

## Questionnaire of the Fourth IAJ Study Group – 2023

### THE JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

#### Kazakhstan:

#### 1-question

a. Appointment to the position of a judge of first instance shall be carried out in accordance with Article 29 of the Constitutional Law on the Judiciary and the Status of Judges, i.e. it shall be a citizen of the Republic of Kazakhstan over 30 years of age, who has higher legal education, high moral qualities, impeccable reputation and work experience in the legal profession of at least five years and has passed a qualification exam (a person who has completed training and passed a qualification exam at the Justice Academy under the Supreme Court of the Republic of Kazakhstan shall be released from taking the exam within four years).

Appointment to the position of a judge of appeals is also in accordance with the requirements of Article 29 of this The Constitutional Law on the Judiciary and the Status of Judges, as well as having at least 15 years of work experience in the legal profession or at least 5 years of work experience as a judge.

Judge of cassation instance - all the same requirements, and also having work experience on legal profession not less than 20 years, including not less than 10 years of work experience as a judge, including 5 years of work experience as a judge of regional court, and also having an opinion of plenary session of the Supreme Court.

There is no distinction for appointment to criminal or civil courts for judges of all instances, when appointing a judge of first instance, his work experience before trial is taken into account, when appointing a judge to an appeal instance, his previous experience in a court of first instance is taken into account, and the vacancy in which judicial board he wishes to occupy is also taken into account.

b. No.

c. No.

d. The issue of appointment to any judicial office is independent of the Government, as such decision is made by the Supreme Judicial Council of the RK, which is not part of the Government, and also not part of the Supreme Court of the RK.

### **2-question**

a. Promotion, namely the desire of a trial judge to become an appellate judge and of an appellate judge to become a judge of the Supreme Court depends primarily on his meeting the requirements mentioned above, as well as the availability of vacancies and the suitability of his specialization to the advertised vacancy.

b. According to Article 28 of the Constitutional Law on the Judiciary and the Status of Judges judges may not belong to parties, trade unions, support or oppose any political party.

c. If there are vacancies for the position of a judge of the first, appellate, cassation instances, the Supreme Judicial Council of the Republic of Kazakhstan shall announce a competition for the position of a judge through the mass media, indicating the requirements and a list of necessary documents to be sent to the Supreme Judicial Council within one month from the date of publication. After the announcement of the competition the applicants collect the necessary package of documents and send it to the Supreme Judicial Council. After the deadline for submission of the documents, the Supreme Judicial Council selects and verifies the candidates and then officially publishes the list of those admitted to the competition. Further, the members of the Supreme Judicial Council carry out a competitive selection of persons who may be recommended for the position of judge. However, the selection procedure itself and why one candidate and not another is recommended is not transparent. Judges participating in the competition do not know why they were rejected, why their candidacy was not suitable, who were the other candidates, etc.

### **3-question**

a. There are no such requirements.

b. We have no such thing as "a judge finding it difficult to cope with workload", all cases

are received and allocated through the TORELİK system, all accepted cases must be completed by the deadline set by the procedural law, before a judge takes leave, because 21 days before the annual leave he/she will be disconnected from receiving cases to enable him/her to complete all cases they received before.

c. There is no provision for the reassignment of cases from one judge to another because a judge "suffers from overload". Reassignment can only take place when a judge is ill and the deadline for cases taken before him or her cannot be extended.

#### **4-question**

a. The Constitutional Law on the Judiciary and the Status of Judges does not provide for a procedure for removal of a judge. There is a concept of suspension of powers (Article 33 of the Constitutional Law on the Judiciary and the Status of Judges): the judge is registered as a candidate for President of the Republic of Kazakhstan, deputy of Parliament or Maslikhats of the Republic of Kazakhstan; the judge has been appointed as a member of the Supreme Judicial Council; the judge is recognized as missing in action; consent to bring the judge to criminal liability has been given; there is a decision of the Judicial Quality Commission or the Judicial Jury on the need to terminate the powers of the judge

Judges may have their proxy suspended by:

- In respect of the President of the Supreme Court - the President of the Republic of Kazakhstan.
- In the case of all other judges of the Republic - by the Chairman of the Supreme Judicial Council.

The proxy of a judge shall be resumed if the circumstances that gave rise to the decision to suspend the powers of the judge cease to exist.

b. The Constitutional Law on the Judiciary and the Status of Judges does not provide for a procedure for the removal of a judge from office.

There is a notion of "termination of powers of a judge", which is stipulated in Article 34 of the Constitutional Law.

Grounds for termination of the powers of the Chairman, the Chairman of the Judicial Collegium and the judge:

- 1) retirement of the judge;
- 2) removal from the position of a judge at his own request;
- 3) a state of health preventing further performance of professional duties in accordance with a medical report;
- 4) entry into legal force of a court decision declaring a judge legally incapable or partially incapacitated or imposing compulsory medical measures on him/her;
- 5) the entry into legal force of a judgment of conviction against such judge, termination of the criminal case at the pre-trial stage based on paragraphs 3), 4), 9), 10) and 12) of part one of Article 35 or Article 36 of the Criminal Procedure Code.
- (6) termination of citizenship of the Republic of Kazakhstan
- 7) death of a judge or the entry into force of a court decision declaring him/her dead
- 8) appointment, election of a judge to another position and his or her transfer to another job
- 9) abolition of a court or reorganization of a court, reduction in the number of judges of the relevant court, if the judge does not consent to occupying a vacant position of a judge in another court, as well as refusal of the judge to transfer to another court, to another specialization in cases provided by Article 44(1), Paragraph two of Article 44(5) of the Constitutional Law on the Judiciary and the Status of Judges;
- 10) abolition of the court or reorganization of the court, reduction of the number of judges of the respective court, expiration of the term of office, if the president of the court, the president of the Judicial Collegium does not agree to take the vacant position of judge in another court, as well as refusal of the president of the court, the president of the Judicial Collegium to transfer to another court, to another specialization in cases provided for by subparagraph 4) of paragraph 1, paragraph 5, part two of Article 44 of the Constitutional Law on the Judiciary and the Status of Judges;

11) a decision of the Judicial Quality Commission on the non-compliance of a judge with his/her position due to professional unsuitability;

11-1) a decision of the Judicial Jury on the necessity to remove a judge for committing a disciplinary offence or not fulfilling the requirements specified in Article 28 of the Constitutional Law on the Judiciary and the Status of Judges;

12) reaching the retirement age or the age limit for holding the office of judge.