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Visita a Uzbekistán

Informe del Relator Especial sobre la independencia de los magistrados y abogados* **

Resumen

El Relator Especial sobre la independencia de los magistrados y abogados realizó una visita oficial a Uzbekistán del 19 al 25 de septiembre de 2019. El propósito de la visita era evaluar la reforma que se estaba realizando del sistema de justicia iniciada bajo la dirección del Presidente Mirziyoyev.

El Relator Especial celebra los progresos realizados hasta ahora por Uzbekistán en el fortalecimiento de la independencia del poder judicial y el libre ejercicio de la profesión jurídica. El establecimiento del Consejo Supremo de la Magistratura, la reorganización del sistema judicial, los nuevos procedimientos de selección y nombramiento de candidatos a cargos judiciales y la promulgación de diversas medidas para mejorar la capacitación judicial y la inamovilidad en el cargo podrían considerarse pasos positivos hacia el establecimiento de un sistema de justicia verdaderamente independiente e imparcial. No obstante, harán falta muchas más medidas para garantizar que el poder judicial sea verdaderamente independiente de los demás poderes del Estado y para que los magistrados, jueces, fiscales y abogados gocen de libertad para llevar a cabo sus actividades profesionales sin ninguna injerencia o presión indebida.

Sigue habiendo varios factores de injerencia que socavan tanto la independencia del poder judicial respecto de otros poderes del Estado (independencia institucional) como la independencia de los magistrados individuales para juzgar de manera imparcial y autónoma los casos que se les presentan (independencia personal). Los fiscales siguen desempeñando una función destacada en los procesos penales, y los procedimientos para nombrar y destituir al Fiscal General no ofrecen garantías suficientes para evitar que los poderes legislativo y ejecutivo ejerzan influencia política indebida, lo que suscita considerable

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó y en ruso.

** Se acordó publicar el presente informe tras la fecha de publicación prevista debido a circunstancias que escapan al control de quien lo presenta.

inquietud en cuanto a la independencia institucional del ministerio público en su conjunto. La escasez de abogados afecta gravemente al acceso a la justicia, especialmente fuera de Taskent, y los abogados siguen encontrando varios obstáculos para acceder a los clientes, en particular durante la prisión preventiva.

El Relator Especial concluye el informe ofreciendo una serie de recomendaciones destinadas a seguir reforzando la independencia de los magistrados y fiscales y el libre ejercicio de la profesión jurídica.

Annex

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

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, visited Uzbekistan from 19 to 25 September 2019.

2. During his mission, the Special Rapporteur met in Tashkent, Fergana and Samarkand with senior officials including the President of Uzbekistan; the ministers of foreign affairs, justice and internal affairs and their teams; the Chairs and members of the two branches of the parliament; the Prosecutor-General; the Ombudsman; the Chairs and various magistrates of the Constitutional Court and the Supreme Court; magistrates and judges of lower courts and tribunals; the Chair and members of the Supreme Judicial Council; and the director and staff of the Supreme School of Judges. He also met with a wide range of civil society representatives, including members of the Chamber of Lawyers (Bar Association), non-governmental organizations, defence lawyers, academics, representatives of the donor community and members of international and regional organizations.

3. He wishes to reiterate his gratitude to the authorities of Uzbekistan, in particular the National Human Rights Centre and the Supreme Court, for the invitation and for their support in the preparation of the visit. He also wishes to thank the United Nations Resident Coordinator and the Regional Office of the High Commissioner for Human Rights for Central Asia for their valuable cooperation and assistance.

4. He regrets, however, that some of the civil society representatives he met with during the visit were subject to various forms of surveillance and questioning prior to and/or following their meeting with him. These acts, which were allegedly carried out by representatives of the State Security Services, constitute acts of intimidation and reprisal against those who seek to cooperate or have cooperated with the United Nations in the field of human rights.[1] The Special Rapporteur raised his concerns with Government representatives during and after the mission, and also brought those concerns to the attention of other special procedures mandate holders, the Coordination Committee of Special Procedures and the senior official designated by former Secretary-General Ban Ki-moon to lead efforts within the United Nations system to address intimidation and reprisals against those cooperating with the United Nations on human rights.

II. Legal and institutional framework

A. International obligations

5. An efficient, independent and impartial judicial system is essential for upholding the rule of law and ensuring the protection of human rights and fundamental freedoms. The independence of judges and prosecutors and the free exercise of the legal profession are enshrined in a number of international human rights treaties to which Uzbekistan is a party, including the International Covenant on Civil and Political Rights. The Basic Principles on the Independence of the Judiciary contain the measures that States have to adopt in order to secure and promote judicial independence.

[1] Human Rights Council resolutions 12/2, 24/24 and 36/21.

6. The independence of the judiciary is an essential requirement of the democratic principle of separation of powers. According to this principle, the Constitution, laws and policies of a country must ensure that the justice system is truly independent from other branches of the State. Within the justice system, judges, lawyers and prosecutors must be free to carry out their professional duties without political interference and must be protected, in law and in practice, from attack, harassment or persecution as they carry out their professional activities.

7. The preamble of the Constitution of Uzbekistan recognizes that generally accepted norms of international law take precedence over national legislation. However, the Constitution does not include any provisions stating that international treaties or standards on human rights take precedence over national legislation in case of conflict with provisions contained in ordinary laws or regulations. The inclusion of such a provision in the Constitution is highly recommended.

B. The justice system

8. The judicial system of Uzbekistan consists of the Constitutional Court; the Supreme Court; military courts; and civil, criminal, administrative and economic courts established at the interdistrict, district and city levels. The autonomous Republic of Karakalpakstan and the city of Tashkent have their own courts. The organization and functioning of these courts is regulated by law (art. 107).

9. The Constitutional Court is the judicial body in charge of hearing cases on the constitutionality of laws and acts having the force of law adopted by the executive authorities. Its composition and functioning are regulated by the Constitution (arts. 108 and 109) and the Law on the Constitutional Court.[2]

10. The Supreme Court is the supreme judicial authority in civil, criminal, economic and administrative matters. It supervises the administration of justice in lower courts, and its decisions are binding in the entire territory of the country and not subject to appeal (art. 110).

11. Military courts hear military cases in respect of crimes committed by military officers, officers of the national security service, officers of internal affairs, as well as cases of crimes related to breaches of State secrets. At present, there are 12 military courts (1 in each administrative region), with a structure similar to that of ordinary courts. Military courts are subordinated to the Supreme Court.

12. Regional courts hear appeal cases of a civil, criminal, economic or administrative nature. There are 12 regional courts located in the capital city of each region. Tashkent city courts belong to the category of regional courts because they have wider power than ordinary city courts and are structured in the same way as regional courts.

13. First instance courts are established at the interdistrict, district and city levels to hear cases of civil, criminal and administrative nature. Their functioning is regulated in article 37 of the Law on Courts.

14. The judicial system of the autonomous Republic of Karakalpakstan consists of the Supreme Court, which is the highest judicial body in civil, criminal and administrative matters; the Economic Court of the Republic of Karakalpakstan; and interdistrict, district and city courts. Their organization and functioning is regulated by law.

15. According to the Constitution, the system of public prosecution supervises the strict and uniform observance of laws on the territory of Uzbekistan (art. 118). It consists of the Prosecutor-General's Office and its subordinate offices. The Prosecutor-General directs the centralized system of bodies of his or her office and appoints the prosecutors at the interdistrict, district and city levels (art. 119). The organization and functioning of these bodies are regulated by the Law on Public Prosecution[3] and the Law on Combating

[2] Law No. ZRU-431 of 31 May 2017.

[3] Law No. 257-II of 29 August 2001.

Corruption.[4] These laws entrust wide powers to prosecution authorities that go far beyond the supervisory powers mentioned in the Constitution.

III. Positive developments

16. The declaration of independence from the Soviet Union in 1991 did not translate in the dismantlement of the authoritarian and centralized structure that Uzbekistan had inherited from that country. As the judiciary remained under the control of the executive power, it was unable to fulfil its role as guardian of the rule of law and of the human rights and fundamental freedoms of the people. The Prosecution's Office (*Prokuratura*) retained the responsibility of supervising the observance of the law by all government ministries and institutions subordinate to them. In criminal proceedings, the role of judges was limited to rubber-stamping the requests made by the prosecutor in the indictment. The capacity of defence counsels to provide effective legal assistance to their clients was extremely limited, especially in the field of criminal law.

17. Today, this situation is gradually changing. Under the leadership of President Mirziyoyev, Uzbekistan has developed a comprehensive agenda of reforms to modernize State institutions and policies. The reform of the justice system, which is currently under way, is a key component of this agenda. Its main objectives are to protect the independence of the judiciary and to strengthen access to justice.

18. Some of the measures that have been adopted to strengthen the independence of the judiciary and the free exercise of the legal profession since President Mirziyoyev took office include:

(a) The establishment of the Supreme Judicial Council as a constitutional body with a broad mandate to insulate the judiciary and judicial career processes from external political pressure;

(b) The reorganization of the court system, which includes the transfer of the functions of the High Economic Court to the Supreme Court, the establishment of a new administrative justice system and the transfer of a number of administrative and technical functions relating to the court administration from the Ministry of Justice to the new Department for Supporting Court Activities, established within the Supreme Court;

(c) The gradual increase in the acquittal rate in criminal proceedings as an indicator of the strengthening of the autonomy of judges vis-à-vis prosecutors;

(d) New procedures for the selection and appointment of candidates to judicial offices;

(e) Measures to strengthen the security of tenure for judges;

(f) The enactment of a number of measures, including the establishment of the Higher Judicial School under the Supreme Judicial Council, with the aim of strengthening the initial and continuous training of judges;

(g) The regular publication of court decisions on the website of the Supreme Court, and the gradual establishment of electronic procedures aimed at increasing transparency and facilitating access to justice;

(h) A number of key reforms in the area of anti-corruption policies, including the adoption of a law on anti-corruption and the creation of mechanisms for the implementation of such measures.

19. Such measures should be regarded as initial steps towards the establishment of a truly independent and impartial justice system. Much more needs to be done to ensure that the judiciary is truly independent from other branches of the State, and that judges, prosecutors and lawyers are free to carry out their professional activities without any undue interference or pressure.

[4] Law No. ZRU-419 of 3 January 2017.

IV. Challenges to an independent and impartial justice system

A. Judges

20. The principle of judicial independence refers to both the individual and the institutional independence required for decision-making. It is both a state of mind and a set of institutional and operational arrangements aimed at ensuring that individual judges, and the judiciary as an institution, are able to exercise their professional responsibilities without being influenced by the executive or legislative branches or other external sources.

21. In its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee observed that the requirement of independence and impartiality of a tribunal refers, in particular, to the procedure for the appointment of judges; the guarantees relating to their security of tenure; the conditions governing the promotion, transfer, suspension and cessation of their functions; and the actual independence of the judiciary from political interference by the executive branch and the legislature. The Basic Principles on the Independence of the Judiciary provide that the status of judges, including their term of office, independence, security, adequate remuneration, conditions of service, pensions and age of retirement must be regulated by law.

1. Threats to judicial independence

22. The Constitution enshrines both the principle of separation of powers (art. 11) and the independence of the judiciary from the legislative and executive authorities, political parties and public associations (art. 106). It also provides that in the exercise of their functions, judges are independent and only subject to the law; that any interference with their activities is deemed inadmissible and is punishable in accordance with the law; and that judges can only be removed from office before the completion of their terms in the cases provided by law (art. 112). The Supreme Judicial Council was established in 2017 as a new constitutional body in charge of safeguarding the independence of the judicial system and the independence of individual judges (art. 111).

23. According to the Law on Courts, the independence of judges is ensured by:

(a) Statutory procedures for their election, appointment and termination of office;

(b) Their immunity;

(c) Strict procedures for the administration of justice;

(d) Secrecy of the judges' conference before the delivery of a judgment and restraint of disclosure of the respective confidential information;

(e) Liability for contempt of court or interfering with judicial proceedings, or violation of judicial immunity;

(f) An adequate level of material and social security provided to judges by the State in accordance with their high social status (art. 67).

24. In general terms, the Constitution and ordinary legislation are drafted in line with international standards on the independence of the judiciary and the separation of powers. In practice, however, a number of interferences continue to undermine both the independence of the judiciary from other branches of Government (institutional independence) and the independence of individual judges to adjudicate the cases before them impartially and autonomously (personal independence).

25. Institutional independence – that is, independence with respect to matters of administration that relate directly to the exercise of the judicial function – remains weak. Major issues concerning the administration of justice, including the establishment of judicial bodies, the organization and functioning of courts or the remuneration of judges and court employees, are regulated by presidential decrees. The Special Rapporteur is aware of the fact that legislation has been enacted pursuant to some executive decrees in

order to regulate important aspects of judicial careers. Nevertheless, he remains concerned that important aspects of judicial careers, including the procedure for handling disciplinary proceedings against judges, continue to be regulated by secondary legislation.

26. He welcomes the fact that some competences of the President on issues related to the organization and functioning of the judiciary have been eliminated, including those related to the appointment of ordinary judges (see para. 39). Nevertheless, the President retains important functions in relation to the organization and functioning of the judicial system, such as the power to appoint senior judges and to approve the court structure and the number of staff (article 78 of the Law on Courts).

27. Another important factor affecting judicial independence is the prominent role that prosecutors retain in criminal proceedings. According to several sources, the Prosecutor's Office exercises excessive prerogative in criminal cases and in its general oversight function (see paras. 71 ff.). In the criminal justice system, the closing indictment, forwarded by the Prosecutor's Office to the court along with the case materials, is often used as the text of the judge's decision. According to several sources, the extended and visible presence of the security services in the daily life of Uzbek citizens and in public institutions has a particular influence on the prosecution service. As a result, the autonomy of judges to decide the cases before them impartially, on the basis of facts and in accordance with the law, is de facto limited to upholding the requests made by the prosecutor in the indictment. Several judges have allegedly been harassed, subjected to disciplinary proceedings or dismissed in the past for not having followed the prosecution's instructions.

28. During the course of the mission, several interlocutors referred to the increase in acquittals in criminal proceedings as an indicator of a progressive move towards judicial independence. According to the figures provided by State authorities, the number of acquittals increased from only 6 in 2016 to 263 in 2017, 867 in 2018 and more than 500 in the first nine months of 2019. These numbers, if confirmed, could indeed be regarded as a gradual move from a system where the autonomy of judges was limited to simply confirming the indictment made by the prosecutor to a system in which judges are able to exercise a more independent role.

29. An additional threat to judicial independence comes from the pyramidal structure of the justice system and the extremely broad powers that court Chairs have with regard to the selection, promotion, evaluation and discipline of judges (see paras. 53 ff.). Court Chairs or the head of a superior court can interfere with criminal trials in lower-level courts by giving instructions to the judge concerning the outcome of the trial or demanding progress reports from the judge. State authorities claim that so-called "telephone justice" – that is, the practice of interfering with the judicial decision-making by putting pressure on the judge on how to adjudicate the case – is a remnant of the past. Nonetheless, many interlocutors confirmed that such interference was still entrenched in the system, and that the court Chair often played an intermediary function in this process.

30. Judges who adjudicate the case without taking into account the requests made by the prosecutor in the indictment or the instructions received from the judicial hierarchy may have their decision overturned on appeal. They may also be subject, at the request of the prosecutor, to enquiries into their sentence history, with the aim of ascertaining the percentage of judgments that have been partially or totally reversed by superior courts. The number of acquittal decisions may constitute a decisive factor in proving the "inconsistency of the judge's decisions", and may adversely affect the judge concerned during the performance assessment or the reappointment process (see paras. 49 ff.).

2. Supreme Judicial Council

31. The composition and functioning of the Supreme Judicial Council are regulated by the Law on the Supreme Judicial Council.[5]

32. The Supreme Judicial Council consists of 21 representatives, including 11 judges. Its representatives are chosen from among judges, representatives of law enforcement

[5] Law No. ZRU-427 of 6 April 2017, as amended by Law No. ZRU-566 of 10 September 2019.

bodies, institutions of civil society and recognized experts in the field of law (art. 5). The Council has broad competences in relation to: the selection of candidates for judicial office; the organization of initial and continuous training for judges; the evaluation and promotion of judges; and the handling of disciplinary proceedings against judges. It also has the power to elaborate law proposals aimed at strengthening judicial independence and improving access to justice (art. 6).

33. The Special Rapporteur welcomes the establishment of the Supreme Judicial Council through a constitutional provision, which emphasizes the vital role that such a council plays as a guarantor of judicial independence.[6] However, he considers that the provisions regarding the composition and functions of the Council are not fully in line with international standards, and do not provide sufficient guarantees to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch.[7]

34. The inclusion in the Council of members who are not part of the judiciary contributes to minimizing the risk of corporatism and self-interest.[8] Nonetheless, the criteria for the selection of non-judge members of the Council are not sufficiently defined. The lack of strict criteria for their selection allows, in practice, the appointment of candidates who may not have the necessary skills and qualifications, but who are chosen solely on the basis of their political affiliation.

35. The Law establishing the Council provides widespread powers to the President of Uzbekistan in relation to the appointment of Council members. The President has discretionary powers to appoint seven of its members and its Secretary. He or she also appoints 11 judge-members of the Council from a list prepared by the Chair of the Council. Finally, the President exercises a significant role in the selection of the Chair, who is appointed by the Senate (Oliy Majlis) upon nomination by the President, and the Deputy Chair, who is appointed directly by the President.

36. In order to insulate the Council from external political interference, the involvement of political authorities, such as the President, at any stage of the selection process should be avoided. Judge-members of the Council should be selected by their peers, through appropriate selection procedures guaranteeing the widest representation of the judiciary at all levels. The interference of the judicial hierarchies in this process should be avoided. The election of non-judge members should preferably be entrusted to a non-political body; in no case should they be selected, or appointed, by the executive branch.[9]

37. As to the appointment of the Chair of the Supreme Judicial Council, the Special Rapporteur considers that the Chair should be an impartial person who does not have any political affiliation, and should be elected by the Council itself from among its judge-members. In the light of his or her functions, the President of the Supreme Court should not be appointed as the Chair of a judicial council.[10]

3. Selection and appointment of judges

38. The Special Rapporteur welcomes the new procedure for the selection and appointment of candidates to judicial offices, which entrusts key competences in relation to judicial appointments to the Supreme Judicial Council.

39. The Council is now responsible for the selection and appointment of the majority of national judges (judges of military courts, regional courts and Tashkent city courts, Chairs and judges of interdistrict, district and city courts). Until recently, the Council exercised

[6] A/HRC/38/38, para. 42.

[7] See also Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, "Opinion on the Law on the High Judicial Council of the Republic of Uzbekistan", Opinion-Nr.: JUD-UZB/327/2018, 1 October 2018, paras. 22–29; and Organization for Economic Cooperation and Development, *Anti-Corruption Reforms in Uzbekistan: 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan*, 2019, pp. 104–106.

[8] A/HRC/38/38, paras. 72–73.

[9] Ibid., paras. 76–77 and 108.

[10] Ibid., para. 112.

this competence in consultation with the President (article 63, paragraph 5, of the Law on Courts), but such consultative process has now been eliminated.[11]

40. The Supreme Judicial Council also participates in the selection of Chairs and deputy Chairs of military courts, regional courts and Tashkent city courts, who are appointed by the President upon recommendation of the Council.

41. The Council does not play any role in the selection of the most senior judges – that is, Chairs, deputy Chairs and judges of the Constitutional Court and the Supreme Court – who are elected by the Senate on the proposal of the President.

42. In relation to the procedure for the selection and appointment of judges, the mandate has consistently held that this procedure should be based on objective criteria previously established by law, and that decisions concerning the selection should be based solely on merit, with regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, independence and impartiality.[12] In this regard, the Special Rapporteur regrets that neither the criteria nor the procedure envisaged for the selection of candidates provide sufficient guarantees to avoid judicial appointments based on improper motives.

43. Most of the criteria set out in the Law establishing the Council for selecting candidates to judicial offices are too broad or generic, and the law does not provide any guidance on how to assess some of the requirements, such as spotless reputation, honesty or sufficient life experience (arts. 20 and 21). This means that in practice, candidates for judicial offices are currently selected on the basis of formal and overly general requirements that do not allow a proper assessment of the moral integrity, independence and professional qualifications of the candidate.

44. The procedure envisaged by the Law with regard to the selection of candidates is extremely cumbersome. In the opinion of the Special Rapporteur, the selection procedure could be made more straightforward by organizing regular competitive selection processes and appointing successful candidates on the basis of their rating in that process. Competitive examinations conducted, at least partly, in a written and anonymous manner represent an important tool in the selection process.[13] Mandatory training, including an internship in court, could be provided only to candidates who had been successful in the selection process.

4. Security of tenure

45. Security of tenure constitutes an essential guarantee for ensuring the independence of the judiciary. While not all international standards unambiguously state that judges should be appointed for life, it is undeniable that judges who do not have long-term security of tenure may be subject to undue pressure and interferences from different actors, such as the executive branch, the judicial hierarchy or other appointing authorities. This problem becomes particularly acute in countries where the executive branch plays a predominant role in the selection and appointment of judges.

46. Law No. 428 of 12 April 2017 introduced amendments to article 63-1 of the Law on Courts, which regulates security of tenure. According to this new provision, judges are now appointed for an initial 5-year term, followed by a 10-year term, and subsequently by a lifetime appointment. These changes represent a positive step in the right direction. However, the system of two temporary appointments before achieving a lifelong appointment continues to expose judges to the risks of undue pressure and interferences during the first 15 years in office. This is true, in particular, for judges dealing with politically sensitive cases, who may feel pressured to decide in favour of the State authorities in order to improve their chances of being reappointed.

[11] See Law No. ZRU-566 of 10 September 2019.

[12] A/HRC/38/38, para. 49.

[13] Ibid., para. 54; A/HRC/11/41, para. 30.

47. To date, changes in the regulation on the duration of tenure have not had a positive impact on the security of tenure of Uzbek judges. As of October 2018, only 38 judges (about 3 per cent of all judges) had obtained a permanent appointment. Most of these judges sit in the Supreme Court. A total of 164 judges (about 12 per cent) had been reappointed for a 10-year term, while the remaining judges were on an initial 5-year appointment.

48. One way of strengthening judicial independence in cases of fixed-term appointments is by establishing a clear procedure ensuring objective and transparent assessment and reappointment of judges after expiration of the initial 5-year term.

49. The main criteria for the selection of judges for a new term and other judicial positions are impeccable reputation, honesty, impartiality, fairness and professional competence shown during their career. Furthermore, three additional criteria are taken into account while considering a candidate for reappointment: the "stability" of the judge's judicial decisions; experience in judicial decision-making and the application of legal norms; and public opinion about the judge's professional abilities. In the opinion of the Special Rapporteur, these criteria are highly problematic.[14]

50. With regard to the stability of the judge's judicial decisions, the fact that a judicial decision may be overturned on appeal or after review by a higher judicial body does not entail that the decision is wrong, and the overturning of such a decision cannot be used to assess the judge's performance negatively. Such an assessment would have the effect of increasing the dependency of lower courts on higher courts.

51. The second criterion is unclear, since the judge's experience in judicial decision-making cannot be tested solely on the basis of the time that he or she has been in office. On this basis, any judge applying for initial reappointment should be considered to meet the requirement, let alone those applying for reappointment after 15 years of service.

52. The third criterion, which is aimed at assessing public opinion on the judge's performance, may pose a serious threat to judicial independence, since judges may be prone to adjudicate cases attracting wide media coverage in accordance with public opinion so as to increase the chance of being reappointed at the end of their term of office.

5. Role of Chairs

53. In Uzbekistan, court Chairs are entrusted with wide discretionary powers in relation to several aspects of judicial careers. They evaluate the performances of judges in their court, and participate, in their capacity as head of the judicial qualification board, in assessing the professional qualifications and personal qualities of the judges who apply for reappointment. Chairs have wide-ranging powers in determining the salary and bonuses of judges in their court, including the authority to provide salary increases up to 100 per cent to judges and staff who perform their professional duties in an efficient and diligent way. They also have the power to initiate disciplinary proceedings against judges (see para. 58).

54. The broad powers entrusted to court Chairs allow them to exert influence over individual judges and undermine, in practice, their independence to adjudicate the cases before them impartially and autonomously. In view of the extensive powers the Chair of the court has in relation to judicial careers, judges may be tempted to ask the advice of their court Chair before adjudicating politically sensitive cases or to follow the instructions received by the court hierarchy.

55. International standards provide that a hierarchical organization of the judiciary, intended as the subordination of the judges to the court presidents or to higher instances in

[14] Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, "Opinion on the Law on the High Judicial Council of the Republic of Uzbekistan", Opinion-Nr.: JUD-UZB/327/2018, 1 October 2018, paras. 48–52.

their judicial decision-making activity, amounts to a breach of the principle of judicial independence.[15]

6. Disciplinary proceedings

56. International standards recognize that individual judges may be subject to disciplinary proceedings and penalties, up to and including removal from office, for sufficiently serious misconduct that renders them unfit to discharge their duties. The responsibility for handling disciplinary proceedings against judges should be vested in an independent authority (such as a judicial council) or a court. International human rights mechanisms, including the Special Rapporteur, have stressed that the involvement of members of the executive branch of power in the disciplinary body is de facto incompatible with the principle of the independence of the judiciary.[16]

57. The current regime for disciplinary measures against judges is scattered through a number of regulations that do not meet the minimum requirements set out, inter alia, in principles 17 to 20 of the Basic Principles on the Independence of the Judiciary.

58. The grounds for disciplinary liability set out in article 73 of the Law on Courts are too vague and ambiguous. In particular, there seems to be an overlap between the offences to the dignity of their profession that could compromise the independence and authority of the judiciary and violations of rules of ethical conduct. Furthermore, not all violations of ethical rules could amount to misconduct. Whether disciplinary action is appropriate or not may depend on other factors, such as the seriousness of the transgression, whether or not there is a pattern of improper activity, and the effect of any improper activity on others and on the judicial system as a whole.

59. The authority to initiate disciplinary proceedings against judges is vested in the Chair of the Supreme Court – who may act on the basis of a request from the Chair of the respective court – and in the Supreme Judicial Council. Disciplinary cases involving judges of higher courts are handled by the Higher Judicial Qualification Board, while cases concerning ordinary judges are considered by lower-level judicial qualification boards (article 74 of the Law on Courts).

60. The disciplinary procedure is set out in the Regulation on Judicial Qualification Boards.[17] If the judicial qualification board finds the case to have merit, it may issue a reprimand or impose a fine amounting up to 30 per cent of the judge's average monthly wage. In the most serious cases, the board may refer the case to the Supreme Judicial Council, which is the sole authority competent to remove judges from office or, in the case of judges appointed by the President or elected by the Senate, to recommend early termination to the President (article 7 of the Law establishing the Supreme Judicial Council).

7. Women in the judiciary

61. The Special Rapporteur welcomes the recent adoption of two important laws on gender equality and violence against women,[18] and wishes to underline that a more representative and gender-sensitive judiciary could play a determining role in empowering women to gain access to justice, claim their rights and break patterns of gender discrimination and impunity in cases of violence against women.

[15] Universal Charter of the Judge, approved by the Central Council of the International Association of Judges in Taipei, Taiwan Province of China, on 17 November 1999, and updated in Santiago on 14 November 2017, art. 3-1.

[16] A/HRC/38/38, paras. 60 ff.

[17] Adopted by Law of the Republic of Uzbekistan No. ZRU-368 of 22 April 2014.

[18] Law on Protecting Women from Harassment and Violence (Law No. ZRU-561), and Law on Guarantees of Equal Rights and Opportunities for Women and Men (Law No. ZRU-562), both adopted on 2 September 2019.

62. In Uzbekistan, women continue to be a small minority on the bench. According to recent estimates, out of a total of 1,038 judges, only 129 (12.4 per cent) were women.[19] The gender gap is particularly evident in criminal and administrative courts, where women represent approximately 8 per cent of the total number of judges (25 out of 319 and 18 out of 203, respectively).[20] No data are available about the percentage of women judges sitting in the top-ranking position.

63. According to State authorities, the low representation of women in the judiciary, and especially in criminal and administrative courts, is the result of women's educational and professional choices. The authorities indicate that women opt for occupations that offer a better life-work balance, and within the judiciary, prefer to work on family issues rather than being involved in more complex and time-consuming criminal and administrative issues.

64. The Special Rapporteur does not share this view. The underrepresentation of women in the judiciary may be a reflection of deep-rooted stereotypes concerning the roles and responsibilities of women and men in the family and in society, stereotypes that result in discrimination against women and the perpetuation of their subordination within the family and society. The low representation of women in the judiciary and their concentration in civil courts seem to reflect the traditional and patriarchal societal structure of the country.

B. Prosecutors

65. Prosecutors play a central role in the administration of justice. Since prosecutors are appointed by the executive branch in some jurisdictions or are dependent on this branch to some extent, international standards do not expressly require that the prosecution service be independent from other State institutions. Nevertheless, respect for human rights and the rule of law presuppose a strong prosecutorial authority in charge of investigating and prosecuting criminal offences with independence and impartiality from political power.

66. The Guidelines on the Role of Prosecutors require States to adopt all appropriate measures to ensure that as essential agents of the administration of justice, prosecutors can carry out their professional functions impartially and objectively, without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability (guideline 4). In order to guarantee the proper discharge of prosecutorial functions, States have a duty to provide reasonable conditions of service, adequate remuneration and, where applicable, security of tenure (guideline 6), and to protect prosecutors and their families when their personal safety is threatened as a result of the discharge of prosecutorial functions (guideline 5).

67. In assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of prosecution services, which depends on the prosecution model applied in the domestic legal system, and their operational independence and impartiality, or functional independence (A/HRC/20/19, para. 26).

1. Selection and appointment

68. According to the Law on Public Prosecution, the Prosecutor-General is appointed for a period of five years by the President with the subsequent approval of the Senate (art. 12). Neither the Constitution nor the Law on Public Prosecution spell out the qualifications that candidates for this position must possess or the procedure for their selection and appointment. Similarly, the grounds for the Prosecutor-General's dismissal or the procedure to follow are not regulated by the law.

[19] There seems to be a negative trend in relation to women's representation in the judiciary: in 2015, the Committee on the Elimination of All Forms of Discrimination against Women had already expressed concerns at the decline in the number of women judges, who then represented 13 per cent of the total workforce (CEDAW/C/UZB/CO/5, para. 21).

[20] Organization for Economic Cooperation and Development, *Anti-Corruption Reforms in Uzbekistan*, p. 92.

69. In the opinion of the Special Rapporteur, these procedures do not provide sufficient guarantees to prevent undue political influence from the legislative and executive branches of power in the process of appointment and dismissal of the Prosecutor-General. They may hamper the institutional independence of the prosecution service as a whole, and raise considerable risk of corruption. The development of clear and objective criteria and a procedure for the selection and appointment of the Prosecutor-General and the involvement of civil society in the procedure could strengthen the transparency of the process and reduce the risk of politicization of the prosecution service.

70. The procedure for admission to the prosecution service is currently regulated by the Order of the Prosecutor-General on increasing the effectiveness of activities in the field of staff selection, placement and education.[21] The selection process is carried out by the personnel department of the Prosecutor-General's Office, together with the Internal Security Department and other units of the Office.

71. The Special Rapporteur welcomes the fact that the procedure for the review of candidates is carried out on a competitive basis, but regrets that neither the criteria nor the procedure envisaged for the selection of candidates provides sufficient guarantees to minimize the risk of selection for improper motives. Furthermore, the current system, in which all prosecutors are appointed by the Prosecutor-General for a five-year term, cannot be regarded as being consistent with international standards relating to the independence of the prosecution services. An institution of prosecutorial self-government, such as a prosecutorial council, could be established to strengthen the independence of the prosecution service and deal with all issues relating to the prosecutorial career.

2. Supervisory powers

72. The Constitution provides that the prosecution authorities exercise their powers independently of any State bodies, public associations and officials, and are only subject to the law (art. 120). To ensure the independence of the prosecution authorities, the Criminal Code provides a criminal liability for unlawful influence in any form on an investigator or a prosecutor aimed at preventing a full, complete and objective investigation of a case (art. 236).

73. In addition to their far-reaching competences in the field of criminal investigation, prosecutors are vested with wide supervisory powers over the executive and legislative branches, investigative bodies and administrative agencies, as well as over any private institutions, enterprises and organizations (see article 3 of the Law on Public Prosecution). The Law on Combating Corruption provides wide discretionary powers to the prosecution service in relation to the development and implementation of anti-corruption legislation and programmes (art. 9). In the exercise of these powers, they are largely unaccountable to anyone except the Prosecutor-General.

74. According to the Law on Public Prosecution, prosecutors retain the power to verify the conformity of court decisions with the law and the evidence collected, regardless of whether they participated in the proceedings, and may appeal decisions in criminal, civil, economic and administrative cases to a higher court. This power also extends to decisions that have already entered into force, although the right to protest against final decisions only pertains to the Prosecutor-General and his or her deputies. While the supervisory procedure is pending, the Prosecutor-General has the right to suspend the execution of the protested decision (arts. 36–40).

75. The Special Rapporteur considers that these powers, which constitute a rudiment of the former Soviet legal system, violate the principles of separation of powers and the independence of the judiciary, and pose considerable corruption risks, given the hierarchical structure of the prosecution service and the fact that the Prosecutor-General is appointed by political bodies. The right to protest against final decisions is inconsistent with a number of rule-of-law principles, such as the principles of res judicata and legal certainty. Judicial errors should be dealt with through the appeal or cassation procedure, or

[21] Order of the Prosecutor-General No. 131 of 29 August 2016.

with the reopening of the cases when exceptional circumstances, such as newly discovered evidence, arise.

C. Lawyers

76. The Constitution provides that an accused has the right to legal assistance during the investigation and at all stages of legal proceedings, and that legal assistance is provided by the Chamber of Lawyers (art. 116). The organization and functioning of the legal profession is regulated by the Law on Lawyers[22] and the Law on Guarantees of Defence Lawyers' Activities and Social Protection of Defence Lawyers.[23]

77. The low number of lawyers in Uzbekistan is a matter of serious concern. At the time of the Special Rapporteur's visit, there were approximately 4,000 lawyers in the country. The majority of lawyers reside and work in Tashkent. In other areas of the country, there is a dramatic shortage of lawyers, which has a serious impact on access to justice.

1. Access to a lawyer

78. National legislation is generally in line with international standards on the right to be assisted by a lawyer of one's own choosing, as set out, inter alia, in article 14 of the International Covenant on Civil and Political Rights and in the Basic Principles on the Role of Lawyers. Nevertheless, during the mission, several interlocutors stressed that such guarantees are not always realized in practice, and that lawyers encounter several obstacles that prevent or limit the discharge of their professional obligations. State authorities have also acknowledged the existence of these problems.[24]

79. First of all, it appears that many lawyers have difficulty obtaining access to clients who have been arrested or put in detention. According to the information received, prison staff or employees of the investigative bodies adduce formal reasons, such as the nature of the charges, to prevent lawyers from meeting their clients. In some cases, prison authorities put pressure on detainees to force them to waive their right to be assisted by a lawyer of their choice. Complaints brought before the competent authorities by the lawyers concerned, denouncing their lack of access to their clients, are not considered swiftly, or are simply ignored without any further explanation. In extreme cases, lawyers do not manage to meet with their clients until the end of the preliminary investigations.

80. When they are granted access to their clients, many lawyers complain about the absence of adequate facilities in prisons and detention centres to communicate with their clients without interception and in full confidentiality. At times, such meetings take place in a room that does not provide adequate guarantees of confidentiality or in the presence of prison staff or law enforcement officials. Some lawyers – for example, those defending persons who have been charged with terrorist offences or who are political prisoners – also reported harassment and illegal searches prior to meetings with clients in detention facilities, and were prevented from bringing documents, cell phones and other electronic devices needed during the interview with their clients.

81. Another common obstacle that lawyers encounter in the exercise of their professional duties is the lack of access to information, files and documents in the possession of State authorities. Allegedly, it is not uncommon for lawyers to be denied access to the case file prior to the indictment or to be prevented from summoning or cross-examining witnesses. In cases involving State security, lawyers do not even have access to the indictment or the final ruling. This constitutes a serious violation of the principle of equality of arms, since defendants are de facto deprived of any effective legal assistance.

[22] Law No. 349-I of 27 December 1996.

[23] Law No. 721-I of 25 December 1998.

[24] See, e.g., Presidential Decree No. UP-5441 of 12 May 2018, on measures to radically improve the efficiency of the Chamber of Lawyers and increase the independence of defence lawyers.

2. Chamber of Lawyers

82. As a result of the reform of the legal profession in 2008,[25] the Chamber of Lawyers of Uzbekistan has been placed under the control of the executive branch. The Ministry of Justice plays a decisive role in the appointment and dismissal of the Chair of the Chamber of Lawyers (article 12-3 of the Law on Lawyers). It participates in determining the composition and functioning of the Higher Qualification Commission and its territorial commissions (art. 13), takes part in the procedure for the disbarment of lawyers (art. 16) and maintains the State register of lawyers (art. 17).

83. The Special Rapporteur is concerned that as a result of the 2008 reform, the independence of the Chamber of Lawyers has been undermined.[26] Bar associations play a fundamental role in promoting and protecting the independence and the integrity of the legal profession and in safeguarding the professional interests of lawyers. In order to fulfil this role, bar associations should be independent from the State or other national institutions. Situations where the State, in particular the executive branch, controls all or part of a bar association or its governing body are incompatible with the principle of the independence of the legal profession.[27]

D. Accessibility of courts and tribunals

84. During his visit, the Special Rapporteur assessed the accessibility of courts and tribunals. The mandate has observed on a number of occasions that the effective exercise of the right of access to justice on an equal basis with others can be violated where architectural barriers or language obstacles prevent or limit the access of certain group of individuals, such as persons with disabilities and older persons, to court buildings or court proceedings.[28]

85. The Convention on the Rights of Persons with Disabilities[29] recognizes that persons with disabilities have the right to have access to justice on an equal basis with others (art. 13). Such provisions should be read in conjunction with articles 5 (equality and non-discrimination), 9 (accessibility) and 21 (freedom of expression and opinion, and access to information). The Convention underscores the fact that access to justice for persons with disabilities entails not only the removal of barriers to ensure access to legal proceedings on an equal basis with others, but also the promotion of the active involvement and participation of persons with disabilities in the administration of justice.

86. The Special Rapporteur recognizes the efforts made by Uzbekistan in recent years to make court buildings accessible to persons with disabilities. Some of the premises he visited, and in particular recently refurbished buildings, have been made more accessible through the construction of ramps, handrails and lifts. Nevertheless, even recently refurbished buildings that he visited were not fully accessible – the toilets of the Taylak district court in Samarkand, for instance, were not accessible to a person in a wheelchair. According to several interlocutors, the majority of court premises remain fully inaccessible for persons with disabilities, especially outside the main cities.

87. In relation to the accessibility of judicial proceedings, the Special Rapporteur is concerned by the insufficient number of sign language interpreters; the lack of documents, including court decisions, in accessible formats for persons with sensory, intellectual or psychosocial disabilities; and the absence of policies to empower persons with disabilities to participate in the justice system as direct or indirect participants, such as lawyers, court officers or law enforcement officials.

[25] Law No. ZRU-497 of 11 October 2018.
[26] See also CCPR/C/UZB/CO/4, para. 21.
[27] A/73/365, paras. 100–101.
[28] See, e.g., A/HRC/8/4, para. 32.
[29] Although Uzbekistan has not yet ratified the Convention, its signature in February 2009 signals its intention to become a party in the future, and obliges the State to not do anything inconsistent with the Convention's object and purpose (article 18 of the Vienna Convention on the Law of Treaties).

V. Conclusions

88. The Special Rapporteur welcomes the ongoing reform of the judicial system, which is aimed at strengthening the independence of the judiciary and the effective realization of the principle of separation of powers.

89. The creation of the Supreme Judicial Council, the transfer of administrative and technical functions relating to the court administration from the Ministry of Justice to the Department for Supporting Court Activities under the Supreme Court, and the establishment of new procedures for the selection and appointment of candidates to judicial offices demonstrate the unequivocal commitment of the State to establish a truly independent and impartial justice system. The increase in acquittals in criminal proceedings could also be regarded, if confirmed, as an indicator of a progressive move from a system where the judges' autonomy was limited to simply confirming the requests made by the prosecutor in the indictment to a system in which judges are enabled to exercise a more independent role.

90. Notwithstanding these measures, the judiciary cannot be regarded at present as being independent from other State authorities. Governmental authorities, and in particular the President, retain important functions in relation to the organization and functioning of the judicial system. Prosecutors continue to play a decisive role in criminal proceedings and exert significant pressure on individual judges. The pyramidal structure of the justice system and the extremely broad powers that court Chairs have with regard to the selection, promotion, evaluation and discipline of judges also contribute to limiting the capacity of individual judges to adjudicate the cases before them impartially and autonomously.

91. Much more needs to be done to ensure that the judiciary is truly independent from other branches of the State, in particular the executive branch, and that judges, prosecutors and lawyers are free to carry out their professional activities without any undue interference or pressure.

VI. Recommendations

A. Legal and institutional framework

92. **Uzbekistan should consider including a new provision in its Constitution to recognize that in case of a conflict between sources of law, international norms and standards on human rights take precedence over national legislative or regulatory standards.**

B. Judges

Strengthening judicial independence

93. **The Special Rapporteur encourages Uzbekistan to continue its ongoing reform of the judicial system. The reform of the judiciary should be aimed at strengthening its independence and impartiality and should be carried out in accordance with existing norms and standards relating to the independence of the judiciary, the separation of powers and the rule of law, as well as with the recommendations of relevant international and regional bodies, such as the Human Rights Committee, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, and the Anti-Corruption Network for Eastern Europe and Central Asia of the Organization for Economic Cooperation and Development.**

94. **In order to minimize political interference and strengthen judicial independence, the organization and functioning of the judiciary should be regulated solely by law. The law should regulate all aspects of the judicial career, including selection and appointment of candidates to judicial offices, security of tenure, remuneration and benefits of judges and court personnel, conditions of service,**

transfer, promotion, pensions and the age of retirement. Secondary legislation should only be used to regulate technical and procedural matters in accordance with the law.

95. **All State institutions should respect and observe the independence of individual judges to decide matters before them impartially, on the basis of facts and in accordance with the law, without restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any authority, including the prosecution service and judicial hierarchy. Court Chairs and superior courts should refrain from addressing instructions to judges on how they should decide individual cases. Appropriate sanctions should be imposed against persons seeking to influence judges in an improper manner.**

96. **Judgments should always be reasoned and pronounced publicly. Judicial decisions should not be subject to any revision other than judicial review before a higher court or reopening of the proceedings in exceptional circumstances previously established by law.**

97. **The competences of the President of the Republic in relation to the appointment of senior judges and the approval of the court system should be transferred to the Supreme Judicial Council or to the judiciary itself (e.g., the Department for Supporting Court Activities under the Supreme Court).**

Supreme Judicial Council

98. **In order to strengthen the independence of the Supreme Judicial Council and minimize the risk of political interference, the criteria and the procedure for the selection and appointment of the Council's members should be reviewed, with a view to:**

(a) **Excluding active politicians, representatives of the legislative or executive branches of power, members of the police or the prosecution service from participation;**

(b) **Eliminating the involvement of political authorities at any stage of the selection process;**

(c) **Ensuring that the Chair is elected by the Council itself among its judge-members.**

99. **In addition to the responsibilities referred to in article 6 of the Law on the Supreme Judicial Council, the Council should be entrusted with general responsibilities with regard to the administration of the court system, the preparation of the judicial budget and the allocation of budgetary resources to the various courts.**

100. **The competence to determine the structure and the number of staff of the Executive Board of the Supreme Judicial Council, which at present are approved by the President of the Republic (article 8 of the Law), should be entrusted solely to the Council.**

Selection and appointment of judges

101. **The procedure for the selection of candidates to judicial offices should be transparent and based on objective criteria previously established by law or by the Supreme Judicial Council. Decisions should be based solely on merit, with regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, sense of independence and impartiality. Competitive examinations conducted, at least partly, in a written and anonymous manner can serve as an important tool in the selection process.**

102. **The procedure for the selection of Chairs and deputy Chairs of regional courts, military courts, and Tashkent city courts should be reviewed so as to limit the discretionary power of the President of the Republic to choose among the candidates put forward by the Supreme Judicial Council. Should the President retain the power to formally appoint judges, the appointment should be made on the basis of the recommendation of the Council that the President follows in practice.**

103. **The procedure for the selection of Chairs, deputy Chairs and judges of the Constitutional Court and the Supreme Court should be reviewed in order to reduce the politicization of judicial appointments. Should the Senate (Oliy Majlis) retain the power to formally appoint judges, the appointment should be made on a transparent process and on the basis of a proposal of the Supreme Judicial Council that the parliament follows in practice.**

Security of tenure

104. **The system of two temporary appointments before achieving a lifelong appointment should be reconsidered, since it exposes judges to the risk of undue pressure and interferences during the first 15 years in office. While moving towards life appointment, the Special Rapporteur recommends limiting temporary appointments to a single initial term of office, possibly for 10 years.**

105. **The criteria set out in article 22 of the Law on the Supreme Judicial Council for the selection of judges for a new term and other judicial positions should be eliminated because they risk exposing judges to undue interferences in their judicial activity. In particular, the number of acquittals should never be used as an indicator for the evaluation of judges. To diminish pressure on judges to avoid acquittals, a change in the system of their professional evaluation is strongly recommended.**

106. **The professional evaluation of judges should be based on a clear and transparent procedure previously established by law. It should focus upon the judge's skills, including professional competence, personal competence, social competence and, for possible promotion to an administrative position, competence to lead. Judges should be heard and informed about the outcome of the evaluation, with opportunities for review on appeal.**

Court Chairs

107. **In accordance with international standards, the mandate of court Chairs should be limited to representative and administrative functions. They should not be involved in judicial selection or in disciplinary proceedings against judges. The discretionary powers entrusted to court Chairs in relation to judges' salaries and bonuses should be eliminated.**

108. **In order to minimize the risk of political interference with the work of the courts, the power to elect court Chairs should be vested in a judicial authority (either the Supreme Judicial Council or the conference of judges sitting in the court).**

Disciplinary proceedings

109. **Judges should only be subject to disciplinary proceedings in the cases expressly provided for by law and in accordance with a fair and appropriate procedure before a court or a similar independent body entrusted with this task.**

110. **Judges should only be subject to disciplinary proceedings in cases of alleged professional misconduct that are gross and inexcusable and at risk of compromising the independence and authority of the judiciary. Disciplinary responsibility of judges should not extend to the content of their decisions.**

111. **The power to initiate disciplinary proceedings against judges should only be vested in the Supreme Judicial Council. In order to minimize the threat to judicial independence arising from the pyramidal structure of the justice system, court Chairs may file a complaint to the body that is competent to receive complaints and conduct disciplinary investigations, but should not have the power to either initiate or adopt a disciplinary measure.**

112. **In order to avoid excessive concentration of power in one body, judicial qualification boards should not play any role in disciplinary proceedings against judges. For the same reason, it would be preferable that the competence to hear the case and adopt a decision on disciplinary measures be attributed to a different independent body not subject to the authority of the Supreme Judicial Council. Such a**

body should include members from outside the judiciary to avoid any perception of corporatism.

113. **The list of possible sanctions should be supplemented, so as to ensure that sanctions be imposed taking into account the severity of the offence, the context in which it has taken place and its impact on the judiciary as a whole.**

Women in the judiciary

114. **Improving women's representation in the justice system requires the inclusion of a gender perspective in the procedure for the selection and appointment of judges, and the adoption of specific measures aimed at achieving gender equality in the judiciary, including temporary special measures pursuant to article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women.**

C. Prosecutors

Supervisory powers

115. **Prosecutors' competences should be limited to the criminal sphere (pretrial investigation and execution of criminal punishment). Consideration should be given to transferring the wide supervisory powers entrusted to prosecutors to other State bodies, such as the judiciary, where appropriate, or an independent national human rights institution. The powers of prosecutors to recall or file a protest against court decisions should be abolished.**

Selection and appointment

116. **The procedures for the selection and dismissal of the Prosecutor-General should be based on objective criteria previously established by law. The law should provide appropriate mechanisms to facilitate the participation of civil society and the public at large in the assessment of the qualifications, experience, independence and integrity of the candidates. In order to minimize the risk of politicization of the selection process, the role of the President and the Senate should be restricted to selecting the appointee from a list of pre-selected candidates prepared by an independent body, such as a prosecutorial council.**

117. **The criteria and the procedure for the selection of candidates to the prosecution service should be regulated by law. The competence to assess the candidates should be transferred to an independent institution of prosecutorial self-government, such as a prosecutorial council.**

118. **In order to strengthen the independence of the prosecution service, consideration should be given to the establishment of a prosecutorial council. The council should be established by law and consist of a majority of prosecutors elected by their peers. Its mandate should be to strengthen the independence of the prosecution service and to deal with all issues relating to the prosecutorial career, including the appointment, promotion, transfer and discipline of prosecutors. This body should be independent of the Prosecutor-General and include representatives of civil society in order to avoid or minimize any risk of corporatism.**

D. Lawyers

Access to a lawyer

119. **The Special Rapporteur calls on the legal profession to adopt all appropriate measures to facilitate access to the legal profession for young law graduates. He also recommends that new law schools be created outside the capital. This would facilitate access to law courses for students wishing to undertake the legal profession.**

120. **Uzbekistan should adopt all appropriate measures to ensure that persons arrested or detained, with or without criminal charge, have prompt access to a lawyer**

of their choice. The State should also envisage minimum safeguards to ensure that lawyers are able to perform all of their professional functions freely and without any intimidation, hindrance, harassment or improper interference. Those safeguards should include access to adequate facilities in prisons and detention centres to communicate with their clients without interception and in full confidentiality; and prompt access to the information, files and documents held by State authorities that are necessary to provide effective legal assistance to their clients. Severe penalties should be imposed on law enforcement officials and prosecutors who prevent or limit the right of lawyers to assist their clients.

Chamber of Lawyers

121. **The Law on Lawyers should be amended to eliminate the widespread competences attributed to the Ministry of Justice in relation to the organization and functioning of the legal profession, which undermine the independence of the Chamber of Lawyers and, consequently, the free and independent exercise of the legal profession.**

122. **The legal profession is best placed to determine admission requirements and procedures, and should thus be responsible, alone or in collaboration with the Government, for administering examinations and granting professional certificates.**[30] **The responsibility for disciplinary proceedings against lawyers should be vested in an impartial disciplinary committee established by the legal profession, an independent statutory authority or a court.**[31]

E. Accessibility of courts and tribunals

123. **Uzbekistan should adopt all appropriate measures to ensure that all individuals within its territory and subject to its jurisdiction have access to court buildings and court proceedings. This entails, in particular, the elimination of architectural and language barriers that currently prevent or limit the right of persons with disabilities to have access to justice on an equal basis with others.**

124. **Bearing in mind article 32 of the Convention on the Rights of Persons with Disabilities, the Special Rapporteur calls on the donor community to continue supporting Uzbekistan in its efforts aimed at ensuring effective access to justice for persons with disabilities. These measures should be developed and implemented in close cooperation with civil society organizations, including organizations of persons with disabilities.**

[30] A/73/365, para. 56, and A/64/181, para. 34.
[31] A/73/365, paras. 116–117.