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Conseil national des droits de l'Homme

المملكة المغربية
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Kingdom of Morocco

The Organic Law of the Higher Council of the Judicial Power

Additional Memorandum



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ADDITIONAL MEMORANDUM ON THE ORGANIC LAW OF THE HIGHER COUNCIL OF THE JUDICIAL POWER

1. Considering Articles 13, 24 and 25 of Dahir Number 1-11-19 of 25 Rabi' I 1432 (1 March 2011) establishing its creation;

Considering the memorandum of the National Council of Human Rights on the Organic Law of the Superior Council of the Judiciary, adopted at the third ordinary session of the Council on 6 October 2012;

Having reviewed the preliminary draft of the organic law on the High Council of the Judiciary, in its version of 25 December 2013;

The National Council for Human Rights presents this additional memorandum on the draft of the Organic Law of the Superior Council of the Judiciary.

This additional memorandum concerns the following points:

The Procedure for the Election of Representatives of the Magistrates

2. The analysis of the terms of the proclamation of the results, under Article 42 of the draft of the organic law of the High Council of the Judiciary, and the application filing in the manner provided for in Article 25 that the authors of the draft of the organic law on the Superior Council of the Judiciary have opted for the uninominal voting system. Based on this conclusion, the National Council for Human Rights, which has no particular preference for a particular voting system, recommends that the provisions of Article 34 of the draft organic law be reformulated so as to specify that judges elect their representative by an uninominal voting system.

The coordination mechanism between the Higher Council of Judicial Power and the government authority responsible for the administration of justice (Article 51)

3. In the opinion of the National Council for Human Rights, the broad wording of the mandate of the coordination mechanism between the Higher Council of the Judicial Power and the government authority responsible for justice administration and which deals with: «all issues related to the system of justice» may create interference of powers between the executive government and the Higher Council of the Judicial Power and negatively impact the independence of the judiciary.

The National Council for Human Rights, while recognizing the need for a coordination mechanism between the Higher Council of the Judicial Power and the government authority responsible for the administration of justice, recommends that the mandate be better clarified and that the competence of this mechanism be in accordance with the constitutional principles of the independence of the judiciary power and the principle of the separation of powers.

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As such, and in order to better help a new formulation of the mandate of this mechanism, the National Council for Human Rights proposes that this mandate be articulated on issues strictly related to the administration of justice.

4. The National Council for Human Rights also underlines, for the purpose of comparison, that the Spanish Council of the Judiciary created within itself a joint commission for relations with the Ministry of Justice and a Coordination Committee with the services of Justice of the Autonomous regions who have with the expertise, the personnel and the material resources needed for the Administration of Justice¹. The Italian Higher Council of the Judiciary created, in a similar approach, joint consultative committees in the ministry which has a specific thematic mandate that addresses issues related to the organization of courts². It appears from the analysis of these two experiments that the mechanisms for coordination with the government authority responsible for the administration of justice must have a clear mandate that covers areas that do not affect the independence of the judiciary, nor the separation of powers.

The Financial Autonomy of the Higher Council of Judicial Power (Article 60)

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5. Considering that this concerns a council created by an organic law under Article 116 of the Constitution, the National Council for Human Rights emphasized that the Higher Council for Judicial Power must have the highest levels of financial autonomy. In this context, the National Council for Human Rights reiterates the recommendation it made in its main memorandum on the Higher Council of Judicial Power where it proposed that the organic law of the said council devote a provision that will register the appropriations of the State general budget destined for the Higher Council of the Judicial Power under a chapter «Higher Council of the Judicial Power.» The National Council for Human Rights recommended the amendment of the first paragraph of Article 60 of the draft organic law in this direction.

The Criteria for Management of the Careers of Judges (Article 65)

6. The National Council for Human Rights reiterates its proposal to give judges the ability to self-assess their performance and as part of a more comprehensive evaluation process. It recommends the inclusion of the said recommendation into the introduction of Article 65 of the draft organic law.

1- The Consultative Council of European Judges (CCJE): «Draft questionnaire for the Opinion of the CCJE in 2007 on the Councils for the Judiciary: Response of the Spanish delegation,» REP CCJE (2007) 37.

2- The Consultative Council of European Judges (CCJE): «Draft questionnaire for the Opinion of the CCJE in 2007 on the Councils for the Judiciary: Response of the Spanish delegation,» REP CCJE (2007) 12

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The Assignment of Judges' Responsibilities (Articles 69 and 71)

7. The National Council for Human Rights stresses the fact that the legal regime of assigning responsibilities to judges is closely linked to the principle of tenure of judges, guaranteed by Article 108 of the Constitution and in general by the 12th fundamental principle on the independence of the judiciary³. The Council also recalls that it proposed in its memorandum on the Organic Law on the Status of Judges that the organic law establish the principle that a sitting judge could not be given a new assignment without the judge's consent even if it was a promotion assignment⁴.

Considering the above cited elements, the National Council for Human Rights proposes the amendment of the second paragraph of Article 69 of the draft organic law explicitly stipulating the prior agreement of judges selected for judicial responsibilities. Regarding Article 71 of the draft organic law, the National Council for Human Rights proposes to prioritize the expression of interest criterion expressed by candidate judges to judicial responsibilities and before all of other criteria contained in that article.

Consistency between Article 88 of the draft organic law on the Higher Council of the Judicial power and Article 111 of the draft organic law establishing the status of judges

8. For the sake of a consistent legislative drafting, the National Council for Human Rights proposes to refer, at the level of Article 88 of the draft organic law, to the errors under Article 111 of Organic Law establishing the status of judges.

Proposals concerning Article 106 of the draft organic law

9. In order to ensure that the Higher Council of the Judicial Power have access to information, data and documents necessary for the performance of its duties, the National Council for Human Rights proposes the addition to Article 106 of the draft organic law of a provision that any obstacle or opposition by a manager, an official or any person to the administration of justice in any form whatsoever, or to the fulfilment of missions of the Council, must be subject of a special report to the Head of Government so that appropriate sanctions may be pronounced and the necessary measures are taken.

3- Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985 and confirmed by the General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

4- On the issue of security of tenure of judges, see the doctoral thesis in public law Olivier Pluen: The Tenure of Judges: a model? ; Under the direction of Professor Jean Morange; supported the November 22, 2011 at the Panthéon-Assas University, Graduate School of Public Law, Administrative and Political Science.

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Conseil national des droits de l'Homme

**THE HIGH COUNCIL OF JUDICIAL POWER
ORGANIC LAW**

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Boulevard Erriad

B.P.21527, N° 22, Hay Ryad, Rabat - Maroc

tel : +212(0) 5 37 54 00 00

fax : +212(0) 5 37 54 00 01

cndh@cndh.org.ma

شارع الرياض

ص ب 21527، حي رياض، الرباط - المغرب

الطائف : +212(0) 5 37 54 00 00

الفاكس : +212(0) 5 37 54 00 01

cndh@cndh.org.ma