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REPUBLIC OF KAZAKHSTAN

CONCEPT PAPER

**ON THE REFORM ON THE HIGH JUDICIAL COUNCIL AND THE
SYSTEM OF SELECTION, TRAINING AND PROMOTION OF JUDGES***

*Translation provided by the authorities of Kazakhstan

CONCEPT PAPER ON THE HIGH JUDICIAL COUNCIL AND THE SYSTEM OF SELECTION, TRAINING AND PROMOTION OF JUDGES

The purpose of the draft law is to increase the level of public trust to the judicial system, to ensure independence of judges, to introduce mechanisms for the selection of judges based on recognized international standards and best international practices, thereby to carry out selection of professional and dedicated judges.

For this, it is assumed to:

Modernize qualification examination for candidates for judges having provided selection of the most worthy and most prepared citizens;

Improve the quality of training of candidates for judges in order to create conditions for the efficient acquisition by candidates of the skills necessary to work as a judge;

Increase transparency and ensure maximum objectivity in the selection of judges;

Expand access to the judicial profession through systematization and improvement of competitive procedures, as well as liberalization of the Kazakh system of judicial meritocracy;

Increase guarantees of judicial independence;

Develop mechanisms to ensure institutional development and a full realization of the potential of the High Judicial Council (hereinafter – the Council) as a constitutional body responsible for the formation of the judiciary of Kazakhstan.

1. Modernization of the qualification exam that will result in the following:

1) **Strengthened role of psychological testing** of candidates for judges, which will be the first and most important stage of the exam. Results of the psychological examination will not be recommendatory (as before), but mandatory determining the possibility of passing the subsequent stages of the exam.

The main aspect during the exam will be definition and evaluation of moral and psychological aptitude of the candidate, because not every trained and knowledgeable lawyer by virtue of their personal qualities is able to work as a judge;

2) introduction of a requirement for candidates to submit a **written essay** that meets modern standards, which will allow to determine the level of candidates' intellect through their ability to express their thoughts logically, competently and in a concise form;

3) improvement of the **stages of computer testing on legal knowledge and oral legal examination**. Computer tests on legal knowledge will become more difficult and will cover not only 6 basic branches of law, but 11 branches of law and legislation. Solution of case law problems during the oral examination will also become more difficult and complex combining several branches of law;

4) **establishment of the institute of observers** during the qualification exam to enhance its objectivity and transparency.

2. Improving the quality of trainings of candidates for judges, so organizational and legal measures will be taken to improve efficiency and quality of training in the courts and exclude elements of formalism, including the following means:

- 1) **content filling of the internship** program by providing a more in-depth study of judicial work specifics in various specializations;
- 2) introduction of an **interim assessment** of the candidate internship quality in the courts, in addition to assessment after its completion;
- 3) definition of **incentive measures** for trainees and their mentors-judges to motivate them to pass internship in a quality manner;
- 4) establishment of **differentiated terms** of internship (from one year to 6 months) depending on the level of training and professional skills of candidates;
- 5) **participation in internship in the Academy of Justice** under the Supreme Court, which could check the quality of the internship and conduct relevant training courses and trainings for interns.

3. Transparency and objectivity of judges selection, which will be achieved through introduction of the following:

- 1) **systems of objective and differentiated selection criteria for each candidate category**. At the same time, a number of evaluation criteria, which are unambiguous, are digitized and will be automatically calculated by a special computer program analogous to bank scoring evaluation systems. Other criteria, that cannot be digitized, will be assessed by the permanent members of the Council using special techniques.

Such criteria are introduced in Kazakhstan's practice, taking into account experience of France, Italy and Spain, which have state bodies, that are analogous similar to the Council (Supreme Council of magistracy, General Council of the judiciary) where working visits were made;

- 2) **interviewing** candidates for judges to assess their communication and professional skills by permanent members of the Council, most of whom are acting judges;
- 3) **online broadcasts of Council meetings**, when selecting candidates for judges;
- 4) **specific list of grounds**, preventing judges to appoint persons whose professional and other qualities raise doubts.

4. Expansion of access to the judicial profession and partial liberalization of the Kazakhstani system of judicial meritocracy, systematization and improvement of competitive procedures:

- 1) it will be possible for **persons who do not have judicial experience, but have extensive experience in legal work to be involved to the Courts of appeal**;
- 2) **the scope the use of competitive procedures** will be expanded through introduction of **competitive selection of chairmen of judicial boards of the Courts of appeal**;

3) regulations will provide for an annual schedule of competitions for judicial positions **with pre-defined dates of their conduct for different categories of judicial positions**, which will be introduced from the year 2019. Due to this, the work of the Council will be more planned and systematic, without elements of campaigning, where candidates for judges will be able to plan their schedule;

4) **time limits** of these competitions and the **number of documents** to be submitted by candidates will be **reduced**.

5. **Enhancing independence of judges** by:

1) **exclusion of administrative command and bureaucratic elements in the judicial system by consolidation of requirements on impossibility of persons to hold equivalent posts of chairmen or chairmen of the boards of the courts more than two times**;

2) transfer of powers from the **Supreme Court to the jurisdiction of the High Judicial Council to resolve personnel issues of the judicial system**, including:

- bringing judges to disciplinary responsibility;

- formation and maintenance of the personnel reserve for leading judicial positions;

3) **limiting the grounds for conducting professional assessment of judges** and introducing **more objective standards, methods and criteria for assessing** the performance of judges by the judiciary community;

4) excluding the need for a judge to obtain **surety** from higher judicial colleagues, when participating in a competition for another judicial position, since such sureties, as practice has shown, entail dependence of judges;

5) excluding **disciplinary liability of judges** for violation of labor legislation;

6) **abolishing Presidiums of plenary sessions** of regional courts and the Supreme Court to exclude their influence on disciplinary responsibility of judges and administration of justice;

7) **prevention of the influence of the chairmen of the regional courts on the career development of judges** by excluding their participation in the activities of plenary sessions of the courts, when giving feedbacks to candidates participating in the competition for judicial positions, and introducing mandatory secret voting at such meetings.

6. **Disclosure of the Council's potential in the formation of judicial personnel and its institutional strengthening** through:

1) **expansion of the Council** by including judges (who will be the majority in the Council), and representatives of the legal community;

2) introduction of a requirement to **renew a part of the Council' personnel after a half of the term** to ensure continuity in the Council's activities;

- 3) establishment of **wages for permanent members of the Council** among the advocacy, scientific and legal community, who now work in the Council on a voluntary basis;
- 4) assigning powers to the Council **to participate in legislative activities** and to prepare an annual **National report on the status of personnel in judicial system**;
- 5) maximum **digitalization** of the Council's activities. All documents for judges competition will be submitted in electronic format, and the interview with the candidates for judges will be held via videoconference.

Adoption of the draft law will allow to:

increase the level of public confidence in the judicial system;

create an efficient mechanism for selection of the best candidates for judges and exclusion of persons who are not capable of being judges by psychological and professional qualities;

strengthen guarantees of judicial independence;

ensure systematic character and consistency in the work of the Council and facilitate candidates' access to for judicial positions;

create conditions for career growth of judges on the basis of their professional achievements and qualifications;

ensure the inflow of experienced and reputable lawyers in the judicial system by liberalizing the system of judicial meritocracy;

maximize potential of the High Judicial Council when carrying out tasks and ensure transparency of its activities.

Note:

Transformation of the Council and the judicial selection system is now being carried out in **two successive phases**.

Phase one – now (2018) are taken measures that do not require correction of the legislation. At the same time, despite a number of restraining and outdated laws, the Council is working in a proactive manner, since the rules governing the improved qualification exam system for a judicial appointment, selection of candidates for judges under the system of differentiated criteria for different categories of judicial positions, candidates interviewing, more complete use of the potential of permanent members of the Council in the evaluation of candidates, as well as the rules establishing regularity of competitions for judicial positions have already been laid down in the Rules of the Council and are beginning to be applied in practice.

Phase two is the further transformation of the Council's work, based on systemic measures involving amendments to existing legislation.

Tentatively, **the following legislative amendments will be required:**

- in 20 of 58 articles of the Constitutional law dated December 25, 2000 “On the judicial system and the status of judges of the Republic of Kazakhstan”, concerning powers of the

plenary session of the regional court, powers of the Supreme Court, its Chairman and the plenary session of the Supreme Court, requirements for candidates for judges, professional evaluation of judges, judicial jury, disciplinary liability of judges, abolition of the Presidium of the plenary sessions of the courts and extension of the term of judges who reached retirement age;

- in 13 of 26 articles of the Law dated December 4, 2015 “On the High Judicial Council of the Republic of Kazakhstan” concerning powers and composition of the Council, order of meetings of the Council, qualification exams, announcement of the competition and selection of judges, including selection criteria, consideration of judges excusal and appeal of disciplinary sanctions;

In addition, amendments will be made in exercising normative legal acts, including:

- Regulations on passing the internship by a candidate for judge position;
- Regulations on Judicial jury;
- Regulations of the Office of the Council;
- Regulations of the High Judicial Council.

We also note that issues of judicial education and training at the Academy of justice of the Supreme Court are not addressed in this Concept, as it is a separate complex issue that requires special consideration.
