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

**DRAFT AMENDMENTS**

**TO THE CONSTITUTIONAL LAW ON THE STATUS OF JUDGES,  
CURRENT WORDING OF THE CONSTITUTIONAL LAW  
AND RELATED AMENDMENTS TO THE LAW  
ON JUDICIAL SELF-GOVERNANCE BODIES,  
THE CIVIL PROCEDURE CODE AND THE CRIMINAL CODE  
OF THE KYRGYZ REPUBLIC**

## 1. Draft Amendments to the Constitutional Law “On the Status of Judges of the Kyrgyz Republic”

Draft

### CONSTITUTIONAL LAW OF THE KYRGYZ REPUBLIC

#### “On introducing amendments to the Constitutional Law of the Kyrgyz Republic ‘On the Status of Judges of the Kyrgyz Republic’”

##### Article 1.

Introduce the following changes to the Constitutional Law of the Kyrgyz Republic “On the status of judges of the Kyrgyz Republic” (Bulletin of Jogorku Kenesh of the Kyrgyz Republic, 2008, # 6/2, Art. 605):

1. Part 2 of Article 6 shall be reworded as follows:

*“2. The irreproachability of judge’s conduct shall mean a lack of evidence of violations of requirements set before the judge in accordance with Article 5-1 of the present Constitutional Law that are confirmed by the Council of Judges.”*

2. In Article 14:

- part 2 after the word ‘Judge’ shall be supplemented with the words “*including after the termination of powers of the judge and dismissal of the judge from office,*”;

- declare part 3 to no longer be in force.

3. In Article 26:

- item 8 of part 2 shall be reworded as follows:

*“8) making a systematic or gross disciplinary offense confirmed by the decision of the Council of Judges;”*

- the following item 12 shall be added:

*“12) identifying the falsity of data, provided by him during participation in a competitive selection for filling a vacant position of a judge.”*

4. In Article 28:

- second and third paragraphs in part 1 shall be reworded as follows:

*“A disciplinary offense is a wrongful act or an omission by the judge which does not correspond to the requirements of irreproachable conduct, established by the present Constitutional Law and the provisions of the Code of Honor of Judges.*

*Gross or systematic violation of rules of conduct in off-duty activities, set by the Code of Honor of Judges is also a basis for bringing the judge to disciplinary liability.*

*A judge can be subject to disciplinary punishment not later than two years from the day of committing an offense.*

*The period of limitation for imposing disciplinary punishment is put on hold from the moment of initiating disciplinary proceedings and until the Council of Judges takes a decision, but not for more than three months.”*

- Part 2 and 3 shall be reworded as follows:

*"2. The following measures of disciplinary liability can be applied to the judge:*

- 1) disciplinary action in the form of admonition;*
- 2) early dismissal of judge from held office.*

*When choosing measures of disciplinary liability, the Council of Judges takes into account:*

- the scope and nature of offense.*
- ;*
- the consequences that came about;*
- the form of judge's guilt;*
- other consequences which aggravate or mitigate liability.*

*The list of circumstances, which aggravate or mitigate liability, is established by the Council of Judges.*

*3. An admonition can be removed by the Council of Judges not earlier than after 6 months of its imposition.*

*If, in the course of one year after the imposition of disciplinary admonition, the judge has not committed any new disciplinary offense he is considered as not having been brought to disciplinary liability."*

*- part 5 and 6 shall be reworded as follows:*

*"5. Early dismissal from the position can be applied as an extreme measure of disciplinary punishment for systematic or gross violations of requirements to the irreproachable conduct of judges.*

*Committing a third disciplinary offense by the judge, given the presence of two unremoved admonitions, within the course of one year is a systematic violation of requirements to the irreproachable conduct of the judge.*

*A gross violation of requirements to the irreproachable conduct of the judge is a single serious violation of requirements which is incompatible with the high title of the judge, stipulated by part 1 of Article 5-1 of the present constitutional Law.*

*A decision on the early dismissal of judges of the Supreme Court, the Constitutional Chamber of the Supreme Court is taken by Jogorku Kenesh upon the recommendation of the President, which is based on the decision of the Council of Judges on the early dismissal of a judge from held position.*

*A decision about an early dismissal of judges of a local court is taken by the President on the basis of a decision by the Council of Judges on the early dismissal of the judge from held position.*

*6. The Council of Judges, taking into account the insignificance of a disciplinary offense terminates disciplinary proceedings and transfers materials for consideration to an assembly of judges in an appropriate court."*

*5. In Article 29:*

*- part 2 shall be reworded as follows:*

*"2. The Disciplinary Commission under the Council of Judges is entitled to initiate disciplinary proceedings on received complaints not later than one month. Upon initiation of disciplinary proceedings, an internal investigation is conducted by the Disciplinary Commission of the Council of Judges within a period of one month.*

*Refusal to initiate disciplinary proceedings may be appealed to the Council of Judges within two months from the date of the decision on refusal. Appeal is considered by the Council of Judges within a period of one month.*

*Institution of disciplinary proceedings may be denied if:*

- there are no grounds for bringing judges to disciplinary liability*

- the period of disciplinary liability stipulated by part 1 of Article 28 of the present Constitutional Law has expired;
- in case of a withdrawal of complaint or submission against the judge;
- in case of contestation of a judicial act.

Internal investigation includes:

- questioning and solicitation of explanations or other evidence from the judge against whom the complaint is filed, questioning and obtaining additional explanations and evidence from the complainant, interviewing witnesses, investigating materials of a case considered by the judge, if the complaint is filed with regard to the judge's actions, committed by him while considering a particular case;
- any other activities for collecting comprehensive information on the causes and circumstances that serve as a basis for filing the complaint.

Following the results of an internal investigation a conclusion is elaborated and sent to the Council of Judges for consideration

- declare part 3 to no longer be in force.

- part 4 shall be reworded as follows:

*"4. The meeting of the Council of Judges on disciplinary proceedings shall be conducted openly, except in case of satisfying an appeal for a closed hearing by the judge with relation to whom the disciplinary proceedings are considered,*

*Based on the results of a review of the conclusion of the Disciplinary Commission and upon finding a disciplinary offense in actions or omissions committed by the judge, the Council of Judges takes one of the decisions stipulated by Article 28 of the present Constitutional Law.*

*If actions or omission by the judge do not constitute a disciplinary offense, the Council of Judges makes a decision on terminating disciplinary proceedings.*

*Upon discovering elements of crime in actions or omissions by the Judge the Council of Judges submits materials of disciplinary proceedings to the Prosecutor General".*

- supplement with part 6 that reads as follows:

*"6. In case of a violation of the procedure of bringing a judge to disciplinary responsibility the decisions by the Council of judges can be appealed in court. Appeals are submitted not later than 10 days from the moment of making a decision. Decisions of Jogorku Kenesh, the President about the early dismissal of a judge of the Supreme Court, the Constitutional Chamber of the Supreme Court and local court are not subject to appeal".*

6. Supplement part 6 with the following Article 29-1 :

*"Article 29-1. Disciplinary Commission under the Council of Judges.*

*-Disciplinary commission under the Council of Judges (hereinafter – Disciplinary commission) is formed by the Council of Judges for a period of terms of office of the Council of Judges taking into account gender representation of not more than 70% of individuals of the same gender in the amount of 9 members, out of which 5 are judges and four – representatives of the civil society.*

*Jogorku Kenesh, the President propose one representative from the civil society; educational, scientific establishments, Bar association and other noncommercial organizations – two representatives.*

*2. The Council of Judges within one month from the moment of its election publishes information about the nomination of candidates to the Disciplinary Commission in mass media.*

*Not later than 30 days from the day of publishing the announcement on the nomination of candidates, suggestions on candidates to the Disciplinary Commission are submitted to the Council of Judges.*

3. *Members of the Council of Judges, the Council for the selection of judges, deputies of Jogorku Kenesh should not be included in the Disciplinary Commission. The Council of Judges elects the main and reserve members of the Disciplinary Commission.*

4. *Proposals on the representatives of the judicial power in the composition of the Disciplinary Commission are submitted by an assembly of judges. Candidates may include one judge of the Supreme Court and the Constitutional Chamber of the Supreme Court. Chairpersons of the Supreme Court and the Constitutional Chamber, local courts and their deputies can not be nominated as candidates.*

*Members of the Disciplinary Commission are elected by the Council of Judges from among judges suggested by an assembly of judges. The ten candidates who gained the most number of votes of the Council of Judges are deemed elected to the Disciplinary Commission; out of them the first 5 candidates who gained the most number of votes are included in the main body and the other 5 to the reserve body.*

*Replacement of exiting members of the Disciplinary Commission from the number of judges is made from the reserve body in alphabetical order of last names of its members.*

5. *Candidates from the civil society are nominated to the Disciplinary Commission from educational, scientific establishments, Bar association and other non-commercial organizations with the exception of political parties. One establishment or organization is entitled to suggest one candidate to become a member of the Disciplinary Commission.*

*A decision, taken by an establishment or non-commercial organizations and formalized in accordance with its statutory documents is directed to the Council of Judges together with a copy certificate of registration of legal entity.*

*Members of the Disciplinary Commission from the civil society, in both the main and reserve composition, are elected through lot drawing. Replacement of exiting members of the Disciplinary Commission from among the civil society is done from the reserve also through lot drawing. The procedure for lot drawing is determined by the Council of Judges.*

*A person who:*

- holds citizenship of the Kyrgyz Republic;*
- has reached the age of 35 years;*
- has higher legal education and work experience in the field of not less than 10 years;*
- is not in state or municipal service;*
- has not previously served in law enforcement bodies;*
- does not belong to any political party;*
- has an impeccable reputation and is respected in the society;*
- has no previous convictions, including served and dropped ones.*

*is eligible to be a candidate from among representatives of the civil society to the Disciplinary Commission.*

6. *The meeting of Disciplinary Commission is considered legal upon the presence of the majority from the total number of members of the Disciplinary Commission. At the first organizational meeting, members of the Disciplinary Commission elect a chairperson and his deputy. The decision of the Disciplinary Commission is made by the majority from the total number of members of the Disciplinary Commission.*

*The procedure for organizing the work of the Disciplinary Commission is set by a Regulation approved by the Council of Judges.*

7. *Representatives of the civil society are reimbursed for any expenses related to their work in the Disciplinary Commission according to the procedure established by an authorized state body."*

7. In Article 30:

- in part 1: remove words 'on the issue' and "and prosecutors authorized by them with a status not lower than that of prosecutors of regions, cities of Bishkek and Osh";

- in part 2 of Article 30 replace the word 'legislation' with the words 'of law';

- part 5 shall be reworded as follows:

*“The submission to obtain consent to bring the judge to criminal or administrative liability, imposed in a judicial order, is considered in the Council of Judges not later than ten days after the day of submission, at a closed hearing with a mandatory participation of Prosecutor General or his deputy.*

*Open meeting is allowed on the basis of an appeal by the judge against whom the submission was made.*

*The basis and the procedure for making a decision on giving consent or on refusal of consent for bringing the judge to criminal or administrative liability, applied in judicial order is determined by the Council of Judges.”;*

- Part 6 after words *“The Council of Judges after having established that bringing the judge to criminal or administrative liability“* shall be supplemented with the words *“imposed in a judicial order,”*.

## **Article 2.**

The present Constitutional Law comes into force after 10 days from the day of its official publication.

**President of the Kyrgyz Republic,  
A. Atambaev.**

## **2. 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 as bearers of judicial power**

1. The judicial power in the Kyrgyz Republic shall be administered only by courts represented by judges:

of the Supreme Court of the Kyrgyz Republic (hereinafter referred to as the Supreme Court);

of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (hereinafter referred to as the Constitutional Chamber of the Supreme Court);

of local courts of the Kyrgyz Republic (hereinafter referred to as the local courts);

of specialized courts established by law.

2. The judges shall be persons who are entrusted with powers to administer justice pursuant the procedures envisaged in the Constitution and the present constitutional law and who perform their duties on a professional basis.

3. Manifestation of disrespect to court or to judges shall result in liability envisaged by law.

#### **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 official capacity, 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, 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 courts supervise the enforcement of judicial acts that have come into legal force.

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

Failure to execute judicial acts, 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. Status of a judge**

1. The status of a judge shall be defined by enhanced requirements towards its acquisition and termination, establishment of high standards in respect of the personality of the holder, qualification and conduct, increased responsibility for improper exercise of the judicial powers, material and social benefits as well as other guarantees corresponding to the high status.

2. A person shall acquire the status of a judge since the day of accession to office of a judge in a corresponding court; such status shall be terminated since the day of publication of an act of dismissal of a judge and termination of powers of a judge in accordance with the present constitutional law. A judge shall be deemed in office since the moment of swearing an oath.

3. The judges of all courts of the Kyrgyz Republic shall have the uniform status, the difference between them shall be manifested only by powers envisaged in the legislation on organization and procedural activity of relevant courts.

4. Judges shall be assigned classification grades depending on the position they hold, their work record as a judge as well as other circumstances provided for in the law.

5. The differences in salaries depending on the position held, the amounts of benefits paid upon retirement or termination of the status of a judge as well as other differences established in the present constitutional law depending on the position held, work record and other circumstances, shall not mean a change in the status.

#### **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 honor".

2. The oath taken by the judges of the Supreme Court and Constitutional Chamber of the Supreme Court shall be pronounced at a sitting of the Jogorku Kenesh of the Kyrgyz Republic (hereinafter - 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. A judge of a local court transferred from one local court to another, shall not swear an oath.

#### **Article 5-1. Requirements towards a judge in accordance with his / her status**

1. A judge should:

1) strictly comply with the Constitution and the laws of the Kyrgyz Republic as well as observe the oath of a judge;

2) observe the requirements of the Code of honor of judges of the Kyrgyz Republic as well as the ethics of the civil servants as envisaged by law, avoid any circumstances which may discredit the authority and the dignity of a judge;

3) confront any attempts of unlawful intervention in activities related to the administration of justice;

4) observe secrecy of deliberations of judges;

5) declare his / her assets and incomes in accordance with the legislation of the Kyrgyz Republic;

6) observe the working procedures established in the relevant court.

2. A judge shall not have the right:

1) to be an attorney or representative (except for cases of representation at law) for the cases of private persons or legal entities in courts as well as in other state agencies;

2) to allow public statements on a matter which is subject to consideration in court until an act of court on such matter comes into legal force;

3) to disclose or use for purposes not related to the exercise of the powers of a judge the information which is referred to the information with restricted access in accordance with the law or privileged information, which might become available to him / her in the course of exercise of the powers of a judge;

4) to use gifts received in the course of protocol and other official events. Such gifts are deemed to be the property of the state and shall be transferred under a handover act to the court where a judge holds a position of a judge except for cases envisaged in the law. A judge who handed over a gift received in the course of a protocol or other official event, shall have the right to buy it back in accordance with the procedures envisaged in the normative regulatory acts of the Kyrgyz Republic;

5) to accept without permission of the Council of Judges of the Kyrgyz Republic (hereinafter referred to as the Council of Judges) honorary and special (except for scientific and sports) degrees, awards and other decorations of foreign countries, political parties, other public associations and other organizations;

6) to leave on business trips outside the Kyrgyz Republic at the expense of private persons and legal entities except for business trips undertaken in accordance with the legislation of the Kyrgyz Republic, international agreements of the Kyrgyz Republic or bilateral arrangements between the Supreme Court, the Constitutional Chamber of the Supreme Court and the Council of Judges with the relevant courts of foreign countries, international and foreign organizations;

7) to be member of managing bodies, council of trustees or supervisory boards as well as other bodies of foreign non-commercial non-governmental organizations operating on the territory of the Kyrgyz Republic as well as structural subdivisions thereof, unless otherwise provided in the legislation of the Kyrgyz Republic, international agreements of the Kyrgyz

Republic or bilateral arrangements between the Supreme Court, the Constitutional Chamber of the Supreme Court with the relevant courts of foreign countries, international and foreign organizations;

8) to participate in strikes and rallies;

9) to be engaged in entrepreneurial activity as well as to combine the position of a judge with the activity as a deputy or office in state agencies or local self-governance bodies as well as other paid work except:

- teaching, scientific and creative activity to the extent that it does not impede the execution of duties of a judge;

- participation in the activity of bodies of judicial self-regulation, the Council on selection of judges of the Kyrgyz Republic (hereinafter referred to as the Council on selection of judges).

3. Judges may not be members of a political party as well as speak in support or against any political party.

### **Article 5-2. Fundamental rights of a judge**

1. A judge shall have the following rights pursuant the procedures and on the basis of provisions envisaged in the present constitutional law and other laws adopted on the basis thereof:

to transfer (rotation) to other court;

to be elected president or deputy president of a court as well as in the bodies of judicial self-regulation and the Council on selection of judges;

to improve his / her qualification;

to resignation;

to claim disclaimer or recognition of being groundless in respect of any accusations against him / her of violation of provisions of article 6 of the present Constitutional Law;

to assistance from the state and the bodies of judicial self-regulation in implementation of his / her lawful interests;

to assurance of guarantees envisaged in the present Constitutional Law.

2. The list of rights in part 1 of the present article shall not limit other rights of a citizen in the position of a judge as envisaged in the Constitution of the Kyrgyz Republic to its citizens provided the implementation of such rights does not contradict the high status of a judge.

### **Article 6. Irreproachability of conduct of judges**

1. A judge shall hold his / her position and retain the powers for as long as his / her conduct is irreproachable.

2. Irreproachability of the judge's conduct means a lack of confirmed or recognized by the Council of Judges facts of violations of requirements, demanded from the judge in accordance with Article 5-1 of the present Constitutional Law.

### **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 identity certifications.

Identity certifications for the judges of the Supreme Court and the Constitutional Chamber of the Supreme Court shall be issued by the Toraga (Speaker) of the Jogorku Kenesh.

Identity certifications of the president and deputy president of the Supreme Court and the Constitutional Chamber of the Supreme Court shall be issued by the Toraga (Speaker) of

the Jogorku Kenesh on the basis of a decision of the meeting of judges of the Supreme Court and the Constitutional Chamber of the Supreme Court.

Identity certifications of the president and deputy president of the local court shall be issued by the President of the Kyrgyz Republic (hereinafter referred to as the President) on the basis of a decision of the meeting of local court judges.

Identity certification of a local court judge shall be issued by the President.

#### **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.

3. Classification categories shall be assigned to judges by the President of the Kyrgyz Republic at the proposal of 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 Supreme Court, Constitutional Chamber of the Supreme Court.

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

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;
  - 7) the right to retirement
2. Guarantees of the independence of judges provided for in the Constitution of the Kyrgyz Republic and the present Constitutional Law may not be abolished in any circumstances.

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

1. Any interference in the administration of justice shall be prohibited. Persons guilty of influencing a judge, shall be liable in accordance with the 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 Constitutional 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 Constitutional law.

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

1. A judge shall be entitled to the right of immunity and cannot be detained and arrested, be subject to search of premises or person unless when caught at the scene of the crime. A judge detained on suspicion of having committed a crime or by any other reason or forcibly delivered to any law enforcement agency, should his/her identity as a judge was not known at the moment of detention, shall be subject to immediate release after identification.
2. Criminal and administrative liability procedures may not be initiated against a judge for unlawful actions committed by him / her during the performance of his / her judicial powers

may not be initiated except in accordance with procedures envisaged in the present constitutional law.

3. 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 of electing judges of the Supreme Court and the Constitutional Chamber of the Supreme Court, electing and dismissal of the president and deputy president of the Supreme Court.**

#### **Article 15. Requirements towards the judges of the Supreme Court and the Constitutional Chamber of the Supreme Court and their election procedure**

1. Any citizen of the Kyrgyz Republic who is no younger than 40 years of age and no older than 70 years of age, has a higher legal education and at least ten years of work record in a legal profession, including five years as a judge may be elected judge of the Supreme Court.

Any citizen of the Kyrgyz Republic who is no younger than 40 years of age and no older than 70 years of age, has a higher legal education and at least fifteen years of work record in a legal profession, having the command of the state and official language, may be elected judge of the Constitutional Chamber of the Supreme Court.

1-1. The period of working in positions stipulated for judges of local courts and established by part 4 of Article 17 of the present Constitutional Law is included as part of work experience in a legal profession required for taking the position of the judge of the Supreme Court and the Constitutional Chamber of the Supreme Court.

2. Judges of the Supreme Court, including judges of the Constitutional Chamber of the Supreme Court, shall be elected by the Jogorku Kenesh upon presentment of the President based on the proposal of the Council on selection of judges in view of representation of not more than seventy percent of persons of the same gender. Judges of the Supreme Court shall be elected and stay in their position until they reach the age of mandatory retirement set by the Constitution; Judges of the Constitutional Chamber of the Supreme Court shall be elected for a period of 7 years for the first time, and subsequently – until they reach the age of retirement set by the Constitution.

3. The selection of candidates for a vacant position of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court shall be effected by the Council on selection of judges on the competitive basis.

The competition for a vacant seat of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court shall be conducted by means of a competitive selection in the order established by Article 21 of the present Constitutional Law.

4. The Council on selection of judges shall no later than sixty days prior to reaching the age limit by a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court or no later than twenty days since the date of early termination of powers of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court or his/her early dismissal shall announce a competition for a vacant position of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court.

5. The candidate shall submit an application for participation in the competition to the Council for the selection of judges within ten days since the publication date of the announcement.

The following documents shall be attached to the application:

- 1) a copy of the passport;
- 2) a certified copy of the diploma of higher legal education;

3) certified copies of service record and other documents confirming candidates' work record in legal profession;

4) a medical health certificate issued within one year period before the participation in the competition.

The application may be accompanied by other documents (references and recommendations) concerning the personality of the candidate.

Acting judges of the Kyrgyz Republic shall have the right to participate in the competitive selection of judges of the Supreme Court and the Constitutional Chamber of the Supreme Court by submitting applications.

Personal files of judges of the Kyrgyz Republic, who submit their applications for participation in the competition, shall be forwarded to the Council on selection of judges by the administrations of the Supreme Court, the Constitutional Chamber of the Supreme Court and the authorized state agency on ensuring the activity of local courts (hereinafter referred to as the authorized agency).

6. After completing the receipt of applications, the Council for the Selection of Judges shall, within ten days and based on the outcomes of a competitive selection, submit to the President the candidates for election to the position of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court.

6-1. The President is entitled to return the materials on a nominated candidate for the position of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court with a justification of his decision. If the Council for the Selection of Judges does not identify any circumstances that obstruct the appointment of a candidate to the position of the judge of the Supreme Court and the Constitutional Chamber of the Supreme Court, the Council for the Selection of Judges can repeatedly nominate the same candidate to the President for a further presentment by the President in the course of 10 work days to Jogorku Kenesh for appointment to the position of the judge of the Supreme Court and the Constitutional Chamber of the Supreme Court, The decision on a repeated nomination of a candidate for the position of the judge of the Supreme Court and the Constitutionals Chamber of the Supreme Court is taken by a majority of not less than two thirds of votes from the total number of members of the Council for the Selection of Judges.

If the Council for the Selection of Judges agrees with the circumstances set out by the President, the Council for the Selection of Judges will announce a new competition.

7. The President shall make a presentment to the Jogorku Kenesh on the candidate for election to the position of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court.

The Jogorku Kenesh shall decide upon the candidate no later than two weeks since the receipt of the presentment.

8. Should the Jogorku Kenesh fail to elect the candidate for the position of a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court, then the President upon the proposal of the Council for the Selection of Judges shall present another candidate on the basis of a new competitive selection.

The Jogorku Kenesh shall consider the presentment of the President in respect of a new candidate to be elected a judge of the Supreme Court and the Constitutional Chamber of the Supreme Court and shall make a decision no later than two weeks after the receipt of the presentment.

9. The following persons may not be judges of the Supreme Court and the Constitutional Chamber of the Supreme Court:

1) those having convictions, including the one expunged or removed from the records;

2) those earlier dismissed from the position of a judge of the Kyrgyz Republic due to exceptionable conduct;

3) those dismissed from the law enforcement agencies due to the discreditation of the rank of law enforcement officer or whose license to act as a defense lawyer was cancelled due to circumstances envisaged in paragraphs 8 and 9 of article 10 of the Law of the Kyrgyz Republic "On advocacy";

4) those having the citizenship of a foreign country.

#### **Article 16. Procedure of election and dismissal of the president and deputy presidents of the Supreme Court**

1. The judges of the Supreme Court shall elect from among themselves the president and the deputy presidents of the Supreme Court for the period of three years.

One and the same judge may not be elected president or deputy president of the Supreme Court for more than two consecutive terms.

2. Election and dismissal of the president and deputy presidents of the Supreme Court shall be subject to procedures envisaged in the legislation of the Kyrgyz Republic.

3. Election and dismissal of the chairman and deputy chairman of the Constitutional Chamber of the Supreme Court shall be subject to procedures envisaged in the constitutional law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic".

### **Chapter 4.**

#### **Procedure for election 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 30 and no older than 65 years of age and has a higher legal education with no less than five years of experience in the legal profession may be a judge of a local court.

2. The following additional requirements shall be applied in respect of persons seeking the position of a local court judge for the first time but not having the work record as a judge or persons having work record as a judge but who have an over ten years' break period between the date of submission of the application to participate in the competition and the date of dismissal from the position of a judge or termination of judicial powers: they have to present a certificate attesting the passage of a qualification exam (hereinafter referred to as the exam). Such an exam is passed after the completion of full-time or extramural tuition of applicants. The certificate is valid for a period of three years. The training program, the membership of the examination commission as well as the procedure of passing the exam are to be approved by the Council of judges.

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

1) those having convictions, including that expunged or removed from the records;  
2) those earlier dismissed from the position of a judge of the Kyrgyz Republic due to exceptionable conduct;

3) those dismissed from law enforcement agencies due to the discreditation of the rank of law enforcement officer or whose license to act as a defense lawyer was cancelled due to circumstances envisaged in paragraphs 8 and 9 of article 10 of the Law of the Kyrgyz Republic "On advocacy";

4) those having the citizenship of a foreign country.

4. The following positions shall be taken into account for the work record in the legal profession required for the position of a judge:

- deputies of the Jogorku Kenesh of the Kyrgyz Republic with a higher legal education;
- employees of the legal department of the Apparatus of the President, the plenipotentiary representative of the President in the Jogorku Kenesh;
- employees of legal units, as well as departments of committees in charge of law and order, human rights, constitutional legislation, state structure as well as judicial and legal issues of the Administration of the Jogorku Kenesh as well as consultants to the deputies of the Jogorku Kenesh with a higher legal education;

- employees of the legal department and department in charge of defense and law enforcement agencies in the Office of the Government of the Kyrgyz Republic (hereinafter referred to as the Government) and the permanent representative of the Government in the Jogorku Kenesh;
- employees of the administration of the Supreme Court;
- employees of the administration of the Constitutional Chamber of the Supreme Court;
- employees of administrations of local courts;
- employees of the authorized state agency;
- employees of prosecution bodies;
- employees of the system of justice;
- employees of legal and investigation units of internal affairs agencies;
- employees of legal and investigation units of the National Security Service;
- employees of legal and investigation units of the State Customs Service and the Financial Police;
- employees of legal units of ministries, state committees and administrative agencies as well as subordinate divisions thereof;
- employees of legal units of the administrations of state commissions and funds of the Kyrgyz Republic;
- employees of legal units of the apparatuses of local public administrations and local self-governance bodies;
- employees of the administration of the Ombudsman (Akyikatchy) of the Kyrgyz Republic who have higher legal education;
- employees of legal units of legal entities irrespective of their form of ownership;
- defense lawyers of the Kyrgyz Republic;
- notaries of the Kyrgyz Republic;
- academic staff as well as academic secretaries of higher educational establishments dealing with the issues of law.

At the same time, the period of working in positions that mandatorily require higher legal education is counted as part of work experience in the profession.

#### **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 Council on selection of judges on a competitive basis.

2. Replacement to fill a vacant post of local court judge shall be carried by means of a competitive selection.

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 specialized courts.

4. The Council for the Selection of Judges shall no later than sixty days prior to the date of reaching the age limit of a local court judge or no later than twenty days since the early termination of powers of a local court judge or his/her early dismissal from position announce a competition to fill the freed or vacant position of a local court judge. The announcement on the competition shall be posted in an official state publication as well as on the website of the Council on selection of judges.

A judge of a local court is entitled to turn to the Council for the Selection of Judges with a request for his/her appointment as a judge of a local court not earlier than eighty and not later than sixty days prior to the day of termination of his/her powers. In this case, the Council for the



Selection of Judges shall consider his/her request within a two-week period from the day of receiving the request, according to the rules stipulated by Article 21 of the present Constitutional Law. At the same time, if a candidate is not nominated for appointment as a judge of a local court, a competition for a vacant position of a judge of a local court is announced not later than five days from the day of rejecting the nomination of an acting judge. Such judge has the right to participate in other competitions for vacant positions of judges not earlier than one year from the day of the rejection of his/her nomination by the Council for the Selection of Judges.

5. When a vacancy is formed on the grounds set forth in sub-paragraphs 4, 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 Council on selection of judges no later than twenty days after the vacancy is formed.

### **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 Council on selection of judges and delivered to the authorized state agency.

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 Supreme Court and the Constitutional Chamber of the Supreme Court shall be prepared by the administrations of the Supreme Court and the Constitutional Chamber of the Supreme Court and shall be handed over to the authorized state agency.

The documents of local court judges shall be compiled by the authorized state agency.

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 Council on selection of judges and may not be less than fourteen days from the date of publication of the announcement.

Documents submitted after the expiry of the deadline established under the present article shall not be accepted.

The authorized state agency' 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 Council on selection of judges 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 Council on selection of judges.

## **Article 20. Qualifying examination**

*(Ceased to be in force in accordance with the Law of the KR #6 as of January 19<sup>th</sup>, 2010)*

## **Article 21. Competitive selection**

1. The following persons are allowed to participate in a competitive selection:

- 1) acting judges;
- 2) persons who have judicial work experience and whose interval between the application to participate in the competition and dismissal from the office of the judge or termination of powers does not exceed ten years;
- 3) persons who have obtained a certificate on the basis of the examination's results.

2. A selective competition is implemented in three stages.

During the first stage, the Council for the Selection of Judges examines:

- income declarations of candidates, their spouses, close relatives;
- other information (reviews on a candidate, recommendations) confirming the irreproachability of candidate's conduct.

The Council for the Selection of Judges shall request income declarations of the candidate for the vacant position of the judge, income declarations of his/her spouse and close relatives.

Based on the results of an examination of documents during the first stage, the Council for the Selection of Judges takes a decision on permitting a candidate to participate in the second stage of a competitive selection.

The decision on permitting a candidate to participate in the second stage of the competitive selection is made by the Council for the Selection of Judges through an open voting.

A candidate is deemed admitted to the second stage of the competitive selection if the majority from the total number of members of the Council for the Selection of Judges has voted in favor of permitting him/her to participate in the second stage of the competitive selection.

3. In the second stage of the competitive selection, the Council for the Selection of Judges asks candidates:

- 1) to write a composition on a given legal topic and present it verbally;
- 2) to reply to questions on the constitutional law and proceedings, criminal, procedural-criminal, civil and procedural-civil legislation of the Kyrgyz Republic.

Legal topics and questions are determined by the Council for the Selection of Judges annually and are published on the official website of the Council for the Selection of Judges and in mass media.

After hearing the verbal presentation of compositions and answers to the questions, the members of the Council for the Selection of Judges give scores (marks) to each candidate.

All candidates who have obtained a passing score are admitted to the third stage of the competitive selection regardless of the number of vacancies for positions of judges.

A passing score is set annually by the Council for the Selection of Judges.

Candidates who have received the highest passing scores are included in the bulletin for voting.

Candidates who have not obtained a passing score have the right to participate in other competitions for vacant positions of judges not earlier than one year after the rejection of their nomination by the Council for the Selection of Judges.

4. A competitive selection for a vacant position of a judge is deemed as not having taken place, if:

1) no applications for filling a vacant position of a judge have been submitted;

2) after the first stage of the competitive selection, there are no candidates left who are vying for this vacant position of a judge.

In this case, the Council for the Selection of Judges announces a new competition.

5. If, after the results of the second stage of competitive selection, only one candidate is left for one vacant position of a judge, the third stage is not carried out and this candidate is considered as suggested for appointment or election as a judge.

6. All materials of a competitive selection are included in a personal file of a candidate. Personal files of candidates, who participated in the selection, are not returned and are kept in an authorized state body in the order established by the 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 proposed by the Council on selection of judges.

2. A proposal of a candidate for appointment as a local court judge shall be submitted to the President of the Kyrgyz Republic after the result of the competitive selection.

The president is entitled to return materials on a nominated candidate to the Council for the Selection of Judges with a justification of his/her decision within ten days of their receipt. In this case, the Council for the Selection of Judges carries out a new competition and suggests another candidate for the vacant position.

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.

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. Grounds and procedure of transfer (rotation) of a local court judge**

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

1) at his / her own will;

2) in the event of reorganization of the court or changes to the structure or staffing number of judges;

3) for the purpose of state protection of judges on circumstances beyond the control of the judge and the state;

4) in the event of participation of a local court judge in the competitive selection of candidates to a vacant position of a judge of another local court and presentment of his candidacy to the President by the Council for the Selection of Judges.

2. The transfer (rotation) of judges on the grounds envisaged in paragraph 1 part 1 of the present article shall be effected by the Council for the Selection of Judges as applications of judges are being received. Such applications are submitted by the authorized agency addressed to the Council for the Selection of Judges.

The Council for the Selection of Judges, after having reviewed an application of judges requesting a transfer (rotation), shall honor them and shall submit a proposal to the President on a transfer (rotation) of judges only in the event that there is a mutual consent of judges in respect of transfer (rotation).

A judge who was transferred from a local court to another one, shall have the right to again apply for transfer (rotation) no earlier than five years after the last transfer (rotation).

3. In the event of reorganization of a local court, changing the structure of a local court with the transfer of staff positions to other local courts, the Council of judges shall hear the opinions of judges concerning their transfer (rotation) to courts to where staff positions of judges of the reorganized court or the court with a changed structure are transferred. The Council makes a decision on transfer (rotation) of judges taking into account all circumstances and the possibility for judges to work in their new jobs.

4. The Council on selection of judges shall without delay consider the matter of transfer (rotation) for the purpose of state protection of a judge due to the circumstances beyond the control of the judge and the state. The reason for consideration of the matter shall be the appeal of the president of a relevant local court or appeal of a judge confirmed by appropriate evidence from the law enforcement agencies. The Council shall make a decision on transfer (rotation) for the purpose of state protection after having reviewed all circumstances and having defined the relevancy of the threat existing in respect of a judge.

5. The transfer (rotation) of a local court judge shall be effected for the remaining period of his / her tenure.

6. The decision on transfer (rotation) of a judge shall be made by the Council for the Selection of Judges and shall be forwarded to the President for issuance of an appropriate decree. Such decree should be signed by the President within ten days since the day of after the receipt of the decision by the President.

#### **Article 24. Procedure of electing presidents and deputy presidents of local courts**

1. Presidents and deputy presidents of local courts shall be elected at the meeting of judges of the relevant local court for the period of three years.

2. One and the same judge may not be elected president or deputy president of a local court for two consecutive terms in the same court.

3. Election and dismissal of presidents and deputy presidents of local courts shall be subject to procedures envisaged in the legislation of the Kyrgyz Republic.

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

#### **Article 25. Suspension of a judge**

1. A judge of the Kyrgyz Republic shall be suspended from his/ her office (from exercising the duties of a judge) in the event that the Council of Judges gives its consent to institution of criminal proceedings (as an accused person) or administrative proceedings imposed by a judicial procedure.

2. The Jogorku Kenesh upon proposal of the Council of judges may suspend a judge of the Supreme Court or the Constitutional Chamber of the Supreme Court from office in the event that it gives to the Prosecutor General of the Kyrgyz Republic (hereinafter referred to as the Prosecutor General) its consent to institution of proceedings against a judge as an accused person.

The President upon proposal of the Council of judges may suspend a local court judge in the event that consent is given to the Prosecutor General to institution of proceedings against a judge as an accused person.

3. The suspension of a judge from office shall not entail termination of payment of salary to the judge and other types of material and social benefits to which he / she is entitled.

4. A judge suspended from office, shall be restored in his / her position (shall be deemed as taking the office of a judge) by a body which elected or appointed him / her in case circumstances constituting the grounds for a decision of dismissal from office cease to exist.

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

1. *(Ceased to be in force in accordance with the Law of the KR #6 as of January 19<sup>th</sup>, 2010)*

2. A judge shall be subject to early dismissal from office in the following cases:

1) submission of a written application by a judge on voluntary dismissal from office;  
2) inability to exercise the powers of a judge due to state of health confirmed by the conclusion of a medical commission;

3) appointment of a judge of the Supreme Court or the Constitutional Chamber of the Supreme Court to the position of a local court judge; election of a local court judge to the position of the judge of the Supreme Court or the Constitutional Chamber of the Supreme Court;

4) transfer to another job not related to the administration of justice;

5) refusal of a local court judge to be transferred to another local court on the grounds envisaged in paragraph 2, part 1 of article 23 of the present constitutional law;

6) entry into legal force of a guilty verdict by a court in respect of a judge;

7) entry into legal force of a court verdict on application of compulsory measures of medical character in respect of a judge;

8) committing of a disciplinary misdeed incompatible with the irreproachable conduct and the high position of a judge, confirmed by the decision of the Council of judges;

9) engaging in activity incompatible with the position of a judge;

10) membership of judges in political parties and their statements in support of whatsoever political party;

11) in the event that a judge:

- is registered as a candidate for the office of President of the Kyrgyz Republic;

- is included in the registered list of a political party taking part in elections to the Jogorku Kenesh;

- is registered as a candidate to the office of a deputy in a local kenesh.

3. Judges of the Supreme Court and the Constitutional Chamber of the Supreme Court shall be subject to early dismissal from office by the majority of no less than two thirds of the total number of the deputies of the Jogorku Kenesh upon presentment of the President made in accordance with the decision of the Council of judges.

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

5. A written application by the judge to be voluntarily discharged from office may be revoked within 3 working days 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 reaching the age limit and 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 the judge are terminated by the President or the Jogorku Kenesh, accordingly. In the event of a cancellation of court judgments, stipulated by paragraphs 4 and 5 of part 1 of the present article, the powers of a judge of a local court shall be restored by the President, while the powers of the Judge of the Supreme Court and the Constitutional Chamber of the Supreme Court shall be restored by the Jogorku Kenesh.

### **Article 27-1. Resignation of a judge**

1. A resignation of a judge is judge's dismissal from office or retirement.

2. Each judge has the right to retire on his/her own wish, regardless of age. The judge is considered retired or dismissed if his conduct as a judge is irreproachable and he was dismissed on the grounds stipulated by paragraphs 1, 2, 4, 5, 11 of part 2 of Article 26 of the present constitutional Law, or if his powers were terminated on grounds stipulated in part 1 of article 27 of the present constitutional Law.

3. Judges who have resigned are issued a judge's certificate in accordance with the order established by the President.

4. A judge in resignation retains the title of a resigned judge, membership in the judicial community, guarantees of immunity for opinions expressed during the administration of justice and the court's decisions, unless a verdict of the court that has come into legal force finds the judge to be guilty of knowingly making an unjust court decision.

5. A judge is considered resigned as long as he/she retains the citizenship of the Kyrgyz Republic and does not allow acts that discredit him/her and thus undermine the authority of the judicial power.

The order and conditions of terminating judge's resignation in case of a termination of citizenship of the Kyrgyz Republic or allowing acts that discredit him/her and thus undermine the authority of the judicial power are established by the President in consultation with the Council of Judges.

## **Chapter 6. Liability of judges**

### **Article 28. Disciplinary liability of judges**

1. A judge is brought to disciplinary liability for committing a disciplinary offense. A disciplinary offense is a wrongful act or an omission by the judge, which does not correspond to the requirements of irreproachable conduct, established by part 2 of Article 6 of the present Constitutional Law, as well as engaging in activities not compatible with the position of the judge.

A judge can be subject to disciplinary punishment not later than one year from the day of discovering the offense, not counting the time of internal investigation or judge's absence from work for a valid reason, but not later than three years from the day of committing the offense.

2. Bringing the judge to disciplinary liability for committing a disciplinary offense entails an imposition of one of the following measures of disciplinary punishment:

- 1) disciplinary action in the form of an admonition or a reprimand;
- 2) early dismissal of judge from held office.

Taking into the account the insignificance of a committed disciplinary offense the Council of Judges can limit itself to giving out a warning.

3. An admonition or a reprimand can be removed by the Council of Judges not earlier than 6 months after its imposition. The order of removing an admonition or a reprimand is established by the Regulation on the Disciplinary Commission of the Council of Judges (hereinafter – Regulation on the Disciplinary Commission), approved by the Council of Judges.

4. *(Ceased to be in force in accordance with the Law of the KR #6 as of January 19<sup>th</sup>, 2010)*

5. An admonition or a reprimand are applied by the Council of Judges in accordance with the Regulation on the Disciplinary Commission.

Early dismissal from office for committing a disciplinary offense is used as an extreme measure of disciplinary punishment for gross violation of requirements to irreproachable conduct of a judge.

Decision on the early dismissal of judges of the Supreme Court, the Constitutional Chamber of the Supreme Court is taken by the Jogorku Kenesh upon the recommendation of the President based on the decision of the Council of Judges on the early dismissal of judge from held office.

Decision on the early dismissal of judges of local courts is taken by the President on the basis of a decision of the Council of Judges on the early dismissal of judge from held office.

6. When considering a complaint or a report on the actions of a judge, the Council of Judges can limit itself to a warning.

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

1. Disciplinary proceedings initiated may be instituted against a judge in 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. The Disciplinary Commission under the Council of Judges is entitled to initiate disciplinary proceedings on the basis of received complaints, submissions and special rulings. Upon initiation of disciplinary proceedings, an internal investigation is conducted by the Disciplinary Commission of the Council of Judges within a period of two months in accordance with the Regulation on the Disciplinary Commission. Refusal to initiate disciplinary proceedings may be appealed to the Council of Judges. The order and timeframes of an appeal are established by the Regulation on the Disciplinary Commission.

An internal investigation includes:

- questioning and solicitation of explanations or other evidence from the judge against whom the complaint is filed, questioning and obtaining additional explanations and evidence from the complainant, interviewing witnesses, investigating materials of a case considered by the judge, if the complaint is filed with regard to judge's actions, committed by him/her while considering a particular case;
- Any other actions on collecting comprehensive information on the causes and circumstances that serve as a basis for filing the complaint.

Following the results of an internal investigation, a briefing note is elaborated in accordance with the Regulation on the Disciplinary Commission.

3. A judge in respect of whom disciplinary proceedings were initiated, should be familiarized with the materials of the proceedings in advance.

A refusal to familiarize with the materials shall not serve an obstacle for further disciplinary proceedings.

4. On the basis of a review of the briefing note elaborated within the framework of disciplinary proceedings, the Council of Judges takes one of the decisions stipulated by Article 28 of the present Constitutional Law or a decision on terminating disciplinary proceedings due to the non-existence of a disciplinary offense in judge's actions.

Upon discovering elements of offense in actions or omissions by the judge, the Council of Judges submits materials of 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. Decision about institution of criminal case in relation to the judge is made by the Prosecutor General of the Kyrgyz Republic (hereinafter the Prosecutor General) and prosecutors authorized by him/her with a status not lower than that of prosecutors of regions, cities of Bishkek and Osh.

2. Decision on bringing the judge to criminal liability (making a decree on indictment) is made by the Prosecutor General by approbation of the Council of Judges.

In order to get accordance to make the judge criminally liable, the Prosecutor General submits an appropriate communication to the Council of Judges where circumstances of criminal case are outlined, article of criminal law the judge is charged, request to give accordance to institute criminal liability (institute as an accused person).

3. A consent to initiate administrative proceedings at law against judges of the Supreme Court, the Constitutional Chamber of the Supreme Court and local courts shall be given by the Council of judges upon presentment of the Prosecutor General.

4. In case of changing of qualification of composition of crime or offence in a course of investigation of criminal case or case on administrative offence, which can lead to worsening of situation with the judge, bringing of the judge to criminal or administrative liability is accepted in procedure laid down by the present Article.

5. Submission on acceptance to bring the judge to criminal or administrative liability imposed judicially is considered by the Council of Judges not later 10 days since date of submission.

6. The Council of Judges rejects to give accordance for bringing the judge to criminal or administrative liability detecting that bringing of the judge to criminal or administrative liability imposed judicially is determined by position taken by the judge under execution of the judiciary powers.

7. Repeated submission is not allowed in order to get accordance on bringing of the judge to criminal or administrative liability in case the Council of Judges made decision on refusal of such accordance issuing.

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

*(Ceased to be in force in accordance with the Constitutional Law of the KR # 167 as of August 10<sup>th</sup>, 2012)*

## **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 meters of useable floor area for each member of the judge's family.

Official accommodation may not be privatized.

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 labor legislation.

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

4. Judges are provided by a free type of clothing (a mantle).

Description of formal clothing (mantle), the times of wearing it and write-off, the order of providing judges with formal clothing (mantle) are established by an authorized body in consultation with the Council of Judges.

### **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.

**The order of mandatory medical insurance at the expense of state funds and compensation of expenditures related to treatment during the period of illness is approved by the Government of the Kyrgyz Republic.**

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 case of judge's death, as well as in the case of termination of powers of the judge on grounds specified in paragraph 4 of part 1 of Article 27 of the present Constitutional Law,

his family is paid a one-time allowance based on his/her average monthly salary at the last position for each full work year as a judge, but not less than his annual salary.

3. Persons dismissed from office early, in accordance with paragraph 1 of part 2 of Article 26 of the present Constitutional Law, given the presence of judicial experience of 20 and more years; in accordance with paragraph 2 of part 2 of Article 26 of the present Constitutional Law; persons whose powers were terminated in connection with reaching the age of retirement; in accordance with paragraph 2 of Part 1 of Article 27 of the Constitutional Law, as well as those persons, whose powers were terminated due to an expiration of the term of office, given the presence of judicial experience of 15 years and more, shall be paid a one-time allowance based on average monthly salary at the last position for each full work year as a judge, but not less than his annual salary.

At the same time, for persons listed in the first paragraph of this part and the newly elected or appointed judges only the time of serving as a judge from the moment of last election or appointment is counted, in case of receiving a one-time allowance upon previous dismissal or termination of powers of a judge.

4. A pension is paid to judges who have reached the age of retirement age on a regular basis and in the order and cases stipulated by the law.

Persons listed in part 3 of the present constitutional law as well as resigned judges are given a bonus to their designated pension in the following order and amount:

- for a period of service as a judge from 15 to 20 years – a bonus in a 1.5-fold amount from the designated pension;

- for a period of service as a judge from 20 to 25 years – a bonus in a 2-fold amount from the designated pension;

- for a period of service as a judge for 25 and more years - a bonus in a 2.5-fold amount from the designated pension.

5. Calculation of work experience as a judge and the amount of pensions for issuing bonuses are established by the moment of termination of powers of a judge or dismissal of the judge from held position.

6. For persons, who have served as judges of the Constitutional Court, the Constitutional Chamber of the Supreme Court, the amount of bonuses to pensions is calculated in accordance with parts 4 and 5 of the present article and taking into account the period of work in a legal profession.

7. Payment of bonuses set by the present Article is made from the republican budget through the Social Fund of the Kyrgyz Republic.

#### **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 Government.

### **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.

### **3. Draft Amendments to the Law of the Kyrgyz Republic “On Judicial Self-Governance Bodies of the Kyrgyz Republic”**

**Draft**

#### **LAW OF THE KYRGYZ REPUBLIC**

#### **On making amendments in the Law of the Kyrgyz Republic “On Judicial Self-Governance Bodies of the Kyrgyz Republic”**

##### **Article 1**

Following amendments to be introduced in the Law of the Kyrgyz Republic “On the judicial self-governance bodies of the Kyrgyz Republic” (Bulletin of the Jogorku Kenesh of the Kyrgyz Republic, 2008, N 3, page 260):

In part 2 of the Article 9:

- paragraph 17 to be formulated in following version:

“- elects members of the Disciplinary Commission under the Council of Judges and approves a regulation on its activity”.

Part 3 of the Article 10-1 to be complemented by paragraphs seven and eight with following content:

“- considers and discusses materials of disciplinary proceedings in relation to the judge of the relevant court submitted by the Council of Judges due to insignificance of committed disciplinary case;

- proposes a candidature of the judge of the relevant court to be elected in the Disciplinary Commission under the Council of Judges”.

##### **Article 2**

The present Law comes into force after 10 days from the day of its official publication.

**President of the Kyrgyz Republic**  
**A.Atambaev**

#### 4. Draft Amendments to the Code of Civil Procedure of the Kyrgyz Republic

**Draft**

### LAW OF THE KYRGYZ REPUBLIC

#### On making Amendments in the Code of Civil Procedure of the Kyrgyz Republic

##### Article 1

Following amendments to be introduced in the Code of Civil Procedure of the Kyrgyz Republic (Bulletin of the Jogorku Kenesh of the Kyrgyz Republic, 2000, N 3, page158):

Section 4 to be complemented by the Article 28-1 with following content

«Article 28-1. Bringing a complaint against the decision of the Judge Selection Council and of the Council of Judges

In case of violation of a procedure of competition-based selection of judges or procedure of calling of the judges to disciplinary liability, a complaint against the decision of the Judge Selection Council or of the Council of Judges can be brought to the court of the location where the authorized body is exercising its activities”.

The Code to be added with the Chapter 25-2 of following content:

##### «Chapter 25-2

Process for applications related to allegations against decisions, actions (act of omission) of the Judge Selection Council of the Kyrgyz Republic or of the Council of Judges of the Kyrgyz Republic

##### Article 258-4. Submission of application

1. In case of violation of the procedure of competition-based selection of the judges or of the procedure of bringing a judge to disciplinary liability, the judge applying to a vacancy or the judge of the Kyrgyz Republic is entitled to file a complaint against the decision, action (act of omission) of the Judge Selection Council of the Kyrgyz Republic or the Council of Judges of the Kyrgyz Republic with the court of the location where the authorized bodies are exercising their activities.

2. Application can be filed with the court within ten days from the date the decision was made, action was committed (act of omission) by the Judge Selection Council or the Council of Judges.

##### Article 258-5. Examination of an application

1. Applications submitted within the time limit prescribed by paragraph 2 of Article 258-4 of this Code shall be considered within five days.

2. The application is considered with participation of the applicant, representative of the Judge Selection Council or the Council of Judges. Default of appearance of above-mentioned persons who have been properly notified about time and place of the judicial hearing is not an obstacle for the consideration and resolution of the case.

##### Article 258-6. Decision of the court on the application and its appeal

1. The court adjudging the validity of the application which recognizes the disputed decision, action (act of omission) as unlawful cancels the decision of the Judge Selection

Council or the Council of Judges, or shall eliminate fully the suffered violation of procedure of competition-based selection of the judges or of the procedure which made the judge disciplinary liable.

2. The court rejects the application if it determines that the disputed decision and action (act of omission) are lawful.

3. Decision of the court of the first instance entered into force could be appealed before the Supreme Court of the Kyrgyz Republic in accordance with the supervisory procedure provided for in Chapter 41 of this Code.

The Supreme Court of the Kyrgyz Republic considers complaints submitted in accordance with the supervisory procedure within five calendar days from the day of submission of the complaint”.

## **Article 2**

The present Law comes into force after 10 days from the day of its official publication.

**President of the Kyrgyz Republic**  
**A.Atambaev**

## **5. Draft Amendments to the Criminal Code of the Kyrgyz Republic**

**Draft**

### **Draft Amendments to the Criminal Code of the Kyrgyz Republic**

Article 328. Knowingly Giving an Unjust Judgment, Decision, **or any Other Judicial Act**

(1) Delivery by a judge (judges) of a knowingly unjust judgment, decision, or any other judicial act, shall be punishable by deprivation of liberty for a term of two to five years.

(2) The same deed:

- 1) related to the delivery by a court of law of an unjust sentence of deprivation of liberty;
  - 2) entailing the death of the person or other serious consequences;
  - 3) entailing an **unlawful forfeiting of property right**,
- shall be punishable by deprivation of liberty for a term of five to ten years.

**Note: an institution of criminal case in relation to the judge is not allowed if the court of superior jurisdiction did not abolish the judicial act.**