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including the right to development**

Report of the Special Rapporteur on the independence of judges and lawyers on his visit to Uzbekistan

Comments by the State*

* The present document is being issued without formal editing.

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Comments of the Government of the Republic of Uzbekistan on the report of the Special Rapporteur of the UN Human Rights Council on the Independence of Judges and Lawyers Mr. Diego García-Sayán according to the outcome of the mission to Uzbekistan (September 18-25, 2019)

1. From 18 to 25 September 2019, at the invitation of the Government of Uzbekistan, the Special Rapporteur on the independence of judges and lawyers, D. García-Sayán (*hereinafter the Special Rapporteur*), visited the country. The visit of the Special Rapporteur was received positively in Uzbekistan and was seen as an important step in constructive cooperation to ensure the independence of judges and lawyers.
2. During his visit, the Special Rapporteur was received by the President of the Republic of Uzbekistan Sh.M. Mirziyoyev. Mr. D.García-Sayán held also meetings with the Speaker of the Legislative Chamber and the Chairperson of the Senate of the Oliy Majlis of the Republic of Uzbekistan, the Chairman of the Supreme Court, the Chairman of the Constitutional Court, the Chairman of the Supreme Judicial Council, Ministers of Foreign Affairs, Justice and Internal Affairs, the Head of the National Centre for Human Rights, the Parliamentary Ombudsman, the Chairman and members of the Chamber of Advocates, and representatives of civil society. Apart from meetings in Tashkent, capital of Uzbekistan, D. Garcia-Sayan visited to the Ferghana and Samarkand regions also.
3. Uzbekistan welcomes the reflection in the Report of Special Rapporteur of the progress made by the country in strengthening the independence of the judiciary, as well as the implementation of the judicial and legal reforms initiated by the President of the Republic of Uzbekistan Sh. M. Mirziyoyev as consistent steps towards the establishment of a truly independent and impartial justice system.
4. Uzbekistan expresses its appreciation to the Special Rapporteur for the constructive proposals and recommendations aimed at further improving the judicial and legal reform to ensure genuine independence of the judiciary; strengthening the independence of the Supreme Judicial Council and advances in selection procedure of candidates for judges; revising the term of office for judges; limiting the powers of the prosecution in the justice system; strengthening the status and independence of lawyers; ensuring public access to justice and qualified legal assistance. **Uzbekistan confirms that these recommendations are in line with the spirit and content of the priorities for further development of the country within the framework of the Country's Development Strategy for 2017-2021 and expresses its readiness to accept them for implementation.**
5. In his speech, **at the ceremonial meeting dedicated to the Constitution Day of the Republic of Uzbekistan¹, as well as in the Address of the President of the Republic of Uzbekistan to the Parliament (Oliy Majlis)²**, most pressing tasks essential in ensuring the rule of law and improving the judicial sphere were determined as per their priority. It was also emphasized that **one of the most important tasks is to further improve the justice system, increase credibility and ensure the true independence of the judiciary.³**
6. The Presidential Decree of 2 March 2020 on the State programme for the implementation of a strategy for action on five priority development areas in 2017-2021 in the Year of the Development of Science, Education and the Digital Economy (*hereinafter the*

¹ Statement of President Shavkat Mirziyoyev at the ceremonial meeting dedicated to the 27th anniversary of the adoption of the Constitution of the Republic of Uzbekistan, see here <https://president.uz/ru/lists/view/3119> (in Russian only).

² Address of the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Parliament (Oliy Majlis), see here <https://president.uz/ru/lists/view/3324> (in Russian only).

³ Resolution of the President of the Republic of Uzbekistan on December 13, 2019 No. PR-4551 "On additional measures to ensure the supremacy of the Constitution and the law, strengthening public control in this direction, as well as raising the legal culture in society". National database legislation, 12/14/2019, No. 07/19/4551/4162 // <https://lex.uz/ru/docs/4647340>.

State programme of 2020) defines priority tasks in **ensuring the rule of law and further reforming the judicial and legal system**, in particular:

- Introducing, as from 1 May 2020, **a procedure under which the prosecutor** is allowed to request cases from the court in which sentences, decisions, judgements or rulings of the court have entered into legal force, **only if the parties** (with the exception of the prosecutor) **apply for such a request**;
- **Reforming the appeal and cassation instances** until 1 November 2020, **abolishing the institution of supervisory review proceedings of the Supreme Court** in order to improve access to justice;
- Transferring, as from 1 December 2020, the powers to review cases of administrative offenses **to the competence of criminal courts**.
- Drafting of a **new version of the law “On Courts”**, legislation regulating the activities of the judiciary and providing for amendments and additions to the Criminal Code, the Code of Criminal Procedure and the Code of Administrative Liability, aimed at strengthening guarantees of the rights of citizens.

7. In order to ensure a broad discussion of the recommendations of the Special Rapporteur represented during his meetings with government agencies, the judiciary and lawyers, the National Centre of Human Rights, together with the Supreme Court, the Supreme Judicial Council and other organisations, held a number of events with the participation of the judicial community, representatives of international organizations and the diplomatic corps accredited in Tashkent, as well as representatives of civil society.

8. We hereby present the comments of the Government of Uzbekistan on certain points of the report of the Special Rapporteur, aimed at clarifying and specifying some of its provisions.

I. Introduction

Persecution of “civil activists”

9. In order to ensure a complete, comprehensive and objective consideration of the information of the Special Rapporteur on the persecution of civil activists by the prosecutor's office of the city of Fergana, a preliminary investigation was carried out with the participation of **G. Mamatkhanov** and **D. Madaliev**. According to **D. Madaliev**, on 21 September 2019, he was a participant in the event at the “Asia Hotel” in Ferghana, where a meeting of civil activists and the UN Special Rapporteur D. Garcia-Sayan was held. After the event, when leaving the “Asia Hotel”, he talked with his former colleagues from the Main Internal Affairs Department of Ferghana, **E. Khaidamatov** and **D. Khoshimov**, who were probably involved in ensuring public safety in connection with the event. Meanwhile, according to **D. Madaliev**, none of the law enforcement officers questioned him or demanded any explanation about his participation in the meeting with the Special Rapporteur, and he was not subjected to any pressure from the law enforcement agencies.

10. In turn, **G. Mamatkhanov** also explained that on 21 September 2019, he was a participant in the event at the “Asia Hotel” in Ferghana, where a meeting of civil activists and UN Special Rapporteur D. Garcia-Sayan was held. After the event, when leaving the “Asia Hotel”, he saw a friend, who was an officer of criminal investigation department of the Main Internal Affairs Department of Ferghana named “Rustam” and two other employees unknown to him, who were at the time near the hotel. He only greeted them, after which he got into a taxi and went to his home. After a while, one of his acquaintances, whose name he does not want to disclose, told him that the criminal investigation officers in another car accompanied him home and this incident will be discussed at the international conference on human rights in Geneva in March 2020. However, **G. Mamatkhanov** cannot claim that he was chased by law enforcement officers or other persons along the entire route to his home. During the pre-investigation check, **G. Mamatkhanov** and **D. Madaliev** did not provide any other concrete facts about pressure or interference of law enforcement officials in their human

rights activities. According to the results of the preliminary investigation the Prosecutor's office of Ferghana city 24.01.2020 made the decision about refusal in excitation of criminal case under paragraph 2 of article 83 of the Criminal Procedure Code of the Republic of Uzbekistan in connection with absence of *corpus delicti* in the actions of law enforcement officials.

11. According to the arguments about the prosecution of civil activist A. Madmarov on 27.01.2020, a decision was made to refuse to initiate criminal proceedings on the basis of paragraph 2 of article 83 of the Criminal Procedure code of the Republic of Uzbekistan.

12. The above-mentioned decision was studied by the General Prosecutor's Office (GPO) and was recognized as legal.

13. In order to ensure a complete, comprehensive and objective consideration of the Special Rapporteur's appeal regarding the persecution of **A. Turgunov**, the prosecutor's office of the Almazar district of Tashkent conducted an inspection. In the course of the inspection, officials of the prosecutor's office and internal affairs bodies of Almazar district made repeated attempts to contact A. Turgunov, but it was not possible to contact him. However, it was found that A. Turgunov had not contacted law enforcement or government agencies about his prosecution. During the inspection, the facts of A. Turgunov's harassment or intimidation by law enforcement agencies were not established. In view of the above, on 19 February 2020, the Almazar District Procurator's Office issued a decision on 19 February 2020, based on paragraph 2 of article 83 of the Code of Criminal Procedure, refusing to institute criminal proceedings for lack of *corpus delicti* in anyone's actions. The above-mentioned decision was studied by the GPO's Unit on supervision over the investigation by the prosecutors' offices, and was recognized as legal.

14. Additionally, the Special Rapporteur's report states that he has additional information and reliable evidence of acts of persecution and harassment against other persons who met or attempted to meet with him during his official visit to Uzbekistan. In the case of the submission of evidence and information, the Prosecutor General will ensure their full, comprehensive, objective review, ensuring the safety of interested parties.

IV. Challenges to the establishment of an independent and impartial judicial system

A. Judges

15. Regarding paragraph 21, it is reported that in accordance with the State Program 2020, in order to improve the material and technical conditions and social guarantees for the activities of judges, it is envisaged to take measures, in 2020, to fully finance, from 2021 onwards, **the salaries and other equivalent payments of judges and court officials from the State budget; to increase the salaries of judges and court officials, review and bring them in line with international standards; to design new court buildings on the basis of the best practices;** to include judges on the list of managers eligible to **receive official housing** that are built based on standard projects in rural areas; to take other targeted measures aimed at improving the financing of judicial system and the material and technical base.

1. Threats to judicial independence

16. In paragraph 25 of the report, the Special Rapporteur notes that

“institutional independence, i.e. independence in the administration of justice, which is directly related to the exercise of judicial duties, remains weak”

and expresses concern that

“the procedure for handling disciplinary cases against judges is still regulated via by-laws”.

Despite the fact that the issue of bringing judges to disciplinary liability is regulated by the laws of the Republic of Uzbekistan “On Courts” and “On the Supreme Judicial Council of the Republic of Uzbekistan”, as well as the Regulation on the “Qualification Collegiums of Judges”, approved by the Law of the Republic of Uzbekistan No. LRU-Z68 dated April 22, 2014, which also has the status of law, the Government of Uzbekistan, in accordance with the recommendations of the Special Rapporteur, plans to take measures aimed at strengthening the status of judges, strengthening guarantees to ensure genuine court independence. Particularly, in accordance with the State Program 2020, adoption of the law “On courts” in a new version by October 1, 2020 is planned, which will review the procedure for initiating disciplinary proceedings against judges, improve the mechanism for appealing decisions on bringing judges to disciplinary responsibility, and review the procedure for evaluating the performance of judges by court chairpersons. In addition, the law will define the procedure for suspending and terminating the powers of judges in accordance with international standards, and strengthen the legal status of current and retired judges. These measures are aimed at abolishing the practice of regulating these issues via bylaws.

17. Concerning paragraph 27 of the report, Uzbekistan reports that for judges who have violated the oath and the Code of Ethical Conduct, the powers of 16 judges were prematurely terminated in 2017, 17 judges in 2018, 16 judges in 2019, and in 2017, 4 judges were terminated for criminal prosecution, in 2018 - 2 judges, in 2019 - 3 judges. In addition, on the grounds of application submitted by judges themselves, 7 judges self-terminated their powers in 2017, 3 judges in 2018, and 14 judges in 2019. At the same time, “refusal to support the opinion of the prosecutor during the court hearing” cannot serve as a reason for terminating of the powers of judges.

18. Supporting the Special Rapporteur’s concern on the excessive power of prosecutors in criminal proceedings (paragraph 27 of the report), the President of the Republic of Uzbekistan in his Address to the Parliament noted **the need to limit the legacy of the old system and the ongoing practice of prosecutors studying court decisions and introducing an order when the prosecutor will be able to request a court decision only upon receipt of a complaint in the case**. In this regard, in accordance with the State Program 2020, it is planned, by 1 April 2020, to develop a draft law aimed at harmonizing the activities of prosecution bodies with international standards and best foreign practices; determination of the legal and procedural grounds on which the prosecutor can refuse charges; review of the appeal procedure by the prosecutor of judicial decisions; the exclusion of the participation of the prosecutor in the consideration of civil and economic cases brought by other persons in the courts, except as otherwise provided by law, as well as the abolition of the mandatory participation of the Attorney General at plenary sessions of the Supreme Court.

19. Paragraph 29 of the report notes the additional threat to the independence of judges posed by the

“pyramidal structure of the justice system and the extremely broad powers of court chairpersons with respect to the selection, promotion, evaluation of judges, as well as the imposition of disciplinary sanctions on them”.

In order to further improve the procedure for the appointment of judges (paragraph 26 of the report), in accordance with the State Program 2020, further reform of the judicial system is expected:

- development of the draft law “**On the bodies of judicial community**”, which defines the legal basis of activity, the main tasks, functions and powers of the judicial community, the **procedure for forming judicial community bodies**, including the procedure for nominating candidates to these bodies, as well as the role of the judicial community in ensuring the independence of the judiciary;
- adoption of a law providing for a set of measures to organize the activities of qualified judicial boards on a democratic basis, ensuring their objectivity and impartiality. The draft law to provide for the authority to the bodies of judicial community **to form the highest qualification collegium of judges**; the formation of the current composition of the qualification collegiums of the courts at the expense of existing judges and members acting on a voluntary basis (former judges, veterans of the judiciary); the introduction of the procedure for the selection by secret ballot for a maximum of two

consecutive terms of chairpersons of the qualification collegiums of judges, their deputies and members; the exclusion of the practice of nominating during the election the chairpersons of the higher qualification collegium of judges, the chairpersons of the qualification collegiums of courts in the field, the candidacies of the chairpersons of these courts.

20. With regard to paragraph 30 of the report, the Program of measures to ensure the supremacy of the Constitution and the Rule of Law, strengthening public control, approved by the Resolution of the President of the Republic of Uzbekistan of 13 December 2019, provides for the development of a law aimed at strengthening responsibility for cases of interference in the resolution of court cases, including the impact of in any form to a judge in order to prevent a comprehensive, complete and objective examination of a case, issuance of an unlawful judgment, decision, determination or ruling (section 4.1).

2. Supreme Judicial Council

21. The report notes that the lack of conformity of the provisions on the composition and functions of the Council of the international standards, including the lack of safeguards against outside political pressure (para. 33 of the report), as well as the absence of strict criteria for the selection of judges (para. 34 of the report). The Special Rapporteur recommends that the Council is protected from external political interference, that a procedure be introduced for the selection of judges to guarantee the widest possible representation of the judiciary at all levels (para. 36 of the report), and that the Chairperson of the Supreme Judicial Council is elected from among its judicial members. In the light of these recommendations, and in order to ensure that national legislation is in line with international principles and standards, Uzbekistan plans to amend the current procedure of the composition of the Supreme Judicial Council, excluding the possibility of joining it representatives of law enforcement, executive and representative authorities.

22. With regard to the Special Rapporteur's recommendation that active politicians, representatives of the legislative or executive authorities and law enforcement officers should not participate in the process of selecting and appointing Council members, it should be noted that in accordance with the Law of the Republic of Uzbekistan "On the Supreme Judicial Council of the Republic of Uzbekistan", seven members of the Council are approved by the President of the Republic of Uzbekistan among the representatives of civil society institutions and highly qualified specialists in the field of law. Currently, law enforcement officials are excluded from the Council. Only authoritative legal scholars, university professors and representatives of the Judges' Association are represented on a voluntary basis as members of the Council.

3. Selection and appointment of judges

23. The report notes that the Council does not play any role in the selection of the most senior judges, chairpersons, vice-chairpersons and judges of the Constitutional and Supreme Courts (para. 41 of the report). In accordance with the laws of the Republic of Uzbekistan "On the Supreme Judicial Council of the Republic of Uzbekistan", "On the Constitutional Court of the Republic of Uzbekistan", "On Courts", the Supreme Judicial Council carries out the selection of chairpersons, deputy chairpersons and judges of the Constitutional and Supreme Court. In particular, the Supreme Judicial Council makes proposals to the President of the Republic of Uzbekistan on candidates for the positions of chairman, deputy chairmen and judges of the Supreme Court of the Republic of Uzbekistan, as well as presentations to the President of the Republic of Uzbekistan on candidates recommended for the positions of chairmen and deputy chairmen of the courts of the regions and the city of Tashkent, Chairman of the Military Court of the Republic of Uzbekistan. According to Article 5 of the Law "On the Constitutional Court of the Republic of Uzbekistan", the Constitutional Court judges are elected by the Senate on the proposal of the President of the Republic of Uzbekistan from among those recommended by the Supreme Judicial Council, including a representative from the Republic of Karakalpakstan. The President of the Republic of Uzbekistan is not a part of the executive branch of government, because article 89 of the Constitution states that the President is the head of state and ensures the coordinated functioning and interaction of state bodies.

24. Concerning the procedures of the selection and appointment of judges, which as noted in paras. 42-43 of the report should be based on the objective criteria established by law, Uzbekistan informs that article 21 of the Law "On the Supreme Judicial Council of the Republic of Uzbekistan" lists the basic selection criteria for the first time appointed judges, and Article 42 of the Rules of the Supreme Judicial Council, which was approved by the resolution of the Supreme judicial Council of the Republic of Uzbekistan on 17 May 2017, provides for the definition of these selections criteria. However, considering the recommendations of the Special Rapporteur, Uzbekistan is planning to approve the criteria at the level of the law, thereby undo it practices in the settlement of these issues via bylaws.

4. Guaranteed term of office

25. Concerning paragraph 47 of the report, Uzbekistan reports that as of January 2020, 49 judges have been appointed (elected) for an unlimited term of office, which is approximately 5% of the total number of judges. At the same time, 384 judges are appointed (elected) for a ten-year term, which is 40% of the total number of judges.

5. The role of the court chairpersons

26. In his Address to Parliament (Oliy Majlis) of the Republic of Uzbekistan, President of Uzbekistan noted the need to revise the powers of chairpersons of the courts to assess the activities of judges and initiate disciplinary proceedings against them.

27. In accordance with the amendments made to the Law "On Courts", adopted on 10 March 2020, a procedure for the automatic distribution of cases in courts was introduced; the procedure is taking into account the workload and specialization of judges. This procedure excludes the possibility of influencing the distribution of cases between judges by persons interested in the outcome of the case. According to the Law, the procedure for the automatic distribution of cases is approved by the Presidium of the Supreme Court of the Republic of Uzbekistan.

6. Disciplinary procedures

28. With regard to paras. 56-60 of the report, Uzbekistan clarifies that the authority to initiate disciplinary proceedings against judges is vested only in the chairperson of the Supreme Court and the Supreme Judicial Council, as the body making the collegial decision. Moreover, the chairpersons of regional and equivalent courts do not have the right to initiate disciplinary proceedings.

29. Regarding the disciplinary procedure (paragraph 60), it should be noted that the procedure described in the report refers exclusively to the disciplinary proceedings by the Chairperson of the Supreme Court. In cases of the initiation of disciplinary proceedings by the Supreme Judicial Council, the qualification collegium does not have the authority to consider the issue of bringing judges to disciplinary liability, but only determines the measure of disciplinary sanction.

30. At the same time, we inform that, taking into account the recommendations of the Special Rapporteur, the issue of cancelling the powers of the Chairperson of the Supreme Court to initiate disciplinary proceedings against judges and giving him the right to make submissions to the Supreme Judicial Council to consider the issue of initiating disciplinary proceedings are being considered.

31. It is planned at the legislative level of Uzbekistan, based on international standards, to determine the grounds and criteria for bringing a judge to disciplinary liability, to establish a detailed procedure and procedures for disciplinary proceedings, as well as the procedure for appealing decisions on bringing to disciplinary liability.

7. Women in the judiciary

32. Concerning paragraphs 62 - 64, it is reported that as of January 2020, out of the total number of judges (1191), the number of female judges is - 149 (12, 5 %). Of the 149 female judges, 7 - are appointed for an indefinite period, 55 - a ten-year tenure. In this case, there are 14 female judges in the Supreme Court.

B. Prosecutors

33. Apropos of paragraphs 74 and 75, the mentioned concerns were also addressed in President of Uzbekistan Sh Mirziyoyev's Address to the Parliament (Oliy Majlis) of the Republic of Uzbekistan: "It is necessary to limit the inherited from the old system and continuing the practice of examining judicial decisions by the prosecutor's office. From now on, the prosecutor will be able to request a court decision only upon receipt of a complaint of a party of the case". Currently, the General Prosecutor's Office has drafted a regulatory act, providing for the establishment of order of reclaim courts' decisions to be studied prosecutors only at the request of interested parties.

34. Based on the recommendations of the Special Rapporteur, the General Prosecutor's Office developed a draft Law "On serving in the prosecutor's office", which provides for a new transparent selection mechanism and appointment, as well as the establishment of the Prosecutor's Council.

C. Lawyers

35. Taking into account the recommendations provided in para. 77 of the report, the State Program 2020 provides for the enhancement of the legal science and education, the development of the system of training, retraining and advanced training of legal personnel, opening new law faculties in the universities of different regions of the country; the creation of an effective system for the continuing education and retraining of legal and pedagogical personnel, as well as the widespread introduction of innovative forms and methods of teaching, new pedagogical technologies, interactive and situational lessons are planned.

1. Access to a lawyer

36. Regarding paragraph. 79, it is reported that by Resolution of the President of the Republic of Uzbekistan dated 13.12.2019 No. PR-4551 "On additional measures to ensure the supremacy of the Constitution and the law, strengthening public control in this direction, as well as raising the legal culture in society", creating a draft of conceptual framework for the development of the institution of the bar, providing for measures to further improve the institution of the bar and radically increase the status of lawyers, in particular, the exclusion of the powers of the Ministry of Justice is envisaged.

37. Concerning paras. 80, 81, it is reported that the decision of the President of the Republic of Uzbekistan dated 13.12.2019, the "On additional measures to ensure supremacy of the Constitution and the Rule of Law, strengthening public control in this field, as well as raising the legal culture in society" envisages the introduction of mandatory video recording of actions taken in detaining an individual and explaining him/her legal rights, denial of counsel, as well as the employees of law enforcement bodies after the detention of the person are assigned responsibility for immediate notification of his arrest and place of detention to someone among the members of his family, and in their absence - other relatives or close persons. Starting from 1 July 2020, any procedural coercive measures, limiting rights of a person, including detaining a person will be entered into a single electronic registration system.
