**Questionnaire of the Special Rapporteur on the independence of judges and lawyers**

**REPLIES OF THE ASSOCIATION OF JUDGES OF THE REPUBLIC OF ARMENIA**

1. Please indicate whether there is a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?

**Yes, there is. According to the Section 3 of the Judicial Code of the Republic of Armenia that body is the Justice Council. The legal basis for the establishment of this body is the Article 94.1 of the Constitution of the Republic of Armenia.**

**As a result of the constitutional reforms in Armenia, in 2018 a new independent body, which is the Supreme Judicial Council, will function instead of the Justice Council. The legal basis for the establishment of this new body is the new Constitution of the Republic of Armenia.**

2. Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget).

**According to Clause 1 and Clause 2 of the Article 94.1 of the Constitution of the Republic of Armenia, the Constitution and the law shall define the procedure for the formation and activities of the Council of Justice. The Council of Justice shall consist of up to nine judges elected by secret ballot for a period of five years by the General Assembly of Judges of the Republic of Armenia in conformity with the procedure defined by the law, two legal scholars appointed by the President of the Republic and two legal scholars appointed by the National Assembly.**

**According to the Article 98 of the Judicial Code of the Republic of Armenia**

**1.A judge who has at least five years of judge experience and, during the last five years, has not been subjected to a disciplinary sanction may be elected as a judge member of the Justice Council.  A court chairman and a chamber chairman of the Cassation Court may not be Justice Council members.**

**1.1.** **The same person may not be elected or appointed two times in succession as a member of the Justice Council.**

**2.** **The position of the Justice Council member that is a law academic is a state position. A legal scholar member of the Justice Council may be appointed the person, who has at least 3 years of work experience in scientific-educational organization over the past five years.**

**3.** **The Judicial Department pays monthly compensation to the legal scholar members of the Justice Council at the expense of the appropriate means defined by the state budget of the Republic of Armenia, in the amount of one hundred fifty minimal salaries.**

**According to the Clause 1 of the Article 112 of the current Judicial Code of the Republic of Armenia the Justice Council staff functions shall be carried out by a separate subdivision of the Judicial Department.**

**According to the Article 113 of the current Judicial Code of the Republic of Armenia financing of the Justice Council shall be contemplated in a budget allocated to the relevant separate subdivision of the Judicial Department.**

**As it is mentioned in the previous point, in the result of the constitutional reforms in Armenia, in 2018 a new independent body, which is the Supreme Judicial Council, will function instead of the Justice Council. The new Constitution of the Republic of Armenia defines a different procedure for the composition of this new body. The new Constitution also defines a different procedure for the appointment of the members of the Supreme Judicial Council.**

**According to the Article 174 of the new Constitution of the Republic of Armenia**

**1. The Supreme Judicial Council shall be composed of ten members.**

**2. Five members of the Supreme Judicial Council shall be elected by the General Assembly of Judges, from among judges having at least ten years of experience as a judge. Judges from all court instances must be included in the Supreme Judicial Council. A member elected by the General Assembly of Judges may not act as chairperson of a court or chairperson of a chamber of the Court of Cassation.**

**3. Five members of the Supreme Judicial Council shall be elected by the National Assembly, by at least three fifths of votes of the total number of Deputies, from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience. The member elected by the National Assembly may not be a judge.**

**4. Members of the Supreme Judicial Council shall be elected for a term of five years, without the right to be re-elected.**

**(…)**

3. Please provide detailed information on the legislation and practice existing in your country in relation to:

(a) The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency); **According to the Judicial Code of the Republic of Armenia a qualification test is being held for the selection of candidates for judges. According to the Clause 2 of the Article 115 of the Judicial Code of the Republic of Armenia a qualification test shall be carried out in a competitive procedure based on the results of written exams. Participation in the qualification exam is open to citizens of the Republic of Armenia, who are 28-60 years old and have obtained in the Republic of Armenia a Bachelor’s degree or a “specialist with diploma” degree in higher legal education, or have obtained a similar degree in a foreign state, which has been recognized and confirmed in terms of adequacy in the Republic of Armenia in accordance with the procedure stipulated by law, provided that they have a command of the Armenian language, have not been deprived of the right to apply to the Judicial School in accordance with the procedure stipulated by law, have at least 3 years of professional working experience and comply with the requirements of Article 119(1) hereof (Judicial Code of the Republic of Armenia, Article 115, Clause 4). Candidates who have passed the scores of written qualification exam, pass psychological test aimed at check of the sense of responsibility, ability to listen, self-control, moderate usage of reputation (influence), and other non-professional qualities required for the work of a judge (Judicial Code of the Republic of Armenia, Article 115.2, Clause 9). The results of the psychological test are of only advisory significance; they are not subject to publication and are provided only to the members of the Council of Justice after an interview in the council before the final discussion. The results of the psychological test, after approval by the President of the Republic of Armenia of the list of judges, are subject to destruction (Judicial Code of the Republic of Armenia, Article 115.2, Clause 10). The process of choosing a candidate for the judge also includes the interview in the Justice Council. According to the Article 116.1, Clause 5 of the Judicial Code of the Republic of Armenia, the maximum length of interviews with each candidate in the Justice Council is 1.5 hours.** **After the completion of interviews with all candidates, a final discussion of the interview results is being held between members of the Justice Council (Judicial Code of the Republic of Armenia, Article 116.2, Clause 7).** **At the end of the final discussion on the interview and outcome of the Justice Council, an open voting is held on each candidate, in which each member of the Justice Council votes in favor of each candidate for "in favor" or "against" (Judicial Code of the Republic of Armenia, Article 117, Clause 1). By results of voting the list of candidates is formed in the Justice Council. According to the Constitution (Article 95) and the Judicial Code (Article 117, Clause 6) of the Republic of Armenia, the Council of Justice, as prescribed by law, shall prepare the list of candidates for judges and official promotion lists of judges and submit them to the President of the Republic for approval, on the basis of which appointments are made.** **Within ten days after the receipt of the list, the President of the Republic approves the list prepared by the Council of Justice or returns it to the Council of Justice, requesting a new discussion (Judicial Code of the Republic of Armenia, Article 117,Clause 8).**

(b) Condition of service and security of tenure of judges;

**According to the Article 97 of the Constitution of the Republic of Armenia judges and members of the Constitutional Court may not be detained, involved as an accused, nor may a matter on subjecting them to administrative liability through judicial procedure be initiated, without the consent of the Council of Justice or the Constitutional Court, respectively. Judges and members of the Constitutional Court may not be arrested, except for cases when the arrest is effected at the moment of committing a crime or immediately thereafter. In such cases, the President of the Republic and the Chairperson of the Court of Cassation or the Chairperson of the Constitutional Court, respectively, shall be promptly informed about the arrest.**

**According to the Article 13 of the Judicial Code of the Republic of Armenia**

**1. A judge shall be immune.**

**2. A judge may not be arrested, with the exception of cases in which the arrest is performed at the time of or immediately after committing a crime. The arrest of a judge shall be immediately communicated to the President of the Republic and the Cassation Court Chairman. Within 24 hours of the arrest, the arrest decision shall be forwarded to the President of the Republic and the Cassation Court Chairman. The bodies and officials that made the arrest must ensure the Cassation Court Chairman’s unimpeded access to the place where the arrested judge is held and must ensure that the Cassation Court Chairman can visit with the judge.**

**3. A judge may not be detained, involved as a defendant, or subjected to administrative liability by court procedure without the consent of the President of the Republic, given on the basis of a proposal by the Republic of Armenia Justice Council (hereinafter, “the Justice Council”).**

**4. From the moment criminal prosecution of a judge is instigated, the prosecutorial control of the pre-trial proceedings of the case shall be conducted by the Republic of Armenia Prosecutor General (hereinafter, “the Prosecutor General”).**

**5. A judge may not be apprehended. After the identity of a judge apprehended without documents is established, the competent state body shall immediately release him.**

**6. Criminal prosecution of a judge for the latter making a manifestly unfair judgment, decision, or other judicial act out of pecuniary or other personal motives may not be instigated, unless the act has been quashed by a higher-standing court.**

**7. Entry into a court building for purposes of a search, examination, or seizure of documents or objects shall be performed with notification of the court chairman.**

**8. A judge may not be subjected to civil liability for damage inflicted as a consequence of the improper performance of his official duties, unless the damage was inflicted as a consequence of an intentionally-performed act.**

**9. Declaring a state of war or emergency shall not eliminate the immunity guarantees laid down in this Article.**

(c) Promotion of judges;

**According to the Article 136 of the Judicial Code of the Republic of Armenia**

**1. The Justice Council shall compile and present to the approval of the President of the Republic the Official Promotion List of Judges.  Amendments and supplements to the Official Promotion List of Judges shall be made in the same procedure.**

**2. The Official Promotion List of Judges shall consist of:**

**1) the Official promotion list for the appointment of a judge in Appellate courts with criminal, civil, administrative specialization divisions;**

**2) the Official Promotion list for the appointment of a judge in the Cassation Court with criminal specialization, civil and administrative specialization divisions.**

**3. Persons that work as judges (including reserve and redundant judges, even if they have been appointed to a judge position in a lower court), as well as other persons stipulated by this Code may be included in the Official Promotion List of Judges.**

 (d) Transfer of judges;

**Justice Council compiles and presents to the approval of the President of the Republic judge's transfer list.**

(e) Disciplinary proceedings against judges.

**According to the Clause 1 of the Article 153 of the Judicial Code of the Republic of Armenia the power to subject a judge to disciplinary liability is vested in the Justice Council.**

**1. When examining matters of subjecting a judge to disciplinary liability, the Justice Council shall act as a court.  When the Justice Council acts as a court to examine cases, the procedure of case examination shall be subject to the rules of the Republic of Armenia Administrative Procedure Code to the extent that such rules are substantively applicable to the case examination by the Justice Council and do not contradict the rules of this Code.**

**2. A member of the Justice Council may not declare a self-withdrawal.**

**3. The person that instigated the proceedings carries the burden to prove that there are grounds for subjecting a judge to disciplinary liability.  In a session of the Justice Council, any remaining suspicion about whether the judge committed a disciplinary offence shall be dispelled in favor of the judge.**

**4. The Justice Council shall examine a case concerning the subjecting of a judge to disciplinary liability within a reasonable period.**

**5. Documents studied by the Justice Council shall be attached to the case materials, either in the form of originals or duly endorsed copies.**

What is the role played by the national organ or mechanism with regard to the issues referred to above?

4. If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:

(a) Judicial selection and appointment;

(b) Transfer and promotion of judges;

(c) Disciplinary proceedings against judges