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(VENICE COMMISSION)

**CODE OF JUDICIAL ETHICS
OF THE REPUBLIC OF TAJIKISTAN**

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Legal protection of human rights and freedoms cannot be ensured unless there is a competent and independent system of justice, administered according to the principles of fairness and impartiality. Such a justice system requires that every judge observe the rules of professional ethics, discharge their duties in an honest and conscientious manner and show proper concern for the preservation both of their own honour and dignity and of the dignity and authority of the judiciary.

State guarantees with respect to the independence, inviolability and irremovability of judges, non-interference in their activities and a high level of material and social support are not a personal privilege of judges but rather a means of securing the aims of the justice system, namely to deliver rulings which are lawful, well-founded and fair.

The judges of the Republic of Tajikistan, being guided by the provisions of the Constitution of the Republic of Tajikistan, the constitutional law of the Republic of Tajikistan "On courts of the Republic of Tajikistan", international legal principles and norms recognised by the Republic of Tajikistan, developing and elaborating on them for the purpose of safeguarding the right of every person to have their case dealt with in a fair and timely manner by a competent, independent and impartial court, and likewise for the purpose of establishing standards of judicial conduct as the basis for public trust in the judiciary and the quality of justice, mindful of their responsibility to society for the proper dispensation of justice, hereby adopt the present Code of Judicial Ethics.

I. CHAPTER 1. GENERAL PROVISIONS

Article 1. Subject matter

1. The Code of Judicial Ethics, as an act of the judicial community, shall establish rules of conduct which shall be binding on all judges in the performance of their professional activities relating to the dispensation of justice and in their extrajudicial activities, which rules shall be based on the high moral and ethical requirements and provisions of the legislation of the Republic of Tajikistan and on international standards in the field of justice and judicial conduct.

2. The need to observe the Code of Judicial Ethics shall be determined by the status of the judge, by the very fact of conferring on a particular individual judicial powers to take a final decision on matters concerning the rights, freedoms and obligations of persons seeking judicial protection.

3. Judges of the Republic of Tajikistan shall enjoy all the rights provided for in the Constitution of the Republic of Tajikistan, other laws, universally recognised principles and norms of international law, with due regard for any restrictions placed on them by the legislation of the Republic of Tajikistan.

4. Those provisions of the Code of Judicial Ethics which impose heightened moral and ethical requirements on judges, on account of their status, shall not be interpreted as restricting their civil rights and freedoms, as guaranteed by the Constitution of the Republic of Tajikistan.

Article 2. Scope

1. The Code of Judicial Ethics shall apply to all judges of the Republic of Tajikistan, including retired judges.

2. The rules of professional conduct laid down in the present Code shall likewise apply to persons involved in accordance with constitutional law in the administration of justice, for the duration of the period in which they perform functions relating to the dispensation of justice.

3. Where matters of judicial ethics are not regulated by the Code of Judicial Ethics, judges shall abide by the universally recognised principles of moral and ethical public conduct, and by international standards in the field of justice and judicial conduct.

4. Court presidents and judges shall acquaint judicial assistants, courtroom secretaries and other court employees with the content of the Code of Judicial Ethics.

5. If a judge has difficulty in determining whether their conduct in a particular situation involving the dispensation of justice or in their extrajudicial activities is compatible with the requirements of

professional ethics and the status of a judge or if a judge is uncertain as to how to proceed in a complex ethical situation in a manner which preserves their independence and impartiality, they may lodge an appropriate request for clarification, which may not be refused, with the ethics committee of the judges' association of the Republic of Tajikistan.

Article 3. Terms used in the Code of Judicial Ethics

For the purposes of the present Code of Judicial Ethics, the following terms shall have the following meanings:

close relatives – spouse, parents, children, adoptive parents, adopted children, biological siblings, and also grandfathers, grandmothers, grandchildren;

judge's spouse – persons who are registered marriage partners;

members of a judge's family - spouse, parents, children, any other close relative living with the judge;

persons involved in the administration of justice – people's assessors, involved in the administration of justice in accordance with the procedure prescribed by law;

final judicial decision – a judicial decision concluding the examination of a case on its merits in a court of the appropriate jurisdiction.

II. CHAPTER 2. GENERAL REQUIREMENTS GOVERNING THE CONDUCT OF JUDGES

Article 4. Requirements concerning compliance with the legislation and the Code of Judicial Ethics

1. In the performance of their duties relating to the administration of justice, judges shall proceed on the basis that the judicial protection of human and civil rights and freedoms determines the essence and content of the activities of the judiciary.

2. In their professional and off-duty activities, judges shall comply with the Constitution of the Republic of Tajikistan, shall be guided by the constitutional law of the Republic of Tajikistan "On courts of the Republic of Tajikistan", by the norms of procedural legislation and other regulatory and legal instruments, and also by the principles and rules of conduct established by the Code of Judicial Ethics and by universally recognised standards of morality and shall rigorously abide by the judge's oath.

3. Compliance with the Code of Judicial Ethics shall be adopted by the judge as an inner conviction and a rule of life, helping to reinforce public trust in the judicial system and public confidence in the fact that justice is being administered in a competent, independent, impartial and fair manner.

Article 5. Requirements concerning the priority to be given to professional activities

1. Judges shall proceed on the basis that their activities relating to the dispensation of justice are to take priority over any other activities in which they are entitled to engage in accordance with the legislation on the status of judges.

2. Judges may not refuse to examine applications, petitions or complaints submitted to them or otherwise refuse to perform their professional duties, except in circumstances which demand that they disqualify themselves.

3. Throughout the entire period of their service, judges shall not engage in any other activity which might cast doubt on their independence and impartiality or lead to a conflict of interest.

4. In addition to the exercise of judicial powers, judges may engage in other paid activities permitted by law, including teaching, research and creative activities provided that this does not hamper the administration of justice.

Article 6. Requirements aimed at maintaining the status of judges

1. Judges shall have high moral standards, shall be honest, shall maintain their personal dignity in all circumstances, shall uphold their honour and shall avoid anything that might diminish the authority of the judiciary or harm the reputation of a judge.

2. Judges shall conscientiously exercise their civil rights and fulfil their civil duties. They shall not use their official position for the purpose of securing any personal advantages in civil law matters. They shall avoid concluding agreements with financial implications for persons professionally dependent on them or with persons who are participants in legal proceedings in cases assigned to them.

3. Judges shall not use their status for the purpose of securing any benefits, services or commercial or other advantages whatsoever for themselves or for their relatives, friends and acquaintances (for example, the securing of credit, the concluding of agreements on terms other than those available to other individuals); demand or accept any benefits, payments or advantages not provided for in the legislation of the Republic of Tajikistan (for example, advances, interest-free loans, services, paid entertainment, leisure or transport) and shall be bound to take reasonable steps to ensure that there was no possibility of the said benefits, payments or advantages being accepted by members of their family, where this is prompted by actions which the judge has carried out or intends to carry out or by a failure to act on the part of the judge in connection with the performance of their official duties.

4. Judges shall be aware of their personal assets and the sources from which they are derived and shall take reasonable steps to obtain information about the assets and financial interests of the members of their family.

5. Judges shall not act themselves or cause others to act in a way that would suggest that influence is being brought to bear on the judge in the exercise of their powers or cast doubt on the judge's independence and impartiality.

Article 7. Requirements for accepting titles, awards and gifts

Judges may accept honorary and special titles, awards and other distinctions, including from foreign states, political parties, non-governmental associations and other organisations, and may likewise accept gifts in the instances and manner prescribed by law.

III. CHAPTER 3. PRINCIPLES AND RULES GOVERNING THE PROFESSIONAL CONDUCT OF JUDGES

Article 8. Principle of independence

1. Independence of the judiciary shall be a constitutional principle guaranteeing the rule of law in the administration of justice, a condition for impartiality and a fundamental safeguard for a fair trial. Judges shall have a duty to support the independence of the judiciary and to abide by the principle of independence.

2. When hearing cases, judges shall be bound to maintain an independent and impartial position in relation to all the participants in the proceedings. When exercising judicial powers judges shall proceed solely on the basis of an evaluation of the facts and legal circumstances of the case, in keeping with their inner convictions, with due respect for the procedural rights of all persons participating in the case, and independently of any outside influence, pressure, threats or other interference in the proceedings, whether direct or indirect, from whatever quarter and for whatever motives or purpose. Public opinion of judges' activities and any criticism levelled at them shall not affect the lawfulness and well-foundedness of their decisions.

3. Judges shall notify the president of the court, the judicial community and law enforcement agencies of any attempts to influence them or to bring direct or indirect pressure to bear on them for the purpose of influencing their decisions.

4. Judges shall notify the persons participating in a case of any verbal or written extra-procedural applications which they may have received in connection with the examination of that case and also of any circumstances which may give rise to a conflict of interest.

Article 9. Principle of objectivity and impartiality

1. Objectivity and impartiality shall be essential conditions for the proper administration of justice. Judges' conduct during judicial proceedings and outside the courtroom shall be such as to contribute to maintaining the confidence of the public and participants in the proceedings in the objectivity and impartiality of judges and the judicial authorities.

2. In the discharge of their professional duties, for the purpose of ensuring an objective examination of the case judges shall be free from any preferences, prejudices and bias and shall seek to remove any doubts as to their impartiality.

3. Where possible, judges shall refrain from performing any actions which may subsequently result in a conflict of interest or otherwise bar them from participating in judicial proceedings.

4. A judge shall refuse to examine a case if there are legally prescribed grounds for doing so, or where there might be a conflict of interest or a situation which casts doubt on the judge's impartiality, including in the following instances:

a) the spouse of the judge or a close relative of one of them is one of the persons participating in the case or another procedural participant in the judicial proceedings concerned;

b) the judge or their spouse (a), or a close relative of one of them has a vested interest in the case under examination, may substantially influence the course of the judicial proceedings or works in an organisation which is a participant in the proceedings, or where the decision of the court may substantially affect their interests;

c) the judge has information potentially making them a witness as regards the merits of the dispute;

d) the judge or members of their family are subjected to pressure, threats or other outside influence, casting doubt on the possibility of the judge making an objective ruling in the case. In such instances, the judge may refuse to examine the case in order to ensure their own safety and/or the safety of those close to them if the judge has taken all steps within their power to arrange for their safety and the safety of those close to them and if the relevant safety measures have not been implemented by the competent authorities within a reasonable time.

5. Judges shall avoid situations in which their personal relations with participants in the proceedings may prompt reasonable suspicions or create the appearance that the judge has some preference or bias. Where such a situation arises, the judge shall notify those participating in the case accordingly.

Article 10. Principle of equality

1. Equal treatment of all the persons participating in the case shall be a condition for the objective and impartial administration of justice and a fair trial.

2. Judges shall be guided in the performance of their duties by the principle of equality and shall maintain a balance between the parties, affording each of them equal opportunities, displaying objectivity and impartiality, and paying equal attention to all the participants in the judicial proceedings irrespective of their gender, race, ethnicity, language, origin, financial situation and official position, place of residence, religion, convictions, affiliations with non-governmental associations and other circumstances.

3. Judges may demand that persons participating in the case and other participants in the proceedings refrain from showing any bias or prejudice vis-à-vis any individual, except in instances which are connected to the establishment of the facts, which have a legal bearing on the subject matter of the judicial proceedings and which may be legally justified.

4. Judges shall be correct in their dealings with citizens, show respect for the customs and traditions of peoples, show consideration for the cultural and other characteristics of different ethnic and social groups and faiths, facilitate inter-ethnic and inter-faith harmony and not permit

any conflictual situations that might be damaging to their reputation or the authority of the judiciary.

5. In the performance of their duties, judges shall refrain from showing their religious affiliations.

6. Judges shall perform their professional duties without showing any kind of preference or real or perceived bias or discrimination, while creating the necessary conditions for the parties to fulfil their procedural obligations and exercise their rights, and while ensuring a fair trial within a reasonable time.

Article 11. Competence and conscientiousness of judges

1. Competence and conscientiousness shall be essential conditions for the discharge by judges of their duties relating to the administration of justice.

2. Judges shall perform their duties conscientiously and to a high professional standard, shall make every endeavour to examine cases properly and in good time and shall assist efforts to bring about reconciliation between parties and to arrive at an amicable settlement of disputes.

3. Judges shall take measures to safeguard the right of each person to a fair trial within a reasonable time; shall duly organise and conduct judicial hearings, taking care to ensure that several cases are not scheduled for hearing at the same time and that there are no repeated and unjustified delays in judicial proceedings, including on grounds of their inadequate preparation.

4. Judges shall maintain their qualifications at a high level, broaden their professional knowledge and develop the practical experience and personal qualities required for the proper performance of their duties. To this end, judges shall both make use of opportunities for independent study and systematically undergo further training within the state system of professional development.

5. Judges shall be conversant with amendments to the legislation of the Republic of Tajikistan, with the norms of international law, including international conventions and other instruments in the field of human rights, and shall systematically study law enforcement practice, including that of the Constitutional Court of the Republic of Tajikistan, the Supreme Court of the Republic of Tajikistan, the Supreme Economic Court of the Republic of Tajikistan and the European Court of Human Rights.

6. Judges may not disclose any information received in the performance of their duties. Confidential information which has come to the notice of a judge by virtue of their official position may not be used by them or divulged to anyone for purposes unrelated to the performance of the judge's duties.

7. Judges shall observe a culture of proper conduct in proceedings, maintain order in court and behave in a manner that is dignified, patient and polite to the participants in the proceedings and other persons present in court. Judges shall demand the same conduct of participants in the proceedings and all persons present in court, as well as of court staff.

Article 12. Rules of conduct in the exercise of organisational and administrative powers

1. A judge's professional activities shall include not only performing duties relating to the judicial examination of the case and making decisions but also other tasks and powers, including of an organisational and administrative nature, which are related to the judge's activities. Furthermore, the performance of judicial duties shall take priority over other types of activity.

2. In their professional activity, judges who hold organisational and administrative powers in relation to other judges – court presidents (or deputy court presidents) – shall not only perform duties relating to the dispensation of justice but shall also conscientiously exercise the administrative powers conferred on them, maintain a high level of professional expertise in the sphere of judicial administration and help other judges and court staff to perform their judicial duties in a more effective manner.

3. In the exercise of their organisational and administrative powers, court presidents (or deputy court presidents) shall not allow any actions (or omissions) which compromise the independence

of judges, exert pressure on them or employ other administrative methods aimed at influencing judges' activities in the dispensation of justice.

4. Insofar as the dispensation of justice is impossible without detailed organisation of the work of the court employees, failure to properly organise the work of the court and its apparatus undermines trust in the court and diminishes the authority of the judiciary. Court presidents (or deputy court presidents) shall be bound to take all necessary measures to ensure that judges perform their duties in a timely and effective manner, including measures of an organisational, financial, material, social and domestic nature.

5. Court presidents shall ensure that the workload is equally distributed among judges and court staff.

6. Court presidents shall make conscientious use of their right to resolve staffing issues, avoiding unjustified appointments, patronage or nepotism. In the exercise of their organisational and administrative powers, court presidents shall be civil and restrained towards other judges and subordinates, be tolerant of criticism of their actions and shall refrain from engaging in any victimisation, direct or indirect, in response to criticism of them. Neither improper patronage (unmerited rewards, unjustified unscheduled promotions or other acts not dictated by the needs of the service) nor connivance (failure to take steps regarding an omission or infringement committed in official activities, failure to respond to misconduct) shall be permitted.

7. Judges shall be entitled to require judicial assistants, courtroom secretaries and other court staff to observe the general principles of conduct for state civil servants as defined by civil service regulations, to maintain a high professional standard and to observe the appropriate rules of ethical conduct and the prohibitions, restrictions and obligations laid down in the legislation on the state civil service of the Republic of Tajikistan.

8. Judges shall not order or instruct court staff to carry out acts which would be considered as violating the Code of Judicial Ethics were such acts to be carried out by the judges themselves.

Article 13. Relations with the media

1. In order for judicial activity to be effective, the public must have confidence in that activity and a proper understanding of the legal reasons for the court decisions taken. In order to ensure that the public is informed of the activities of the courts in an objective and transparent manner, judges shall co-operate with representatives of the media. Since this not only helps to develop citizens' awareness of the law, to build trust in the courts and to increase the authority of the justice system, but also helps the media to perform an important social function in informing citizens about any socially significant events.

2. In coverage of judicial activities in the media, judges shall show prudence and shall refrain from commenting on the merits of cases in which no final judicial decision has yet been taken. This shall not preclude the right of a judge to provide information about the procedural stages of a case. With respect to a case which has been tried, judges may provide verbal or written explanations concerning the judicial decision taken.

3. Judges may exercise restraint and be correct when commenting on the decisions of their colleagues. Judges may provide clarification or make comments on a decision taken by them, express an opinion on existing practice as regards application of the rules of substantive and/or procedural law. Within the judicial community judges may express disagreement with the conduct of colleagues for the purpose of remedying shortcomings in the sphere of judicial proceedings and preventing and eliminating violations of the principles of the public/transparent nature of judicial proceedings, as enshrined in constitutional and international law.

4. Where a judge's activities are portrayed in the media in such a way as to create a distorted picture of the work of the courts and judges, the decision as to how to respond to such actions on the part of the media shall be taken by each judge independently, using the legally prescribed remedies available to them as a citizen. A personal complaint made by a judge to the law enforcement agencies in order to protect their honour and dignity or to a media outlet for the purpose of replying publicly to criticism shall be appropriate where other remedies have been exhausted or recourse to them does not appear possible.

5. In those instances where, as a result of unfounded media criticism of a judge's actions, the authority and impartiality of the justice system are liable to suffer, it shall be preferable for the press services of the court and/or the organs of the council of justice and the organs of the judicial community to respond to the criticism by publishing comments in the media.

IV. CHAPTER 4. PRINCIPLES AND RULES GOVERNING THE CONDUCT OF JUDGES IN EXTRAJUDICIAL ACTIVITIES

Article 14. Principles for engaging in extrajudicial activities

1. In extrajudicial activities and off-duty relations, judges shall avoid anything that might diminish the authority of the judiciary or cast doubt on their impartiality and fairness.

2. Judges may engage in various types of extrajudicial activity, including research, educational, creative, social, voluntary or other activity, and take part in various public events unless this contravenes the legislation on courts of the Republic of Tajikistan or is prejudicial to the interests of the justice system.

3. Judges shall not engage in types of extrajudicial activity or participate in public events which create obstacles preventing the judge from performing their professional duties, adversely affect the independence and impartiality of the judge, result in frequent applications for the judge to be removed from a case or for self-disqualification or exceed the limits of the restrictions imposed by the constitutional law of the Republic of Tajikistan "On courts of the Republic of Tajikistan".

Article 15. Participation in activities related to the development of the law and legislation

1. Judges may participate in measures aimed at developing law and improving legislation, the judicial system and justice.

2. Judges may present public reports and lectures, participate in public hearings, academic forums and conferences, write articles and books, engage in research and teaching activity, including in return for a fee, and likewise engage in other types of activity related to the sphere of law, legislation and justice, unless this conflicts with the legislation on the status of judges.

Article 16. Restrictions related to the practice of law

1. Judges may not practise as defence lawyers or other law professionals or provide legal services during the period in which they hold the office of judge. Judges may, however, represent themselves in judicial bodies and, in the case of legal representation, other persons as well, provide consultation and other legal assistance to members of their family.

2. The restrictions stipulated in paragraph 1 of the present article shall apply to retired judges, unless otherwise provided by law.

Article 17. Participation in public activities

1. Judges may participate in public activities, provided that they do not compromise the authority of the court and the proper performance by the judge of their professional duties.

2. Judges may be members of non-profit non-governmental, including professional, charitable, educational and other similar organisations, subject to compliance with the restrictions provided for in paragraphs 3, 4 and 5 of the present article.

3. Judges shall refrain from consulting the organisations referred to in paragraph 2 of the present article, and from providing them with legal assistance regarding matters which may become the subject of judicial proceedings.

4. In order to prevent a possible conflict of interest, judges who are members of non-profit non-governmental organisations shall comply with the requirement prohibiting them from acting as counsel or representative in the cases of natural persons or legal entities.

5. Judges shall not participate in fund-raising for the benefit of a non-governmental organisation or incite members of the organisation to participate in fund-raising if such incitement might be interpreted as coercion or as constituting in essence an additional means of increasing funding, and shall likewise refrain from exploiting or allowing others to exploit the judge's official authority for those purposes.

Article 18. Interaction with state authorities and local authorities

1. Judges may engage in interaction with legislative and executive authorities and also local authorities regarding questions of law, legislation, the judicial system and court practice provided that this is perceived as expressing their own views based on personal experience and expertise in their specialist field, while avoiding anything that might cast doubt on their independence and impartiality or cause them to be influenced by officials of the said authorities.

2. Judges shall refrain from making public statements, judgments and assessments with regard to the activities of state authorities and local authorities, and of the heads of those authorities.

Article 19. Restrictions related to participation in entrepreneurial activities

1. Judges may not engage in entrepreneurial activities personally or via authorised representatives, and this includes participation in the administration of a commercial organisation, irrespective of its form of ownership.

2. Judges may act as executors of wills or other authorised representatives solely in respect of the property or person of members of their families. When exercising the power of an authorised representative, judges shall act within the limits that would apply were they to act in such capacity on their own behalf.

Article 20. Remuneration received in connection with the performance of extrajudicial activities

Judges may receive remuneration and reimbursement of expenses for carrying out extrajudicial activities, provided that this does not conflict with the legislation on courts of the Republic of Tajikistan and provided that the source of these payments does not give the appearance of influencing the judge in the performance of their professional duties, and provided that the amount of the judge's remuneration is commensurate with the amount of remuneration received by other persons for similar activity, and does not exceed reasonable limits, and in particular does not exceed the amounts of daily remuneration received by the judge for carrying out their professional activity.

Article 21. Restrictions related to participation in political activity

1. Judges shall refrain from participating in political activity.

2. Judges shall not: be a member or leader or hold any post whatsoever in any political organisation whatsoever; actively support a political organisation or candidate standing for election or make public statements in support of or against a candidate standing for election; participate in fund-raising, pay contributions or provide financial support for a political organisation or candidate, or attend an event sponsored by a political organisation or candidate; publicly express their political views, participate in processions and demonstrations of a political nature or in other political events.

Article 22. Freedom of expression

1. Every judge shall have the right to freely express their opinion. This right shall include the freedom to adhere to one's views and to receive and disseminate information and ideas without

any interference whatsoever on the part of the public authorities and irrespective of state boundaries.

2. Judges shall exercise their right to freedom of opinion in a manner compatible with the restrictions placed on them by virtue of their status. In so doing, they shall show restraint in all circumstances where the authority of the court and the impartiality of the justice system might be called into question. Judges shall refrain from making public statements or comments which might be prejudicial to the interests of the judiciary or to their independence and impartiality.

Article 23. Participation in professional organisations

1. Judges shall have the freedom to create judges' associations or other professional organisations and the right to join them in order to protect their interests and the interests of justice, improve the status of judges or occupational training or preserve their independence as judges.

2. Judges' professional organisations, participation in which shall be voluntary, shall promote the protection of rights afforded to judges in accordance with their status, vis-à-vis state authorities involved in the adoption of decisions affecting the judicial system and the status of judges.

3. The opinion of judges on matters relating to changes in their status and the determination of the conditions concerning their remuneration and welfare provision shall be heard at sittings of bodies of the judicial community.

V. CHAPTER 5. FINAL PROVISIONS

Article 24. Entry into force of the Code of Judicial Ethics

1. The Code of Judicial Ethics shall enter into force from the date on which it is approved by the Conference of Judges of the Republic of Tajikistan.

2. The Code of Judicial Ethics approved by the Conference of Judges of the Republic of Tajikistan on 9 October 2004 shall be declared null and void.