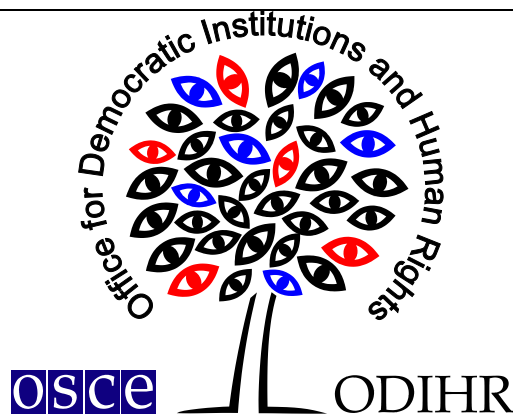


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OPINION ON THE LAW ON THE HIGH JUDICIAL COUNCIL OF THE REPUBLIC OF UZBEKISTAN

**Based on an unofficial English translation of the law on the High Judicial Council of the
Republic of Uzbekistan translated by a translator engaged by ODIHR**

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*This Opinion is also available in Russian
However, the English version remains the only official version of the document.*

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Annex: Law of the Republic of Uzbekistan on the High Judicial Council of the Republic of Uzbekistan

I. INTRODUCTION

1. *On 25 May 2018 The High Judicial Council of the Republic of Uzbekistan (hereinafter the High Judicial Council or Council) sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the Law of the of the High Judicial Council of the Republic of Uzbekistan (hereinafter “the Law”).*
2. *On 7 June 2018, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion in approximately three months on the compliance of these draft amendments with OSCE commitments and international human rights standards.*
3. *This Opinion was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate.¹*

II. SCOPE OF REVIEW

4. The scope of this Opinion covers only the Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the judiciary in Uzbekistan. The opinion will also highlight some areas where clear procedures and objective criteria in respect of fulfilment of the High Judicial Council’s mandate should be developed
5. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses more on those provisions that require improvements rather than on the positive aspects of the Law. The ensuing recommendations are based on international standards and practices related to the independence of the Judiciary. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
6. This Opinion is based on an unofficial English translation of the Law, which is attached to this document as an Annex. Errors from translation may result. This Opinion is also available in Russian. However, the English version remains the only official version of the document.²
7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Uzbekistan that the OSCE/ODIHR may wish to make in the future.

¹ Judiciary: The OSCE/ODIHR conducted this assessment within its mandate of the Human Dimension: OSCE participating States “confirm that they will respect each other’s right to freely choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law”. See OSCE Copenhagen Document, 29 June 1990, Part 1 par 94. Available here: <<http://www.osce.org/fr/odihr/elections/14304>>.

² The translation of the law names the body in the Law under review “High Judicial Council”. The Russian-speaking expert hired for research suggested that “Supreme” is the best translation, but after internal discussion it was decided to employ the term “High”.

III. EXECUTIVE SUMMARY

8. The OSCE/ODIHR welcomes the initiative to review this important Law on the High Judicial Council with an aim to ensure its compatibility with international standards. The efforts addressed at strengthening institutional guarantees for independence and efficiency of this key public body are commendable.
9. Article 2 of the Law defines independence of the judiciary as a primary objective for the work of the High Judicial Council, while Article 4 of the Law stipulates that it should respect principles of the rule of law, independence, impartiality and transparency. References to these fundamental principles and values, which are common both for the Constitution of Uzbekistan and international law, should be welcomed. It is also welcomed that Article 19 introduces the principle of equality, as applicable to the candidates who are to form the judiciary.
10. However, the OSCE/ODIHR notes that certain provisions of the Law, as analysed below, contradict its very aim, and undermine the independence, transparency and impartiality of the High Judicial Council and ultimately of the judicial institutions. The Law provides the President of Uzbekistan, who is a head of executive, with significant and unjustified powers to influence the composition of the High Judicial Council. According to the Law, the President, can directly appoint 8 members (including the Secretary) and significantly influence the appointments of the remaining 13 members [pars 23 and 24], without or with extremely limited involvement of the judiciary in this process. Such influence of the executive branch of power, over the composition of the High Judicial Council and lack of clear procedures for election/appointment of its members, is not compatible with standards and good practices for an independent judiciary. It is strongly recommended to revise the Law in this regard in order to be compliant with international standards.
11. Several other provisions of the Law are unclear and need to be revised, such as how the list of candidates proposed by the Head of the High Judicial Council is created [par 23], or grounds for dismissal based on “misconduct defaming his/her honesty” as this may be easily abused [par 36].
12. More specifically, and in addition to what was stated above, OSCE/ODIHR makes following recommendations to enhance institutional independence and efficiency of the Council :
 - A. Exclude members of the law enforcement bodies and prosecutors (unless they belong to the same judicial corps) as potential members of the High Judicial Council as they have conflicting roles within the judicial system; [par 28]
 - B. Include members of the bar / practicing lawyers/attorneys as possible members of the High Judicial Council as they play a significant role in the work of the courts; [par 28]
 - C. Introduce clearer criteria and procedure for selecting candidates for appointments to the High Judicial Council; [pars 23 and 28]
 - D. Consider increasing the term of office for member of the High Judicial Council without possibility of re-appointment; [par 31]
 - E. Clarify the role of the High Judicial Council in lifting of judicial immunities against criminal and administrative liability, as well as its role in inflicting of disciplinary sanctions on judges. [par 42]

- F. Review the power of re-appointment of judges by the High Judicial Council (possibly opting for appointments till the age of retirement), while ensuring that appointments are made by a body which is independent from the executive branch of power and only on the basis of clearly defined criteria. [pars 47-48]
- G. Clarify the power of the Council in the process of evaluation of judges and, in particular, provision in Article 7 of the Law, which empowers the High Judicial Council to “inspect the performance of judges with regard to the level of professionalism”. [par 49]

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

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on the independence of the judiciary and judicial councils

- 13. As stated in the OSCE Copenhagen Document 1990, “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression”.³ The principle of the independence of the judiciary is also crucial to upholding other international human rights standards.⁴ More specifically, the independence of the judiciary is a prerequisite to the broader guarantee of every person’s right to a fair trial i.e., to a fair and public hearing by a competent, independent and impartial tribunal established by law and by an accountable judiciary. This independence means that both the judiciary as an institution, but also individual judges must be able to exercise their professional responsibilities without being influenced by the executive or legislative branches or other external sources.
- 14. The establishment of well-functioning judicial councils, ensuring accountability of the judiciary but at the same time preserving its independence is of crucial importance in countries adhering to the principles of rule of law. The OSCE/ODIHR has already noted in previous opinions that: *“In principle, judicial councils or other similar bodies are crucial to support and guarantee the independence of the judiciary in a given country, and as such should themselves be independent and impartial, i.e., free from interference from the executive and legislative branches. Indeed, interfering with the independence of bodies, which are guarantors of judicial independence, could as a consequence impact and potentially jeopardize the independence of the judiciary in general”*.⁵ The Venice Commission also underlines that for “the due functioning of the Judicial Council, in those legal systems where it exists, is an essential guarantee for judicial independence.”⁶ Furthermore, the Venice Commission of the Council of Europe has

³ *Op. cit.* footnote 1, par 2

⁴ See e.g., OSCE Ministerial Council Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems, 6 December 2005, <<http://www.osce.org/mc/17347?download=true>>.

⁵ OSCE/ODIHR *Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary and Certain other Acts of Poland (5 May 2017)*, par 37.

⁶ Venice Commission *Opinion On The Draft Law On Amendments to the Law On The Judicial Council And Judges (Montenegro)*, CDL-Ad(2018)015, par 37.

- recommended establishing judicial councils as a guarantee to prevent pressure from other branches of government and external actors.⁷
15. The independence of the judiciary is also essential to engendering public trust and credibility in the justice system in general, so that everyone is seen as equal before the law and treated equally, and that no one is above the law. While every State is entitled to reform its judicial system and the legal framework in which its courts and judges operate, reform of the judiciary must respect longstanding international standards on the independence of the judiciary, the separation of powers and the rule of law, as well as the principle of equality, including equality between women and men.
16. At the international level, it has long been recognized that litigants in both criminal and civil matters have the right to a fair hearing before an “independent and impartial tribunal”, articulated in Article 10 of the Universal Declaration of Human Rights, which reflects customary international law, and subsequently incorporated into Article 14⁸ of the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”). This principle thus requires that the body appointing judges is impartial and free of political influence. The institutional relationships and mechanisms required for establishing and maintaining an independent judiciary are the subject of the UN Basic Principles on the Independence of the Judiciary (1985),⁹ and have been further elaborated in the Bangalore Principles of Judicial Conduct (2002).¹⁰ In particular, these principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.¹¹ International understanding of the practical requirements of judicial independence continues to be shaped by the work of international bodies, including the UN Human Rights Committee and the UN Special Rapporteur on the Independence of Judges and Lawyers. In its General Comment No. 32 on Article 14 of the ICCPR, the UN Human Rights Committee specifically provided that States should ensure “the actual independence of the judiciary from political interference by the executive branch and legislature” and “take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of primary and secondary legislation , and establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them”.¹²

⁷ Venice Commission Report (CDL-AD(2007)028 on Judicial Appointments, par 48 “*An appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy.*” Available here: <https://rm.coe.int/0900001680700a62>

⁸ UN International Covenant on Civil and Political Rights (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Uzbekistan acceded to the ICCPR by succession on 28 September 1995, <<http://indicators.ohchr.org/>>

⁹ UN Basic Principles on the Independence of the Judiciary, endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>>.

¹⁰ Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, which is an independent, autonomous, not-for-profit and voluntary entity composed of heads of the judiciary or senior judges from various countries, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), and endorsed by the UN Economic and Social Council in its resolution 2006/23 of 27 July 2006, <http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf>. See also Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (2010), prepared by the Judicial Group on Strengthening Judicial Integrity, <http://www.judicialintegritygroup.org/images/resources/documents/BP_Implementation%20Measures_Engl.pdf>.

¹¹ Bangalore Principles of Judicial Conduct, 2002, Preamble

¹² UN Human Rights Committee, General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial, 23 August 2007, par 19, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en>.

17. Uzbekistan is a participating state of the OSCE and OSCE participating States have also committed to ensure “the independence of judges and the impartial operation of the public judicial service” as one of the elements of justice “which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings” (1990 Copenhagen Document).¹³ In the 1991 Moscow Document,¹⁴ participating States further committed to “respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service” (par 19.1) and to “ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice” (par 19.2). Moreover, in its Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area (2008), the Ministerial Council also called upon OSCE participating States “to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary”, as a key element of strengthening the rule of law in the OSCE area.¹⁵ Further and more detailed guidance is also provided by the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) (hereinafter the “Kyiv Recommendations on Judicial Independence”).¹⁶
18. Other sources such as statements from the Council of Europe will also be mentioned as they result from legal practice relevant for many countries and can serve as useful guidance.
19. Other useful reference documents elaborated in various international and regional fora contain more practical guidance to help ensure the independence of the judiciary, including, among others:
- Reports of the UN Special Rapporteur on the Independence of Judges and Lawyers;¹⁷
 - Reports and other documents of the European Network of Councils for the Judiciary (ENCJ);¹⁸
 - The European Charter on the Statute for Judges (1998);¹⁹
 - Report of the Venice Commission on the Independence of the Judicial System, in particular Part I on the independence of Judges; and²⁰

¹³ *Op. cit.* footnote 1, pars 5 and 5.12.

¹⁴ OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (Moscow, 10 September-4 October 1991), <<http://www.osce.org/fr/odihr/elections/14310>>.

¹⁵ OSCE, Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area, Helsinki, 4-5 December 2008, <<http://www.osce.org/mc/35494>>.

¹⁶ The *OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010) were 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, <<http://www.osce.org/odihr/kyivrec>>.

¹⁷ Annual reports available in six languages (including English and Russian) available at: <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx>,

¹⁸ Available at <https://www.ency.eu/>.

¹⁹ European Charter on the Statute for Judges (Strasbourg, 8-10 July 1998), adopted by the European Association of Judges, published by the Council of Europe [DAJ/DOC (98)23], <<https://wcd.coe.int/ViewDoc.jsp?p=&id=1766485&direct=true>>

²⁰ The recommendations and guiding principles developed by the Venice Commission in its reports and opinions are widely accepted as part of the soft law and although Republic of Uzbekistan is not a member to the Venice Commission, these documents may serve as

- Opinions of the OSCE/ODIHR dealing with issues pertaining to judicial councils and the independence of the judiciary.²¹

2. General provisions of the Law

20. The Law contains 38 articles in 6 chapters and many of them are referred to below. The analysis will address the main subjects of the law following the general structure of the Law, but not article by article.
21. Article 1 simply states that the purpose of the Law is to regulate the activities of the High Judicial Council. The *raison d'être* for this body is according to article 2 to ensure compliance with the principle of an independent judiciary laid down in the Constitution of Uzbekistan.²² The independence of the High Judicial Council is further elaborated in article 4 where it is stated that “The Council exercises its activities by complying only with the law independently from the state bodies and other organizations as well as any officials”. The same article states that “Interference in the activities of the Council shall not be allowed and shall entail liability in accordance with the law”. **It is recommended to clarify what laws/legal provisions are being referred to. Furthermore, it is also recommended to specify the “other legislative acts” that regulate the activities of the High Judicial Council referred to in article 3.**

3. Appointments and composition of the High Judicial Council

3.1. Appointments of the members of the High Judicial Council

22. According to article 5 of the Law, the High Judicial Council shall consist of the Chairperson, the Deputy Chairperson, its members and the Secretary from among judges, representatives of law-enforcement bodies, institutions of civil society and highly skilled specialists in the field of law and shall comprise twenty-one persons.
23. The President of Uzbekistan (hereinafter the President) has the key role in appointing the members of the High Judicial Council. This is shown by the following provisions of appointment in article 5 of the Law: The President has discretionary power to appoint 7 members of the High Judicial Council and its Secretary. He or she can select any person from a wide range of organisations including law enforcement bodies, civil society groups or recognised specialists in the area of law, **but otherwise the criteria are vague and should be clarified.** Furthermore, the President appoints 11 judicial members of the Council. Here the President’s competence is somewhat limited as these 11 judges are appointed by the President from the list submitted by the Head of the High

important and useful sources for reference. Report on the Independence of the Judicial System is available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2009\)055rev5-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2009)055rev5-e)

²¹ See for instance: *Op. cit.* footnote 5 (*Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary and Certain other Acts of Poland (5 May 2017)*), OSCE/ODIHR *Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (As Of 26 September 2017)* available here: <http://www.legislationline.org/documents/id/20682>), *Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (30 August 2017)* available here: <http://www.legislationline.org/documents/id/21259>, *Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (as of 26 September 2017)* available here: <http://www.legislationline.org/documents/id/21444>, OSCE/ODIHR *Opinion on the Law of Ukraine on the Judiciary and the Status of Judges (30 June 2017)* available here: <http://www.legislationline.org/documents/id/21193>, OSCE/ODIHR *Opinion on the law 29/1967 Concerning the Judicial System, The Supreme Judicial Council of the Judiciary, and the Status of Judges in Tunisia (as amended up to 12 August 2005 (21 December 2012)*, available here: <https://www.osce.org/odihr/99826?download=true> and several other opinions available at <http://www.legislationline.org/search/runSearch/1/type/2/topic/9>.

²² Constitution of the Republic of Uzbekistan, article 106, available here: <https://www.un.int/uzbekistan/uzbekistan/constitution-republic-uzbekistan>

Judicial Council. However, the Law is unclear on how this list is formed and whether the President has right to refuse the appointment and what may constitute the reasons for such a decision. The same is true with respect to the power of the President to approve the Deputy Chairperson of the High Judicial Council. It is also not clear from the Law who nominates the candidacy of the Deputy Chairperson and what are the procedures for a nomination. The judiciary as a whole does not seem to be involved in this process.

24. Finally, the President has significant competences in appointing the Chairperson of the High Judicial Council. The Chairperson is nominated by the President and is confirmed in post by the Parliament (article 5). The Law neither contains the procedure of selecting the candidate for the position of the Chairperson, nor does it define criteria candidate should satisfy. The President thus seems to have wide discretion and control over the process of selection of a candidate for this position.
25. The said provisions give the President either direct or strong indirect influence over all nominations to positions on the High Judicial Council. This is highly problematic as the President is the Head of the executive branch of power. This creates an unfortunate link between the members of the High Judicial Council and the President and severely compromises the perception of an independent body. It must be reiterated that the key purpose of judicial self-governing bodies, particularly judicial councils or similar independent bodies, is to safeguard the independence of the judiciary and of individual judges. To serve this purpose, judicial councils must themselves enjoy sufficient independence from the other branches of power in their work and decision-making.²³ It's also important to note that when assessing whether a given body enjoys independence or not, the European Court of Human Rights (ECtHR) has highlighted that the manner in which judges are appointed to a judicial council, and particularly the nature of the appointing authorities, is relevant in terms of judicial self-governance.²⁴ More specifically, the ECtHR has stressed the importance of having the judicial corps elect its own representatives to the Council, in order to “reduc[e] the influence of the political organs of the government on the composition of the [Council]”.²⁵
26. According to the Kyiv Recommendations on Judicial Independence the work of judicial councils shall not be dominated by representatives of the executive and legislative branch, including the State President.²⁶ Furthermore, the CCJE has expressly stated that it “does not advocate [for] systems that involve political authorities such as the Parliament or the executive at any stage of the selection process [of judge members of Judicial Councils]”.²⁷ The Venice Commission has also concluded similarly: *‘The exact composition of the judicial councils varies, but it is widely accepted that at least half of the council members should be judges elected by their peers.’*²⁸ The Recommendation of the Committee of Ministers of the Council of Europe states that *‘not less than half*

²³ *Op. cit.* footnote 5, par 41.

²⁴ ECtHR, *Oleksandr Volkov v. Ukraine*, (Application 21722/11) judgment of 9 January 2013, par 112, available here: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwi-o7Pc58bdAhXM-KOKHwfQCFwOFjAAegQIABAC&url=https%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F17748&usg=AOvVaw0N6_tYvw2G_soEGSb81mQy

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ 2007 CCJE Opinion No. 10 on the Council for the Judiciary at the Service of Society, para 31.

²⁸ Venice Commission, *Opinion on the Draft Act Amending the Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court, Proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts*, (11 December 2017), par. 17, available here: http://krs.pl/admin/files/wwm/venice_com_opinion%20cdlad9042017031_of_11.12.2017_on_draft_acts_krs_sn_ustp.pdf

the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary'.²⁹ Such systems are in place in for instance, Moldova where 6 out of 12 members of the High Council of the Magistracy are elected by their peers.³⁰ The same is the case in Slovenia, 6 out of 11 members,³¹ Slovakia 9 out of 18 members.³² In Lithuania 20 out of 23 judge-members are elected by judges.³³ The Law seems to exclude the input of judiciary from the system of appointment of the members of the High Judicial Council. While, it is ensured that 11 members (see par. 28 *infra*) are judges, the selection of these judges is left to the discretion of the Head of the High Judicial Council, and ultimately to the President of Uzbekistan. The Kyiv Recommendations further suggest that the Head of the Judicial Council be elected by majority vote from among its members.³⁴ As noted above, according to the Law under review, the President of Uzbekistan nominates the head. In the absence of a clearly defined procedure for the selection of a candidate, who is then approved for office by a vote in the Parliament makes the appointment political and detached from the judiciary. Democratic decision-making is almost absent from the appointment of the members of the Judicial Council of Uzbekistan. The judge members seem to be singlehandedly selected by the head of the Council.

27. **In view of the above described international standards and findings, in order to ensure the independence of the High Judicial Council, it is recommended to reform the presented system, clarify criteria and procedure for electing / appointment members to the High Judicial Council, limiting the excessive influence of the executive power in the process of appointments, especially with respect to judicial members of the High Judicial Council, ensure involvement of the judicial self-governing bodies in the process, as well as consider implementing other changes in line with the recommendations above.**

3.2. Composition of the High Judicial Council

28. According to article 5 of the Law the High Judicial Council consists of 21 members. Among these 21 members, 11 are judge members. Judicial Councils are bodies entrusted with specific tasks of judicial administration and independent competences in order to guarantee judicial independence. However, as pointed out in the previous section, the judge members in the High Council of the Judiciary in Uzbekistan are not elected by the judiciary and therefore they cannot be deemed to represent it. The remaining 10 members of the High Judicial Council can be representatives of law enforcement bodies, members of civil society and highly qualified specialists in the area of law. The vague language of the Law and also the vague criteria for suitability of candidates (see par. 23 *supra*) effectively allow appointments from a very large pool of potential candidates, who may not have necessary skills and qualifications. This also renders it possible members of the police, the prosecutorial authority, or even the special security services to be appointed as members of the High Judicial Council. This

²⁹ Council of Europe, Committee of Ministers, Recommendation 2010(12), section 27.

³⁰ Law of the Republic Moldova of July 19, 1996 No. 947-XIII, article 3 (4) Available here: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=2ahUKEwj9dHDwNjdAhVG3aQKHRUfBBAQFjABegQICRAC&url=https%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F16658&usq=AOvVaw2XpBRIL7L4Bx87z-HL6Lgd>

³¹ https://www.ency.eu/images/stories/pdf/factsheets/sodni_svet_slovenia.pdf

³² https://www.ency.eu/images/stories/pdf/factsheets/sudna_rada_slovakia_march_2015.pdf

³³ Law on Courts of Lithuania 31 May 1994 No. I-480, article 119-2.2), see also:

https://www.ency.eu/images/stories/pdf/factsheets/tt_lithuania.pdf

³⁴ *Op. cit.* footnote 16, section 7.

rule is not in line with the Kyiv Recommendations, which states that prosecutors should be excluded, where they do not belong to the same judicial corps as the judges (for example in France judges and prosecutors (investigative judges, (*juges d'instruction*)) belong to the same judicial corps, while other representatives of the law enforcement agencies should be barred from participation in the judicial council.³⁵ It is a very unusual occurrence in OSCE participating states for representatives of the law enforcement bodies to be members of Judicial Councils. For instance, in Lithuania all members belong to the judiciary and members of the prosecutorial services cannot be appointed.³⁶ In Bulgaria 4 out of 25 members of the Judicial Council are elected by the prosecutorial sector, and the Prosecutor General is an *ex officio* member,³⁷ however, this is substantiated by the fact that the Bulgarian Supreme Judicial Council has the power to decide the organisation of the prosecutor's offices.³⁸ Moreover, the members of the bar/practicing lawyers/attorneys are not directly mentioned in the Uzbek law. Since advocates are the key stakeholders in any judicial system, their participation is to be encouraged. According to the Kyiv Recommendations, "*apart from a substantial number of judicial members elected by the judges, the Judicial Council should comprise law professors and preferably a member of the bar, to promote greater inclusiveness and transparency*".³⁹ Furthermore, "*in order to avoid excessive concentration of power in one judicial body and perceptions of corporatism it is recommended to distinguish among and separate different competences, such as selection, promotion and training of judges, discipline, professional evaluation and budget.*"⁴⁰

29. **Thus, it is recommended that law enforcement officials are excluded from the pool of candidates for appointments to the High Judicial Council, allowing prosecutors only if they belong to the same judicial corps and that candidates be selected from scholars, members of the bar/practicing lawyers/attorneys and members of civil society. Furthermore, clearer criteria for suitability of candidates should be introduced. It may be advisable to establish different independent bodies competent for specific aspects of judicial administration without subjecting them to the control of a single institution or authority.**

4. Guarantees for the independence of the Members of the High Judicial Council

4.1. Tenure

30. Pursuant to Article 27 of the Law on the High Judicial Council of Uzbekistan a member of the Council can be appointed for no longer than 5 years. "Judge members" of the Council, the head of the Council and its registrar are full-time members of the Council and they can only be elected twice. All other members of the High Judicial Council are part time members and they can be re-appointed indefinitely.
31. In general, the system of re-appointment may create an incentive to demonstrate loyalty to a political body or force that appoints members of the High Judicial Council and is

³⁵ *Op. cit.* footnote 16, section 7.

³⁶ *Op. cit.* footnote 33 (https://www.ency.eu/images/stories/pdf/factsheets/tt_lithuania.pdf)

³⁷ https://www.ency.eu/images/stories/pdf/factsheets/bcc_vss_bulgaria.pdf

³⁸ Official Website of the Supreme Judicial Council of Bulgaria: <http://www.vss.justice.bg/en/page/view/2068>

³⁹ *Op. cit.* footnote 16, section 7.

⁴⁰ *Ibid.*, section 2.

thus not optimal. Longer tenures without a possibility to re-appoint can better ensure independence of the members of the High Judicial Council. According to the European Charter on the Statute for Judges,⁴¹ judicial appointments for a fixed period are acceptable under the provision that the decision on whether to renew their mandates is made by “an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary”; “the decision may also be taken upon the proposal or recommendation of such a body”.⁴² According to the Rule of Law Checklist adopted by the Venice Commission, “[l]imited or renewable terms in office may make judges dependent on the authority which appointed them or has the power to re-appoint them”.⁴³ This situation can also be relevant for the High Judicial Council of Uzbekistan, as all members are appointed by a political body and re-appointments can then also be particularly problematic with regards to the High Judicial Council as it appoints judges (see par 43 *infra*).

32. In many participating States of the OSCE consecutive re-election is prohibited. Examples include, Ukraine where a member of the High Judicial Council is elected for the period of 4 years.⁴⁴ A person cannot be elected twice consecutively. In Bulgaria, the mandate of the elected members of the Council is five years, but members cannot be re-elected for two consecutive mandates.⁴⁵ In Hungary, the Members of the National Judicial Council are elected for a non-renewable term of 6 years.⁴⁶ In Spain, the Members of the General Council for the Judiciary are appointed for the non-renewable term of 5 years.⁴⁷ In some participating States, re-appointment is possible; however, in this case independence of the judicial council is ensured by the way of appointment: a nomination by the judiciary. Examples include Lithuania where re-election is possible, but all members are judges and as mentioned 20 out of 23 are selected by their peers.⁴⁸ In Greece, all members of the Supreme Judicial Council of the Administrative Justice are judges whose term can be renewed. Independence is ensured by that the members are all judges and chosen by lot among judges who have served at the Supreme Administrative Court for at least two years.⁴⁹
33. **In line with the above, and with a view of ensuring greater independence of the High Judicial Council, it is advisable to introduce non-renewable terms of office for members of the High Judicial Council. As an alternative, the renewal of mandates may be permissible on the basis of clearly defined criteria and procedure of selection of candidates by the body independent from the political authority. OSCE/ODIHR also recommends that the same rules regarding tenure apply to all members to avoid differential treatment.**

⁴¹ *Op. cit.* footnote 19, par. 3.3.

⁴² *Op. cit.* footnote 21. (*Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (As Of 26 September 2017)*), par 120.

⁴³ Venice Commission: Rule of Law Checklist (2016), section 76

⁴⁴ Law of Ukraine on the Supreme Council of the Judiciary, 21 December 2016 N° 1798 VIII, article 5-2 available here: <http://www.legislationline.org/documents/id/20642>

⁴⁵ *Op. cit.* footnote 37.

⁴⁶ Factsheet on the Hungarian National Judicial Council. https://www.ency.eu/images/stories/pdf/factsheets/obt_hungary.pdf

⁴⁷ This is the case for all members except for the president of the General Council who can be re-elected. See, factsheet on the Spanish General Council for the Judiciary. https://www.ency.eu/images/stories/pdf/factsheets/cgpj_spain.pdf

⁴⁸ *Op. cit.* footnote 33 (Law on Courts of Lithuania, article 119-2.2).

⁴⁹ https://www.ency.eu/images/stories/pdf/factsheets/greece_sjc_aj.pdf

4.2. Dismissal

34. Legal provisions against early dismissal of the Members of the High Judicial Council are established as guarantees for the independence of the Members. Article 30 of the Law under review provides for a list of reasons for early dismissal of the Members.
35. Voluntary resignation, death of a member or a criminal sentence against a Member according to regular criminal proceedings are among the most often found in legislation of participating States and generally constitute an acceptable reason for early dismissal.
36. Other reasons mentioned in the Law however, raise concerns. In particular, the last premise stipulated in Article 30, namely committing a “misconduct defaming his/her honesty and dignity”. This provision may refer to various disciplinary actions for which members of the High Judicial Council can be sanctioned. The term “misconduct defaming his/her honesty and dignity” is vague and overbroad; it can include many different actions. In the Law no criteria are elaborated to define it. Furthermore, it is also unclear under what circumstances this provision can be triggered. One can only suggest that such “misconduct” falls short of criminal acts because the same article of the Law under review establishes a separate provision for early dismissal because of a criminal conviction. This vague and broad reason for dismissal may easily open the floodgates of unfetter discretion in interpretation and can be used to inflict undue pressure on the members of the High Judicial Council for acts which may simply be socially or politically unwelcome and may lead to arbitrary prosecutions for alleged disciplinary offences.
37. Members of the High Judicial Council should only be dismissed for very serious reasons clearly stipulated by the law and that may harm the reputation of the judiciary.⁵⁰ As this body is closely linked to the judiciary similar standards for dismissal of judges in courts can serve as guidance. According to a previous opinion by OSCE/ODIHR “*there are three basic requirements which they set with respect to national laws governing the disciplinary responsibility of judges, i) A clear definition of the acts or omissions which constitute disciplinary offences; ii) The disciplinary sanctions must be proportionate to the respective disciplinary offence; and iii) The disciplinary proceedings must be of an appropriate quality.*”⁵¹ Vague, imprecise and broadly-worded provisions that define members’ liability may discourage an independent and impartial interpretation of the law, assessment of facts and weighing of evidence. Regulations of judges’ liability that lack these qualities may also be abused to exert undue pressure on judges when deciding cases and thus undermine their independence and impartiality.⁵² Second, the punishment for dishonourable acts should be proportionate. It seems that the only punishment expected here is the early termination of the membership of the Council. It is impossible to adequately examine if this punishment is proportionate since

⁵⁰ OSCE-ODIHR *Opinion on the Law on the Selection, Performance, Evaluation and Career of Judges in Moldova* (13 June 2014), par 25, available here: <http://www.legislationline.org/documents/id/19100>

⁵¹ OSCE/ODIHR, *Opinion on the Draft Law of the Republic of Moldova on the Disciplinary Responsibility of Judges*. (14 December 2012), par 10, available here: <http://www.legislationline.org/documents/id/17699>, see also: Venice Commission - OSCE/ODIHR *Joint Opinion on the Draft Law on Disciplinary Liability of Judges of the republic of Moldova* (24 March 2014), par 15, available here: <http://www.legislationline.org/documents/id/18817>

⁵² Venice Commission: *Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia* (CDL-AD(2007)009), pars 25 and 29, available here: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)009-e); *Opinion on the Laws on Disciplinary Liability and evaluation of Judges of the Former Yugoslav Republic of Macedonia* ”CDL-AD(2015)042, par 113, available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)042-e); see also *Op. cit.* footnote 24, pars 185-186, .

the law does not have any indication of what dishonourable acts may include. Third, what makes this provision even more problematic is that there is no clear procedure in the law that would ensure that the dismissal is decided as a result of fair trial. It is not clear what body is going to decide on whether a Member of the Council has indeed committed an action that can “defame the honour and dignity” of the member.; There is no reference to the standard of proof that should be used by this committee or other fair trial guarantees such as equality of arms, right to be informed about the accusations, right to adequate defence and others. With respect to the disciplinary prosecution of judges the Venice Commission stated that “[t]he disciplinary system should fulfil the requirements of procedural fairness by way of a fair hearing and the possibility of appeal(s)”.⁵³ Furthermore, the Kyiv Recommendations suggest such bodies must be independent from influence from other branches of power.⁵⁴ Similar standards should be applied to the disciplinary procedures against members of the Judicial Council. **In line with the above is recommended to clarify the grounds for the termination of mandate more precisely, avoiding overbroad and vague formulations, introduce guarantees of procedural fairness in cases against members of the High Judicial Council.**

38. Although health issues of a member of the High Judicial Council can be a justified reason of termination of membership, it is important to be clear as to what types of diseases can prevent a Member of the High Judicial Council from continuing her or his membership. Article 30 regulates that the power of a Member should be terminated if he or she has diseases or physical disabilities that impede his/her activities. A very similar provision is enshrined in Article 20 as a reason to exclude a person from the reserve list of judicial candidates. This definition is vague and open to broad interpretation as well as abuse.
39. Relevant provisions should be clear and they should indicate in what cases medical issues can prevent members from performing their duties. This can be regulated by law as in Lithuania, where the rule for dismissal due to health reasons is much clearer: 120 consecutive days or 140 days in a calendar year. Incurable illness or prolonged illness can also serve as reasons for dismissal.⁵⁵ The example is again for judges, but similar considerations will apply to judicial councils.
40. **OSCE/ODIHR recommends that the Law clarify what health problems are meant in Articles 20 and 30. The exact list of medical conditions can be provided by a separate act but the key identifiable features of these disabilities should be indicated in the Law.**
41. Another technical anomaly is that from the text of the Law under review it is clear that members can continue their membership in the High Judicial Council even if they resign from a judicial position. Comparable laws in other participating states of the OSCE provide for an early termination of membership in the Council if a Member ceases to be a judge. Article 12 (1) of the of the Moldovan Law on the Supreme Council of the Magistracy provides that the membership of the Council ends if the member is no longer a judge, changes professional position or is dismissed from his or her judicial

⁵³ *Op. cit.* footnote 43 (Venice Commission Rule of Law Checklist), section 78.

⁵⁴ *Op. cit.* footnote 16, sections 9 and 26.

⁵⁵ *Op. cit.* footnote 33, (Law on Courts of Lithuania, article 90.2)

post.⁵⁶ However, retired judges may still be elected to the Judicial Council by their judiciary itself as long as they fulfil other criteria for being a member.

It is recommended to clarify the rules and grounds for membership in case of resignation from a judicial position.

4.3. Immunity of the Members of the High Judicial Council

42. According to article 28 of the Law, the guarantees of immunity for judges in Uzbekistan are also extended to all Members of the High Judicial Council. The OSCE/ODIHR and the Venice Commission has emphasized that independence of judges should not be compromised ‘through fear of the initiation of prosecution’.⁵⁷ Similarly, it is crucial to ensure procedural immunity of the Members of the High Judicial Council, which typically includes special protection against arrest, detention and prosecution.⁵⁸ Although it is welcome that according to Article 17 of the Law under review the High Judicial Council is entrusted with lifting judicial immunities, the lack of guarantees for institutional independence identified above makes the system suboptimal.

5. Competences of the High Judicial Council

5.1. Judicial Appointments

43. According to article 6 of the Law, one of the key competences of the High Judicial Council is related to judicial appointments. In previous opinions, the OSCE/ODIHR has stated that the independence of the body appointing judges is fundamental for the independence of the judiciary in general, i.e. a limited role of the legislative and executive branches of power.⁵⁹ This position is also supported by the Venice Commission, which has emphasised that the key role in appointment of judges should belong to the judicial governance body and that this body must be competent to make independent decisions regarding appointments.⁶⁰ The Law under consideration does not provide for a detailed description of the procedure of judicial appointments. This procedure is regulated by Article 63 of the Law of Uzbekistan “on Courts”. Since the latter law falls outside the realm of this opinion, its provisions are not directly commented on but they are only taken into account as long as they affect the compliance of the Law “on the High Judicial Council” with international standards. The High Judicial Council appoints the majority of judges in the country except for presidents of the regional courts and the Supreme Court of Uzbekistan. All regular judges are appointed and removed from their role by the High Judicial Council in consultation with the President of Uzbekistan. It is not clear from the text of the Law under review the nature of the consultations to take place between the President and the

⁵⁶ *Op. cit.* footnote 30

⁵⁷ Venice Commission – OSCE/ODIHR, *Joint Opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic* (CDL-AD(2014)018), para. 37, available here: <http://www.legislationline.org/documents/id/19099>

⁵⁸ OSCE/ODIHR - Venice Commission, *Joint Opinion CDL-AD(2016)025, Kyrgyz Republic - Endorsed joint opinion on the draft law "on Introduction of amendments and changes to the Constitution"*, par. 77, available here: <https://www.osce.org/odihr/313186?download=true>

⁵⁹ *Op. cit.* footnote 21 (all cited sources)

⁶⁰ See for example Venice Commission: *Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine* (CDL-AD(2013)034), par. 16, available here: Venice Commission: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)034-e), see also, Venice Commission: *Opinion on the Draft New Constitution of Iceland* (CDL-AD(2013)010), para. 137, available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)010-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)010-e).

High Judicial Council. Furthermore, it is not clear how they are/would be organised and what powers the President has in relation to the list of new judges considered by the High Judicial Council. Taking into account that the President is significantly involved in appointing of the members of the High Judicial Council, his or her opinion about the candidates can prove to be crucial when appointing new judges. **The OSCE/ODIHR recommends that the President of Uzbekistan, as head of the executive power, should not have decisive competences in this area.** In the case that the President of Uzbekistan has any competence in the appointment process this should be, in line with the Kyiv recommendations limited to refusal of candidates nominated by the High Judicial Council and only on procedural grounds and be reasoned. The High Judicial Council should have the possibility to overrule by qualified majority the President's refusal to appoint after revisiting its previous decision.⁶¹

44. It is also essential that the criteria for appointment are governed by merits and not by loyalty and any other irrelevant factors.⁶² Article 21 of the Law provides that the key criteria of appointment are spotless reputation, honesty, expertise, sufficient life experience, absence of illnesses or disabilities that would prevent him from working as a judge. Although, these criteria might not be problematic as such, they are very abstract and they are open to very broad interpretation. **More specific criteria ought to be provided, and the Law under review should establish the procedure of how these criteria can be tested.** According to Article 24 of the Law, the High Judicial Council can use various methods such as interviews, testing by independent experts, thematic essays, and express-questionnaires. It seems that a single test of abilities of the judicial candidates is a preferable option that would provide comparable and objective results. The Venice Commission opined that “[i]n order to ensure the high quality and diversity of candidates, mandatory written exams should be introduced at the entry level”.⁶³ Procedures for such testing can be regulated in primary or secondary legislation.
45. Furthermore, there are a number of international standards on the selection of judges that aim to ensure that decisions on the selection of judges are made in a manner, which ensures the independence of the judiciary and results in the appointment of competent, impartial and independent judges reflecting the composition of the population as a whole. These include, as mentioned, the independence of the selection body⁶⁴, its composition⁶⁵ and membership.⁶⁶ Transparent and clear selection criteria⁶⁷ and decision-making processes⁶⁸ are also of relevance in this context, as is the right to challenge decisions.⁶⁹ There should also be guarantees against discrimination⁷⁰ and the composition of the judiciary should reflect the composition of the population as a whole⁷¹ and be balanced in terms of gender.⁷² It is positive that Article 19 of the Law

⁶¹ *Op. cit.* footnote 16, section 23.

⁶² Venice Commission: *Report on the Independence of the Judicial System Part I: The Independence of Judges*, CDL-AD(2010)004, par 27, available here: <https://rm.coe.int/1680700a63>

⁶³ Venice Commission: *Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina*, CDL-AD(2012)014, par 91, available here: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)014-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)014-e)

⁶⁴ *Op. cit.* footnote 19, par 2.1 (European Charter on the Statute for Judges); footnote 29, par 46 (Recommendation CM/Rec(2010)12, and footnote 16, section 21.

⁶⁵ *Ibid* par 1.3 (European Charter on the Statute for Judges,); par. 46 (Recommendation CM/Rec(2010)12),

⁶⁶ *Op. cit.* footnote 19, par. 48.

⁶⁷ General Comment 32, par 19; Magna Carta of judges, par 5; *Ibid*, par 44 (Recommendation CM/Rec(2010)12); par 2.1 and 2.2 (European Charter on the Statute for Judges); and *op. cit.* footnote 16, par 21.

⁶⁸ *Ibid*, par 48 (Recommendation CM/Rec(2010)12); *Op. cit.* footnote 9, principle 10.

⁶⁹ *Ibid*, par 48 (Recommendation CM/Rec(2010)12).

⁷⁰ *Ibid*, par 45 (Recommendation CM/Rec(2010)12); cf. *Op. cit.* footnote 9, principle 10.

⁷¹ *Op. cit.* footnote 16, section 24.

includes provisions to ensure that appointments are not based on “gender, race, nationality, language, religion, social background, beliefs and personal and social status”. **However, in light of this last requirement mentioned above on gender balance, it is recommended to consider adding to the Law provisions that will ensure that in the process of selecting judges, special regard is paid to ensuring gender balance in the judiciary.**

46. **It is recommended to clarify the criteria and procedure for judicial appointment in line with the above mentioned recommendation and ensure that the executive power has limited influence in the process of selection and appointment of judges.**

5.2. Re-appointment of judges in the courts of Uzbekistan

47. According to Article 63 of the Law of Uzbekistan “on Courts”,⁷³ a judge is appointed for an initial period of 5 years. Then he or she can be re-appointed for the period of 10 years and only after that, he or she can be re-appointed indefinitely. The system of two re-appointments contains a danger to the independence of the Judiciary during the initial 15 years of a judge in office. It should be noted that the Human Rights Committee expressed concern about the insufficient independence and impartiality of the judiciary, including the lack of security of tenure of judges — who have their term renewed by the Executive every five years — and regrets the lack of information on the appointment, promotion, suspension and removal of judges.⁷⁴ Apart from that, initial appointments for 5 or 10 years entails similar dangers to the probationary appointment system applied in certain jurisdictions. The Venice Commission has dealt extensively with the issue of probationary appointment stating “...*that setting probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way. [...] This should not be interpreted as excluding all possibilities for establishing temporary judges. In countries with relatively new judicial systems there might be a practical need to first ascertain whether a judge is really able to carry out his or her functions effectively before permanent appointment. If probationary appointments are considered indispensable, a “refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office”.*⁷⁵
48. Pursuant to the said Article, the High Judicial Council should take into account three criteria: first, “stability” of his or her judicial decisions; second, his or her experience in judicial decision-making and application of legal norms; third, public opinion about his or her professional abilities. All these criteria are problematic and require re-consideration.

⁷² See par 190 under Strategic Objective G.1: “Take measures to ensure women's equal access to and full participation in power structures and decision-making” of the Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), available at <http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en> ; OSCE Ministerial Council Decision 7/09 on Women’s Participation in Political and Public Life; see also par 81 on the “Adequate Representation of Women in the Judiciary” of the 2011 Annual Report of the Special Rapporteur on the Independence of Judges and Lawyers, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/130/15/PDF/G1113015.pdf?OpenElement> .

⁷³ Law of the Republic of Uzbekistan on Courts of September 2, 1993 No. 924-XII.

⁷⁴ Concluding observations of the Human Rights Committee, 7 April 2010, CCPR/C/UZB/CO/3, par. 16.

⁷⁵ *Op. cit.* footnote 62, par 37.

49. The first criterion for re-appointment is the stability of his or her judicial decisions. There is a multitude reasons for which a decision can be overturned on appeal. Often a different decision by an appeal court has nothing to do with the quality of the initial decision: an appeal court can come up with a different discretionary decision based on a different interpretation of the law and/or new evidence. This does not entail that the earlier decision is wrong. This criterion might increase the dependency of lower courts from the upper courts in terms of their decision-making. The judges will then naturally try to ensure that their decisions will stay by consulting with their colleagues from the higher courts. This is an unacceptable practice of fettering discretion as higher courts cannot influence the decision-making of the lower courts in their substance, only by prior jurisprudence. Such practice is a clear threat to independence of the judiciary. In this respect, the Venice Commission opined that:

*“this is a matter that should be approached with a great degree of caution. It does not necessarily follow that because a judge has been overruled on a number of occasions that the judge has not acted in a competent or professional manner. It is however reasonable that a judge who had an unduly high number of cases overruled might have his or her competence called into question. Nevertheless, any final decision would have to be made on the basis of an actual assessment of the cases concerned and not on the basis of a simple counting of the numbers of cases which had been overruled. In addition, a distinction might be drawn between decisions made on the basis of obvious errors, which any lawyer of reasonable competence should have avoided and decisions where the conclusion arrived at was a perfectly arguable one which nonetheless was overturned by a higher court”.*⁷⁶

50. **It is recommended that rules for re-appointments are thoroughly revised, possibly opting for appointments till the age of retirement, eliminating initial 5 year appointments, and that no re-appointment criterion is solely based on the number of overturned judgments.**
51. The second criterion examines whether the judge up for re-appointment had enough experience in judicial decision-making. The aim of this criterion is unclear as it is hard to see what exactly it is supposed to test. Even during the first 5 years in office a judge would be able to gain enough experience let alone during his or her 15 initial years. The utility of this criterion is doubtful. **It is recommended this provision be removed.**
52. Lastly, public opinion about the judge should, according to the Law, be taken into account in re-appointing him or her. This criterion is particularly problematic as it undermines the immunity of the judge from public opinion. It is widely accepted that independence of judiciary is maintained by his or her lengthy tenure and lack of democratic accountability. When delivering a judgment a judge should solely rely on legal reasoning at his or her discretion. This judge should not be required to bear in mind how popular or unpopular a particular judgment would be with general public. The discussed criterion directly links public satisfaction with judgments and re-appointment of the judge who delivered these judgments. This approach is inappropriate. Judicial accountability is not normally ensured through democratic means that are normally appropriate for other branches of power. Moreover, it is unclear how

⁷⁶ Venice Commission; *Opinion on the Criteria and Standards for the Election of Judges and Court Presidents of Serbia*, CDL-AD(2009)023, pars 35-38, available here: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)023-e_and_Opinion_on_the_Laws_on_the_Disciplinary_Liability_and_Evaluation_of_Judges_in_the_former_Yugoslav_Republic_of_Macedonia,CDL-AD92015\)42](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)023-e_and_Opinion_on_the_Laws_on_the_Disciplinary_Liability_and_Evaluation_of_Judges_in_the_former_Yugoslav_Republic_of_Macedonia,CDL-AD92015)42), par 46.

the public opinion is collected. Most judges are not particularly known to people; there are people who are naturally dissatisfied with the judgments but not because there are illegal or unfair but because they are not benefiting from these judgments. **Therefore, this criterion is inherently problematic from both a substantive and procedural point of view and should be removed from the Law.**

5.1. Criminal and disciplinary measures

53. In Article 6 of the Law, it is stipulated that one of the tasks of the High Judicial Council is “to consider the issues of disciplinary liability for judges, and making conclusions on bringing them to criminal and administrative liability”. The Law does not offer a detailed procedure of application of criminal and disciplinary measures to ordinary judges. **A more detailed regulation would be appropriate to ensure independence and avoid arbitrary infliction of disciplinary sanctions.**
54. According to Article 70 of the Uzbek Law “on Courts” judges cannot be brought to criminal responsibility, placed under pre-trial detention without the opinion of the High Judicial Council and consent from the Plenary of the Supreme Court. A similar opinion may be sought if a judge is to be brought to administrative responsibility depending on the gravity of the matter. Placing these decisions in the hands of the judiciary complies with European standards. The judiciary itself should be entrusted with deciding on immunities of the judges with some minor external oversight.⁷⁷ This requirement seems to be respected by the Law under review. The only concerning aspect is the role of the opinion provided by the High Judicial Council. It is unclear what the practical impact of this opinion might have on the decision of the Plenary of the Supreme Court in case of criminal responsibility which has the final say in lifting the immunities. Similarly, it is not entirely clear how this opinion should be taken into account by a decision-maker in the case of administrative procedures instigated against a judge.
55. The High Judicial Council should play a significant role in applying disciplinary sanctions on the judges. Pursuant to the Venice Commission disciplinary liability:
- “has different constitutive elements from criminal liability and applies a different standard of proof, however, it should be pointed out that criminal and disciplinary liability are not mutually exclusive. Disciplinary sanctions may still be appropriate in case of a criminal acquittal. Also, the fact that criminal proceedings have not been initiated due to the failure of establishing criminal guilt or the facts in a criminal case, does not mean that no disciplinary breach was committed by the judge concerned, precisely because of the different nature of both liabilities. If the misconduct of a judge is capable of undermining public confidence in the judiciary, it is in the public interest to institute disciplinary proceedings against that judge. Criminal proceedings, however, do not consider the particular disciplinary aspect of the misconduct, but criminal guilt. In any event, it is important that both types of liability be used sparingly in order not to cause a chilling effect on the judiciary”.*⁷⁸

⁷⁷ *Op. Cit.* footnote 60 (*Opinion on draft constitutional amendments on the immunity of Members of Parliament and judges of Ukraine*), par. 23.

⁷⁸ Venice Commission *Amicus Curiae Brief, Republic of Moldova - Amicus Curiae Brief for the Constitutional Court on the Criminal liability of judges*, (CDL-AD(2017)002) par. 18, available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)002-e)

56. Article 7 of the Law provides for two sets of competencies in relation to disciplinary sanctions. First, the High Judicial Council considers the question of bringing judges to disciplinary responsibility and then it can forward the materials to an appropriate qualification committee. It seems that the ultimate decision-maker in that case is the qualification committee. The precise procedure is not regulated by the Law under consideration and in reality it might fall short of International standards: “disciplinary proceedings against judges based on the rule of law should correspond to certain basic principles, which include the following: *“the liability should follow a violation of a duty expressly defined by law; there should be fair trial with full hearing of the parties and representation of the judge; the law should define the scale of sanctions; the imposition of the sanction should be subject to the principle of proportionality; there should be a right to appeal to a higher judicial authority”*.”⁷⁹ From the available materials, it seems that legal regulations in this area are sparse, some definitions are extremely vague and they leave many loopholes that can undermine independence of the judiciary. **OSCE/ODIHR recommends more detailed and precise regulations be introduced.**
57. **The criteria for disciplinary liability should be clarified.** These criteria are only mentioned in the Law “on Courts” which while mentioned above, is not within the specific scope of this Opinion. **It suffices to state here that Article 73 of the Law “on Courts” should be brought into compliance with international standards.** For example all disciplinary offences should comply with the principle that was formulated in Section 66 of the Recommendation of the Committee of Ministers of the Council of Europe: *“The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence”*.⁸⁰ It seems that the High Judicial Council and the qualification committees have too broad discretion in deciding disciplinary cases.
58. Finally, according to Article 7 of the Law, the Council has the power to determine whether a judge is professionally suitable to continue working as a judge. This competence is problematic as it goes beyond criminal and disciplinary responsibility and it is not clearly defined. Such proceedings can undermine the independence of ordinary judges and can be used as an instrument of pressure on judges. Especially, since the Law under consideration does not indicate what consequences professional unsuitability might have. The Kyiv Recommendations specify that systems for professional evaluations should be implemented to improve the skills of the judges, including professional and social skills and not to influence the independence of the Judiciary.⁸¹ According to the same set of recommendations, the judicial council should mainly be involved in establishing the criteria for evaluating judges, but not be directly involved in such evaluations as persons dealing with the evaluated judges on a regular basis on the local level should perform the actual evaluation.⁸² **OSCE/ODIHR recommends more detailed regulations be introduced.**

⁷⁹ Venice Commission, *Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia*, (CDL-AD(2007)009) par. 9.

⁸⁰ *Op. cit.* footnote 29, section 66.

⁸¹ *Op. cit.* footnote 16, par 27.

⁸² *Ibid*, par 30.

6. Other issues:

6.1. Media

59. Pursuant to Article 6 of the Law, the High Judicial Council should communicate with mass media, to establish a dialogue with the population. It is essential that the public is informed about important court cases and therefore the links should be clearly established between the media and the judicial institutions. For that reason, and as an example, the Consultative Council of European Judges in its opinion supported an idea of appointing ‘*a judge with communication responsibilities or a spokesperson to deal with the press on subjects of interest to the public*’.⁸³ Therefore, it should be welcomed that the High Judicial Council will supply information to the media about the trials. Since the Council is a collegiate body it is difficult to imagine how the Council as a body can communicate with the media, perhaps one of the members of the Council can have specific responsibilities of liaising with the media.
60. Moreover, the Law suggests that there will be a dialogue between the population, the media and the judiciary. This dialogue however should be limited; the judiciary should not be influenced by media.⁸⁴ This danger is especially pertinent in the context of the provision enshrined in Article 22 of the Law, namely that the re-appointment of a judge can depend on the public opinion about his/her professional activities. The judiciary should be insulated from public opinion about their professional activities. **Therefore, it is suggested that instead of establishing dialogue the High Judicial Council can ensure that the public receives verified and truthful information about the activities of the Council. The Law is recommended to be amended to that effect.**

6.2. Budget

61. Pursuant to Article 34, technical support and financial security of the activities of the Council shall be provided at the expense of the State Budget of the Republic of Uzbekistan and other sources that are not banned by the law. It seems that the Supreme High Council does not have its independent budget and does not participate in its funding. This might undermine the financial security of the Council and the budget holder can influence the Council and undermine its independence.
62. Opinion No. 2 of the Consultative Council of European Judges (CCJE) on the funding and management of courts provides: “5. *The CCJE agreed that although the funding of courts is part of the State budget presented to Parliament by the Ministry of Finances, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence*”. – “10. *The CCJE agreed that it was*

⁸³ Opinion no. 3 of the Consultative Council of European Judges (CCJE), par. 40, <https://rm.coe.int/16807475bb>.

⁸⁴ *Ibid.*

... important that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views.”⁸⁵

63. In many states the judicial governance bodies have their own clearly defined budgets. In Bulgaria the Supreme Judicial Council does not only have its budget but it is also responsible for distributing the budget of the judiciary of the country.⁸⁶ In Croatia, Hungary and Romania, for example the judicial governance councils have their own budgets.⁸⁷ Autonomous budget is allocated to the Judicial Council in France.⁸⁸ **It is suggested that the High Judicial Council be allocated its own protected budget that can ensure its operations and independence.**

7. Final Comments

64. Finally, OSCE commitments require States to adopt legislation as “as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.⁸⁹ This is particularly true for legislation that can impact and affect human rights. As a consequence, **it is recommended** to revise the Law in the light of above listed finding, through inclusive and meaningful public consultation processes, including consultations with stakeholders, civil society and human rights organizations having adequate opportunity for engagement before its adoption.
65. The OSCE/ODIHR stands ready to further assist the Uzbek authorities in their reform efforts, through consultations and review of any draft Laws and amendments which may be undertaken.

[END OF TEXT]

⁸⁵ Opinion no. 2 of the Consultative Council of European Judges (CCJE), pars. 5 and 10, available here: <https://rm.coe.int/1680747492>

⁸⁶ *Op. cit.* footnote 37

⁸⁷ https://www.encj.eu/images/stories/pdf/factsheets/dsv_croatia.pdf, https://www.encj.eu/images/stories/pdf/factsheets/obt_hungary.pdf, https://www.encj.eu/images/stories/pdf/factsheets/csm_romania.pdf.

⁸⁸ https://www.encj.eu/images/stories/pdf/factsheets/csm_france.pdf

⁸⁹ *Op. cit.* footnote 14, par. 18.1

ANNEX:

Draft

LAW

On the High Judicial Council of the Republic of Uzbekistan

Adopted by Legislative Chamber on 18 March 2017

Approved by the Senate on 28 March 2017

Chapter 1. General Provisions

Article 1. Purpose of the Law

The purpose of this law is to regulate the activities of High Judicial Council of the Republic of Uzbekistan.

Article 2. High Judicial Council of the Republic of Uzbekistan

High Judicial Council of the Republic of Uzbekistan (hereinafter – the Council) is the body of judiciary which shall provide for ensuring compliance with the constitutional principle of independence of the judiciary in the Republic of Uzbekistan.

The Council is the legal entity with its own seal featuring the state coat of arms of the Republic of Uzbekistan and bearing its name.

Article 3. Legislation on High Judicial Council of the Republic of Uzbekistan

Legislation on High Judicial Council of the Republic of Uzbekistan consists of the present Law and other legislative acts.

Article 4. Fundamental Principles of the Council's activities

Fundamental principles of the Council's activities are the rule of law, independence, collegiality, impartiality, equality of its members and openness.

The Council and its members shall adhere to and comply with the requirements of the Constitution and the laws of the Republic of Uzbekistan.

The Council exercises its activities by complying only with the law independently from the state bodies and other organizations as well as any officials. Interference in the activities of the Council shall be not allowed and shall entail liability in accordance with the law.

The decisions of the Council are taken in a collegial manner at its meetings.

The members of the Council, while taking decisions, express their position which is free of political views and from any other external influence.

All the members of the Council enjoy equal rights and have one vote each when taking decisions within Council's competence.

The Council exercises its activities openly, in cooperation with the state bodies, the bodies of citizens' self-government, other organizations and citizens as well as mass media.

Article 5. Composition of the Council and the Procedure of its Formation

The Council shall consist of the Chairperson, the Deputy Chairperson, its members and the Secretary from among judges, representatives of law-enforcement bodies, institutions of civil society and high skill specialists in the field of law and shall comprise twenty one person.

The Chairperson shall be appointed by the Senate of Oliy Majlis of the Republic of Uzbekistan upon nomination of the President of the Republic of Uzbekistan.

The Deputy Chairperson of the Council shall be approved by the President of the Republic of Uzbekistan, and is at the same time heading the Research Centre for Justice Studies under the High Judicial Council of the Republic of Uzbekistan.

Eleven members of the Council shall be approved by the President of the Republic of Uzbekistan from among the judges nominated by the Chairperson of the Council. One of these Council members shall be approved from among the judges of the courts of the Republic of Karakalpakstan.

The Secretary and seven members of the Council shall be approved by the President of the Republic of Uzbekistan from among the representatives of law-enforcement bodies, institutions of civil society and high skill specialists in the field of law.

The Chairperson, the Secretary and eleven members of the Council appointed from among the judges exercise their activities on a full-time basis, the rest eight members of the Council, including the Deputy Chairperson of the Council, exercise their activities on a voluntary basis.

Eleven members of the Council, approved from among the judges and exercising their activities on a full-time basis, upon nomination of the Chairperson of the Council shall be elected by the Council to sections and Judicial Inspection of the Council, including at managerial positions in these units.

Chapter 2. Main Tasks and Authorities of the Council

Article 6. Main Tasks of the Council

Main tasks of the Council shall be:

to form the judiciary on the basis of competitive recruitment of candidates for the positions of judges, to appoint the judges from the most qualified and responsible specialists, and to give recommendations for nomination for senior judicial positions;

to take measures preventing violation of immunity of judges and interference in their activities related to justice;

to organize professional training for and raising qualification of judges, to assess the efficiency of their performance, and to initiate the appraisal of judges;

to communicate with mass media, to establish a dialogue with the population, to consider appeals of individuals and legal entities on judges' compliance with the rules of ethical behaviour;

to propose further improvements of the judiciary legislature, to provide for genuine independence of the judiciary and a uniform judicial practice, to facilitate access to justice and to improve its quality;

to consider the issues of disciplinary liability for judges, and of making conclusions on bringing them to criminal and administrative liability.

Article 7. Authorities of the Council

To fulfil the tasks assigned the Council shall:

- form the Roster of candidates for the positions of judges;
- organize the competitive recruitment of candidates for the positions of judges;
- bring up proposals to the President of the Republic of Uzbekistan on the candidatures recommended for the positions of the Chairperson, Deputies of Chairperson and judges of the Supreme Court of the Republic of Uzbekistan;
- bring up proposals to the President of the Republic of Uzbekistan on the candidatures recommended for the positions of chairpersons and deputies of chairpersons of regional (*oblast*) courts and of the city of Tashkent, the Chairperson of the Military Tribunal of the Republic of Uzbekistan;
- appoint judges of military tribunals, regional (*oblast*) courts and of the city of Tashkent, chairpersons and judges of inter-district, district and town courts upon consent of the President of the Republic of Uzbekistan;
- make, in accordance with the law, conclusions (proposals) to Jokarghy Kenes of the Republic of Karakalpakstan on candidates to the positions of judges of courts of the Republic of Karakalpakstan;
- re-appoint judges during the term of their office to the positions of judges of military tribunals, regional (*oblast*) courts and of the city of Tashkent, chairpersons and judges of inter-district, district and town courts on the basis of their applications and upon nomination of the High Qualification Judicial Board;
- make proposals to Jokarghy Kenes of the Republic of Karakalpakstan on re-appointment of judges to the positions of judges of the courts of the Republic of Karakalpakstan, chairpersons and judges of inter-district, district and town courts of the Republic of Karakalpakstan on the basis of their applications and upon nomination of the High Qualification Judicial Board;
- make proposals (recommendations) to the President of the Republic of Uzbekistan on early termination of the powers of the judges, appointed by the President of the Republic of Uzbekistan or elected by the Senate of Oliy Majlis of the Republic of Uzbekistan;
- dismiss the judges of military tribunals, regional (*oblast*) courts and of the city of Tashkent, chairpersons and judges of inter-district, district and town courts in cases, foreseen in the law, upon consent of the President of the Republic of Uzbekistan;
- make conclusions to Jokarghy Kenes of the Republic of Karakalpakstan on early termination of the powers of the judges of the courts of the Republic of Karakalpakstan;
- make proposals to the President of the Republic of Uzbekistan on rewarding judges with state awards;
- consider cases on bringing judges to disciplinary liability and submit cases to corresponding Qualification Judicial Boards;
- make a conclusion on bringing judges to criminal or administrative liability;
- submit to the Plenary Session of the Supreme Court of the Republic of Uzbekistan proposals on further improvement of the judicial legislature, to provide for genuine independence of the judiciary and a uniform judicial practice, to facilitate access to justice and to improve its quality;
- carry out general management of activities of Qualification Judicial Boards, audit their activities, hear reports of the chairpersons of Qualification Judicial Boards;

consider appeals of individuals and legal entities on judges' failure to comply with the rules of ethical behaviour;

inspect the performance of judges with regard to the level of professionalism;

approve the Code of Ethical Behaviour of Judges;

establish criteria for inspection and evaluation of the performance of judges;

approve the program of organization of professional training and qualification development for judges;

hear annual information of the director of the Department for the Support of the Courts under the Supreme Court of the Republic of Uzbekistan on its performance;

fulfil set of measures for inspecting the level of personal and professional qualities of the candidates nominated for the first time for the positions of judges, candidates for a new term of office or any other judicial positions;

approve the Rules of Procedures of the High Judicial Council of the Republic of Uzbekistan.

The Council shall also exercise other authorities in accordance with the legislation.

Article 8. Executive Board of the Council

Executive Board of the Council is accountable in its activities to the Council.

The structure and the number of staff of the Executive Board of the Council shall be approved by the President of the Republic of Uzbekistan.

Article 9. Powers of the Chairperson of the Council

The Chairperson of the Council shall:

provide general guidance for the Council's activity and bear personal responsibility for the fulfilment of the tasks assigned;

convene meetings of the Council and preside at the meetings thereof;

submit matters under the authorities of the Council for its consideration;

represent the Council in its relations with state bodies, public associations and international organizations;

make proposals to the President of the Republic of Uzbekistan on the candidatures, recommended to the corresponding positions of members of the Council;

appoint and dismiss the staff of the Executive Board of the Council;

allocate duties among the staff of the Executive Board of the Council;

award the class ranks to the staff of the Executive Board of the Council;

approve the budget of expenditures and carry out organizational management of financial and economic activities of the Council;

sign resolutions, conclusions, protocols of meetings and any other documents on behalf of the Council.

Chairperson of the Council shall exercise other powers in accordance with the legislation.

Article 10. Powers of the Deputy Chairperson of the Council

The Deputy Chairperson of the Council shall:

head the Research Centre for Justice Studies under the High Judicial Council of the Republic of Uzbekistan;

submit to the meetings of the Council proposals on further improvement of the judiciary legislature, on providing for genuine independence of the judiciary and a uniform judicial practice, on facilitating access to justice and improving its quality;

carry out the duties of the Chairperson of the Council in his/her absence.

Deputy Chairperson of the Council shall exercise other powers in accordance with the legislation.

Article 11. Powers of the Secretary of the Council

The Secretary of the Council shall:

notify the members of the Council of the date and time of meetings;

provide the members of the Council with necessary materials with regards to the issues included in the agenda of the meeting;

handle technical preparations of meetings of the Council;

keep minutes of meetings of the Council;

provide for distribution of copies of decisions of the Council among interested persons and organizations;

organize work to monitor the implementation of the decisions of the Council;

control the office work in the Council;

fulfil instructions of the Chairperson of the Council.

In the absence of the Secretary of the Council, the performance of his/her duties upon the instruction of the Chairperson of the Council shall be assigned to a full-time member of the Council.

Article 12. Rights of the Member of the Council

The Member of the Council shall have the right to:

Get familiar with the materials, submitted for consideration by the Council, participate in their review and consideration;

make motions, give reasons and justifications for his/her proposals and submit additional materials to the Council on the issues in question;

participate in the process of assessing the performance of judges, conducted by Qualification Judicial Boards;

request and receive free of charge information and documents, necessary for fulfilling the tasks assigned to the Council, from state bodies and other organizations;

submit for consideration at the meetings of the Council the issues within its authorities;

participate in the decision-making of the Council and express his/her dissenting opinion.

Member of the Council shall have other rights in accordance with the legislation.

Article 13. Duties of Member of the Council

Member of the Council shall:

exercise his/her activities in accordance with the law;

assist the Council in implementing the principle of independence of the judiciary, in creating the Roster of and assessing the candidates to the positions of judges;

keep the meetings of the Council in secret and respect the confidentiality of information about the private lives of judges and candidates for judges, which became known to him/her by virtue of powers, assigned to him/her;

refrain from any actions that may affect the authority of the Council, raise doubts in its impartiality;

withdraw himself/herself on the grounds, indicated in [the part 1](#) of Article 16 of this Law;

vote for or against the issues considered by the Council.

Member of the Council shall bear any other obligations in accordance with the legislation.

Chapter 3. Organization of Activities of the Council

Article 14. Meeting of the Council

A meeting of the Council is the main organizational form of its activities. The meeting of the Council is held as needed to consider the issues within its competence. A meeting of the Council shall be considered as valid, if at least two thirds of all members of the Council participate therein.

Decisions of the Council shall be taken by a simple majority of the meeting participants by open vote.

The Chairperson is the last to vote. In the case of split votes, the vote of the Chairperson shall be decisive.

In case of a disagreement with the decision adopted, a member of the Council shall sign the conclusion and be entitled to present his/her written dissenting opinion that is attached to the minutes of the meeting of the Council but not announced. A person, in respect of whom the decision is made, shall not familiarize with the dissenting opinion of a member of the Council.

Article 15. Secrecy of Meetings of the Council

The members of the Council shall vote in a closed session. No other persons but members of the Council are allowed to be present during voting.

The Member of the Council shall have no right to disclose the secrecy of the meetings. Votes of the members of the Council and their opinions are confidential and are not subject to disclosure.

The Members of the Council shall bear responsibility for disclosure of the given information in the prescribed manner.

Article 16. Withdrawal and Self-Withdrawal of Member of the Council

The Member of the Council cannot participate in its meetings and shall be withdrawn if he/she is:

in an official, financial or any other dependence on or a close relative of the person in question at the meeting of the Council;

directly or indirectly interested in the outcome of the meeting of the Council and the decision of the meeting or there are some other circumstances that cast doubt on his/her impartiality.

In circumstances, indicated in the first part of this Article, a member of the Council shall withdraw himself/herself. If he/she has not done so, he/she may be withdrawn by other members of the Council as well as by a candidate for a judge.

A request on withdrawal shall be grounded.

The Member of the Council in question shall have the right to give explanations before consideration of his/her withdrawal.

The question on withdrawal shall be resolved by simple majority of votes in the absence of the person in question. If the votes are split, the member of the Council shall be considered withdrawn.

A record is made in the minutes of the meeting of the Council about granting or rejecting the withdrawal request.

Article 17. Decisions of the Council

The Council shall make resolutions, conclusions and proposals on the issues in its competence.

Decisions that can be taken at the meetings of the Council are:

- on inclusion or denial of inclusion to the roster of candidates for the positions of judges;
- on compliance or non-compliance of a candidate with the criteria for the position of a judge;
- on appointment, reappointment of a judge;
- on initiating a rewarding of judges;
- on charging disciplinary measures against judges;
- on giving a conclusion on bringing a judge to criminal or administrative liability;
- on suspension or early termination of the powers of a judge.

The Council shall take other decisions on the issues within its competence.

Decisions of the Council, taken within its competence, shall be binding for state bodies and other organizations.

Article 18. Communication of the Council with State Bodies and Other Organizations

When considering the compliance of the candidate with the position of a judge for appointment (election) for the first time, for another ten-year term and subsequent indefinite term in the capacity of a judge, as well as for appointment (election) candidates to management positions in the Supreme Court of the Republic of Uzbekistan, courts of the Republic of Karakalpakstan, regional (*oblast*) courts and the court of the city of Tashkent, the Military Tribunal of the Republic of Uzbekistan, the Council shall request a competent body for its conclusion. The competent body shall submit the corresponding conclusion within one month after receiving the request.

When considering the compliance of a candidate with the position of judge, the Council shall request the opinion of the Supreme Court of the Republic of Uzbekistan and other organizations about the personal and professional qualities of the candidate during the

term of his/her office in these organizations. The reply to the request of the Council shall be submitted no later than one month from the day of receiving the request.

Chapter 4. Formation of the Judiciary

Article 19. Equality of Rights of the Candidates for the Positions of Judges when Forming the Judiciary

Forming of judiciary shall be on the basis of equality of rights of the candidates for the positions of judges regardless their gender, race, nationality, language, religion, social background, beliefs, personal and social status.

Article 20. The Roster of the Candidates for the Positions of Judges

The Council shall form the roster of the candidates for appointing to the positions of judges for the first time, (further – the Roster).

Citizens of the Republic of Uzbekistan, who expressed their wish to be included in the Roster, can file an application to the Council.

The Roster shall include citizens of the Republic of Uzbekistan, who are above thirty years old, have university degree in law, have a professional legal experience for at least five years, are regarded as highly qualified lawyers, possess the knowledge necessary for the position of judge, have durable life experience and impeccable reputation.

The Roster shall not include persons:

Who were previously convicted;

who have diseases or physical disabilities that prevent them from administration of justice;

who are recognized in due course as incapable or who have limited capacity;

whose powers at a previous position were terminated in due course for misconduct incompatible with their professional activities.

The Council shall include a candidate for the position of judge into the Roster based on assessment of the candidate's compliance with the criteria foreseen in this Law and provided he/she had successfully passed a qualification exam held according to a procedure determined by the Council.

A candidate for the position of a judge shall be excluded from the Roster in case of:

his/her application for exclusion from the Roster;

failure to be selected to a special training course for the candidates to the positions of judges;

unsatisfactory evaluation of his/her learning outcomes and internship;

loss of citizenship of the Republic of Uzbekistan;

diseases or physical disabilities preventing him/her from the administration of justice;

recognizing him/her as incapable or with limited capability in due course;

death or declaration of his/her death by the decision of the court;

committing a crime or other acts that defame his/her honour and dignity;

a conclusion on his/her failure to comply with the status of a judge.

A candidate for the position of a judge shall also be excluded from the Roster if he/she has not been nominated to the judicial position for more than three years.

Article 21. Main Criteria for the Selection of Judges Who are Appointed for the First Time

Main criteria for the selection of judges who are appointed for the first time shall be impeccable reputation, honesty, competence, durable life experience, absence of diseases or physical disabilities that prevent him/her from the administration of justice.

Article 22. Main Criteria for the Selection of Judges for the New Term of Office and for Other Judicial Positions

Main criteria for the selection of judges for the new term of office and for other judicial positions shall be impeccable reputation, honesty, impartiality, fairness and competence during the period of their judicial activity.

The Council, when considering a candidate for the position of a judge for appointing for a new term of office, shall take into account stability of his/her court decisions, his/her sufficient experience in the administration of justice and application of legislation, as well as public opinion about his/her professional activities.

Article 23. Medical Examination of the Candidate for the Position of Judge

To confirm the absence of diseases or physical disabilities that prevent a person from the administration of justice, the candidate shall undergo preliminary medical examination.

The list of diseases and physical disabilities that impede the administration of justice is adopted by the joint decision of the Council and the Ministry of Health of the Republic of Uzbekistan. The form of the document on the absence of diseases and physical disabilities that impede the administration of justice is adopted by the Ministry of Health of the Republic of Uzbekistan.

Article 24. Procedure for the Selection of Candidates for the Positions of Judges

The information about vacant judicial positions shall be placed on the official website of the Council. The candidates, who are appointed to the positions of judges for the first time, shall be considered by the Council on the alternative basis.

A candidate for the position of a judge, included in the Roster, shall be entitled to apply directly to the Council to participate in the selection for the vacant judicial positions after successful training and internship.

A judge, who expressed his/her wish to be self-nominated for another judicial position, shall apply to the Council and submit necessary documents.

A judge shall apply and submit necessary documents on self-nomination or withdrawal from nomination for the new term of office to the Council not later than six months before the termination of his/her term of office.

The corresponding Qualification Judicial Board shall make its conclusion to the Council on the candidate for the position of a judge.

If a judge does not meet the requirements for the position claimed, the Council shall be entitled to put on the agenda the issue of his/her consideration for a lower judicial position.

When selecting candidates, who are appointed to the positions of judges for the first time, candidates for a new term of office or any other judicial positions, various methods of examination may be used, such as interview, testing by independent experts, thematic essay on a given problematics, express questionnaire according to a procedure determined by the Council.

A person, who has got a decision of the Council to refuse his/her inclusion in the Roster by virtue of his/her non-compliance with the position of a judge, shall be entitled to reapply to the Council with the request for inclusion into the Roster after one year.

A person, who was refused to be included into the Roster for other reasons, shall be entitled to reapply to the Council with the request for inclusion into the Roster only after the elimination of the causes of refusal.

Article 25. Organization of the Professional Training for Judges

Professional Training for Judges is organized with the aim to train and upgrade the judges' qualification, as well as to familiarize judges with the latest amendments in the legislation and the modern law enforcement practice.

While organizing professional training for judges the Council communicates with the Supreme Court and the Ministry of Justice of the Republic of Uzbekistan, the Association of Judges of Uzbekistan, research institutions, representatives of public associations and international organizations.

The activities aimed to upgrade the qualification of judges are organized to address the results of examination and assessment of the judges' performance taking into account the revealed systematic deficiencies at the administration of justice.

Chapter 5. Guarantees of Independence and the Status of a Member of the Council. Financial and Social Security.

Article 26. Securing of Independence of a Member of the Council

Independence of a member of the Council shall be secured through:

an established appointment (approval) procedure;

his/her immunity;

the secrecy of the meetings of the Council;

providing his/her financial and social security at the expense of the state, relevant to his/her high status.

Article 27. Terms of Office of a Member of the Council

A member of the Council shall be appointed (approved) for the term of five years.

A full-time member of the Council shall not be appointed (approved) for more than two consecutive terms.

Article 28. Immunity of a Member of the Council

The guarantees of immunity, stipulated for judges by the Law of the Republic of Uzbekistan "On Courts", shall be extended to the members of the Council taking into account the provisions of this article.

A member of the Council shall not be brought to a criminal or administrative liability, as well as not detained, without the consent of the Council.

The criminal charge against a member of the Council shall be initiated only by the General Prosecutor of the Republic of Uzbekistan.

Article 29. Financial and Social Security of a Full-Time Member of the Council

The remuneration of a full-time member of the Council shall consist of the official salary, extra charges for the qualification rank (class rank and others), length of service and other payments stipulated by the law.

Full-time members of the Council shall be exempted from the personal income tax over the income received in connection with the performance of official duties.

The members of the Council, approved from among the judges, shall keep the status of judge and all the benefits, prescribed for judges, for the term of office as a member of the Council.

Article 30. Early Termination of the Powers of a Member of the Council

The powers of a member of the Council shall be early terminated in case of:
his/her application for the termination of his/her powers before their expiration;
loss of citizenship of the Republic of Uzbekistan;
diseases or physical disabilities that impede his/her activities;
recognizing him/her as incapable or with limited capacity in due course;
death or declaration of his/her death by the decision of the court;
his/her conviction by the court that came into force;
misconduct defaming his/her honesty and dignity.

Article 31. Guarantees of Employment of a Member of the Council after Termination of Office

The Chairperson and the Secretary of the Council shall be offered the previous job (position) after termination of their powers, and in the absence of such one – any other equivalent job (position).

The members of the Council, approved from among the judges, shall continue their judicial activities in the previous position or any other equivalent judicial position, after termination of their powers as a member of the Council.

Article 32. Financial and Social Security of the Staff of the Executive Board of the Council

The remuneration of the staff of the executive board of the Council shall consist of the official salary, extra charges for the class ranks, length of service and other payments stipulated by the law.

The staff of executive board of the Council shall be awarded with class ranks, and get extra payments for the class ranks and length of service by the decision of the Chairperson of the Council according to the procedure established for the staff of the Supreme Court of the Republic of Uzbekistan.

The procedure of awarding the class ranks to the staff of the executive board of the Council shall be defined by a procedure approved by *Oliy Majlis* of the Republic of Uzbekistan.

Chapter 6. Final Provisions

Article 33. The Rules of Procedures of the High Judicial Council of the Republic of Uzbekistan

The Council shall organize its work in accordance with the Rules of Procedures approved by the Council.

Article 34. Technical Support and Financial Security of the Activities of the Council

Technical support and financial security of the activities of the Council shall be provided at the expense of the State Budget of the Republic of Uzbekistan and other sources that are not banned by the law.

Article 35. Service Certificate of a Member of the Council and of the Staff of the Executive Board of the Council

The chairperson and the deputy chairperson of the Council shall be issued the service certificate by the President of the Republic of Uzbekistan, and other members of the Council and the staff of the executive board of the Council – by the Chairperson of the Council.

Article 36. Enforcement, Distribution, Clarification of the Essence and the Meaning of this Law

The Supreme Court of the Republic of Uzbekistan, the Ministry of Justice of the Republic of Uzbekistan and other interested organizations shall secure the implementation of this Law, notify executing bodies and clarify the essence and the meaning of this Law.

Article 37. Bringing the Legislation in Line with This Law

The Cabinet of Ministers of the Republic of Uzbekistan shall:
bring the resolutions of the government in line with this Law;
provide for revision and abolition of normative legal acts contradicting to this Law by the corresponding bodies of state government.

Article 38. Entry into Force of This Law

This Law shall enter into force on the day of its official publication.



Comment LexUz

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The President of the Republic of Uzbekistan SH.MIRZIYOEV

Tashkent,

6 April 2017,

№ ZRU-427