

APPROVED
Minutes No. 1 of the meeting of the Advisory Group of Experts
of November 12, 2023

With amendments
approved by Minutes No. 10 of the meeting of the Advisory Group of Experts
of May 30, 2024

Regulations

of the Advisory Group of Experts

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Preamble

These Regulations are adopted according to the Law “On the Constitutional Court of Ukraine” (hereinafter “the Law”).

Section I. General Provisions

Article 1. Definitions

In these Regulations:

- a. “Advisory Group” means the Advisory Group of Experts mentioned in Article 10² of the Law.
- b. “Candidate” means the candidate for the position of Judge of the Constitutional Court of Ukraine mentioned in Chapter 2¹ of the Law.
- c. “Chair” means the chair of the Advisory Group mentioned in Article 10² part 18 of the Law.
- d. “Secretary” means the secretary mentioned in Article 10² and item 15 of Section IV “Transitional Provisions” of the Law.
- e. “Assessment” means assessing the moral qualities and level of competence in the field of law of Candidates mentioned in Article 10² part 1 of the Law.
- f. “Member” means a member of the Advisory Group mentioned in Article 10² part 3 of the Law as well as a deputy member acting as a Member in cases provided for by the Law (“international Member” means an individual appointed “at the proposal of the European Commission for Democracy through Law” or “at the proposals of international and foreign organizations”, and “national Member” means any of the other three individuals appointed as per item 5 of Section IV “Transitional Provisions” of the Law), “deputy Member” means a deputy member mentioned in Article 10¹² of the Law.
- g. “Regulations” means these Regulations adopted according to the Law.
- h. “Secretariat” means the additional experts, specialists of international organizations that provide organizational and technical support of the operations of the Advisory Group and the work of its Members.

Article 2. Chair and Secretary

1. The Chair is one of six Members with equal rights and obligations. The task of the Chair is to serve and facilitate the organizational issues of the work of the Advisory Group and its Members.

2. The Chair:
 - a. coordinates the work of the Advisory Group, convenes and chairs the meetings of the Advisory Group;
 - b. represents the Advisory Group in relations with other subjects of legal relations and conclude acts on behalf of the Advisory Group;
 - c. signs minutes of meetings, decisions, letters, and other correspondence on behalf of the Advisory Group;
 - d. signs memoranda of understanding with civil society organizations, public authorities, or other organizations in support of the Advisory Group's mandate;
 - e. performs any other duties stipulated in the Law, these Regulations, or decisions by the Advisory Group.
3. The Secretary:
 - a. organizes the work of the Secretariat;
 - b. performs all duties of the Chair if the Chair cannot be present, including remotely through electronic means of video communication, or the Chair temporarily cannot discharge his duties. In this case, the Secretary has also full power of the Chair.
4. The Advisory Group may at any time provide guidance or directives to the Chair and to the Secretary.
5. The authority of the Chair and/or the Secretary ceases upon the termination of his membership in the Advisory Group, resignation, election of another person as the new Chair and/or Secretary, or removal from their position as Chair or Secretary. The election of the new Chair and/or Secretary or the resignation or removal of the Chair and/or Secretary does not affect their status as a Member.
6. The Advisory Group at its first meeting elects from among its Members a Chair and a Secretary for a term of one year. The term is extended until the election of the new Chair and/or Secretary.

Article 3. Language

1. Meetings and other proceedings are held in Ukrainian and English with simultaneous or consecutive interpretation into each language during the meetings upon request. Internal email communication among Members will be preferably in English using machine translations.

2. Decisions and minutes will be reviewed and approved in Ukrainian and translated into English.
3. The external correspondence of the Advisory Group to Ukrainian entities and Candidates will be in the Ukrainian language.

Article 4. Amendments

The Advisory Group may amend these Regulations anytime by a decision taken in line with “Article 10. Voting” of these Regulations.

Article 5. Rules of conduct

1. When performing their functions, Members and deputy Members must:
 - a. fulfill the obligations identified in the Law and these Regulations;
 - b. operate based on the principles of diligence, fairness, impartiality, independence, integrity, objectivity, professionalism, public accountability, respect for human rights and freedoms, and transparency;
 - c. be independent and autonomous in their decisions from any national, international, or foreign organization that proposed Members, and from any person, political parties, public authority, and organization;
 - d. avoid actions or statements that may discredit or otherwise undermine the work of the Advisory Group or raise doubts about the objectivity of its decisions;
 - e. be mindful of the public character of their duties, act in the public interest and not abuse or take advantage of their position to obtain any undue benefit for themselves or anyone else;
 - f. abstain from any direct or indirect contacts and communication with the Candidates and their close persons, except if done according to the Law or these Regulations. If it is impossible to avoid such contacts, the Member or deputy Member without delay notifies the Advisory Group of this fact;
 - g. report to the Advisory Group without delay any attempts to compromise Member’s judgment or otherwise influence them;
 - h. other than for the Assessment purposes and as required by the Law and these Regulations, not use, transfer, or disclose personal data, sources of information, or other confidential information which become known to them during the performance of their function;

- i. disclose to the Advisory Group information known already or obtained from external sources where the Member believes that the information is credible and relevant to the Assessment of the Candidate;
- j. be courteous and respectful in dealings with others, including other Members and the Secretariat;
- k. be mindful of conflicts of interest or circumstances affecting their impartiality, as further elaborated in Article 10² part 30 of the Law, and immediately bring any conflicts of interest or circumstances which might affect their or the Secretariat's impartiality to the attention of the Advisory Group;
- l. regularly check their own e-mail, ensure internal communication between Members of the Advisory Group and its Secretariat by means of electronic and telephone communication, and immediately notify the Secretariat and all Members of any change of their email address and mobile telephone number;
- m. ensure through its participation the quorum of the Advisory Group as foreseen in Article 10² part 13 of the Law.

Section II. Meetings and decisions

Article 6. Meetings

1. Meetings must be convened by email to all Members. The date, time and place, as well as a suggested agenda, must be indicated.
2. The Advisory Group may amend the agenda at any time at the proposal of any Member.
3. Members must attend meetings by physical presence or remotely via electronic means of video communication. Any Member unable to attend a meeting must notify all Members by email without delay.
4. Members may not delegate their powers to any person, including other Members.

Article 7. Matters decided at Meetings

1. The following matters are decided by the Advisory Group only at meetings:
 - a. change of these Regulations;
 - b. election and removal of the Chair and/or Secretary;

- c. review of the conduct of the Members for their compliance with these Regulations and other decisions of the Advisory Group;
 - d. consideration of the application for recusal or disqualification as per Article 10² part 30 of the Law;
 - e. early termination of the powers of a Member as per Article 10² part 15 of the Law;
 - f. appointment of deputy Members as per Article 10¹² part 5 of the Law, early termination of the powers of deputy Member;
 - g. adoption of any other rule the Advisory Group may determine necessary;
 - h. adoption, change of the methodology for Assessing moral qualities and level of competence in the field of law of Candidates for the position of judge of the Constitutional Court of Ukraine;
 - i. adoption of a reasoned decision regarding the Assessment of a Candidates' compliance with high moral qualities and the recognized level of competence in the field of law;
 - j. adoption of the ranking vote on all assessed Candidates and forming the list of their ranking as per Article 10⁸ part 7 of the Law.
2. The Advisory Group may consider any other matter as requested by a Member at the meeting.

Article 8. Recusal and disqualification

1. If a Member learns of circumstances possibly constituting a situation described in Article 10² part 30 of the Law, it must promptly notify all other Members by email.
2. A Candidate's application for disqualification of the Member as per Article 10² part 30 of the Law must be well-founded, reasoned and submitted in writing by email to the Advisory Group at the earliest possible time. The Advisory Group may allow exceptions and accept such an application if the Candidate shows reasonable justification for the impossibility of submission at the earliest possible time.
3. The Member whose recusal is requested may explain the circumstances to the other Members. The decision on recusal is made by the other Members outside the presence of that Member. If this would undermine the quorum as per Article 10² part 13 of the Law, the deputy Member to the Member whose recusal is sought takes part in the consideration of the applications on recusal or disqualification and the decision of the recusal as provided by the Law.

4. The Advisory Group decides without delay at its next meeting.
5. If the Member is recused or disqualified, he:
 - a. has no access to the information about the concerned Candidate of the Assessment and with whom there is a conflict of interests;
 - b. refrains from taking part in collecting information about the concerned Candidate;
 - c. does not participate in the preparation of materials regarding such Candidate;
 - d. does not vote or discuss the Candidate; and,
 - e. absents themselves when the Candidate is discussed.
6. All activities restricted as per para. 5 lit. a-d of this Article for Members are performed by his deputy. Regarding all other Candidates and activities of the Advisory Group, the Member continues to exercise its powers.
7. The recusal or disqualification applies throughout all subsequent stages of the Assessment.

Article 9. Rapporteurs

1. Members of the Advisory Group will serve as rapporteur in pairs of two for each Candidate. The pairs of rapporteurs lead the Secretariat in collecting and reviewing information.
2. The pairs of rapporteurs are formed by the Advisory Group, with each pair consisting of the national Member and of the international Member.
3. For the random allocation of the pairs of rapporteurs to Candidates, a list of all Candidates is drawn up in alphabetical order. Each of the three pairs of rapporteurs is assigned a consecutive number from 1 to 3. An online tool for random generation of numbers between 1 and 3 is used. As a result, each file should be allocated to pairs 1, 2, and 3 until all three pairs of rapporteurs have one-third of the number of Assessment files (rounded down in case of an uneven total). Any remaining extra file in case of an uneven number of files is allocated to the pair next in their numerical order.
4. The Members-rapporteurs, with assistance from the Secretariat, will prepare all necessary drafts on Candidates, including reasoned decisions, and present them to other Members.

Article 10. Voting

1. Votes are cast as “for” or “against”. Members cannot abstain. Members who are recused pursuant to “Article 8. Recusal and disqualification” of these Regulations are considered not taking part in the vote.
2. The Chair declares the outcome of the vote.

Article 11. Minutes

1. Summary minutes include the day and time, participating Members, information about other participants, the matters dealt with, decisions taken including the vote of each Member, and any statement the Member requests at the meeting to be included.
2. The Chair distributes draft minutes to the Members via email as soon as possible and within 24 hours following the end of the meeting. Suggestions for changes have to be proposed within 48 hours following the end of the meeting. The minutes are sent via email within 72 hours following the end of the meeting for approval.

Article 12. Signing of decisions

The decision of the Advisory Group in the process of competitive selection of candidates for the position of a judge of the Constitutional Court, including the assessment of candidates for the position of a judge of the Constitutional Court based on the criteria of high moral qualities and recognised level of competence in the field of law, is signed by the members of the Advisory Group who participated in its adoption by affixing their personal signature and/or using a qualified electronic signature.

Article 13. Correcting typos

The Advisory Group may, on its own initiative or at the request of the Candidate, correct any typos or arithmetical errors made in the decision.

Section III. Secretariat

Article 14. General provisions

1. The Secretariat supports and assists the work of the Advisory Group and of each Member and deputy Member.
2. The Secretariat, including any staff, expert, or other specialist, is subordinated exclusively to the Advisory Group.

3. Within the Secretariat, unless barred from participating in a matter under para. 4 of “Article 15. Duties and conduct” of these Regulations, staff has access to all information about Candidates with a view to analyzing it, processing, and preparing materials for Members. Translators have access to the extent it is necessary for translations/interpretations.
4. Unless directed by the Advisory Group, staff of the Secretariat and other persons supporting or assisting in the activity of the Advisory Group must not disclose any information about the Advisory Group’s deliberations, voting, or preparation of Assessment decisions.

Article 15. Duties and conduct

1. The Secretariat staff assists the Advisory Group in facilitating its work as defined by these Regulations and the Law, including assistance in the collection, verification, and analysis of information on the Candidates.
2. Secretariat staff must adhere appropriately to the Rules of Conduct for Members identified in “Article 5. Rules of conduct” of these Regulations.
3. Staff of the Secretariat must comply with the obligations identified in para. 1 lit. b - e of “Article 5. Rules of conduct” of these Regulations.
4. If staff members learn of activities described in para. 1 of “Article 8. Recusal and disqualification” of these Regulations as concerns themselves, other staff of the Secretariat, or the Member, the staff member must promptly provide a written description to the Chair. The Chair confers with Members to determine if a staff member should be excluded from the respective area of work and restricted from access to related information.

Section IV. Communication

Article 16. Communication

1. Media and the public should direct inquiries and requests for public appearances to the Secretariat by email.
2. Members will inform the Chair about inquiries, appearances, or their public communications related to the Advisory Group’s work.
3. Members of the Advisory Group will not comment on Assessments of particular Candidates except through its official communication. Without prior authorization of the Chair or by these Regulations, the Secretariat staff may neither disclose any information nor comment on the work of the Advisory Group or Secretariat to third parties.

4. The Advisory Group may maintain its internet presence, including on social media.
5. The Advisory Group will use e-mail to exchange communications with the Candidates via e-mail address identified by the Candidates in their documents.

Article 17. Transparency

1. The Secretariat will publish these Regulations and provide regular updates about the Advisory Group's work on the Advisory Group's page on the Constitutional Court of Ukraine's official website.
2. Members of the public and the media may attend meetings and interviews. Attendance may be limited if the number of participants cannot fit in the premises where the hearing takes place.
