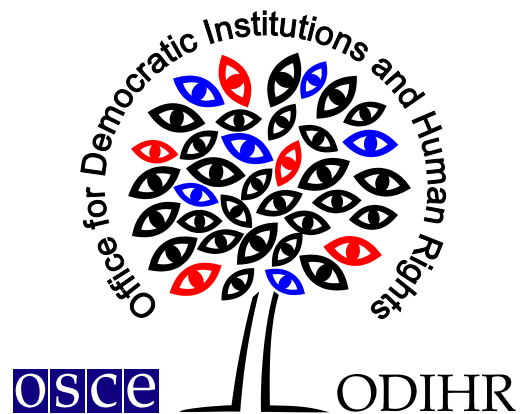


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## **COMMENTS ON THE COMMENTARY ON THE CODE OF JUDICIAL ETHICS OF KAZAKHSTAN**

**based on an unofficial English translation of the Commentary and Code of Ethics  
commissioned by the OSCE Office for Democratic Institutions and Human Rights**

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## **I. INTRODUCTION**

1. *On 28 November 2018, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) received a request from the Head of the OSCE Programme Office in Astana in which he forwarded a request of the Supreme Court of Kazakhstan to review a Commentary prepared by the Supreme Court (hereinafter “Commentary”) on the Code of Judicial Ethics. The Code of Judicial Ethics was adopted by the VII Congress of Judges of the Republic of Kazakhstan on 21 November 2016.*
2. *On 29 November 2018, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare legal comments on the compliance of the Commentary and Code of Judicial Ethics with international human rights standards and OSCE human dimension commitments.*
3. *These Comments were prepared in response to the above-mentioned request.*

## **II. SCOPE OF REVIEW**

4. The scope of these Comments covers only the Commentary and Code of Judicial Ethics submitted for review. Thus limited, the Comments do not constitute a full and comprehensive review of the entire legal and institutional framework regulating judicial ethics in Kazakhstan.
5. The Comments raise key issues and provides indications of areas of concern. In the interest of conciseness, they focus more on areas that require amendments or improvements than on the positive aspects of the Commentary and Code of Judicial Ethics. The ensuing recommendations are based on international standards and practices governing judicial ethics, as well as relevant OSCE commitments. The Comments also highlight, as appropriate, European standards, which, while not applicable in Kazakhstan, may provide useful guidance.
6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women<sup>1</sup> (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the research leading up to the Comments also took care to analyse the potentially different impact of Commentary and Code of Judicial Ethics on women and men.<sup>2</sup>
7. These Comments are based on unofficial English translations of the Commentary and Code of Judicial Ethics commissioned by the OSCE/ODIHR, which are attached to this document as an Annex. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR would like to make mention that these Comments do not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective documents or related legislation

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<sup>1</sup> *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Switzerland ratified this Convention on 27 March 1997.

<sup>2</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>.

pertaining to judicial ethics and/or the independence and accountability of judges in Kazakhstan in the future.

### III. EXECUTIVE SUMMARY

9. At the outset, it should be noted that the Commentary is an important document and its adoption *per se* is very welcome. It aims to clarify, and thus provide further guidance to judges in Kazakhstan on how to interpret the provisions of the Code of Judicial Ethics, and to deal with potentially difficult matters of judicial ethics on a daily basis. In this regard, the Commentary duly covers each provision of the Code of Judicial Ethics and seeks to complement these provisions in a concise yet informative manner. Moreover, it is positive that the Commentary refers to and reflect relevant international documents on judiciary ethics.
10. Recalling that the Code of Judicial Ethics was adopted by the VII Congress of Judges of Kazakhstan, and thus by a wide representation of members of the judiciary, it would be important for the Commentary, to seek broader support of members of the judiciary. It therefore would be laudable if a wider representation of judges of Kazakhstan would be consulted in the process of adoption of the Commentary.
11. That being said, there are some parts of the Comment that would benefit from improvement. As for the wording of the Commentary (and the Code itself), it is noted that the individual provisions and comments are quite detailed, and provide in-depth guidance on certain issues, but remain quite general with respect to others. Additionally, it at times provide extensive instructions to judges on how to behave off duty, which in some instances may not always be necessary. The Commentary and underlying Code at times also state that judges' criticism on laws and other legislative norms, as well as judges' manifestation of their religious beliefs are "undesirable". The relevant parts of the Commentary and Code may raise concerns with respect to judges' right to freedom of expression and right to freedom of religion or belief.
12. Furthermore, and quite importantly, the Code and related Commentary refer to the Law on the Judicial System and Status of Judges of Kazakhstan and reiterate that violations of provisions of the Code of Judicial Ethics may be considered as disciplinary offences, and thus lead to disciplinary sanctions. Here, it is important to distinguish the purpose and the nature of codes of judicial ethics, Commentary to it, on the one hand, and disciplinary provisions in laws on the other. While codes of ethics aim to set out key principles of independence, impartiality and integrity that judges should strive to adhere to, disciplinary proceedings deal with alleged instances of gross and inexcusable misconduct of judges that bring the judiciary into disrepute. These two concepts should not be mixed.
13. Generally, it is important that any legal grounds for initiating disciplinary procedures against judges are stated in a clear and specific manner. It is highly doubtful whether codes of ethics, including the Code of Judicial Ethics in question, will be specific enough to fulfil this requirement. Moreover, relevant legislation outlining disciplinary procedures against judges in Kazakhstan merely refers to judicial ethics, without stating which potential misconduct will lead to which sanctions. This could also raise issues with respect to the principle of legality of legislation, stating that all laws need to be crafted in a manner that allows affected individuals to foresee the consequences of their behaviour, and know which acts are permissible and which are not.

14. Finally, it should be noted that while the focus of these Comments was on the Commentary, it was at times not possible to look at the Commentary, without also going into individual provisions of the Code itself. The ensuing recommendations thus cover both the Commentary, and also the Code of Judicial Ethics.
15. In order to ensure full compliance of the Commentary and Code of Judicial Ethics with international standards on judicial ethics and good practices, the OSCE/ODIHR makes the following key recommendations:
  - A. to consider proceeding with adoption of the Commentary through an inclusive and pluralist process, involving judges in the process [par 26];
  - B. to specify the advisory nature of the Commentary [par 26] and to clarify that conduct which may conflict with the provisions and interpretations provided in the Commentary or the Code of Judicial Ethics may not by itself lead to disciplinary sanctions and limit disciplinary liability to the gross and repeated violations of the norms of judicial ethics [par 34];
  - C. to review paragraph 1 of Article 5 of the Code of Judicial Ethics and related Commentary stating that judges should refrain from “abstract and unreasoned” criticism of laws and other normative acts, and to consider clarifying (bearing in mind relevant international standards) or deleting it [par 45];
  - D. to delete the part of the Commentary on Article 8 of the Code of Judicial Ethics stating that regular participation of judges in religious rites in religious buildings and manifestations of belief are undesirable [par 58];
  - E. to review the Code or at least the Commentary, and to add caveats where it is felt that more leniency is required with respect to retired judges [72];
  - F. to include guidance to judges on when they should recuse themselves from cases in situations where there is a possible lack of impartiality or independence, as well as information on possible complaints mechanisms against judges in cases of perceived misconduct [par 76]; and
  - G. to provide individual judges with information on procedure, guidance and the desired course of action procedures in cases of undue interference, threats or pressure [par 78];

***Additional Recommendations, highlighted in bold, are also included in the text of the Comments.***

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Standards on Judicial Ethics**

16. International human rights standards, as codified in key human rights instruments such as the International Covenant on Civil and Political Rights<sup>3</sup> (hereinafter “ICCPR”) note that one of the elements of the right to a fair trial is a fair and public hearing “by a

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<sup>3</sup> The International Covenant on Civil and Political Rights (ICCPR) was adopted by UN General Assembly resolution 2200A (XXI) on 16 December 1966 and entered into force on 23 March 1976. The Republic of Kazakhstan ratified the ICCPR on 24 January 2006.

competent, independent and impartial tribunal established by law” (Article 14 ICCPR). Especially the independence and impartiality of courts and tribunals, and of individual judges, are key in this respect, and need to be ensured, maintained and protected. These principles have also been reflected in key OSCE commitments, including the 1990 Copenhagen Document and the 1991 Moscow Document.<sup>4</sup>

17. One way to do this is to draft laws in such a way as to ensure that judges are appointed (and dismissed) based on objective criteria, and in a manner that safeguards their independence.<sup>5</sup> Other aspects of legislation on the judiciary need to be drafted with equal care, including the tenure of judges, and the manner in which disciplinary oversight is set up and exercised.<sup>6</sup> Provisions limiting the influence of the executive or legislature in these spheres further help protect the independence of courts and judges.
18. At the same time, the independence, impartiality and also integrity of judges need to be ensured not only by the Constitution, or relevant legislation, and the other powers of state, but also by the judges themselves. While legislation on the status and duties of judges usually sets out what they are allowed to do and what not, codes of conduct, or codes of judicial ethics provide further guidance on how judges may behave in a manner that maintains and enhances public trust in the independence, impartiality and integrity of individual judges, as well as the judiciary as a whole, both inside and outside the courtroom.<sup>7</sup> In this sense codes of conduct/ethics are instruments protecting judicial independence. They provide more or less precise instructions on how judges should behave in contentious situations.
19. Codes of conduct, or codes of ethics have numerous important benefits. First, they help judges resolve questions of professional ethics, give them autonomy in their decision-making and guarantee their independence from other authorities (including other judges). Second, they inform the public about the standards of conduct that it is entitled to expect from judges. Third, codes of conduct or ethics help assure the public that justice is being administered independently and impartially.<sup>8</sup>
20. Today, judiciaries in most countries all over the world have such codes of ethics. At the same time, aside from the recommendation to have such codes, there are few international standards on how these codes should be formulated. This is because in each state, codes of ethics for judges are grounded in that particular society, and every national judiciary lives in specific circumstances and different social environments.<sup>9</sup> Individual judges are also exposed to the various traditions, demands and expectations

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<sup>4</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 29 June 1990, par 5.12, and Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE of 4 October 1991, par 19.2 i.

<sup>5</sup> UN Human Rights Committee: General Comment No. 32, of 23 August 2007, par 19.

<sup>6</sup> UN Human Rights Committee: General Comment No. 32, of 23 August 2007, par 19.

<sup>7</sup> See, in this context, Principle 2.2 of the Bangalore Principles of Judicial Conduct, adopted by the Judicial Integrity Group in 2001, as revised at the Round Table Meeting of Chief Justices in The Hague, Netherlands, on 25-26 November 2002. The Judicial Integrity Group is an independent, autonomous, non-profit and voluntary group made up of heads of the judiciary or senior judges from across the globe, aiming to, among others, enhance accountability and strengthen integrity within the judiciary.

<sup>8</sup> CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 44.

<sup>9</sup> See Council of Europe: Expert Report, Project on Strengthening Judicial Ethics in Turkey: Expert Review of relevant European Standards and Practices, 3 June 2016, p. 8.

of the respective societies that they live and work in.<sup>10</sup> As a consequence, judicial codes of ethics are different in various countries and regions – some are binding, while others are merely of an advisory nature, and some are very explicit, while others remain quite vague in their formulations.

21. Nevertheless, the aim of judicial codes of ethics remain the same all over the world – namely to ensure judicial conduct that will be in line with the principles of independence, impartiality and integrity. Based on these core principles, but also on other international human rights provisions, certain basic standards with regard to judicial codes of ethics have been developed in international documents.
22. Thus, judicial codes of ethics should always be drafted by the judiciary itself.<sup>11</sup> Moreover, most international documents, especially in Europe, clearly distinguish between judicial codes of ethics and disciplinary proceedings set out in law.<sup>12</sup> Additionally, it is important to remember that judges also have the same human rights as other individuals, in particular the rights to freedom of expression, belief, association and assembly. At the same time, judges should, when exercising these rights, always “conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary”.<sup>13</sup>

## **2. The Nature of the Commentary**

23. The current Code of Judicial Ethics was adopted by the VII Congress of Judges of the Republic of Kazakhstan in 2016. It is based on an extensive legal framework on the judiciary in Kazakhstan, primarily involving the Constitution and the Law on the Judicial System and the Status of Judges, but also relevant anti-corruption and administrative legislation. According to Article 13 of the Code of Judicial Ethics, it shall be binding for all judges in Kazakhstan, including retired judges.
24. The Commentary to the Code of Judicial Ethics aims to provide “adequate understanding and practical application of norms and provisions of the Code” and to avoid a broad interpretation of provisions related to the responsibility of judges. Its purpose is thus to provide guidance to individual judges, and possibly also disciplinary committees on how to interpret the Code of Judicial Ethics.

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<sup>10</sup> See Council of Europe: Expert Report, Project on Strengthening Judicial Ethics in Turkey: Expert Review of relevant European Standards and Practices, 3 June 2016, p. 8.

<sup>11</sup> See Judicial Integrity Group: Commentary on the Bangalore Principles of Judicial Conduct, issued in March 2007, par 16. See also CCJE: Magna Carta of Judges, adopted on 17 November 2010, par 18 and CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, pars 48- 49.

<sup>12</sup> See CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 45. See also, CCJE, Magna Carta of Judges, adopted on 17 November 2010, par 18, and Council of Europe: Expert Report, Project on Strengthening Judicial Ethics in Turkey: Expert Review of relevant European Standards and Practices, 3 June

<sup>13</sup> See UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders (26 August – 6 September 1985).

25. It is welcome that the Commentary makes reference to key international documents such as the European Charter of the Statute of Judges<sup>14</sup> and the Bangalore Principles of Judicial Conduct, and clearly seeks to reflect the standards set out therein.
26. The Code of Judicial Ethics was passed by the Congress of Judges, and thus can indeed be said to have been drafted, or at least adopted by vast parts of the judiciary. It is equally important to ensure that the interpretation of individual provisions of the Code truly reflects the opinions and values of the majority of judges. Therefore, in order to foster support and a sense of ownership to this very important document, **it is advisable to develop and adopt the Commentary through an inclusive and pluralist process, involving judges in the process.** The Commentary may also serve as an advisory and authoritative source for the interpretation of the provisions of the Code, although without having a binding legal nature. Number of countries, such as Italy, France, Estonia, Lithuania, Ukraine, Moldova, Slovenia, the Czech Republic and Slovakia, have a “judicial code of ethics” or “principles of conduct” adopted by representative assemblies of judges and distinct from disciplinary rules.<sup>15</sup> It is also recommended to clarify in the document how was it drafted and how should it be adopted. **It is thus advised to specify in the text of the Commentary the advisory nature of this document, to avoid confusion, as well as ensure wider support of judges to it.**

### **3. Judicial Ethics and the Disciplinary Accountability of Judges**

27. As stated earlier, both the Commentary and the Code of Judicial Ethics (Article 13) specify the binding nature of the Code. In principle, this is welcome, as it clarifies the nature of the Code for judges and others and ensures that it is taken seriously and adhered to in practice. Moreover, it is positive that the Commentary mentions, in its comments on Article 13 of the Code of Judicial Ethics, the Central Council of the Union of Judges as an advisory body for judges, judicial candidates and retired judges, that may assist in questions concerning the compliance of certain acts or behavioural patterns with rules of ethics. This type of advisory body is recommended in numerous international documents dealing with judicial codes of ethics.<sup>16</sup>
28. At the same time, it is noted that according to the Commentary, in particular in its comments to Article 14 of the Code of Judicial Ethics (as well as in this provision itself), violations of the Code are considered to constitute grounds for disciplinary

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<sup>14</sup> European Charter on the Statute for Judges, adopted during a multilateral meeting of European judges and judges’ associations that took place in Strasbourg on 8-10 July 1998, par 5.3.

<sup>15</sup> See Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality, para 43.; See also the Venice Commission Report on Freedom of Expression of Judges (CDL-AD(2015)018), par. 23; See also the Venice Commission Opinion on Draft Code of Judicial Ethics of Kazakhstan (CDL-AD(2016)013), par. 6.

<sup>16</sup> See, e.g., the Bologna and Milan Global Code of Judicial Ethics, approved at an International Conference on Judicial Independence held at the University of Bologna and at Bocconi University of Milano in June 2015, par 1.4. See also Council of Europe: Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies), par 74, and CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 49.



liability of the respective judge. In this context, the Commentary refers to the Law on the Judicial System and Status of Judges of Kazakhstan, which includes “a misconduct contrary to judicial ethics” as one of the grounds for disciplinary liability.

29. It is important to distinguish between judicial codes of ethics on the one hand, and disciplinary provisions in laws on the other. The purpose of a code of ethics is to provide general rules, recommendations or standards of good behaviour that guide the activities of judges and enable judges to assess how to address specific issues which arise in conducting their day-to-day work, or during off duty activities. In the majority of countries, codes of ethics have only unofficial status and the breach of ethical principles does not constitute a direct ground for disciplinary action.<sup>17</sup> Thus, codes of ethics aim to give guidance to judges with respect to their daily conduct and provide principles that judges should see as goals and values to be achieved<sup>18</sup> and to aspire to.<sup>19</sup> Such codes are different from statutory and disciplinary rules in that they are self-regulatory standards that recognize that the application of the law is not a mechanical exercise, involves real discretionary power and places judges in a relationship of responsibility to themselves and to citizens.<sup>20</sup> Codes of conduct or ethics should be completely separate from judges’ disciplinary systems.<sup>21</sup> At the same time, though not grounds for disciplinary action themselves, it is also true that in some countries codes of conduct for judges adopted by the professional associations of judges may sometimes give guidance to disciplinary authorities when deciding on disciplinary matters.<sup>22</sup>
30. Disciplinary procedures, on the other hand, are based on grounds set out in law that, if established, will lead to concrete legal consequences. Thus, disciplinary procedures aim to investigate, and if needed sanction judges for intentional and gross misconduct,<sup>23</sup> i.e. for behaviour that is manifestly contrary to law. In this context, it is important to

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<sup>17</sup> CDL-AD(2014)018, Joint Opinion of the Venice Commission and OSCE/ODIHR on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic, pars 25-27.; See also Venice Commission Opinion on the codes of the judicial ethics of Tajikistan, in which it expressed preference for a code of ethics to have only the force of a recommendation, and not be binding document applicable directly in disciplinary proceedings. “The purpose of a code of ethics is entirely different from that achieved by a disciplinary procedure and using a code as a tool for disciplinary procedure has grave potential implications for judicial independence.” (CDL-AD(2013)035, Opinion on the draft Code on Judicial Ethics of the Republic of Tajikistan, pars 15 and 16);

<sup>18</sup> See Council of Europe: Expert Report, Project on Strengthening Judicial Ethics in Turkey: Expert Review of relevant European Standards and Practices, 3 June 2016, p. 8.

<sup>19</sup> For example, the Commentary to the Slovenian Code of Ethics states that “the aim of writing down ethical principles in the form of a code is to strengthen judges’ consciousness of belonging to the profession and is intended as guidance for judges to help them deal with ethical dilemmas encountered in their professional and private life” (Code of Judicial Ethics, Commentary, adopted by Ethics and Integrity Commission in 2016 and updated in 2017).

<sup>20</sup> See CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 45.;

<sup>21</sup> See CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 49. See also, CCJE, Magna Carta of Judges, adopted on 17 November 2010, par 18.

<sup>22</sup> See CCJE (2002) Op. N° 3: in Slovenia, if a judge member of an Association breaches the Code, he/she can be brought before the Court of Honour of the Association; in Estonia and Lithuania, rules of conduct do not impose sanctions but violations of the rules may result in a disciplinary sanction provided by the Law on the Status of Judges; in Italy, the code of conduct aims to serve as an instrument for self-control within the judicial profession and violations may or may not involve sanctions of a disciplinary or criminal nature.

<sup>23</sup> See, e.g., the Bologna and Milan Global Code of Judicial Ethics, approved at an International Conference on Judicial Independence held at the University of Bologna and at Bocconi University of Milano in June 2015, par 1.2.

remember that not every transgression warrants disciplinary action and not every failure to conform to principles constitutes misconduct or misbehaviour. The necessity and appropriateness of disciplinary action will depend on other factors, such as the seriousness of transgressions, patterns of improper activity, and the effect of such actions on others and on the judiciary system as a whole.<sup>24</sup>

31. As stated, disciplinary provisions should focus on serious infractions of law and should therefore be (and usually are) drafted with the utmost precision, so that it is clear to judges what type of behaviour is not permissible. Codes of ethics, on the other hand, are often formulated in a vaguer manner, and may not go into detail. Therefore, although there is both an overlap and an interplay, principles of conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not of itself constitute a disciplinary infringement or a civil or criminal offence.<sup>25</sup> More importantly, although the Commentary may in future become an authoritative source for interpretation of the Code of Judicial Ethics, it should neither be perceived, nor applied as the only and/or binding interpretation of the Code or lead to the imposition of disciplinary measures.
32. The Law on the Judicial System and Status of Judges of Kazakhstan clarifies that judges will be disciplined for “a gross violation of law in legal proceedings”. At the same time, the Law is considerably less specific with respect to disciplinary violations of judicial ethics, which are merely described as “a misconduct contrary to judicial ethics”. There is no further clarification as to which types of such misconduct will be considered punishable disciplinary offences.
33. Generally, laws, and especially legislation that leads to sanctions or other negative consequences for individuals, need to be drafted with great precision, so that the affected individuals will know which behaviour will lead to which consequences under the law (principles of legality and foreseeability of legislation).<sup>26</sup> The reference to the Code of Judicial Ethics implies that improper conduct in private life may result in disciplinary actions as well, even though, due to “the constant evolution of moral values”,<sup>27</sup> it may be difficult to precisely set the standards on how to behave in private life. This situation is particularly problematic given that following disciplinary procedures, a judge may even be dismissed from office. Moreover, it is important that sanctions imposed are proportionate to the respective offence, which is why both offences, and their respective sanctions should normally be described in relevant legislation in detail. In the current situation, any violation of the Code of Judicial Conduct could potentially lead to any sanction described in the Law, which could lead to diverse and even arbitrary sanctions, not all of which may be in line with the principle of proportionality. The Commentary on Article 14 of the Code of Judicial Ethics makes reference to the Law of the Republic of Kazakhstan “On the Judicial System and the Status of Judges”, which provides list of grounds for judges’

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<sup>24</sup> See Judicial Integrity Group: Commentary on the Bangalore Principles of Judicial Conduct, issued in March 2007, par 19.

<sup>25</sup> See CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 48.

<sup>26</sup> UN Human Rights Committee: Larry James Pinkney v. Canada, Communication No. 27/1978, U.N. Doc. CCPR/C/OP/1 at 95 (1985) par 34. See also ECtHR: *Sunday Times v United Kingdom (No. 1)*, application no. 6538/74, judgment of 26 April 1979, par 49.

<sup>27</sup> CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 29.

disciplinary liability, listing “a gross violation of law in judicial proceedings” and “conduct contrary to judicial ethics” among few other grounds for disciplinary actions. It is notable that while only gross violations of legal provisions may trigger disciplinary actions, no such qualification is added to misconduct that breaches ethical norms. This provision of the law, in combination with relevant norms of the Code and the Commentary, raises concerns with respect to possible overbroad application of the disciplinary sanctions. Such wide discretion could pose grave risks for the judiciary in Kazakhstan as a whole, as it would be impossible to predict in practice which behaviour would be sanctioned in which way. Additionally, if standards such as codes of ethics were used to justify disciplinary proceedings, then this may in turn discourage, or at least negatively impact the development of ethical standards in the future.<sup>28</sup> Therefore, it is advisable to limit disciplinary liability to the gross and repeated violations of the code of ethics as well as to ensure that the legislation governing the disciplinary liability of judges does not automatically trigger disciplinary actions in case of conduct contrary to the Code of Judicial Ethics.

34. **It is recommended to clarify that conduct which may conflict with provisions of the Code of Judicial Ethics or interpretations provided in the Commentary should not by itself lead to disciplinary sanctions.**

#### 4. Human Rights of Judges

35. Generally, judges, the same as all individuals, are also holders of human rights, and may exercise them as freely as others. Thus, the UN Basic Principles on the Independence of the Judiciary stress that members of the judiciary are, like other citizens, entitled to the right to privacy, and to freedom of expression, belief, association and assembly, etc.<sup>29</sup>
36. At the same time, the principles of independence, impartiality and integrity require judges to behave in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary at all times<sup>30</sup> – due to the public scrutiny that they are under at all times, judges must therefore accept certain personal restrictions that might be viewed as burdensome by ordinary citizens.<sup>31</sup>
37. The Commentary and the underlying Code of Judicial Conduct contain numerous such restrictions and the ensuing sub-sections outline their nature, and whether they are compliant with international human rights standards.

##### 4.1. Freedom of Expression

38. Article 5 of the Code of Judicial Conduct states that a judge shall refrain from “abstract and unreasoned” criticism of laws and other normative acts. At the same time, the provision notes that this shall not prevent judges from expressing their opinions regarding the interpretation of legal norms and evaluating them in mass media, or from participating in scientific discussions or events.

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<sup>28</sup> See Council of Europe: Expert Report, Project on Strengthening Judicial Ethics in Turkey: Expert Review of relevant European Standards and Practices, 3 June 2016, p. 8.

<sup>29</sup> See UN Basic Principles on the Independence of the Judiciary, par 8.

<sup>30</sup> UN Basic Principles on the Independence of the Judiciary, par 8.

<sup>31</sup> See Principle 4.2 of the Bangalore Principles of Judicial Conduct.

39. The Commentary specifies that, as representatives of a branch of power, judges underlie certain limitations. As a direct executor of the law, a judge cannot “abstractly and unreasonably” criticize laws and other normative acts while off duty.
40. Generally, it is clear that while judges enjoy the right to freedom of expression, this freedom is limited insofar as his or her comments may imply a lack of impartiality with respect to a trial that this particular judge is presiding over, or that he presided over in the past, or may preside over in future. Additionally, any individual’s right to freedom of expression may be limited, as outlined in Article 19 par 3 of the ICCPR, if such restrictions are provided by law, are necessary out of respect of the rights or reputations of others, or in order to protect national security, public order (ordre public), or public health or morals, and are proportionate to such aims.
41. The right to freedom of expression under Article 19 of the ICCPR per se also includes potentially offensive or extreme statements.<sup>32</sup> At the European level, this right is likewise interpreted quite broadly, and thus covers not only information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb.<sup>33</sup>
42. With respect to restricting judges’ freedom of expression in particular, the European Court of Human Rights has noted that given the “prominent place among State organs which is occupied by the judiciary in a democratic society”, states have a wide margin of appreciation.<sup>34</sup> At the same time, it has also found that dismissing a judge merely for exercising his/her freedom of expression by criticizing different pieces of legislation in public was not compatible with Article 10 of the European Convention on Human Rights.<sup>35</sup> In this context, the ECtHR stressed that even if an issue has political implications, this is not in itself sufficient to prevent judges from making statements on the matter.<sup>36</sup> On the contrary, if judges criticize issues falling within public debate, and which the public thus has a legitimate interest in being informed about, this calls for a high protection of their freedom of expression, and a correspondingly narrower margin of appreciation of states.<sup>37</sup> Finally, the Court also noted that the fear of sanctions has a chilling effect on members of the judiciary and the way in which they exercise their freedom of expression.<sup>38</sup>
43. Moreover, in the current Code and related Commentary, it is unclear which criticism would be considered “abstract and unreasonable”, and which statements would not, as the Commentary does not provide any guidance on this matter. If judges are permitted to not only interpret, but also evaluate laws “on grounds of ambiguity, inconsistency or

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<sup>32</sup> See the UN Human Rights Committee, General Comment 34 on Article 19 of the ICCPR: Freedoms of Opinion and Expression, 12 September 2011, U.N. Doc. CCPR/C/GC/34 (201), par 11. See also Communication No. 736/97, *Ross v. Canada*, Views adopted on 18 October 2000.

<sup>33</sup> See ECtHR, *Kudeshkina v. Russia*, application no. 29492/05, judgment of 26 February 2009, par 82. See also *Hertel v. Switzerland*, application no. 59/1997/843/1049, judgment of 25 August 1998, par 46

<sup>34</sup> See ECtHR, *Pitkevich v. Russia*, application no. 47936/99, admissibility decision of 8 February 2001.

<sup>35</sup> See ECtHR, *Baka v. Hungary*, application no. 20261/12, Grand Chamber judgement of 23 June 2016, where the Court found that, notwithstanding the arguments of the Government, the applicant’s dismissal had been based on his strong public criticism of various changes to constitutional and other provisions, see in particular pars 151-152.

<sup>36</sup> See *Wille v. Liechtenstein*, application no. 28396/95, judgment of 28 October 1999, par 67

<sup>37</sup> ECtHR, *Baka v. Hungary*, application no. 20261/12, Grand Chamber judgement of 23 June 2016, par 171.

<sup>38</sup> ECtHR, *Baka v. Hungary*, application no. 20261/12, Grand Chamber judgement of 23 June 2016, par 167 and *Kudeshkina v. Russia*, application no. 29492/05, judgment of 26 February 2009, pars 99-100

other reasons” in mass media and during scientific discussions and events, then it is not clear why they should not be able to also comment on and criticize laws off-duty.

44. Furthermore, the mere fact of making abstract and unreasonable statements about a law would per se not appear to pose grave dangers for the perception of the public and of parties to a particular trial with respect to the independence and impartiality of a judge. The fact that judges directly execute legislation is not a sufficient reason for limiting their freedom of expression and would likewise not appear to be necessary out of respect for the rights and reputation of others, or to protect national security, public order, or public health or morals. It should also be noted that according to the Article 9 of the Code, a judge shall promote professional coverage of judicial activity in mass media and may inform, among others, about substantive and procedural law, provide explanation passed judgments. The Commentary to Article 9 also provides that a judge is not prohibited from replying to the media if requested to explain certain laws. However, a lack of clear guidance with respect to Article 5 of the Code may have a chilling effect and negatively impact the ability of a judge to “promote public awareness” as envisaged by the Commentary.
45. **It is thus recommended to review this part of the Code and Commentary, and to consider clarifying it (always bearing in mind the international standards set out above) or to delete it.**
46. At the same time, it is noted that both the Commentary and the Code of Judicial Ethics do not provide much guidance in terms of how judges should behave on social media networks. Thus, the Commentary on Article 6 merely states that the Code does not prohibit judges from registering in social information networks, while noting that the judge’s publications and assessments should be “reserved and objective”. The Commentary on Article 7, which focuses on the judge’s public reputation, does not mention it at all.
47. Given the importance of social media as a means of publication and communication, and the immediate impact that social media statements have, it may be useful to include in the Commentary some guidance as to how judges should behave in this respect. Overall, of course, posting and generally communicating via social media is covered by every person’s freedom of expression, including that of judges.<sup>39</sup>
48. Nevertheless, it is not always clear what is appropriate behavior on social media, and what is not. Key questions, such as the scope of Facebook friends (this will depend on the circumstances of each case), the type of information that may be shared even only to a smaller circle of friends, and the chances of it being shared and going public, need to be discussed, and judges need to know how to act. Judges also need to know what is permissible and what is not in other social media-related matters, such as whether it is permissible for judges to investigate facts of a case via Facebook (only if this is then also debated before court), posting personal information online (depending on the information, this could create risks for judges’ private lives), or liking/disliking

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<sup>39</sup> See, e.g., the Bologna and Milan Global Code of Judicial Ethics, approved at an International Conference on Judicial Independence held at the University of Bologna and at Bocconi University of Milano in June 2015, par 8.1.

statements made on Facebook (which could, depending on the situation, call into question judges' impartiality).<sup>40</sup>

49. Certain recent documents, such as the 2015 *Bologna and Milan Global Code of Judicial Ethics*, contain some recommendations on how to ensure that judges' use of social media is compliant with relevant codes of ethics.<sup>41</sup> Thus, the Global Code contains some suggested rules that judges may follow,<sup>42</sup> including not publishing information about their personal life and home address online and not publishing information that could put personal safety at risk. Moreover, judges should check privacy settings of online sites, and generally try to ensure that information is restricted, and that they are aware of possible data transfers. Finally, judges should not express opinions that could damage public confidence in their own impartiality or the judiciary in general.
50. **To provide guidance on these and similar matters to judges, it is recommended to debate these points, and to include in the Commentary more specific suggestions in this regard.**

#### 4.2. *Freedom of Religion or Belief*

51. According to Article 8 of the Code of Judicial Conduct, a judge shall refrain from manifesting his or her religious beliefs and affiliations while on duty. This certainly helps enhance the perceived independence and impartiality of the judge during court hearings, and in general.
52. The Commentary clarifies that laws do not prohibit anyone, including judges, from exercising any religion, but notes further that this right "must not detriment or limit universal human and civil rights and responsibilities before the state". It further calls for religious moderation and limitation of "the externals of the religion" given the publicity of the judicial office. Thus, a judge should not manifest his/her religious beliefs and affiliations directly (by stating them) or indirectly (through his/her appearance), verbally or non-verbally while at work. Indirect manifestation of religion or beliefs includes wearing certain (religious) clothes or symbols, making certain gestures or performing certain rites.
53. While the above limitations are mostly directed at judges' behaviour at work (as also stated in Article 8 of the Code), the Commentary also notes that public manifestations of judges' religious beliefs may cause followers of other religions to question his/her objectivity and impartiality. Thus, the Commentary states that regular or occasional participation of a judge in religious rites in religious buildings – churches, mosques, synagogues – and manifestations of religious beliefs (presumably also in public, though this is not specified), are "undesirable".

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<sup>40</sup> For more information on this, and similar matters, see Dimitra Blitsa, Ioannis Papathanasiou & Maria Salmanli: *Judges and Social Media: Managing the Risks*, prepared for the 2015 Themis Competition of the European Judicial Training Network.

<sup>41</sup> The Bologna and Milan Global Code of Judicial Ethics, approved at an International Conference on Judicial Independence held at the University of Bologna and at Bocconi University of Milano in June 2015, par 8.

<sup>42</sup> See the Center for Judicial Ethics of the United States National Center for State Courts, *Social Media and Judicial Ethics*, updated in December 2018, which includes a two-part article analyzing US advisory opinions and discipline decisions on social media and judicial ethics, but also summaries of recent revisions of judicial codes of conduct of different US states. See also the Guide to Judicial Conduct for the judiciary in England and Wales, Section 8.11 on social networking and blogging,

54. In this context, it is noted that according to Article 18 par 1 the right to freedom of religion includes the right “to manifest [one’s] religion in worship”, which the UN Human Rights Committee’s General Comment No. 22 extends to “ritual and ceremonial acts giving direct expression to belief”.<sup>43</sup> However, Article 18 par 3 of the ICCPR also permits limiting the freedom to manifest one’s religion.
55. Overall, limiting the manifestation of a judge’s religion or belief during court hearings and in other situations that are linked to his/her work may be justifiable given the need for absolute independence, impartiality and credibility before court. Judges’ personal values, philosophy, or beliefs should not bias the decisions that they take on a given case.<sup>44</sup>
56. At the same time, assuming that visits to religious places of worship are also “manifestations” of religion, extending such limitations to a judge’s private life appears to go too far. Such an approach would also not appear to be necessary to protect public safety, order, health, morals or the fundamental freedoms of others, as required by Article 18 par 3 of the ICCPR and would thus not be justifiable under international law. In this context, it is noted that such actions are not expressly forbidden by either the Code or the Commentary, but that the suggestion that such behaviour is “undesirable” may cause judges to restrict their behaviour themselves, and thus limit such activities.
57. Generally, it may be assumed that a judge will decide a case objectively and in line with the principles of fairness, including independence and impartiality, regardless of his/her religious faith. The fact that he/she regularly or occasionally goes to church, the mosque or the synagogue in his/her private time, and thereby possibly manifests his/her beliefs would not change that. However, it would certainly be problematic if religious beliefs start to play a role in the deliberations or other professional activities of a judge, and such behaviour would violate the code of professional ethics as well as principles of judicial impartiality and independence.
58. Additionally, it is noted that the Commentary, in seeking to extend limitations of the exercise of judges’ freedom of religion or belief in the private sphere as well, appears to go beyond the wording and intent of Article 8 of the Code of Judicial Ethics, which merely speaks of such restrictions while the judge is on duty and would certainly contradict international norms. For this reason, and due to the other considerations mentioned above, **it is recommended to delete the paragraph stating that judges’ manifestations of religion in the private sphere and visits to religious sites of worship are “undesirable”.**

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<sup>43</sup> See UN Human Rights Committee, General Comment 22 on Article 18 of the ICCPR: The Right to Freedom of Thought, Conscience and Religion, 30 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4, par 4.

<sup>44</sup> See Judicial Integrity Group: Commentary on the Bangalore Principles of Judicial Conduct, issued in March 2007, par 60. See also ECtHR, *Pitkevich v. Russia*, application no. 47936/99, admissibility decision of 8 February 2001, where the Court found that the applicant’s complaint was inadmissible, as her dismissal as a judge was not in violation of her rights. The Court based this on the submitted facts, which revealed that the applicant had intimidated parties to proceedings in court, and that she had promoted her church in damage of the state interest to protect the rule of law. As a result, the Court found that the applicant had called into question her impartiality and impaired the authority of the judiciary.

## 5. The Scope of the Commentary

59. The Commentary, when interpreting the provisions of the Code of Judicial Ethics, is quite detailed, including on judges' behaviour outside of court. It often goes quite far when providing guidance to judges on what to do and what not to do, and at times it is unclear whether such detail is truly necessary. Indeed, as stressed in the Commentary to Article 13 of the Code, "the Code cannot cover all life situations and recommend models of conduct appropriate for each of them". In this regard, it should be borne in mind that it is generally impossible to compile complete lists of pre-determined activities which judges are forbidden from pursuing; the principles set out in a code of conduct or ethics should serve as self-regulatory instruments for judges, i.e. general rules that guide their activities.<sup>45</sup>
60. Thus, with respect to Article 7 of the Code inducing a judge to avoid social gatherings and other public places if this could harm his/her reputation, the Commentary notes that judges should avoid public events arranged by political parties and organizations pursuing political goals. **This sentence should be reviewed, as it would appear to duplicate to a certain extent the Commentary to Article 6 of the Code** outlining the incompatibility of the professional activity of a judge with (active) membership in a political party or public association pursuing political goals.
61. Moreover, the Commentary notes that judges should abstain from visiting public places intended for drinking and gambling and should not appear in public in state of intoxication. As an example, the Commentary notes the case of a judge who caused a scandal after media published a picture of him in a public place with a glass of alcoholic drink in his hand (he subsequently resigned).
62. Generally, it is understood that judges should always, not only when discharging their official duties, act in a manner befitting their judicial office.<sup>46</sup> On the other hand, the effect of a judge's conduct on a community will always depend on the community standards that may vary according to place and time. Generally, assessments of conduct of judges require consideration of how a particular conduct would be perceived by reasonable, fair-minded and informed members of a community, and whether such perception is likely to lessen respect for a judge, and the judiciary as a whole. If so, then such conduct should be avoided.<sup>47</sup>
63. When applying these standards to the Commentary, and while it is clear that intoxicated judges in public (and media coverage of this) could negatively affect the reputation of said judges, and of the judiciary as a whole, asking them to not visit bars or clubs in general appears to be extreme, as the mere visit of such a place would not necessarily, by itself, imply undignified or improper conduct. This may be different for places known for gambling.
64. Moreover, it is not necessary to include in the Commentary a list of places that judges may visit (the Commentary mentions sports events, theatres, shopping malls, charitable and cultural events), as this may imply that any location not listed here may be

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<sup>45</sup> CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, par 48.

<sup>46</sup> See Judicial Integrity Group: Commentary on the Bangalore Principles of Judicial Conduct, issued in March 2007, par 101.

<sup>47</sup> See Judicial Integrity Group: Commentary on the Bangalore Principles of Judicial Conduct, issued in March 2007, par 102.



considered ‘undesirable’. Regardless of the location or event, judges are expected to behave modestly and with decorum (as also stated in the Commentary), and it would be better to focus on that, rather than on places that judges should, or should not avoid, and on examples that compound such instructions. **The relevant parts of the Commentary should be amended accordingly.**

65. The Commentary to Article 12 correctly reflects and expands on most parts of this provision, which indicates that judges should care about their reputation and that of their family members and should not use their official position for personal, family or other interests.
66. However, next to other matters such as awareness of financial interests of the family and not allowing family members or others close to a judge to influence his/her activities related to the administration of justice, Article 12 also requires judges to immediately report the commission of an offence by members of his/her family or close relatives to the human resources department of the authorized body.
67. Aside from explaining that such report shall be made in written form, the Commentary provides little additional explanation on this part of Article 12. Thus, it is not clear whether the provision talks about the commission of an offence *per se*, or about the conviction of a family member or close relative of having committed such an offence (presumably it is the latter, but **it would be good to clarify this in both the Code and the Commentary**).
68. Moreover, even though the Commentary stresses that criminal liability or conviction of family members or close relatives of a judge cannot serve as grounds for his dismissal, the Commentary goes on to say that when considering such cases, judicial bodies shall use an objective and comprehensive approach, and take into consideration the judge’s personality, reputation and attitude to the fact when taking a decision. These latter statements would appear to imply that criminal liability or conviction of family members/close relatives does have some bearing on the manner in which the respective judge is perceived and may call into question his/her integrity. **It is recommended to review this part of the Commentary, as its premise (that the integrity of a judge is called into question due to the behavior of his/her family members or relatives) is too limiting and invasive.** Rather, the integrity of a judge should only be doubted if his/her own behavior (not the behavior of others) suggests a lack thereof.
69. It is also noted that the Commentary (and the underlying Article 12) mentions that a judge shall maintain and educate his/her children and support his/her parents. The Commentary goes further by stating that a judge should be an exemplary “family man/woman” and should not be provocative or demonstrate material welfare (rather, material interests must be reasonable and appropriate). While a reasonable standard of living and avoiding provocative demonstrations of wealth will undoubtedly help safeguard the reputation of the judge and of the judiciary in general, instructing a judge how to educate and maintain his/her children and support his/her parents would appear to go too far. Thus, international documents also stress that standards applying to private life cannot be laid down too precisely.<sup>48</sup>
70. The Commentary to Article 12 also suggests that in order to safeguard his/her reputation, a judge should be an exemplary family man/woman. Although a decent way

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<sup>48</sup> See Judicial Integrity Group: Commentary on the Bangalore Principles of Judicial Conduct, issued in March 2007, par 105.

of life is commendable, applying such vague formulations would not appear to provide much guidance, nor it could be subject to an objective evaluation. **Both Article 12 and the Commentary thereto should be reconsidered in this regard.**

71. Overall, as also stated in Article 13 of the Code and the comments thereto, both the Code and the Commentary cover not only judges in office, but also retired judges and judges in training. While generally, it may be assumed that also the behavior of retired judges may impact the way in which the judiciary is perceived, it may not be necessary for the Code to apply to them in the same way as it may apply to sitting judges.
72. Arguably, if they no longer sit or review cases, the public scrutiny of retired judges will not be the same as when they were active, and will become less, the longer they are out of office. The need for them to adhere to the Code in their daily lives will then automatically also be less stringent. It may thus no longer be necessary for retired judges to self-restrict their freedom of expression, to avoid political gatherings, or to limit the exercise of their religion or belief. Rather, there is no reason why retired judges should not be involved in commercial activities, work in law firms, as mediators or arbitrators, or even become actively involved in politics, or community and social activities.<sup>49</sup> Should, on the other hand, a retired judge still sit in court as acting or auxiliary judge, e.g. due to a backlog of cases, then he/she will of course need to carefully consider the appropriateness of some of these activities.<sup>50</sup> Overall, **it is advisable to review the Code or at least the Commentary, and to add caveats where it is felt that more leniency is required with respect to retired judges.**

## **6. Safeguarding Independence and Reputation of a Judge**

73. In the Commentary's interpretation of Article 2 of the Code of Judicial Ethics, the question is raised of how to respond to allegations of corruption, and insults to the honour and dignity of a judge. The Commentary thus notes that in unfounded cases, the respective persons may be held responsible according to the law.
74. Here, **it may be helpful to be more specific, and to provide judges with guidance as to which measures they may take in case situations escalate** (and how, in certain cases where this may be foreseen, judges can prepare for this). Moreover, they could be reminded about relevant action to take on their end (e.g. relevant contempt of court measures), and any other existing legal remedies (including information as to which type of remedies would be considered proportionate in which situations).
75. At the same time, it may be useful to manage the expectations of individuals, and of society in general, by **providing more information on the manner in which courts, and the judicial system in general, work**. This may be done by informing about court activities, but also by inviting groups to visit courts and cooperating with institutions of education. Further, distributing information on how to access courts may be beneficial.<sup>51</sup>

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<sup>49</sup> See, e.g., the Bologna and Milan Global Code of Judicial Ethics, approved at an International Conference on Judicial Independence held at the University of Bologna and at Bocconi University of Milano in June 2015, par 9.

<sup>50</sup> See the Bologna and Milan Global Code of Judicial Ethics, approved at an International Conference on Judicial Independence held at the University of Bologna and at Bocconi University of Milano in June 2015, par 9.3.4.

<sup>51</sup> See CCJE: Opinion No. 7 on "Justice and Security" of 25 November 2005, pars 8-13.

76. Additionally, as the Commentary and Code are presumably not only intended for judges, but also for the public, **it would be helpful to include in both documents information on possible complaints mechanisms against judges in cases of perceived misconduct.** Moreover, both the Code of Judicial Ethics and the Commentary should provide **guidance to judges on when they should recuse themselves from cases in situations where there is a possible lack of impartiality or independence on their part.**
77. According to the Commentary to Article 2, a judge “should be able to react adequately to threats and pressure regardless of their source, and should submit an official statement about the undue influence he/she experienced to a corresponding authority.” It is recommended to underline that it is the duty of state authorities to protect the independence of the judiciary, and prevent and react adequately and efficiently to allegations of interference. Moreover, a judge not only has an ethical obligation to report on the facts of illegal interference but also the legal obligation to do so. “Illegal interference” and “direct or indirect pressure” on a judge is a crime and must be reported to the prosecuting authorities in all cases. Moreover, the judge should report to the competent authorities even in cases where there is only an appearance of “interference” or “pressure” and should then let them decide whether there is a case to answer.<sup>52</sup>
78. The Commentary on Article 2 also reiterates the principle set out in this Article stating that court chairpersons shall not unduly influence judges in their assessment of a concrete case. This is very important to ensure the independence of individual judges.<sup>53</sup> **It may, however, be helpful to include in the Commentary information as to what individual judges may do in such cases, i.e. which remedies and procedures are at their disposal to react to such difficult situations, in particular in cases where such undue influence occurs, or has become frequent. Similar guidance could be provided for cases where judges are subjected to other threats or pressure, e.g. by the executive, political actors, the media, parties to the case, the public, etc.**
79. Finally, it is noted that Article 9 of the Code of Judicial Ethics on relations with the media, and the related Commentary, stress that a judge may exceptionally appeal to law enforcement and judicial authorities to protect his/her honour, dignity and business reputation, if other ways of protecting his/her reputation have been exhausted. Here, it may be helpful to outline which types of appeals are meant and what steps a judge is recommended to take before appealing to the court. **It is therefore advised to review this paragraph with a view to providing specific suggestions and guidance for judges regarding the steps to be made before appealing to law enforcement officials and/or courts.**

*[END OF TEXT]*

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<sup>52</sup> CDL-AD(2016)013, the Venice Commission Opinion on Draft Code of Judicial Ethics of Kazakhstan.

<sup>53</sup> See also the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), developed by a group of independent experts under the leadership of ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence (hereinafter “the Kyiv Recommendations”), par 11.