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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

ON THE DRAFT LAW ON AMENDMENTS TO THE LAW ON THE JUDICIARY AND THE STATUS OF JUDGES AND TO OTHER LEGAL ACTS

OF UKRAINE

by

Mr James Hamilton
(Substitute Member, Ireland)

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. The opinion of the Venice Commission has been sought on a draft law of Ukraine on amendments to the Law of Ukraine on the Judiciary and the Status of Judges. The draft was prepared by a Commission for Strengthening the Democracy and Rule of Law set up by the President of Ukraine and chaired by Mr. Holovaty. If I understand it correctly the terms of reference were to follow the recommendations expressed by the Venice Commission in previous opinions concerning attempts to reform the Law of Ukraine on the Judicial System and the Status of Judges, most recently on 12-13 March 2010 (CDL-AD (2010) 003) and on 15-16 October 2010 (CDL-AD (2010) 026).

2. In addition the Commission has also been asked for an opinion in connection with a number of amendments which are made to various legal acts of Ukraine, including the Criminal Procedure Code of Ukraine, the Code of Ukraine on Administrative Offences, the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, and the Administrative Code of Ukraine. These amendments appear to relate principally to the question of automatic assignment of judges to courts, the basis on which jurisdiction can be transferred from one court to another, and the question of recusal of a judge. However, it is not really possible to evaluate these laws without reference to the original codes themselves so as to see the context of the provisions and this could be a very large task indeed. I am not clear as to the precise scope of the request as it may be that it is only the amendments to the Criminal Procedural Code which are in issue. In so far as it is possible to understand them the substance of the amendments themselves appear reasonable and logical. The only issue which strikes me is that where the Supreme Court has to consider the issue of the appropriate jurisdiction to deal with a matter (for example the amendment to Article 400 – 28 of the Criminal Procedural Code – it is provided that the court shall consider the issue of the appropriate jurisdiction at its meeting without summoning and notifying the persons participating in the case. It is not clear to me why the parties to a case should not be heard in relation to any jurisdictional issues. As I understand another body of the Council of Europe is considering these amendments it may be that the Commission does not require to undertake this detailed work.

3. So far as concerns the draft law on amendments to the Law on the Judiciary and the Status of Judges the new text represents an improvement over previous proposals in this area and addresses many of the criticisms previously made by the Venice Commission. Those criticisms which have not been addressed in the new text principally relate to provisions which appear in the Constitution and which therefore cannot be changed without an amendment to the Constitution. These include the role

of the Verkovana Rada (parliament) in the appointment and dismissal of judges which the Commission criticized as politicizing the judges, the judges' immunity from prosecution which the Commission has previously criticized and the role of the President in appointing and dismissing judges. The new draft appears to have reversed the earlier decision to effectively deprive the Supreme Court of much of its jurisdiction and would appear to restore it to its position as the highest judicial body in the system of courts.

4. The earlier Venice Commission opinions commented on the technique of legislation in Ukraine which it described as voluminous legislation containing elements which were perhaps not necessary or could be delegated to subordinate legislation as a result of which some of the rules were difficult to find and know, and also referred to the extent to which there was duplication where the same rule was to be found in more than one part of the text. The new text still suffers to some extent from these problems although not as markedly as before. In some cases, however, the opposite problem now exists in so far as quite important matters are referred to in the draft although to find them one has to read the procedural law. As a result, some of the provisions are difficult if not impossible to follow unless both texts are consulted at the same time. For example, Article 33(2) which deals with the powers of a high specialized court says that "in the events prescribed by the procedural law [the Court may] hear cases as a court of first or appellate instance", but without reference to the relevant procedural law the text in fact tells us nothing about the powers of the High specialized court in such cases.

5. Another issue which has not been addressed is the number of levels of court in Ukraine. This was previously commented on by the Commission. It is, of course, appreciated that this could not be changed without constitutional amendment, and the practical difficulties of reducing the number of levels of a court in a system which is up and running are appreciated. A noted improvement in the new draft relates to the provisions concerning discipline and dismissal which are now much more clearly set out and provide clearly for the rights of a judge who has a complaint made against him or her.

6. I will now turn to particular comments on the text.

7. Section I (Articles 1-17) deals with the fundamentals of organization of the judicial power. Generally this provides a clear text setting out fundamental rules which strongly emphasize the independence of the judges and courts. A new provision which is welcome is Article 6.2 which provides that petitions filed with a court in connection with consideration of specific cases by citizens, organizations or officials who in legal terms

are not participants in the court proceedings are not to be considered by the court other than petitions to allow participation in the proceedings.

8. Article 8.2 provides another example of the tendency referred to in paragraph 3 above where key provisions are not in fact contained in the text but must be looked for elsewhere. The Article provides that judges are to hear cases according to the case assignment procedure. It then goes on to say that the case assignment procedure is established by law. In fact, the law concerned appears in the new amendments to the Criminal Procedural Code and the other codes which provide for an automated case assignment system according to the principle of randomness. This law appears in Article 16, raising the question why two separate Articles deal with the same matter.

9. Article 14 provides that in the cases and following the procedure prescribed by the procedural law, participants in court proceedings and other persons have the right to challenge court decisions in a court of appeal or a court of cassation as well as having the case reviewed by the Supreme Court. In effect, however, this provision is meaningless because without reference to the relevant procedural laws it states nothing. In fact, it would be possible to have a procedural law which provided for no appeals or cassation whatsoever without infringing this provision. It should be possible to draft a more meaningful provision without necessarily going into all the detail.

10. Article 15.1 provides that cases are to be considered by a single judge or, and in cases prescribed by the procedural law – by a panel of judges, as well as with the participation of people's assessors and a jury. However, no attempt is made to identify the principles which should underlie when assessors or a jury is to be used or in what circumstances more than one judge is to be considered appropriate. Again, some statement of principle would be helpful leaving the detail to be provided in the procedural law.

11. Notwithstanding the provisions of Article 8.2 already referred to Article 16 goes on to state that an automated case management system is to operate in general jurisdiction courts based on the principle of randomness and taking into account specialization. It would be preferable to merge Articles 8.2 and Articles 16 so that the rule would be found in a single place rather than having two different provisions dealing with the same matter in different ways.

12. Section II (Articles 18-46) deals with courts of general jurisdiction and is divided into chapters dealing with the institutional framework for the system of courts, the local

courts, the courts of appeal, the high specialized courts and the Supreme Court of Ukraine.

13. There has been no change in the number of levels of courts which, as mentioned above, was criticized in previous Venice Commission opinions. It is, of course, appreciated that a constitutional amendment would be required to change this.

14. Article 19.1 refers to the specialized courts but there seems to be some error in the translation as administrative cases are mentioned both as a specialization in themselves, as something combined with criminal courts and separately as administrative offence cases. Article 19.1 deals with the creation of courts of general jurisdiction, including by reorganization. The power of creating courts remains with the President but it is now proposed that he will act upon the recommendation of the State Judicial Administration based on the proposal from the Council of Judges of Ukraine. The previous draft which was criticized by the Commission provided for the President to act on a recommendation of the Minister for Justice based on a proposal from the Chief Judge of the court in question. The new text represents an improvement although it would still be better if it was clear that the President's role was simply the formal one of making the order once the appropriate proposal and recommendation had been made. Article 19.3 states that the grounds for creation or abolition of a court shall be a change of the system of courts established by the law. In the English text this provision is completely circular and meaningless but it may be a translation difficulty. The remainder of the provision, which refers to the need to improve access to justice or changes in the administrative and territorial divisions, seems to make more sense.

15. Article 23(2) provides another example of a provision which cannot be understood without reference to the procedural law (dealing with the authority of local general courts). There appears to be a contradiction between it and paragraph 4 of the same Article in that administrative cases are to be heard in local general courts as well as in local administrative courts.

16. Article 32.4 refers to plenary sessions of the high specialized court to "address issues listed by this law". It is not clear what this means.

17. Article 33.1(2) in dealing with the powers of the High specialized court has a provision that the court can hear cases as a court of first or appellate instance "in the events prescribed by the procedural law" but again no attempt is made to state any general

principle and it seems the procedural law could be as inclusive or restrictive as was desired.

18. Article 37.1 deals with the plenary session of High specialized courts. It refers to addressing issues related to ensuring uniform court practice in dealing with cases within the respective specialized jurisdiction and other matters referred to its authority by this law. There is a similar provision in relation to the plenary session of the Supreme Court in Article 45.2(3) whereby the Supreme Court is to generalize case law in order to ensure equal application of law principles and norms while resolving cases. I wonder what procedures are in place to permit the court to hear argument in such cases? Clearly the decisions made in establishing uniform court practices in how to deal with certain cases may have important consequences for litigants and it may be that there should be some procedure, perhaps involving the use of an *amicus curie* or an advocate general who would have a function of identifying issues and options to be put before the plenary session with a view to assisting the decision.

19. Article 37.2(3) says that the plenary session of a High specialized court shall decide on applying to the Supreme Court of Ukraine regarding submission of a constitutional petition requesting assessment of compliance with the Constitution of certain matters including laws and other regulations of the Verkhovna Rada, acts or regulations issued by the President, or regulations of the cabinet of ministers. Article 39.1(2) provides that the Supreme Court shall review cases by application by court of the law or separate provisions thereof contrary to the Constitution of Ukraine. However, Article 3.2 provides that the Constitutional Court of Ukraine is to be the sole body of constitutional jurisdiction in Ukraine. There seems to be a contradiction between the provision in Article 3.2 and these other provisions which envisage certain constitutional issues being referred by the High specialized courts for a decision in the Supreme Court. It is not clear from the text of the draft where exactly the boundary lies between these functions conferred on the Supreme Court and the powers of the Constitutional Court.

20. Articles 39 and 41 provide a number of further examples of provisions which are meaningless in the absence of the reference to the procedural law. Again I would make the same comment relating to some attempt to define principles as to the jurisdiction of the Supreme Court leaving the detail to be worked out by the procedural law.

21. Section III (Articles 47-62) deals with professional judges, people's assessors and jurors. Article 47.5 states that a judge shall not be obliged to provide any explanations regarding the merits of cases under his or her consideration. Of course, when giving a

reasoned decision a judge does provide explanations regarding the merits of cases. I think something needs to be added to this provision such as the words “except when giving the judgment of the court”.

22. Article 48 deals with judicial immunity. Again, these very strong provisions regarding judicial immunity derive from the Constitution and have been previously criticized by the Venice Commission.

23. Article 53 deals with incompatibility requirements and prohibits judges from engaging in other work except for teaching, scholarly or creative activities during out of court hours. This provision is very tightly drawn. For example, there is no exception made for participation in international intergovernmental bodies, or domestic commissions of inquiry or, for example, working groups which might be established to make recommendations. Could a Ukrainian judge be a member of the Venice Commission and go on a mission?

24. Articles 57-62 deal with people’s assessors and juries. There is no attempt made to state in what circumstances courts are to sit with assessors or juries and again I would have thought it appropriate to try and state some general principles. The whole matter is left to the procedural law. It does not seem clear from the text how people’s assessors and jurors are to be selected. How does one become an assessor? Does one have to apply for the position? Does one have to be interviewed, or is it intended that assessors will be selected at random? How many people are to be assessors? What qualifications are required in an assessor? It would seem that because they sit with professional judges effectively as judges, they are in a somewhat more powerful position than jurors and it seems as if they are intended to be more an elite group than jurors who presumably are to be selected at random from the entire population. However, none of this is made clear. The lists of assessors and jurors are to be formed by a commission whose composition is to be approved of by the respective local council. I would not have thought giving a role to local representatives in such a sensitive area was a good idea. It is true that in Article 58.4 there is a list of matters which disqualify a person from being an assessor or juror but it is not clear whether any person who is not so disqualified is to be on the list. Furthermore, it is not entirely clear what the role of an assessor is when he sits as a member of a court panel together with a judge. Is the role of assessor to be confined to the adjudication of fact, or does the assessor also have a role in determining the law notwithstanding that the assessor is presumably not a lawyer.

25. In Article 59 it is stated that a court is not to engage people's assessors and jurors in a particular case more than once a year. Presumably what is meant here is that no particular juror or assessor is to be summoned more than once a year and this may be a translation difficulty in the English text.

26. Article 62 envisages that people's assessors and jurors are to be paid compensation for the period of their service. This is in principle a very welcome provision but in practice may well create an inhibition to the use of jurors on a wide scale. It is certainly likely to be expensive if juries are commonly used.

27. Section IV deals with the procedure for assuming the office of a professional judge of a court of general jurisdiction (Articles 62-79). These articles deal with the legal requirements for judicial candidates, the procedure for appointing to judicial positions, the role of the qualifications commission in appointments, and the procedure for lifetime election to a permanent judicial position. These provisions represent a substantial improvement from previous texts and set out very clearly the criteria for appointment and, apart from the continued appointment of the Verkhovna Rada and the President in appointments, provide for the much more transparent and clear procedure than earlier drafts of this law.

28. Under the scheme set out in Article 62 concerning requirements for judicial candidates, the newly-appointed judge has to be 25 years of age with higher legal education and at least three years' service in the legal profession, as well as ten years' residence in the Ukraine and command of the state language. All of these seem to be reasonable requirements. It would seem that this provision in Article 62.1 merely relates to the initial appointment to the local court because Articles 62.2-4 then provide that a judge of the court of appeals have to have five years' service as a judge in the local court, a judge of a High specialized court has to have at least five years' service as a judge of Court of Appeals, and finally a judge of the Supreme Court must have served five years in a high specialized court. The system therefore requires an orderly progression through all four levels of court before one can become a judge of the Supreme Court, service of at least 15 years as a judge being the minimum, and this would only apply to somebody who had always been promoted as soon as they had served five years at any particular level of court. This may be a slightly over-rigid system and that some greater flexibility might be considered.

29. Article 67 deals with checks into the integrity of candidates. Organizations and citizens may provide information about a candidate's integrity to the Qualifications Commission

of Judges, but it is now expressly provided that the candidate for a judicial position is entitled to study such information, provide explanations, contest or deny the information. This represents an improvement on the earlier texts.

30. The Qualifications Commissions of Judges are required to conduct a competition and select candidates taking into account their rating. Where candidates have equal rating the candidate with the longer record of service is to have the advantage. The Qualifications Commission then sends to the High Council of Justice recommendations for appointment. Under the existing law the High Council of Justice would have had power to ignore the recommendations. Under the new draft their power is confined to ensuring that the procedures followed by the Qualifications Commission have been in order (Article 76) and when they verify the procedure they submit a motion to the President of Ukraine for appointment of the candidate to a judicial position. It would be preferable if it were made clear that the President's role is simply a formal one of making the appointment which is requested as it is not clear whether he has some discretion in relation to the matter.

31. There is an error in the numbering of the articles in this section. Articles 63 and 64 are wrongly numbered 65 and 66 and they are then followed by a second Article 65 and a second Article 66.

32. The initial appointment of a judge is for a period of five years. The Venice Commission has previously expressed the opinion that this is too long a period for a person to be a temporary judge. The draft has not addressed this issue.

33. Where a judge wishes to be appointed to a lifetime position he must apply for this at least three months before the expiry of his tenure of office. The Qualifications Commission then make a recommendation whether to appoint the judge permanently. An important new provision is contained in Article 76 under which it is made clear that the candidates failure to comply with Articles 53-55 and 62 is to be the only basis to refuse the recommendation of a candidate for election to a lifetime position. This is a very welcome provision.

34. Unfortunately, the decision on appointing someone to a lifetime position is then sent to Verkhovna Rada for a decision. This has previously been criticized by the Venice Commission's opinions although of course it has a constitutional basis. The problem is that the Verkhovna Rada seem to have power to decline to appoint somebody and this does not have to be a reasoned or justified decision.

35. Section V (Articles 80-91) deals with the guarantee of proper qualification level of a judge. Under Article 82 there are changes to the composition of the Qualifications Commission. There is no longer to be an appointee from the Minister for Justice and under the new provision seven of the 11 members are judges appointed by the Congress of Judges as against six at present. The removal of the Minister for Justice's nominee from this important body is a welcome development. Article 83 provides for the election of the seven judges by the Congress of Judges to the Qualifications Committee. Unfortunately, the provision states that the judges should be appointed in an open or secret ballot. It would be preferable if this provision specified which it is to be an. In the writer's opinion it should be a secret ballot. There is no nomination procedure laid down and it is not clear how many persons are required to nominate somebody for election to the Qualifications Commission. Similarly, in Article 85, the Qualifications Committee of Judges is to elect the Head of the Commission, the Deputy Head and the Secretary "in an open or secret ballot". Again it would be preferable to specify that the ballot should be secret.

36. Section VI (Articles 92-110) provide for disciplinary liability of a judge. This chapter has been almost entirely rewritten and in my opinion now provides good guarantees for the fairness of disciplinary proceedings against judges. The grounds for disciplinary action against a judge now contain two new provisions, the use of judicial status in order to receive illegal material gain, and expenditure by the judge or his family which exceeds their income. These are valuable improvements in the provisions. Article 94 provides for two different procedures of complaint. Firstly, any person who is aware of violation by a judge of requirements regarding his status, official responsibilities or on violation of the judicial oath of office has the right to file a complaint. In addition, a member of the disciplinary body may initiate disciplinary action based on information disclosed in the media. The text is a little unclear because these two procedures are treated in the text as if they were one notwithstanding that there are some differences.

37. The procedures for the acceptance of the complaint and its verification are set out in Article 95 and are much more detailed than under the existing law. There are very clear provisions requiring the applicant to be notified of what is in the complaint. If a complaint is accepted a disciplinary inspector is appointed to investigate. This person has extensive powers of inquiry. After the inspector reports then a panel of three members of the disciplinary body decide whether to open the case or dismiss it. If the case is opened there is a hearing at which both the complainant and the judge are invited and their representatives, witnesses and other interested parties can also attend

if necessary. The sanctions for disciplinary breaches include warning, reprimand, strict reprimand, temporary suspension from office and in case there is a decision that the judicial oath has been violated this may lead to the initiating of proceedings to dismiss the judge. There is an appeal from the decision to the High Council of Justice. Article 100 does not make it clear whether the appeal is a full appeal including grounds of substance or procedural only but it is clear from Article 116 that a full appeal is envisaged since the High Council of Justice upon the disciplined judge's complaint may check the facts that became grounds for applying the disciplinary sanction.

38. Under the draft a new body called the Disciplinary Commission of Judges is to be established (formerly the High Qualifications Commission exercised the function of disciplinary proceedings in relation to judges of local and the appellate courts). It seems preferable that these two functions should be separated as now proposed. The Disciplinary Commission consists of 11 members, seven appointed by the Conference of Judges, two by the Higher Law Education establishments, one by the Ombudsman of the Verkhovna Rada, and one by the Verkhovna Rada. The Verkhovna Rada may not, however, appoint one of its own members or a member of the Government. (Article 104.6) It would be preferable that the list of persons excluded from membership of this committee would also include prosecutors.

39. Article 104.1 wrongly refers to the Congress of Judges electing six members. This should be seven. There are no procedures set out regarding nomination for the position. Article 104.5 is in error in referring to the Chairman of the State Judicial Administration as this person does not appoint a member of the Disciplinary Commission. This is probably an error in copying the corresponding provision relating to the High Qualifications Commission which is similar.

40. The work of the Disciplinary Commission of Judges is open and public (Article 106.4). This is to be welcomed.

41. Section VII (Articles 111-124) refers to the removal from office of a judge of a court of general jurisdiction.

42. The removal of a judge must still be carried out by the President or the Verkhovna Rada. This is a provision which has previously been criticized by the Commission but it has a constitutional origin. Unfortunately, as long as it remains the potential for politicization will be there.

43. A number of the provisions relate to relatively routine matters such as the removal of a judge due to the expiry of his term of appointment where he has not applied for a lifetime position, removal where a person reaches retirement age, or is in poor health, or is dead.

44. Before a judge is removed for violating the oath of office, the High Council of Justice must agree to present a motion for the judge's removal. The decision on presenting a motion must be by a two-thirds majority. Presumably what is meant here is that a decision to seek removal requires a two-thirds majority and this should be clarified as presumably it is not necessary that a decision not to seek removal also requires a two-thirds majority as this could lead to deadlock. The decision of the High Council of Justice must contain the statements of facts justifying their opinion that there was a violation of oath and the reasoning behind their decision. They then present their motion for removal to the President or the Verkhovna Rada as the case may be. Article 116.6 states that the President of Ukraine on the basis of the submission by the High Council of Justice shall issue a decree on the judge's removal with obligatory reference to the respective motion by the High Council of Justice. Article 116.7 states that the Verkhovna Rada based on the motion shall pass the resolution on the judge's dismissal with the obligatory reference to the respective motion. It would seem from this drafting that it is intended that the President and the Verkhovna Rada will not have a discretion in relation to the matter.

45. Article 116.8 deals with the situation where the High Council does not agree with the Disciplinary Commission's opinion. In that case it returns the matter to the disciplinary body for it to chose another disciplinary sanction. However, this provision goes on to say that if after that time the Disciplinary Commission of Judges repeat their opinion the High Council of Justice is required to present a motion on the judge's dismissal. This seems rather peculiar as in effect the body appealed against can then overrule the decision of the appellate body. I have never come across such a procedure elsewhere and it does not seem rational.

46. Article 117 deals with removal of a judge due to entry into legal force of a judgment of conviction against him. Again, this repeats a constitutional provision (Article 128 of the Constitution). It seems somewhat harsh that a judge would appear to be removed for even the most minor infraction (for example, if he is guilty of a minor traffic offence). Indeed, Article 145, which deals with the pensions of retired judges, appears to suggest that a retired judge must lose his pension if a conviction against the judge enters into force. Again this seems unduly harsh. It may be, however, that in Ukrainian law minor

matters are not covered by these provisions and I am not aware of whether this is the case.

47. Article 122.5 deals with the situation where the decision on the removal of a judge elected for a lifetime position will not be voted for by the majority of the Verkhovna Rada. The provision provides that re-voting shall be conducted. I wonder how practical this is. Presumably the Verkhovna Rada can continue to refuse to vote for the removal indefinitely and the resolution has to be put before them indefinitely, but I do not see how this solves the problem.

48. Section VIII (Articles 125-134)

49. In previous opinions the Commission was critical of the over elaborate structure of judicial self-government. The new proposal is simpler than the earlier provisions. There are now to be three institutions of self-government, meetings of judges of the courts, the Congress of Judges of Ukraine which is to take place every two years and Council of Judges of Ukraine which is to exercise certain functions in the interim period between congresses. The Congress has very important functions, including the election of the Constitutional Court, and appointments to the Qualifications Commission of Judges and the Disciplinary Commission of Judges. The Congress of Judges consists of 370 judges elected by their peers from the different levels of court. Of these 200 judges are from the local courts, 120 judges from the Courts of Appeal, 40 judges from the High specialized courts and 10 from the Supreme Court.

50. Generally speaking these provisions seem to me to be appropriate. I would have one comment about Article 127.5(1) which refers to meetings of judges of local and appellate courts. These apparently can discuss performance of specific judges and take decisions on these issues binding for the judges. This does not appear to me to be an appropriate provision. Judicial independence requires that judges should not be subjected to peer pressure in relation to any specific cases. Article 127.5 also provides that the judges' meetings of the Supreme Court and the High specialized courts have the same powers. This should be deleted or at least clarified to make clear that pressure may not be brought on a judge concerning an individual case.

51. In relation to Article 30, which provides for a number of persons to be present at the Congress of Judges (including the President, the speaker of parliament, and the Minister for Justice), it is not clear to me why politicians should be present at these meetings. The presence of politicians may well lead to political pressure being brought.

52. Section IX (Articles 135-141) deal with support for a judge, remuneration, housing and so forth. I have only one minor comment in relation to any of this, which is that Article 135.8 appears to me very strange in that judges can be given additional monthly payments for work involving access to state secrets. This seems to me a somewhat extraordinary provision. I wonder how often judges have to have access to state secrets and in what circumstances? Does this mean that they are being provided with information which is not freely available to the parties? If so this does not appear to be appropriate.

53. Section X (Articles 142-145) deals with the status of a retired judge. The only comment I have is in relation to the possibility of a former judge losing his pension if he is convicted of an offence.

54. Section XI (Articles 146-159) deals with organizational support for the operation of courts. It provides for a State Judicial Administration which is required to provide organizational support for the operation of the courts and has substantial powers in relation to budgets. It seems to me that the provisions for control of this body and reporting by this body to the judges is very weak. The reporting provision is in Article 151 which provides that the State Judicial Administration reports to the Congress of Judges. This body only meets every two years and is incapable of exercising day-to-day control over the State Judicial Administration. The appointment of the head of the State Judicial Administration is to be by the Council of Judges of Ukraine, a body of 37 elected judges who are responsible for various matters in the interim period between congresses. It seems to me that a much more effective method of ensuring judicial supervision would involve reporting, not to the Council of Judges who are not a body exercising executive functions in relation to the courts but are essentially a representative body for judges, but rather to the Chief Justice and the Presidents of the different levels of courts. Under the proposals as they stand it seems to me that the head of the State Judicial Administration could well be a person subjected to very little effective control by the judiciary.