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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**  
**ON THE STATUS OF JUDGES**  
**OF KYRGYZSTAN**

*Jogorku Kenesh* [parliament] of the Kyrgyz Republic

In accordance with Article 64 of the Constitution of the Kyrgyz Republic I hereby submit for examination by the *Jogorku Kenesh* of the Kyrgyz Republic a draft Constitutional Law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic".

Considering the importance of this draft law in creating legal machinery guaranteeing the status of judges of the Kyrgyz Republic, providing guarantees of their independence, improving the arrangements for judges' election/appointment, transfer/rotation, discharge from office, liability and other provisions linked to judges' status and the bringing of provisions into line with the new draft of the Constitution of the Kyrgyz Republic, and regarding this law as an urgent priority, I ask the *Jogorku Kenesh* of the Kyrgyz Republic to examine this draft constitutional law under an extraordinary procedure.

In this process I am entrusting the presentation to the *Jogorku Kenesh* of the Kyrgyz Republic of the aforementioned draft constitutional law on behalf of the President of the Kyrgyz Republic to the President of the Supreme Court of the Kyrgyz Republic.

Enclosures:

1. draft Constitutional Law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic"
2. Explanatory memorandum to the draft Constitutional Law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic" in the state and official languages

**Draft**

## **Constitutional Law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic"**

The present Constitutional Law defines the status of judges of the Kyrgyz Republic, guarantees of the independence of judges, the procedure for election or appointment of judges of the Kyrgyz Republic, their transfer/rotation, discharge from office, liability, measures regarding material and social provision for the activity of judges and other provisions linked to judges' status

### **Chapter 1. General provisions**

#### **Article 1. Judges in the Kyrgyz Republic**

1. Justice in the Kyrgyz Republic shall be dispensed solely by courts of the Kyrgyz Republic.

2. Courts of the Kyrgyz Republic shall be:

- the Constitutional Court of the Kyrgyz Republic (hereinafter "the Constitutional Court");
- the Supreme Court of the Kyrgyz Republic (hereinafter "the Supreme Court");
- local courts of the Kyrgyz Republic (hereinafter "local courts");
- specialised courts established by a constitutional law.

3. The courts of the Kyrgyz Republic shall be composed of judges of the Kyrgyz Republic.

4. Any citizens of the Kyrgyz Republic satisfying the requirements laid down in the Constitution of the Kyrgyz Republic and the present Constitutional Law and having personal and professional qualities and a state of health enabling them to fulfil the duties assigned to judges may be judges of the Kyrgyz Republic.

#### **Article 2. Legislation on the status of judges**

1. Legislation on the status of judges shall consist of the Constitution of the Kyrgyz Republic, the present Constitutional Law, other laws and legal and regulatory acts of the Kyrgyz Republic.

2. Legislation of the Kyrgyz Republic on civil service, labour, social, material/technical and other provision and on state insurance shall extend to judges where such matters are not regulated by the present Constitutional Law.

#### **Article 3. Principles of dispensing justice**

1. In the dispensing of justice judges shall be governed by the following fundamental principles:

the exercise of justice solely by courts;

the exercise of justice free of charge in the circumstances provided for in law;

the autonomy of courts and independence of judges;

the equality of all before the law and before the court;

- the responsibility of judges;
- the open and public examination of cases in all courts;
- the binding nature of judicial acts;
- the participation of citizens in the dispensing of justice under the procedure determined

by law.

2. Citizens of the Kyrgyz Republic shall be entitled to judicial protection free of charge in the circumstances provided for in law as well as in any case where they submit proof to the court that they do not have sufficient means to conduct the case in court.

3. Courts shall exercise judicial authority autonomously and independently of the will of any person whomsoever and shall be subordinate only to the Constitution of the Kyrgyz Republic and the law.

Judges and jurors participating in the dispensing of justice shall be independent and subordinate only to the Constitution of the Kyrgyz Republic and the law.

No laws or other legal or regulatory acts restricting the autonomy of courts and independence of judges may be issued in the Kyrgyz Republic.

4. Everyone shall be equal before the law and the court.

Judges shall dispense justice impartially, without giving preference to any bodies, individuals, parties or participants in the procedure on grounds of their state, social, gender, racial, ethnic, linguistic or political affiliations, and regardless of their origin, property or debt situation, place of residence, place of birth, attitude to religion, beliefs or membership of public associations, or on other grounds not provided for in law.

5. Judicial acts of courts of the Kyrgyz Republic having entered into legal force and requests and instructions issued by judges in the exercise of justice shall be binding for all state authorities, local self-governing bodies, officials and physical individuals and legal entities without exception and shall be rigorously executed.

The submission of information and documentation and copies thereof necessary for the exercise of justice shall be mandatory when requested by a judge.

Failure to execute judicial acts and requests and instructions issued by judges shall incur liability as provided for in law.

6. The examination of cases in all courts shall be open, except for cases that must be examined in closed session in the circumstances provided for in law.

7. Citizens of the Kyrgyz Republic shall be entitled to participate in the dispensing of justice in the circumstances provided for in law.

8. Requirements pertaining to citizens participating in the dispensing of justice in the capacity of jurors shall be established by law.

The time spent by jurors participating in the dispensing of justice shall be compensated from the state budget under the procedure provided for in legislation.

#### **Article 4. Unity of status of judges**

Not all judges of the Kyrgyz Republic shall enjoy the same status. Special characteristics of the legal situation of certain categories of judges may be established by a law of the Kyrgyz Republic.

#### **Article 5. Judge's oath**

1. The exercise of powers by elected or appointed judges in the Kyrgyz Republic shall commence on the day on which they take the judge's oath.

The oath shall be sworn in a solemn ceremony and shall read as follows:

"I, ... taking up the post of judge of the Kyrgyz Republic, before my fatherland and my people do hereby swear:

that I will exercise justice honestly, conscientiously, impartially and justly in accordance with the Constitution and laws of the Kyrgyz Republic;

that I will scrupulously comply with the rules laid down by the judges' Code of honour".

2. The oath taken by the judges of the Constitutional Court and the Supreme Court shall be pronounced at a sitting of the *Jogorku Kenesh* on the day of their election.

3. The oath taken by the judges of local courts shall be pronounced at an assembly of judges of the Supreme Court no later than five days following their appointment.

#### **Article 6. Irreproachability of conduct of a judge and restrictions linked to the duties of a judge**

1. A judge shall exercise their duties and keep their powers for as long as their conduct is irreproachable.

The term "irreproachable conduct" shall be taken to mean that judges shall be under obligation to:

1) scrupulously comply with the Constitution and laws of the Kyrgyz Republic;

2) comply with the rules laid down by the judges' Code of honour and refrain anything that might besmirch the authority or dignity of a judge or raise doubts over their honest, conscientious, impartial and just dispensing of justice;

3) resist any attempts at illegal interference in the dispensing of justice;

4) maintain the secrecy of the deliberations room;

5) comply with the rules of working arrangements;

6) should a situation arise where there might be a conflict of interest, take all necessary steps to eliminate that conflict of interest;

7) declare their property and income, in accordance with the legislation of the Kyrgyz Republic.

2. Judges of district courts and courts equivalent thereto shall be under obligation to supervise the execution of judicial acts pronounced by them which have entered into force.

3. Judges shall be prohibited from membership of political parties and from statements in support of any political party.

4. Judges may not engage in entrepreneurial activity nor may they combine the activity of a judge with the activity of a member of parliament or an activity within an executive authority or a local self-governing body or other paid work, with the exception of:

1) teaching, academic and creative activity insofar as this does not impede the fulfilment of the judge's duties;

2) participation in the activity of judges' self-regulation bodies of the National Council for affairs of justice of the Kyrgyz Republic (hereinafter "the National Council").

5. Judges may not provide any conclusions or consultations whatsoever on cases dealt with by courts when they are off duty.

#### **Article 7. Symbols of judicial authority**

1. When exercising justice, judges shall wear a robe and pronounce their decisions in the name of the Kyrgyz Republic.

2. The coat of arms and flag of the Kyrgyz Republic shall be displayed in rooms where court sittings take place.

3. Elected and appointed judges of the Kyrgyz Republic shall be issued with attestations.

The attestations of judges of the Constitutional Court and the Supreme Court shall be issued by the *Jogorku Kenesh* of the Kyrgyz Republic.

The attestations of the respective presidents and vice-presidents of the Constitutional Court and the Supreme Court and of the presidents, vice-presidents and judges of local courts shall be issued by the President of the Kyrgyz Republic.

#### **Article 8. Judges' classification categories**

1. Judges shall be assigned classification categories in relation to the post they hold, their experience of working as a judge, the level of justice dispensed and irreproachable conduct.

2. The breakdown of classification categories shall be as follows:

- fifth classification category;

- fourth classification category;

- third classification category;

- second classification category;

- first classification category;

- top-level classification category.

Classification categories shall be assigned to judges by the President of the Kyrgyz Republic at the proposal of the Council of Judges of the Kyrgyz Republic (hereinafter "the Council of Judges").

#### **Article 9. Procedure for assigning a classification category to a judge of the Kyrgyz Republic**

1. Classification categories shall be assigned as follows:

- 1) fifth to second classification categories to judges of local courts;
- 2) first and top-level classification categories to judges of the Constitutional Court and Supreme Court.

Judges of local courts may, in view of working experience, level of justice dispensed and irreproachable conduct, be assigned first and top-level classification categories.

2. Judges of local courts assigned to their post for the first time and having no classification category shall be assigned the fifth classification category no earlier than six months following their appointment.

The next classification category shall be awarded to the judge no earlier than three years hence. This three-year period shall not include any period when the judge did not exercise their powers. In the event of a disciplinary sanction being imposed on a judge, the three-year period shall be suspended until the disciplinary sanction has been deemed to have been expunged.

Judges assigned classification categories shall retain them for life. Upon assignment of the next classification category, the previous classification category shall lapse.

3. The deprivation of a judge of their classification category shall be permitted only under a judicial procedure as a type of additional sanction imposed by court sentence in a criminal case.

#### **Article 10. Pay supplement for classification categories**

1. Judges holding classification categories shall be assigned supplements to the official rate of pay under the procedure established in the legislation of the Kyrgyz Republic.

2. Judges of military courts holding military ranks shall not be assigned classification categories, and supplements to their official rate of pay shall be based on their military rank.

### **Chapter 2. Guarantees of the independence of judges**

#### **Article 11. Independence of judges**

1. The independence of judges shall be guaranteed by:

- 1) the exercise of justice according to procedures provided for only by law;
- 2) the prohibition, under threat of liability, of interference in the activity of a judge by any party whatsoever;
- 3) the irremovability of judges;
- 4) the immunity of judges;
- 5) the obligation to make material and social provision for judges corresponding to their elevated status at the expense of the State;
- 6) the functioning of judicial self-governing bodies.

2. Guarantees of the independence of judges provided for in the Constitution of the Kyrgyz Republic and the present Federal law may not be abolished in any circumstances.

#### **Article 12. Inadmissibility of interference in the activity of a judge**

1. Any interference in the activity of a judge for the purpose of impeding the exercise of justice shall incur the liability established by law.

2. No one shall be entitled to solicit a report from a judge on a specific judicial case, except where, in accordance with the present Constitutional law, a matter concerning the liability of a judge is under examination.

3. A judge shall not be under obligation to give any kind of explanation as to the merits of cases examined by or assigned to them or to pass the case material to whomsoever to gain knowledge thereof, other than in the circumstances and under the procedure provided for in procedural law.

#### **Article 13. Irremovability of judges**

1. Judges of all courts of the Kyrgyz Republic shall be irremovable. They shall exercise their duties and conserve their powers within the limits of the term laid down in the Constitution.

2. A judge may not be subject to early discharge or dismissal from office and their powers may not be suspended or terminated other than under the procedure and on the grounds established in the Constitution of the Kyrgyz Republic and the present Federal law.

3. A judge exercising their powers in a local court in a given region of the Republic may be sent to an equivalent or higher posting at another court under a transfer/rotation procedure to exercise the powers of judge in that local court only in the circumstances and on the grounds provided for in the present Federal law.

#### **Article 14. Immunity of judges**

1. A judge shall be immune. The immunity of judges shall extend to their home, place of work, means of transport and communication used by them, their correspondence, property and documents.

2. A judge, even after their term of office expires, may not incur any kind of liability for a judgment rendered by them, a sentence or other judicial act, provided that a court sentence having entered into legal force does not establish their guilt for criminal wrong-doing or for knowingly pronouncing an unjust sentence, ruling or other judicial act.

3. A judge may not be detained or arrested or be subjected to searches of their premises or person, except where caught at the scene of a crime. A judge detained on suspicion of committing a crime or on other grounds or forcibly delivered to any law enforcement agency when it was not known who the judge was at the time of detaining them, shall be immediately released upon their identity being established.

4. A personal search of a judge shall not be permitted except in circumstances provided for by law for the purposes of ensuring the security of other people.

### **Chapter 3**

#### **Procedure for electing judges of the Constitutional Court and the Supreme Court and appointing the presidents and vice-presidents of the Constitutional Court and the Supreme Court**

#### **Article 15. Procedure for electing judges of the Constitutional Court and the Supreme Court**

1. Any citizen of the Kyrgyz Republic who is no younger than 35 years of age and no older than 70 years of age and has a higher legal education and no less than 10 years of experience in the legal profession may be a judge of the Constitutional Court.

Any citizen of the Kyrgyz Republic who is no younger than 35 years of age and no older than 70 years of age and has a higher legal education and no less than 10 years of experience in the legal profession, including no less than 5 years as a judge, may be a judge in the Supreme Court.

2. Judges of the Constitutional Court shall be elected by the *Jogorku Kenesh* of the Kyrgyz Republic at the proposal of the President of the Kyrgyz Republic before attaining the age limit established by the Constitution of the Kyrgyz Republic.

Candidates for the post of judge of the Constitutional Court shall be determined independently by the President of the Kyrgyz Republic.

The *Jogorku Kenesh* of the Kyrgyz Republic shall take a decision on a proposed candidate no later than two weeks after the proposal was received.

3. In the event of a proposed candidate for the post of judge of the Constitutional Court being rejected, the President of the Kyrgyz Republic shall submit to the *Jogorku Kenesh* of the Kyrgyz Republic the same or another candidate for election as a judge of the Constitutional Court.

The *Jogorku Kenesh* of the Kyrgyz Republic shall examine the proposal of the President of the Kyrgyz Republic of a new or re-submitted candidate for election as a judge of

the Constitutional Court within no more than ten days after the proposal was received in the *Jogorku Kenesh* of the Kyrgyz Republic.

4. Judges of the Supreme Court shall be elected by the *Jogorku Kenesh* of the Kyrgyz Republic at the proposal of the President of the Kyrgyz Republic based on the suggestion of the National Council, before the candidate attains the age limit established by the Constitution of the Kyrgyz Republic.

5. The National Council shall, no later than sixty days before a serving judge of the Supreme Court will attain the age limit or their powers are to expire, or no later than twenty days after the early termination of powers of a judge of the Supreme Court or their early discharge from office, announce a competition to replace the freed or vacated post of judge of the Supreme Court.

6. Judges of the Kyrgyz Republic may participate in that competition by submitting an application.

Their application must be submitted to the National Council within ten days of publication of the announcement.

7. After reception of the applications is completed, the National Council shall, within ten days and according to the findings of analysis of the personnel files of judges of the Kyrgyz Republic and the conducting of interviews with the applicants, submit to the President of the Kyrgyz Republic candidates for election to the post of judge of the Constitutional Court.

The personnel files of judges of the Constitutional Court, Supreme Court and local courts shall be submitted to the National Council by the corresponding apparatus of the Constitutional Court, Supreme Court and Judicial Department of the Kyrgyz Republic (hereinafter 'the Judicial Department').

8. The President of the Kyrgyz Republic shall submit to the *Jogorku Kenesh* of the Kyrgyz Republic a proposal of one candidate for election as a judge of the Supreme Court. The *Jogorku Kenesh* of the Kyrgyz Republic shall take a decision on the proposed candidate no later than two weeks after the proposal was received.

9. In the event of a proposed candidate for the post of judge of the Supreme Court being rejected, the President shall submit either the same or another candidate from among those previously submitted by the National Council.

In the event of no other candidate being available, the National Council shall submit to the President of the Kyrgyz Republic other candidates from among those having participated in the competition.

The *Jogorku Kenesh* of the Kyrgyz Republic shall examine the proposal of the President of the Kyrgyz Republic resubmitting the same candidate or submitting a new candidate for election as a judge of the Supreme Court within no more than ten days from receipt of the proposals by the *Jogorku Kenesh* of the Kyrgyz Republic.

In the event of there being no other applicants for the post of judge of the Supreme Court, the National Council shall announce and conduct a new competition, following the rules provided for in the present article.

10. The following persons may not be judges of the Constitutional Court or the Supreme Court:

- 1) persons who have a conviction, including a quashed or served conviction for a crime with intent;
- 2) judges of the Kyrgyz Republic previously dismissed from post in connection with conduct not beyond reproach.

#### **Article 16. Procedure for appointing presidents of the Constitutional Court and the Supreme Court and their deputies**

1. The president and vice-president of the Constitutional Court shall be appointed from among the judges of the Constitutional Court by the President of the Kyrgyz Republic with the consent of the *Jogorku Kenesh* of the Kyrgyz Republic.

The president, first vice-president and vice-presidents of the Supreme Court shall be appointed from among the judges of the Supreme Court by the President of the Kyrgyz Republic with the consent of the *Jogorku Kenesh* of the Kyrgyz Republic.



2. The presidents of the Constitutional Court and the Supreme Court and their deputies shall be appointed for a term of five years.

3. The President of the Kyrgyz Republic shall identify the candidates for the post of presidents of the Constitutional Court and the Supreme Court and their deputies and shall submit proposals to the *Jogorku Kenesh* of the Kyrgyz Republic to obtain consent to their appointment in the event of:

1) ceasing of the powers of serving presidents of the Constitutional Court and the Supreme Court and their deputies;

2) early termination of their powers or early discharge from office.

4. The candidates submitted shall be examined by the *Jogorku Kenesh* of the Kyrgyz Republic no later than two weeks after the proposal was submitted by the President of the Kyrgyz Republic. In the event of the candidates proposed being rejected, the President of the Kyrgyz Republic shall be entitled to resubmit the same candidates to the *Jogorku Kenesh* of the Kyrgyz Republic or identify other candidates and submit proposals accordingly to the *Jogorku Kenesh* of the Kyrgyz Republic.

5. In the event of the *Jogorku Kenesh* of the Kyrgyz Republic not examining the proposals requiring consent for the appointment of the presidents of the Constitutional Court and the Supreme Court and their deputies within the established deadline, consent to their appointment shall be deemed to have been obtained.

6. Prior to the appointment of new presidents of the Constitutional Court and the Supreme Court, in connection with the expiry of their powers or the early termination thereof or the early discharge of serving presidents, the duties of president shall be fulfilled by the vice-president of the Constitutional Court or first vice-president of the Supreme Court respectively.

In the event of there being no vice-president of the Constitutional Court, the duties of the president shall be temporarily fulfilled by a judge of the Constitutional Court, who shall be assigned those duties by the President of the Kyrgyz Republic. In the event of there being no first vice-president of the Supreme Court, the duties of the president shall be temporarily fulfilled by one of the vice-presidents of the Supreme Court, who shall be assigned those duties by the President of the Kyrgyz Republic.

#### **Chapter 4.**

#### **Procedure for appointing and transferring judges of local courts and appointing the president and vice-president of a local court**

##### **Article 17. Requirements for candidates for the post of judge of a local court**

1. Any citizen of the Kyrgyz Republic who is no younger than 35 years of age and no older than 65 years of age and has a higher legal education and no less than 5 years of experience in the legal profession may be a judge of a local court.

2. The following additional requirement shall apply to persons who are seeking to take up the duties of judge of a local court and do not have experience in the legal profession:

- a certificate attesting to a study programme established by the Council of Judges and the passing of the corresponding final examination.

3. The following persons may not be judges of a local court:

1) persons who have a conviction, including a conviction served or quashed under the procedure established by law;

2) judges of the Kyrgyz Republic previously dismissed in connection with conduct not beyond reproach.

Note: For the period of work in the legal profession required to take up the post of judge, the time spent working in duties requiring a mandatory higher legal education shall be included. A list of such duties shall be determined by the President of the Kyrgyz Republic at the proposal of the Council of Judges.

##### **Article 18. Competition to fill a vacant post of local court judge**

1. The selection of candidates to fill a vacant post of local court judge shall be carried out by the National Council on a competitive basis.

2. Competitive selection to fill a vacant post of local court judge shall be carried out in two rounds by means of a qualifying examination and an interview.

3. Vacancies for local court judges shall be formed as a result of:

- 1) the expiry of the powers of a local court judge;
- 2) the attaining of the age limit established by the Constitution of the Kyrgyz Republic;
- 3) the early termination of powers of a local court judge or the discharge of the judge from office;

4) the creation of new local court judge posts;

5) the formation of specialised courts.

4. When a vacancy is formed on the grounds set forth in sub-paragraphs 1 and 2 of paragraph 3 of the present article, the announcement of a competition to fill the vacant post of local court judge shall be advertised in the state newspaper of the Kyrgyz Republic and also on the internet site of the National Council no later than sixty days prior to the ceasing of the powers of the local court judge or the attaining by them of the age limit.

5. When a vacancy is formed on the grounds set forth in sub-paragraphs 3-5 of paragraph 3 of the present article, the announcement of a competition to fill the vacant post of local court judge shall be advertised in the state newspaper of the Kyrgyz Republic and also on the internet site of the National Council no later than twenty days after the vacancy is formed.

6. The provisions of the present article shall not apply if, prior to announcing a competition for the vacant/freed post, the National Council receives applications (or an application) from serving judges whose powers are expiring for appointment to that post. In this case the National Council shall examine the candidatures (or candidature) under the rules set forth in Article 21 of the present Constitutional law. If the candidature (or candidatures) do not obtain the necessary amount of votes of members of the National Council, a competition for the vacant judge's post shall be announced in accordance with the present article.

#### **Article 19. Procedure for submitting documents for the competition to fill a vacant local court judge's post**

1. Applications and accompanying documents with respect to a vacant local court judge's post shall be submitted by the applicant either in person or by post.

Applications for a vacant local court judge's post shall be addressed to the National Council and delivered to the Judicial Department of the Kyrgyz Republic (hereinafter 'the Judicial Department').

Applications shall have the following documents enclosed:

- 1) a copy of the passport attesting to the applicant's citizenship and age;
- 2) a certified true copy of the diploma attesting to a higher legal education;
- 3) a certified true copy of the applicant's work record and other documents proving their experience of work in the legal profession;
- 4) a medical certificate attesting to the applicant's state of health no older than one year;

5) a document attesting to the fulfilment of an additional requirement of the applicant provided for in paragraph 2 of Article 17 of the present Constitutional law.

The application may enclose other documents (references, recommendations) describing the applicant's personal qualities.

2. Serving judges of the Kyrgyz Republic shall be entitled to participate in the competition for selection to local court judges' posts by submitting an application.

The documents of judges of the Constitutional Court and the Supreme Court shall be compiled by the administrations of those courts and transmitted to the Judicial Department.

The documents of local court judges shall be compiled by the Judicial Department.

3. Documents of serving judges of the Kyrgyz Republic shall contain:

- 1) the judge's personnel file;
- 2) data on the time worked in a judicial post, showing the number and level of cases examined;
- 3) information on any awards, commendations and reprimands;
- 4) private opinions pronounced in respect of the judge.

4. The deadline set for the submitting of applications and supporting documents of applicants to a vacant local court judge's post shall be established by the National Council and may not be less than fourteen days from the date of publication of the announcement.

Documents from individuals barred from participating in a competition for a two-year period in accordance with Article 20 of the present Constitutional law and documents submitted after the expiry of the deadline established under the present article shall not be accepted.

The Judicial Department shall, after accepting an application and the enclosed documents, make independent inquiries with the relevant authorities as to the conviction record of the applicant.

The corresponding authorities shall be under obligation to send information on the existence or non-existence of a conviction record for the applicant within no more than ten days.

5. The persons whose documents for participation in the competition to fill a vacant local court judge's post are accepted shall be included in the list of applicants. The list of applicants shall be published in the state newspaper of the Kyrgyz Republic and also on the internet site of the National Council no later than forty days from the date of publication of the competition announcement with a view to obtaining feedback on the professional and moral qualities of the applicants.

The deadline for receiving such feedback shall be determined by the National Council.

#### **Article 20. Qualifying examination**

1. The qualifying examination (hereinafter 'the examination') shall be run by the National Council with the aim of determining applicants' professional training and knowledge in branches of law.

The examination shall be taken by applicants who are not judges and have no experience of judicial work or do not possess a certificate attesting that they have passed the examination.

A certificate whose period of validity has not expired shall be valid regardless of changes to the pass-rate threshold.

2. The examination shall be convened by the president of the National Council. Applicants shall be notified of the date, time and place of the examination no later than five days before it is held.

3. The examination shall take the form of a computer-based test for applicants with questions on different branches of law and the resolving of tasks from judicial practice.

The results of the test and resolving of practical tasks shall be assessed in terms of the total number of marks scored by the applicants. The computer-based test and practical questions, the pass-rate threshold and the procedure for holding the qualifying examination shall be determined each year by the National Council.

4. Applicants shall be entitled to familiarise themselves with test questions and practical questions before the examination.

During the examination, applicants may use compendiums of legal and regulatory acts.

5. An applicant shall be adjudged to have passed the first round if the total of marks scored in the test and practical questions is equal to or higher than the established pass-rate threshold. An applicant having passed the first round of the competition shall be issued with a certificate based on the model established by the National Council. The certificate shall be signed by the president of the National Council, authenticated with the official stamp of the Judicial Department and valid for three years.

6. An applicant who fails to obtain the pass-rate threshold shall be adjudged not to have passed the qualifying examination and may not participate in a competition to fill a vacant local court judge's post for the next two years.

#### **Article 21. Interview**

1. Applicants having passed the first round of a competition to fill a vacant local court judge's post shall be entitled to take part in the second round, which is an interview.

Interviews shall be held by the National Council after completion of the first round of the competition.

Serving judges having submitted an application to participate in the competition, individuals with no less than five years' experience in the judicial profession having submitted an application and also individuals holding a previously issued but still valid examination pass certificate shall be admitted to the interview without having to sit the first-round examination.

2. The documents of the individuals taking part in the second round of the competition shall be studied by the National Council on a panel basis. Each applicant interview shall be held orally.

In conducting interviews the National Council shall clarify the factors influencing the possibility of the applicant exercising the powers of a judge in any region of the Kyrgyz Republic.

3. In the light of the results of the interviews the National Council shall hold a vote on each candidate and take a decision to recommend candidates for a post of local court judge.

The procedure for taking a decision on a recommendation of candidates for a post of local court judge shall be determined by the National Council.

4. The decision of the National Council shall be appended to the candidate's personnel file. The personnel files of candidates taking part in the competition shall not be returned and shall be conserved by the Judicial Department under the procedure established by legislation.

#### **Article 22. Procedure for appointing candidates to local court judge posts and assigning them to local courts to exercise the powers of local court judge**

1. Local court judges shall be appointed by the President of the Kyrgyz Republic from among the individuals who have passed the competitive selection process and/or are recommended by the National Council.

2. A proposal of a candidate for appointment as a local court judge shall be submitted to the President of the Kyrgyz Republic after completion of the second round of the competition.

In the event of the President of the Kyrgyz Republic rejecting the proposed candidate, the National Council shall submit another candidate.

In the event of no other candidate being available, the National Council shall announce a new competition.

3. The appointment of local court judges shall be made by decree of the President of the Kyrgyz Republic for the term laid down by the Constitution of the Kyrgyz Republic.

The appointed local court judge shall be assigned by decree of the President of the Kyrgyz Republic to a specific local court to exercise the powers of local court judge.

#### **Article 23. Transfer/rotation of local court judges**

1. A local court judge may be transferred from one local court to another local court on the following grounds:

- 1) at their own wish;
- 2) in the event of reorganisation of the court or changes to the structure or staffing level of the court;
- 3) in the event of a judge exercising their powers in one court for more than 10 years;
- 4) circumstances beyond the control of the judge and the State, including the judge's state of health, confirmed by medical opinion.

2. The transfer of the judge shall be for the remaining term of office.

3. A decision to transfer/rotate a judge shall be taken by the President of the Kyrgyz Republic on the basis of a proposal of the National Council and without the holding of a competition.

#### **Article 24. Procedure for appointing presidents and vice-presidents of local courts**

1. Presidents and vice-presidents of local courts shall be appointed from among local court judges for a term of five years by the President of the Kyrgyz Republic at the proposal of the National Council.

Local court judges with less than five years remaining of their term of office may not be appointed presidents or vice-presidents of local courts.

2. One month before the expiry of the term office of the serving president or vice-president of a local court the National Council shall announce a competition to fill the vacant post of local court president or vice-president.

In the event of early termination of powers or early discharge from office of a president or vice-president of a local court, a competition to fill the vacant post of local court president or vice-president shall be announced no later than ten days after the post falls vacant.

The announcement of a competition to fill the post of president or vice-president of a local court shall be advertised in the state newspaper of the Kyrgyz Republic and also on the internet site of the National Council.

Local court judges shall participate in the competition by submitting an application addressed to the National Council. Applications shall be submitted to the Judicial Department no later than ten days after the announcement of the competition, either in person or by post. From the day of receiving an application the Judicial Department shall compile material for the National Council consisting of:

- 1) the judge's personnel file;
- 2) data on the period worked in the judicial profession, showing the number and level of cases examined;
- 3) information on any awards, commendations and reprimands;
- 4) private opinions pronounced in respect of the judge;
- 5) other documents relating to the judge.

5. The National Council shall examine the applications of local court judges for the post of president or vice-president of a local court and the material relating to them. The date of a National Council sitting shall be set by the National Council.

In the light of its findings the National Council shall select a candidate(s) for the post of president or vice-president of the local court and submit a proposal(s) to the President of the Kyrgyz Republic.

The National Council's decision shall be appended to the judge's personnel file.

6. A local court judge whose powers of local court president or vice-president have expired but whose powers of judge of the Kyrgyz Republic have not yet expired, shall exercise the duties of local court president or vice-president until the appointment of a local court president or vice-president.

Following the appointment of another local court president or vice-president, the aforementioned judge may be assigned to the local court in question or another local court to exercise the powers of a local court judge.

7. The National Council shall be entitled, no later than one month before the expiry of the powers of a local court president or vice-president, to recommend a candidate, without holding a competition, to the President of the Kyrgyz Republic for appointment to the local court president or vice-president post becoming vacant, taking due account of fitting fulfilment by that candidate of their duties and powers and their irreproachable conduct.

## **Chapter 5. Grounds and procedure for suspension of powers, dismissal from office and termination of powers of a judge**

### **Article 25. Suspension of powers of a judge and dismissal from office of a judge**

1. The powers of a judge shall be suspended if:

- the judge is registered as a candidate for the office of President of the Kyrgyz Republic;
- included in the registered list of a political party taking part in elections to the *Jogorku Kenesh* of the Kyrgyz Republic;
- registered as a candidate to the office of parliamentary deputy in a local *kenesh*.

The judge's powers shall be restored if the circumstances constituting grounds for the decision to suspend their powers cease to exist.

The decision to suspend a judge's powers or to restore them shall be taken by the President of the Kyrgyz Republic.

2. A judge of the Kyrgyz Republic shall be dismissed from office/discharged from exercising the duties of a judge by the President of the Kyrgyz Republic at the proposal of the National Council in the event of:

- the institution of criminal proceedings against them (as the person accused of the crime) or administrative proceedings under judicial procedure;
- the lodging of a motion for early discharge from office.

3. In the event of criminal proceedings or disciplinary proceedings being lodged against a judge of the Kyrgyz Republic, the President of the Kyrgyz Republic shall be entitled to dismiss them from office at the proposal of the National Council.

4. A judge dismissed from office shall be restored to office (shall be deemed as having resumed office) if the circumstances constituting grounds for the decision to dismiss them from office cease to exist.

5. The suspension of a judge's powers shall not entail the ceasing of payment of a salary to the judge or a decrease in the amount paid. Nor shall it entail a lowering of the level of other types of material and social provision for the judge or deprive them of the guarantees of immunity established by the present Constitutional law.

6. The dismissal of a judge from office shall entail suspension of payment of salary to the judge and other types of material and social provision.

7. In the event of the judge being restored to office, the judge's salary and other types of material and social provision outstanding shall be paid in full.

#### **Article 26. Grounds and procedure for the discharge of a judge from office**

1. A judge shall be discharged from office upon reaching the age limit established in Article 83 of the Constitution of the Kyrgyz Republic.

2. A judge shall be discharged from office early on the following grounds:

- 1) a written application by the judge to be voluntarily discharged from office;
- 2) inability, owing to their state of health, to exercise the powers of a judge, attested to by the conclusion of a medical commission;
- 3) the failure of the judge to report for work for more than four months running as a result of temporary work invalidity, not counting leave for pregnancy, childbirth or child-care;
- 4) appointment of a Constitutional Court or Supreme Court judge as a local court judge; election of a local court judge as a judge of the Constitutional Court or Supreme Court; taking up of other work not related to the dispensing of justice;
- 5) refusal of a local court judge to be transferred to another local court on the grounds provided for in sub-paragraphs 2-4 of paragraph 1 of Article 23 and paragraph 6 of Article 24 of the present Constitutional law;
- 6) entry into legal force of a guilty verdict of a court against the judge;
- 7) entry into legal force of a court judgment to apply compulsory measures of a medical nature in respect of the judge;
- 8) the committing of a disciplinary infringement incompatible with the irreproachable conduct and high calling of a judge, confirmed by decisions of the Council of Judges or National Council;
- 9) engaging in an activity incompatible with the office of judge.

3. Judges of the Constitutional Court and Supreme Court shall be discharged from office early by a majority of no less than two thirds of the total number of deputies of the *Jogorku Kenesh* of the Kyrgyz Republic at the proposal of the President of the Kyrgyz Republic.

4. A local court judge shall be discharged from office by the President of the Kyrgyz Republic at the proposal of the National Council.

5. A written application by the judge to be voluntarily discharged from office may be revoked within 24 hours of the application being submitted.

6. A decision of early discharge in respect of a judge of the Kyrgyz Republic from the office occupied by them shall not be open to appeal.

**Article 27. Grounds and procedure for the ceasing or termination of a judge's powers**

1. A judge's powers shall cease in connection with the expiry of their powers.

A judge's powers shall be terminated early in the event of:

- 1) loss or relinquishment of citizenship of the Kyrgyz Republic or the acquiring of citizenship of another State;
- 2) limited legal capacity or the declared legal incapacity of the judge, on which a court judgment has entered into legal force;
- 3) their death;
- 4) notification of their death, on which a court judgment has entered into legal force;
- 5) recognition of them as a missing person, on which a court judgment has entered into legal force.

2. The powers of a judge shall be terminated early by the entity which elected or appointed them. In the event of the court judgments mentioned in sub-paragraphs 4 and 5 of paragraph 1 of the present article being set aside, the judge's powers shall be restored by the entity which terminated them.

**Chapter 6. Liability of judges**

**Article 28. Disciplinary liability of a judge**

1. A judge shall have disciplinary proceedings instituted against them for a disciplinary infringement.

A violation of the judge's duties provided for in the present Constitutional law or engaging in an activity incompatible with the office of judge shall be recognised as a disciplinary infringement by a judge.

2. The instituting of disciplinary proceedings against a judge for a disciplinary infringement shall entail application of one of the following disciplinary measures:

- 1) imposing of a disciplinary penalty in the form of an observation or reprimand;
- 2) early discharge of the judge from their post.

3. An observation or reprimand shall be deemed cancelled after one year of such a disciplinary penalty being imposed on condition of proper fulfilment of duties and irreproachable conduct.

4. For a violation of sub-paragraphs 1 and 2 of paragraph 1 of Article 6 of the present Constitutional law, a judge shall either have a disciplinary penalty such as a reprimand imposed on them or be discharged early from their post.

For a disciplinary infringement in violation of sub-paragraphs 3-7 of paragraph 1 of Article 6 of the present Constitutional law, a judge shall have a disciplinary penalty in the form of an observation imposed on them, a reprimand for a repeat infringement within one year and, for a further infringement, regardless of the quashing of a previously imposed penalty, they shall be discharged early from their post.

For a violation of paragraph 2 of Article 6 of the present Constitutional law, a president or judge of a district or equivalent court having passed the judicial acts in question shall have a disciplinary penalty such as an observation imposed on them.

For a violation of paragraphs 3-5 of Article 6 of the present Constitutional law, a judge shall be discharged early from their post.

5. An observation or reprimand for a judge shall be imposed by the Council of Judges.

A decision to discharge a judge of the Constitutional Court or Supreme Court early from their post shall be taken by the *Jogorku Kenesh* of the Kyrgyz Republic at the proposal of the President of the Kyrgyz Republic based on a decision of the Council of Judges to discharge the judge early from their post.

A decision to discharge a local court judge early from their post shall be taken by the President of the Kyrgyz Republic at the proposal of the National Council based on a decision of the Council of Judges to discharge the judge early from their post.

**Article 29. Procedure for instituting disciplinary proceedings against a judge**

1. Disciplinary proceedings may be instituted against a judge in the light of the findings of the examination of a disciplinary case brought by the Council of Judges:

- prompted by complaints from physical individuals and legal entities;
- prompted by applications from state authorities, local authorities, their officials or the president of the corresponding court of the Kyrgyz Republic, accusing the judge of a disciplinary infringement;
- private opinions given by higher-ranking courts in respect of a judge of a lower-ranking instance.

2. To conduct an official investigation in the framework of a disciplinary case, the Council of Judges shall form a committee from among its members, which shall conduct an official investigation within one month.

An official investigation shall entail:

- questioning and requesting explanations and other evidence from the judge in respect of whom the complaint is being examined, questioning and requesting additional explanations and evidence from the persons who submitted the complaint, questioning witnesses, studying a case file of the judge under investigation if the complaint concerns the actions of a judge in the examination of a specific case;
- any other actions aimed at gathering full information on the causes and circumstances constituting grounds for the submitting of the complaint.

On the basis of the findings of the official investigation, the committee shall draw up a briefing paper setting out the date and place of the holding of the investigation, the statements of the individuals questioned, their written explanations, other evidence, conclusions as to whether or not the judge committed an infringement. The briefing paper on the findings of the official investigation shall be signed by the members of the committee and submitted to the Council of Judges. Any member of the committee not in agreement with the briefing paper on the findings of the official investigation shall be entitled to submit a dissenting opinion, appended to the committee's briefing paper.

3. A judge against whom disciplinary proceedings are instituted shall be given sufficient time to familiarise themselves with the case materials.

4. After examining the briefing paper drawn up by the committee in the framework of disciplinary proceedings, the Council of Judges shall take one of the decisions provided for in Article 26 of the present Constitutional law or a decision to cease disciplinary proceedings on grounds that there was no disciplinary infringement in the actions of the judge.

In the event of a constituent element of a crime in the actions of a judge being uncovered, the Council of Judges shall hand over the material of the disciplinary proceedings to the Prosecutor General.

5. If the actions of the judge referred to in the complaint, being incompatible with the irreproachable conduct and high calling of a judge, were committed in the examination of a court case and no judicial act has been adopted on that case, the case shall be subject to transfer to another judge, and the disciplinary proceedings brought shall be subject to examination under the rules of the present article.

### **Article 30. Bringing of a criminal case against a judge and procedure for instituting criminal proceedings or administrative proceedings under judicial procedure against a judge**

1. A decision to bring a criminal case against a judge shall be taken by the Prosecutor General of the Kyrgyz Republic (hereinafter 'the Prosecutor General').

2. A decision to institute criminal proceedings against a judge (as the person accused of the crime) shall be taken by the Prosecutor General with the consent of the National Council.

In order to obtain consent for the instituting of criminal proceedings against a judge, the Prosecutor General shall submit a motion to the National Council, indicating the circumstances of the criminal case and the article of criminal legislation under which the judge stands accused and requesting consent for the instituting of criminal proceedings (as the person accused of the crime).



3. A decision on the instituting of administrative proceedings under judicial procedure against a judge shall be taken by the corresponding prosecutor with the consent of the National Council.

In order to obtain consent for the instituting of administrative proceedings against a judge, the corresponding prosecutor shall submit a motion to the National Council, indicating the circumstances of the administrative case and the article of legislation concerning administrative infringements under which proceedings are to be instituted against the judge and requesting consent for the instituting of administrative proceedings against them.

4. In the event of a change during criminal or administrative investigations in the determination of the constituent element of the crime or infringement which may entail a worsening of the judge's situation, the instituting of criminal or administrative proceedings against a judge shall be permitted under the procedure established in the present article.

5. The motion for consent for the instituting of criminal or administrative proceedings against a judge shall be examined by the National Council and a decision shall be pronounced no later than ten days from the date of submitting the motion.

6. If the National Council establishes that the instituting of criminal or administrative proceedings is prompted by the stance adopted by the judge in the exercise of their judicial powers, it shall refuse to grant consent for the instituting of criminal or administrative proceedings against the judge.

7. In the event of the National Council deciding to refuse to grant consent for the instituting of criminal or administrative proceedings under judicial procedure against a judge, no repeated motions for such consent shall be permitted.

### **Article 31. Carrying out of operational/search and investigative actions in respect of a judge**

1. The carrying out of operational/search measures in respect of a judge entailing restriction of their civil rights or a violation of their immunity, established by the Constitution of the Kyrgyz Republic, the present Constitutional law and other laws of the Kyrgyz Republic shall be permitted only after criminal proceedings have been instituted against the judge.

2. After criminal proceedings have been instituted against a judge, operational/search measures and investigative actions in respect of the judge shall be carried out under the procedure established by the legislation of the Kyrgyz Republic.

## **Chapter 7. Social guarantees of the status of judges**

### **Article 32. Material provision for judges**

1. Judges shall be guaranteed a wage funded by the republic budget provided for the funding of judicial authority.

The conditions of wages of judges shall be determined by the President of the Kyrgyz Republic at the proposal of Council of Judges. The level of a judge's wage may not be reduced during their term in office.

2. A judge requiring housing or improvement thereof shall be provided with official accommodation or compensation for expenditure on rented accommodation or shall be allocated sufficient funding from the judicial system budget to improve their housing conditions.

Official accommodation shall be allocated on the site of the court where the judge exercises their powers. The surface area of official accommodation shall measure no less than 20 square metres of useable floor area for each member of the judge's family.

Official accommodation may not be privatised.

A judge discharged from office upon reaching the age limit who has no less than 20 years experience in the judicial profession and has been occupying official accommodation, shall be provided with housing in the form of a separate flat or house funded by the state budget or with assistance to build their own home.

The procedure for providing them with housing or assistance to build their own home shall be determined by the Government of the Kyrgyz Republic in agreement with the Council of Judges.

3. Judges shall be granted annual paid leave of a duration of thirty calendar days with paid health-recovery assistance under the procedure established by the legislation of the Kyrgyz Republic.

Judges shall be granted additional annual paid leave in relation to their length of service in the legal profession:

- from 5 to 10 years - 2 working days;
- from 10 to 15 years - 4 working days;
- from 15 to 20 years - 6 working days;
- more than 20 years - 8 working days.

Woman judges shall be granted leave for pregnancy and childbirth as well as for child care in accordance with labour legislation.

Upon written application, a judge may be granted unpaid leave in accordance with labour legislation.

4. Judges shall be provided free of charge with attire to be worn in their work (gowns) in line with the standards established by the Government of the Kyrgyz Republic.

### **Article 33. Social protection measures for judges and members of their family**

1. There shall be compulsory medical insurance for judges at the expense of state funds. Expenses linked to treatment in a period of illness shall be compensated from state funds. During a period of illness, attested to by a medical certificate, a judge shall continue to receive their average monthly pay.

In the event of injury or other damage to health caused to a judge in connection with the fulfilment of their official duties which rules out any further possibility of engaging in professional activity, they shall be paid monthly compensation amounting to the difference between their monthly wage and the pension allocated to them, not including payments received under compulsory state insurance.

2. There shall be compulsory state life insurance for judges at the expense of the republic budget.

In the event of a judge's death, their family shall receive a lump-sum payment based on their average monthly salary for the last post occupied for every half-year worked by the judge but no less than the equivalent of one year's salary.

3. Judges discharged from office in connection with attaining the age limit shall receive a lump-sum payment based on their average monthly salary for the last post occupied for every half-year worked by the judge but no less than the equivalent of one year's salary.

Judges with no less than 20 years' irreproachable service in the post of judge who are discharged from office in connection with a submitted written application for discharge from office of their own volition shall receive a lump-sum payment based on their average monthly salary for the last post occupied for ten years worked as a judge.

The lump-sums established in the present paragraph shall be paid from the republic budget provided for the funding of the judicial system.

### **Article 34. State protection of judges**

1. State protection shall be provided for a judge in the event of a threat to the judge's life, health or property in connection with their official activity and shall be implemented through the following security measures:

- 1) personal protection, protection of their home and property;
- 2) issue of a firearm and special means of personal protection and danger alert;
- 3) temporary move to a safe place;
- 4) ensuring the confidentiality of information concerning the protected judge;
- 5) recommendation of transfer/rotation to another court or change of place of work/department;
- 6) resettlement to another place of residence.

2. Where necessary the aforementioned security measures may also be applied to close relatives of the judge. The security measures applied must not prejudice the housing, labour, pension or other rights of the person protected.

3. The conditions and procedure for applying security measures shall be established by the President of the Kyrgyz Republic.

## **Chapter 8. Final provisions**

### **Article 35. Procedure of entry into force**

1. The present Constitutional law of the Kyrgyz Republic shall enter into force from the date of its official publication, with the exception of the provision in paragraph 2 of Article 17 of the present Constitutional law, which shall be applied as of 1 September 2008.

2. Persons having passed the qualifying examination in the form of the computer-based test for the post of local court judge prior to the entry into force of the present Constitutional law shall not be subject to application of the provision in Article 20 of the present Constitutional law for three years dating from the entry into force of the present Constitutional law.

3. From the date of entry into force of the present Constitutional law, the following laws or provisions shall be declared invalid:

- the Constitutional Law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic" of 8 October 1999 (Official Gazette of the *Jogorku Kenesh* [parliament] of the Kyrgyz Republic, 2000 no. 2, p. 96);

- the Constitutional Law of the Kyrgyz Republic "On the status of judges of the Kyrgyz Republic" of 30 March 2001 (Official Gazette of the *Jogorku Kenesh* of the Kyrgyz Republic, 2001 no. 4, p. 95);

- Law no. 137 of the Kyrgyz Republic "On the procedure for accrediting judges of local courts of the Kyrgyz Republic" of 4 December 1999 (Official Gazette of the *Jogorku Kenesh* of the Kyrgyz Republic, 2000 no. 4, p. 177);

- Article 1 of Law no. 105 of the Kyrgyz Republic of 7 July 2006 "Amending and supplementing the Law of the Kyrgyz Republic "On the procedure for accrediting judges of local courts of the Kyrgyz Republic" and the Law of the Kyrgyz Republic "On the Supreme Court of the Kyrgyz Republic and local courts"" ("Erkintoo" Gazette of 18 July 2006, no. 52).

4. It is hereby recommended that judicial organs, self-governing judicial bodies and the Government of the Kyrgyz Republic take measures made necessary by the present Constitutional law.

5. The Government of the Kyrgyz Republic shall bring all decisions into line with the present Constitutional law.