall be considered by the High Judicial Council pursuant to a proposal of the Chairman of the Supreme Court made subject to an opinion of a plenary session of a corresponding regional court.

Candidates for the vacant positions of the chairmen and the chairmen of judicial boards of regional courts, chairmen of judicial boards and judges of the Supreme Court shall be considered by the High Judicial Council pursuant to a proposal of the Chairman of the Supreme Court made subject to an opinion of a plenary session of the Supreme Court.

A candidate for the vacant position of the chairman of a district court shall be recommended from among operating judges or persons having work experience as a judge not less than five years.

A candidate for the vacant position of the chairmen and chairmen of judicial boards of regional courts shall be recommended from among operating judges or persons having work experience as a judge not less than ten years.

Candidates on the candidate pool shall have priority in the process of selection of candidates for the positions of a district court chairman, chairmen and chairmen of judicial boards of regional courts, judges and chairmen of judicial boards of the Supreme Court.

A candidate for the vacant position of the chairman of a judicial board of the Supreme Court shall be recommended from among judges of the Supreme Court.

The High Judicial Council shall recommend candidates for the vacant positions of the chairmen, the chairmen of judicial boards of local and other courts, chairmen of judicial boards of the Supreme Court to the President of the Republic of Kazakhstan for appointment to offices.

A candidate for the position of the Chairman of the Supreme Court shall be considered by the High Judicial Council.

The High Judicial Council shall recommend candidates for the vacant positions of the Chairman, a judge of the Supreme Court to the President of the Republic of Kazakhstan for introduction to the Senate of the Parliament of the Republic of Kazakhstan.”.

**Article 2.** This Constitutional Law shall be enacted upon the expiry of ten calendar days from its first official publication.

**President of the**

**Republic of Kazakhstan**

**Majilis of the Parliament  
Of the Republic of Kazakhstan**

**EXPLANATORY NOTE**  
**on the Draft Constitutional Law of the Republic of Kazakhstan**  
**on Introduction of Amendments and Addenda to the Constitutional Law**  
**of the Republic of Kazakhstan**  
**on Judicial System and Status of Judges of the Republic of Kazakhstan**

[Draft Constitutional Law](#) on Introduction of Amendments and Addenda to the Constitutional Law of the Republic of Kazakhstan on Judicial System and Status of Judges of the Republic of Kazakhstan has been developed in execution of [para 18](#) of the Legislative Drafting Plan of the Government for 2013, approved by the Government Resolution № 1778 dated December 29, 2012 (hereinafter – Draft Constitutional Law).

The Draft Constitutional Law is aimed at enhancing independence of judges; improving the procedure for competitive selection of judge candidates; strengthening the role of the public in selection of judge candidates; enhancing the role and significance of the pool of candidates for high judicial offices, etc.

The Draft Constitutional Law regulates the status of an intermediate session of a regional court of the Supreme Court as of body acting in the period between the plenary sessions of the regional court or the Supreme Court.

To enhance the role of the public in selection of judge candidates, the Draft Constitutional Law envisages determination of the competence of the Chairman of the Supreme Court according to the Standard Statute on the Public Council.

It provides for a ban for judges on public expression of opinions on cases judicial decisions on which have not come into effect.

To enhance independence and reputation of the judicial system, the Draft Constitutional Law prescribes that a judge shall refrain from making public statements or comments able to affect interests of justice, its independence and impartiality.

The Draft Constitutional Law also differentiates requirements for working experience for candidates for high judicial offices.

Besides, it gives a priority to candidates on the pool of candidates for high judicial offices while selecting candidates for positions of chairmen and chairmen of judicial boards of local and other courts.

Adoption of the Draft Law will not require allocation of additional funds from the republican budget.

**Chairman of the  
Supreme Court of  
the Republic of Kazakhstan**

**B. Beknazarov**

**Assessment of Possible Implications of Adoption  
of the Constitutional Law of the Republic of Kazakhstan  
on Introduction of Amendments and Addenda to the  
Constitutional Law of the Republic of Kazakhstan  
on Judicial System and Status of Judges of the Republic of Kazakhstan**

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Adoption of the Draft Law will not require allocation of additional funds from the republican budget.

**Chairman of the  
Supreme Court of  
the Republic of Kazakhstan**

**B. Beknazarov**

**Explanatory Note of the Majilis of the Republic of Kazakhstan № 13/II-853  
dated August 29, 2013  
on the Draft Constitutional Law of the Republic of Kazakhstan  
on Introduction of Amendments and Addenda to the  
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To enhance independence and reputation of the judicial system, the Draft Constitutional Law prescribes that a judge shall refrain from making public statements or comments able to affect interests of justice, its independence and impartiality.

The Draft Constitutional Law also makes a distinction between requirements for working experience for candidates for high judicial offices.

Besides, it gives a priority to candidates on the pool of candidates for high judicial offices while selecting candidates for positions of chairmen and chairmen of judicial boards of local and other courts.

Adoption of the Draft Law will not require allocation of additional funds from the republican budget.

**Prime Minister of the  
Republic of Kazakhstan**

**S. Akhmetov**