

## **PUBLIC STATEMENT**

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### **Kazakhstan: Disciplinary action against judge Zhumasheva is an attack on judicial independence**

The International Commission of Jurists today expressed its concern at disciplinary sanctions and threats of criminal prosecution against Judge Aliya Zhumasheva of the Kachirsk District Court of Pavlodar Region in Kazakhstan.

The Judge was subjected to disciplinary sanction after refusing to abide by wrongful demands from senior colleagues as well as the Prosecutor's Office to issue convictions in two criminal cases.

At a press conference on 18 October, prior to the disciplinary hearing in her case, Judge Zhumasheva stated that she had come under pressure after she had issued two acquittals. In the first case, she reported that an official of the Prosecutor's Office demanded privately that the defendant be convicted to ensure "good indicators" in the rate of convictions, as the career of the Prosecutor was at stake. Shortly after her acquittal of the defendant in this case, a review was initiated by the Prosecutor's Office of administrative cases decided by Judge Zhumasheva.

In a second case, where Judge Zhumasheva acquitted two persons, she alleges that she was again subjected to pressure and the Court President demanded that Judge find the defendants guilty. The judge has made public an audio recording of a private discussion with senior colleagues where she can be heard being threatened with criminal prosecution unless she resigns from her position.

In disciplinary proceedings on 19 October, the Judicial Jury in Astana issued Judge Zhumasheva with a reprimand for procedural irregularities in her work, including in regard to the problems with availability of the casefile in the second criminal case. Although the disciplinary action against the judge was not expressly linked to the acquittals, the ICJ is concerned that the disciplinary process may have been misused to sanction Judge Zhumasheva for her independent decision to acquit defendants, against the wishes of the Prosecutor's Office and demands of her court president.

Such misuse of the disciplinary process severely undermines the independence of the judiciary and the ability of judges to administer fair justice, in contravention of international standards. The UN Basic Principles on the Independence of the Judiciary underscore that "it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary". In addition, "[t]he judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper interferences, inducements, pressure, threats or interferences, direct or indirect, from any quarter or for any reason".

In accordance with these standards, it is not only a right, but also a duty of every judge to decide cases before them in accordance with the law free from fear of reprisals of any kind. The ICJ is also concerned that, although Judge Zhumasheva currently remains in her judicial position, her future judicial career may be jeopardised.

The ICJ recalls that the United Nations Special Rapporteur on the independence of judges and lawyers, in his report following a mission to Kazakhstan in 2004 observed that the low acquittal rate in Kazakhstan, of about one per cent, can be explained by the fear of judges over their security of tenure. The case of Judge Aliya Zhumasheva demonstrates how this fear is fostered to achieve the low percentage of acquittals, which may amount to a denial of the presumption of innocence in the criminal process.

The ICJ calls on the Kazakhstan authorities initiate a prompt, thorough and independent investigation into over the alleged interference with administration of justice in this case. If the allegations of the pressure on judge Aliya Zhumasheva for carrying out her judicial functions are confirmed, those responsible should be held accountable. It must be ensured that Judge Zhumasheva's career, including her further promotion, is not adversely affected as a result of the lawful discharge of her judicial duties.

**For further information:**

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