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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**EXPLANATORY NOTE
TO THE DRAFT LAW
ON AMENDING THE CONSTITUTION OF UKRAINE**

1. Basis for adoption of the draft

The draft Law of Ukraine *On Amending the Constitution of Ukraine* is aimed at a system 'refreshment' of the constitutional regulation of social relations.

Amendments to the Basic Law of the State are proposed to be set out in the form of a new edition of the Constitution of Ukraine.

Initiation of these amendments has been caused by the condition of the modern Ukrainian society and political processes in Ukraine which really need improvements in the constitutional regulation of social relations. These amendments have to facilitate achievement of the goals set forth in the Constitution of Ukraine in force, which particularly aimed at willingness to developing and strengthening democratic, social State, governed by the rule of law and, last but not the least, necessity to secure continuance in the constitutional framework.

These complex changes to the Constitution are also evoked by practical implementation of its provisions, uncovering certain omissions and their elimination, in particular these are insufficient guarantees concerning rights and freedoms of the human being, handicaps in organization and functioning of the State mechanisms, imperfections of the checks and balances system which should have been securing balance and integrity of this mechanism.

Moreover, at different stages of the modern constitutional process a number of important comments of the European Commission for Democracy through Law known as the Venice Commission and the Parliament Assembly of the Council of Europe. In this regard the proposed amendments are aimed at taking into account positions and recommendations of international experts and specialists in the sphere of constitutional law.

2. Goals and tasks of the draft

The draft is aimed at introduction of amendments to the Constitution of Ukraine through comprehensive and substantial approach, and they must be implemented by passing the new edition of the Basic Law in due course, as stipulated by the Verkhovna Rada of Ukraine.

An adequate method of constitutional reforms is implementation of a system refreshment/improvement of the Constitution of Ukraine directed namely to:

- Systematization and facilitation of the constitutional rights of human being and their efficient securing, especially in the Court;
- Provision of realization of the efficient State power on the basis of a distinctive division of functions, improvement of the general deterrence system, avoidance of dualism in the executive branch and finally a global balancing of the whole State mechanism;
- Extension of the constitutional regulation of democratic institutes;
- Optimization of territorial organization of the State power in Ukraine;
- Development in local governments;
- Creation of preconditions for judicial reform and reform in legal enforcing bodies;
- Establishing constitutional grounds for Ukraine's participation in the process of international and European integration;

– Elimination of existing lacks of coordination between certain provisions of the Constitution.

Proceeding from the stable grounds for the modern constitutionalism, analysis of the provisions of the Constitution in force has been carried out. Both international and domestic experience of constitutional framework, international standards and regulations of international legal instruments in the sphere of Human Rights were elaborated. We took into account conclusions and recommendations of the Venice Commission and PACE, decrees and judgements of the Constitutional Court of Ukraine.

The draft was mostly prepared basing on a draft Concept of system refreshment of regulation of social relations in Ukraine developed by the National Constitutional Council of Ukraine. There were taken into account drafts of a new edition of the Constitution of Ukraine those which were drafted by academic circles, political forces, National Commission for Strengthening Democracy and the rule of law, Foundation for Support of Local Governments of Ukraine, public organizations, scientists opinions, first of all specialists in the field of constitutional and administrative law, certain proposals taken from the media sources.

3. General summary and basic provisions of the draft

Amendments are based on the provisions of the Constitution of Ukraine in force and subsequently develop them, aiming at stable realization of the principles of the sovereignty of Ukraine, as a State governed by the Law, democracy, and as a social State following principles of social equity that will be developing civil society in Ukraine.

As far as human being is the top value of the society and the State, special attention has been paid to system, comprehensive setting out of legal norms concerning rights and freedoms of human being, strengthening of guarantees for realization of such rights and freedoms.

An originating point in the legal framework was that Ukraine at the moment has a combined republican form of public organization of the State power. The amendments are proposed for elimination of problems that arose from a counter-reform imposed by the Law of Ukraine "On introduction of amendments to the Constitution of Ukraine" dated 8 December 2004 No 2222-IV, the one that changed the State mechanism, and for creation of conditions for balanced and effective functioning of a mixed organization of the State power on the grounds of distinction between functions and powers of the State bodies, improvement in the checks and balances system. A model of local governments has been substantially democratized.

As far as the Constitution is an act whose norms correlate within the system integrity, the comprehensive nature of the proposed amendments has determined necessity to amend simultaneously nearly the whole text of the Basic Law, affecting each section and, therefore, creating a new wording of the Constitution.

The structure of the new Constitution and its stipulations provide succession in the constitutional regulation of social relations and determine the general logics for reforming the legal sources.

The draft Law of Ukraine "On introduction of amendments to the Constitution of Ukraine" consists of Section I which incorporates the new wording of the Constitution and Section II, the one that regulates the scheme of entry into force of the Law.

It is necessary to name Section I of the new draft Constitution as "Grounds for the Constitutional Organization," Section III as "Popular Vote," to merge in one section the provisions on organization of the judicial branch and prosecution bodies setting them in

Section VII “Courts and Public Prosecution Bodies.” Another section will combine the provisions on local governments, the constitutional status of the Autonomous Republic of Crimea, organization of executive power in the regions of Ukraine.

Structure of the new Constitution of Ukraine

Preamble

Section I “Grounds for the Constitutional Organization” (Articles 1 – 23);

Section II “Rights, freedoms and obligations of human being” (Articles 24 – 73)

Section III “Popular Vote” (Articles 74 – 84);

Section IV “National Assembly of Ukraine” (Articles 85 – 111);

Section V “President of Ukraine” (Articles 112 – 125);

Section VI “Cabinet of Ministers of Ukraine” (Articles 126 – 133);

Section VII “Courts and Public Prosecution Bodies” (Articles 134 – 145);

Section VIII “Constitutional Court of Ukraine” (Articles 146 – 154)

Section IX “Local Government and Territorial Organization of the Power” (Articles 155 – 166);

Section X “Amendments to the Constitution of Ukraine” (Articles 167 – 170)

Section XI “Final Provisions” (Article 171);

Section XII “Transitional Provisions” (14 paragraphs).

The general provisions of the new draft Constitution contain the following.

Preamble

We propose to state in the Preamble that the People of Ukraine is the creator of the Constitution of Ukraine. Such approach correlates to the constitutional principle of public sovereignty and mechanism of amending the Constitution of Ukraine as it is provided by the Basic Law of the State.

It is necessary to generally save objectives and tasks incorporated in the preamble of the existing Constitution.

Along with this, taking into account that the preamble is an integral part of the Basic Law of the State, it seems to be helpful to extend the list of social and political objectives with the provisions connected to strengthening unity of Ukraine and ascertaining the geopolitical location of Ukraine as a member of the European community. Deriving from social and legal nature of the Ukrainian State it seems to be possible to declare such a constitutional goal as improvement of social equity and justice.

Section I “Grounds for the Constitutional Organisation”

Section I “Grounds for the Constitutional Organization” is a substantial core of the Basic Law which determines the general regulation and establishes general conditions for the whole institutional complex of Ukraine.

The main provisions here are those which consider sovereignty of Ukraine over its territory, unitary state organization, basic principles of its administrative and territorial organization, reflect first of all the principles of unity and integrity of Ukraine.

Thus, the system of administrative and territorial organization of Ukraine consists of cities, towns, villages or unified dwelled areas; districts, oblasts and the Autonomous Republic of Crimea that constitute and inalienable parts of Ukraine. Cities with the population defined in the legislation may be equated to oblast or district in its status. The Capital of Ukraine is the City of Kyiv.

The new wording of the Constitution recognizes human being, its life and health, dignity and moral, freedom, safety and personal immunity as the highest value not only as a social value as this mentioned in the Constitution.

The provisions on forming the principles of organization and realization of the power in the State, particularly those which concern the principle of the popular sovereignty and the principle of implementation of the State power through its division into legislative, executive and judicial branches, where set forth in more clear way.

The core specifications of the local self-governments where substantively extended and precisely defined.

The principle of the rule of law was distinguished and this will fortify its application in all the spheres of social life.

At the same time, the provision on the highest legal power of the Constitution is set out in its new wording, as well as the principle of lawfulness. Hence the laws those which are introduced on the basis of the Constitution of Ukraine have to correspond to it, and other acts of legislation have to face the same conditions.

Proceeding from recognition of the priority of the international treaties of Ukraine over acts of domestic legislation, the new edition of the Constitution provides that when an international treaty duly and legally authenticated at national level contains different rules comparing to those which are contained in the national legislation, then the provisions of an international treaty will apply.

The provisions on inalienability of the right of citizenship and the right to change it where transferred to this Section, as well as that the citizen of Ukraine shall not be expelled from the territory of Ukraine or extradited to another state.

Bearing in mind the necessity of further stabilization and development of the institutes of the civil society, the new wording of the Constitution of Ukraine provides mechanisms of its correlation with the state, and relevant articles particularly set out that the State shall facilitate consolidation and development of the civil society.

A particular article sets forth basic guarantees of the political activity, namely that violence shall not be an instrument for defending political interests, that activity of the political parties is based on free competition, respect to democratic values etc. The right to be in opposition and carry out relevant activities is fully recognized in Ukraine.

Proceeding from the conceptual principles concerning restriction of the rights and freedoms of human being, it would be necessary to state that grounds for prohibition of political activity must be defined only by the Constitution of Ukraine.

The draft provides that Ukraine independently decides on whether or not to join international organizations, political and economic international formations and decides on cancellation of its membership in them.

With regard to the necessity of elimination of undefined state symbols of Ukraine, the provisions contain norms on existing State Flag, State Coat of Arms and State Anthem of Ukraine together with the Spiritual Anthem of Ukraine "My Lord, the Almighty, the One Save our Ukraine" added.

Section I also contains the provisions on assigning hryvnia as the national currency of Ukraine.

Section II "Citizens' and human being Rights, freedoms and obligations"

Constitutional regulation of the social relations in Ukraine is based on rights and freedoms of human being which determine and aim the State's activity. The State is responsible for its activity before person. Assertion and insuring of the rights and freedoms of human being are the principal goal of the State.

In this way so called "humancentrism" of the Basic Law of Ukraine that is common for new European constitutions.

However, insufficient level of practical implementation of the rights and freedoms of human being and citizen, their legal guarantee, tendency to make pronouncements for effect of the some regulations of the part II of the current Constitution of Ukraine require optimisation of their legal regulation.

Consistency of the constitutional regulation of the civil, political, social, economic, cultural, ecological rights, guarantee of these rights and also liabilities of the citizens have been simultaneously reserved.

Particularly, the principle which stipulates that all the humans since the moment of birth are free and equal in dignity and rights and principle of equity before the Law and trial are stipulated.

Amended Part II consists regulation regarding restrictions of the rights and freedom of the human and citizen with mentioning directly in Constitution of Ukraine the aim of their implementation (principal of proportionality). The constitutional rights and freedom of the human and citizen may not be restricted, excluding cases stipulated by the Constitution of Ukraine; such a restrictions should be proportional to the aim established by the Law and necessary in democratic society.

Amongst civil rights particularly stipulated rights of each individuals to have a family and respect to a family relation.

In the Draft of the Constitution of Ukraine it is enforced constitutional protection of the children, particularly by means of direct prohibition to involve a child in activity which is harmful for morality and regular development.

Principally new thing in part II is establishment of the regulation regarding liability of the State to create conditions for efficient realisation of the rights of disabled individuals for independence, social integration and entire participation in social life. In case of adoption of amended Constitution of Ukraine this article will become crucial constitutional guarantee for disabled individuals and development of appropriate legislation.

Constitutional grantees on realisation and protection of the constitutional rights and freedoms including relief in the court is increased. In particular, stipulated the right of each individual for just and public hearing of his/her case in reasonable period of time by independent and impartial court.

Enforcement of the constitutional guarantee of rights and freedoms of human and citizen have to facilitate the realisation of the regulation regarding impossibility of capital (death) punishment, decreasing to 24 hours instead of 72 hours the period of court's verification of the validity of application of commitment (detain under arrest).

Regulation of the protection of private life was also made specific, particularly stipulated that every individual has a guarantee, excluding earlier stipulated secrecies, of electronic and other correspondence.

Significant that at the constitutional level determined restrictions that may be established by the Law in terms of intended for realisation of the rights for free movement and free choice of the place of residence, rights to leave free territory of the counter. Particularly, these rights may be restricted only for the reason (that) of national security, public order, crime prevention or solution of crime, healthcare, morality of the population or protection of the rights and freedom of other individuals.

It is stipulated at the constitutional level that founders and members of the political parties may be the citizens of Ukraine.

Wider list of other political rights of the citizens of Ukraine, particularly, stipulated the citizens' right to participate in governing not only the state affairs and the local affairs and also stipulated in addition the right to carry out public and local initiative.

Stipulated that in case of improvement of the individual's condition the legal norm may be retroactive, not only in case of mitigation or cancellation of legal responsibility.

Stipulated also that regulation of this Part apply to the legal entity, that is registered in Ukraine, in case when the rights and freedoms and theirs juridical guarantees may be apply.

Section III "Popular Vote"

The content of this Section directed to realization of the principle of national sovereignty which particularly constitutes the legal basis for the power of people, including forming representative state bodies and local self-governments, and stipulates principles of functioning of the state mechanism.

The existing wording of this Section of the Constitution needs substantial changes aimed at elimination of drawbacks in constitutional regulation of democratic institutes, particularly concerning forms of popular vote, specification of the principles of realization of electoral rights and of the right to participate in the referenda, concerning active and passive right to vote at national and local elections, realization of people and local initiatives etc.

The existing list of forms of popular vote was extended. In this regard institutes of people and local initiatives are to be established.

The content of the principles of electoral right aimed at strengthening the guarantees of realization and protection of constitutional electoral rights of the citizens of Ukraine was sufficiently broadened and specified.

Elections are direct and take place on the basis of common and equal electoral right through the secret ballot. All the voters have equal number of votes at the elections and vote on their own.

Elections are free. Electorate independently makes a decision on whether or not to participate in elections. The conditions for expressing their will freely is guaranteed during elections.

Elections are periodic and are held according to the terms defined by the Constitution and in accordance with the law.

The issue of arrangement of Presidential and parliamentary and local elections in time has been resolved through prohibition of their simultaneous conduction.

The provisions on specific treats of realization of a common and equal electoral right at local elections are proposed to be set out in this Section stipulating, in particular, that the right to vote at local elections and referendums have only those citizens of Ukraine who belong to relevant local communities.

The Section was accomplished by the provisions on impossibility to stand for an election to certain public posts of certain civil servants, as judges, prosecutors, military servants and other whose activity has to be out of politics.

The issue of referendums (both national and local) was set forth at constitutional level, taking into account that the decisions following realization of such form of popular vote must be legally binding.

It was defined that decisions at Ukrainian national or local referendum are proved by the vast majority of votes under a condition that majority of those who have this right took part in the elections.

A scope of issues on which referendums are obligatory was specified, and issues where referendums are not applicable are specified as well.

Thus, it was stipulated that exclusively the national referendum in Ukraine has the right to finally decide on changes of the territory of Ukraine, transfer by Ukraine of a part of its rights to international formations.

The topic of a local referendum, which may be held by a community (or communities) as the major subject of local self-government, is taking decisions, according to the Constitution of Ukraine and legislation in force, on the issues of local concern.

An institute of people initiative is drafted separately, it was defined that draft acts of legislation may be submitted to the Parliament (and urgently considered) on demand of not less than one hundred thousand citizens of Ukraine who have the right to vote. According to people initiative, on demand of not less than 1.5 billion citizens of Ukraine who have the right to vote, a draft act of legislation on amendments to the Constitution or a new version of the Constitution may be submitted to the National Assembly of Ukraine.

This was stipulated that during war or emergency the popular vote does not exercises.

Section IV “National assembly of Ukraine”

National Assembly of Ukraine – the Parliament of Ukraine is a separate body of legislative power.

National Assembly of Ukraine consists of two Chambers, the Chamber of Deputies and the Senate.

The total composition of the Chamber of Deputies is three hundred people's deputies who are elected for the four-year term.

The Senate consists of three senators who are elected for a four-year term in the Autonomous Republic of Crimea, each region (oblast), the City of Kyiv, and at the communities that has the same status as oblast. The Senate also consists of former Presidents of Ukraine except those who were moved from the post via the procedure of impeachment.

The citizen of Ukraine who has the right to vote may be elected a Deputy. The citizen of Ukraine who has the right to vote and reached the age of 35 years may be elected a senator. People's deputies and senators are elected by the citizens of Ukraine, who have the right to vote on the basis of universal, equal and direct suffrage, by secret ballot.

One senator elected in the Autonomous Republic of Crimea, each region (oblast), the city of Kyiv and at the community with the status of region are re-elected each two years.

The Chamber of Deputies adopts the decision with regard to the approval of the members of the Cabinet of Ministers of Ukraine and the Program of its Activity; adopts the decision in regard to the no-confidence vote to the Cabinet of Ministers of Ukraine, dismisses from office the Prime-minister of Ukraine, other members of the Cabinet of Ministers of Ukraine; exercises control over the activity of the Cabinet of Ministers of Ukraine in accordance with the Constitution of Ukraine, controls the implementation of the State Budget of Ukraine.

The Chamber of Deputies confirms decisions on granting loans and economic aid by Ukraine to foreign states and international organisations and also decisions on Ukraine receiving loans not envisaged by the State Budget of Ukraine from foreign states, banks and international financial organisations, exercising control over their use; appoints to office and dismisses from office the half of the staff of the Chamber of Accounting (on a par with the Senate), including the Chairman of the Chamber of Accounting; appoints to office and dismisses from office the Authorised Human Rights Representative of the National Assembly of Ukraine; establishes its territorial representations; establishes and changes by law the boundaries of administrative-territorial subdivisions, establishes and abolishes regions and districts; equates the communities with the status of region or district; confirms by law the list of objects of the right of state property that are not subject to privatisation; annual programs of privatisation of the objects of the right of state property; determines by law the principles for the expropriation of objects of the right of private property.

The Senate: designates elections of the President of Ukraine, the elections of the Deputies to the Verkhovna Rada of the Autonomous Republic of Crimea, the Deputies of the region, Kyiv city, district councils, community councils, heads of communities; upon the submission of the President of Ukraine terminates prior to the expiration of the term of authority of the Verkhovna Rada of the Autonomous Republic of Crimea, based on the opinion of the Constitutional Court of Ukraine that the Constitution of Ukraine has been violated by the Verkhovna Rada of the Autonomous Republic of Crimea; terminates prior to the expiration of the term of authority of

the region, district councils, community councils, heads of community in the cases determined by the Constitution of Ukraine and by law.

The Senate upon the submission of the President of Ukraine confirms his decisions that deals with the defence and the security of the state and decides other issues including personnel issues that mustn't have unnecessary politicization. On the submission of the President of Ukraine the Senate appoints to office and dismisses from office the Chairman and other members of the Central Electoral Commission of Ukraine, the Chairman of the National Bank of Ukraine, the Chairman and state delegates of the Antimonopoly Committee of Ukraine, heads and members of other bodies of government regulation; grants consent for the appointment to office by the President of Ukraine of the Procurator General of Ukraine, Head of Security Service of Ukraine, Head of Foreign Intelligence Service of Ukraine, Head of National Bureau of Investigations of Ukraine, heads of other state bodies, that provide prejudicial inquiry; appoints and dismisses one-half of the composition of the Council of the National Bank of Ukraine (on a par with the President of Ukraine), the National Council of Ukraine on Television and Radio Broadcasting.

The Chambers exercise other powers ascribed to their competence in accordance with the Constitution of Ukraine.

Each Chamber makes all the decision during the sessions that are holding separately. There's a quorum for the sessions of the Chambers – not less than their general composition, the decisions are adopted by the majority of constitutional composition of the Chamber, except in cases envisaged by the Constitution of Ukraine.

Procedure rules of the Chambers of the National Assembly of Ukraine are determined by the Constitution of Ukraine and by the regulations of the Chambers.

The authority of the Chamber of Deputies is terminated on the day of the opening the first session of the Chamber of Deputies of a new convocation.

The authority of the Chamber of Deputies is terminated prior to the expiration of term on the day of the Decree of the President of Ukraine about its dissolution.

The Chamber of Deputies may be dissolved by the President of Ukraine. To adopt such a decision the President announces consultations with the Chairmen of both Chambers and the Heads of Fractions from the Chamber of Deputies.

The right of legislative initiative in the National Assembly of Ukraine belongs to the people's deputies, the senators, the Cabinet of Ministers of Ukraine, the President of Ukraine, no less than one hundred thousand citizens of Ukraine who have the right to vote.

Draft laws are presented for consideration to the Chamber of Deputies. Consideration of draft law by the Chamber of Deputies envisages the adoption of its main dispositions article-by-article and the adoption of the law in a whole. The law adopted by the Chamber of Deputies is forwarded by the Chairman of the Chamber of Deputies to the Senate within five days.

After the receipt of a law within fifteen days of the session the Senate adopts a law or rejects it. If the Senate within the set time doesn't make the decision concerning a law, it is considered to be adopted by the Senate. If the Senate adopted the decision to reject a law, the Chamber of Deputies may adopt it again by the majority of its general composition.

The Chairman of the Senate signs a law adopted by the Senate or repeatedly adopted by the Chamber of Deputies and forwards it without delay to the President of Ukraine.

Within fifteen days of the receipt of a law, the President of Ukraine signs it or uses the right of veto and returns it to the Chamber of Deputies with formulated proposals for repeat consideration.

In the event that the President of Ukraine has not returned a law for repeat consideration within the established term, the law is to be signed by the President of Ukraine.

If a law returned by the President of Ukraine with his proposals, during its repeat consideration, is again adopted by the Chamber of Deputies by no less than two-thirds of its general composition, the President of Ukraine is obliged to sign it within ten days.

A law signed by the President of Ukraine must be officially published without delay. A law enters into force in ten days from the day of its official promulgation, unless otherwise envisaged by the law itself, but not prior to the day of its publication.

Powers of the Deputies terminate simultaneously with the termination of the powers of the Chamber of Deputies, powers of a senator terminate on the day of termination of the term he was elected for. An institute of so called "imperative mandate" is not stipulated.

Immunities of the deputies are constitutionally restricted, and a deputy or a senator shall not be detained or arrested. However bringing to the criminal action takes place in common way, till the moment of entry into force of a verdict proving guilty, and this pulls terminations of the deputy's or senator's powers.

Immunities of the Ombudsman of the National Assembly of Ukraine are stipulated at the same level and this shall additionally contribute to his activity in the sphere of protection of the rights. He shall not be detained or arrested without consent of the Chamber of Deputies unless the legal verdict against him enters into force.

Section V "President of Ukraine"

The President of Ukraine is the Head of State. The President of Ukraine represents the State and secures its legal succession.

The President of Ukraine is the guarantor of the state sovereignty, territorial indivisibility and security of Ukraine, the observance of the Constitution of Ukraine and human and citizens' rights and freedoms.

President also contributes to cooperation of state bodies and local self-government bodies.

The President of Ukraine is elected directly by the citizens of Ukraine for a five-year term. The same person shall not be the President of Ukraine for more than two consecutive terms.

The President provides the governance in the spheres of foreign policy, security. The President is the Commander-in-Chief of the Armed Forces of Ukraine, heads the Council of National Security and Defence of Ukraine and has the proper authority.

Thus, the President: adopts the decision on recognition of foreign states, concludes international treaties of Ukraine; entrusts for the conclusion of international treaties on behalf of Ukraine; appoints and dismisses heads of diplomatic missions of Ukraine to other states and to international organisations; accepts credentials and letters of recall of diplomatic representatives of foreign states; appoints to office and dismisses from office the high command of the Armed Forces of Ukraine and other military formations; adopts a decision on the general or partial mobilisation and the introduction of martial law in Ukraine or in its particular areas, adopts a decision on the introduction of a state of emergency in Ukraine or

in its particular areas, declares certain areas of Ukraine as zones of an ecological emergency situation, adopts a decision on rendering military assistance to foreign states, on sending military units of Ukraine to other countries and on access of foreign military units to the territory of Ukraine, along with the confirmation of these decisions by the Senate of Ukraine; appoints to office with subsequent confirmation of these decisions by the Senate of Ukraine and dismisses from office the Procurator General of Ukraine, Head of the Security Service of Ukraine, Head of national bureau for investigations, chief officers of other bodies of power which conduct pre-trial investigation, the Foreign Intelligence Service of Ukraine, terminates acts of the Cabinet of Ministers of Ukraine on foreign policy, defence and security issues after consultations with Prime-minister of Ukraine.

The President of Ukraine designates all-Ukrainian referendum in accordance with the Constitution, addresses the people with messages and the National Assembly of Ukraine with annual and special messages on the domestic and foreign situation of Ukraine; designates elections to the National Assembly of Ukraine within the terms established by this Constitution; establishes courts by the procedure determined by law and establishes judicial districts, exercises other powers determined by the Constitution of Ukraine.

The Council of National Security and Defence of Ukraine is expected to be the co-ordinating body with the President of Ukraine on the Head on issues of national security and defence. The Council of National Security and Defence of Ukraine coordinates and controls central bodies of executive power in these spheres.

Ex officio members of the Council of National Security and Defence of Ukraine are: the Prime Minister of Ukraine, the Minister of Foreign Affairs of Ukraine, the Minister of Defence of Ukraine, the Minister of Internal Affairs of Ukraine, the Minister of Justice, the Head of the Security Service of Ukraine, the Head of the Intelligence Service of Ukraine and other officials, defined by the President of Ukraine. The Heads of National Assembly Houses may participate in the Council of National Security and Defence of Ukraine meetings.

Decisions of the Council of National Security and Defence of Ukraine are put into effect by decrees of the President of Ukraine

As a result of transition to a bi-chamber model of parliament, the procedure of impeachment will be gaining a classical appearance when the decisions accusing of the President of have to be approved by the lower chamber, and the decisions on termination of his powers by the Senate.

Section VI “Cabinet of Ministers of Ukraine”

The Cabinet of Ministers of Ukraine is the highest body in the system of bodies of executive power

The Cabinet of Ministers of Ukraine is guided in its internal and external activities by the Constitution and the laws of Ukraine and by the acts of the President of Ukraine.

The Cabinet of Ministers of Ukraine is composed of the Prime Minister of Ukraine, the Vice Prime Minister and the Ministers.

There is a right to combine the mandate of People’s Deputy with the position of member of the Cabinet of Ministers of Ukraine

The composition of the Cabinet of Ministers is made in parliamentary way – by the House of Deputies, which has broad powers as to control the Government activity. The Cabinet of Ministers is under the control of House of Deputies.

To compose the Cabinet of Ministers the President of Ukraine obliges the candidate to the position of Prime-minister, authorized by the political party with the majority of votes according to the elections results, to form and introduce in 20-days period for the consideration of House of Deputies the proposals as to personal composition of the Cabinet of Ministers together with the Action Program of the Cabinet of Ministers of Ukraine. The House of Deputies in 10-days term starting from the date of introduction of the proposals on personal composition of the Cabinet and Action Program of the Cabinet of Ministers adopts the decision on approval of the personal composition of the Cabinet of Ministers of Ukraine and its Action Program.

If during the defined term the House of Deputies has not approved the personal composition of the Cabinet of Ministers and its Action Program, the President in 3-days term obliges the candidate to the position of Prime Minister of Ukraine, authorized by the political party second by majority of votes according to the elections results to compose and to introduce in 20-days term for the consideration of the House of Deputies the proposals on personal composition of the Cabinet and Action Program of the Cabinet of Ministers of Ukraine. The House of Deputies in 10-days term starting from the date of introduction of the proposals on personal composition of the Cabinet and Action Program of the Cabinet of Ministers adopts the decision on approval of the personal composition of the Cabinet of Ministers of Ukraine and its Action Program.

If after this the House of Deputies has not approved the personal composition of the Cabinet of Ministers of Ukraine and its Action Program after introduction of such proposal the President of Ukraine nominates candidate for the position of Prime Minister and obliges the candidate in 30-days term to introduce to the House of Deputies the proposals on personal composition of the Cabinet of Ministers of Ukraine and its Action Program.

In case of disapproval of the personal composition of the Cabinet of Ministers of Ukraine and its Action Program by the House of Deputies in 10-days term upon the introduction of such proposals, the President of Ukraine terminates the authority of the House of Deputies and designates a special election.

The Cabinet of Ministers of Ukraine tenders its resignation to the newly-elected President of Ukraine

The adoption of a resolution of no confidence in the Cabinet of Ministers of Ukraine by the House of Deputies of Ukraine results in the resignation of the Cabinet of Ministers of Ukraine.

The Prime Minister of Ukraine has the right to announce the resignation to the House of Deputies. In this case the decision on resignation of the Prime Minister is approved by the House of Commons. The resignation of the Prime Minister of Ukraine results in the resignation of the entire Cabinet of Ministers of Ukraine

In case of resignation, the Cabinet of Ministers continues to exercise its powers until a newly-formed Cabinet of Ministers of Ukraine commences its operation.

The Cabinet of Ministers establishes, reorganizes and liquidates according to the Law the ministries and other central bodies of executive power, appoints and dismisses on the submission of the Prime Minister of Ukraine the chief officers of central bodies of executive power which are not members of the Cabinet; revokes acts of the Cabinet of Ministers of Ukraine, other central bodies of executive power, exercises other powers determined by the Constitution of Ukraine and Laws.

It is regulated that the Cabinet of Ukraine adopts its decisions on the meetings by the majority of its personal composition by voting.

The organisation, authority and operational procedure of the Cabinet of Ministers of Ukraine, and other bodies of executive power, are determined by the Constitution and the laws of Ukraine.

Section VII “Courts and Justice”

The new version of the Constitution of Ukraine is to provide constitutional basis for the reform of the legal system. With the most of provisions of the Constitution currently in force retained the Section needs relevant additions and clarifications in order to reflect more fully the substance of such institutions as the court and justice.

Furthermore, considering changes in definition of functions of the offices of public prosecutors it is regarded necessary to expound in a single Section provisions related to the organization of the judiciary system and public prosecutors' offices.

Jurisdiction of courts is extended to all legal relations that emerge in Ukraine. Courts may not rule to fulfil the duties of other authorities or officials, unless it is envisaged by law.

The system of general jurisdiction courts in Ukraine is built according to the principles of specialization, territoriality and instance.

The High Court of Ukraine is the highest judicial authority that ensures uniform application of the legal norms by all courts of general jurisdiction. Higher Specialized Courts are the Courts of Appeal in the system of general jurisdiction courts. The law envisages functioning of the Courts of Appeal and Local Courts provided that a court may not combine functions of different instances in a case consideration.

The law defines principles and procedure of courts' formation and setting of judicial districts' boundaries. The President of Ukraine sets up courts and determines boundaries of judicial districts.

In cases and in compliance with the procedure envisaged by law justice is carried out in communities by elected Justices of the Peace. The law determines requirement to be met by a Justice of the Peace, procedure of his election, dismissal and rules of his practice.

The judge is appointed for an unlimited time period. A Ukrainian citizen that has reached twenty-seven year old limit, has higher legal education, knows official language (has fluent Ukrainian), was trained for judge qualification at special judge courses and passed an exam may be appointed as a judge according to competition results. The law determines additional requirements for certain categories of judges related to their working experience and qualification levels.

The Senate appoints and dismisses judges of the High Court of Ukraine and Higher Specialized Courts on proposal of the Higher Justice Council. The President of Ukraine appoints and dismisses judges of other courts on proposal of the Higher Justice Council according to the procedure determined by law.

Assembly of judges of a court appoints from its members as well as dismisses the head of the court by a secret ballot.

Immunity of judges is guaranteed to extend that is defined in the Constitution of Ukraine. A judge may not be detained or imprisoned without consent of the Senate.

Judge credentials may be terminated by the Higher Justice Council of Ukraine if a judge is accused of committing a crime or to avoid violation of norms regarding incompatibility of duties.

The Higher Justice Council of Ukraine puts forward proposals on dismissing and terminates credentials of judges in cases envisaged by the Constitution of Ukraine. The Higher Justice Council of Ukraine decides on calling judges to account on disciplinary liability matters.

The Higher Justice Council of Ukraine is comprised of sixteen members. Assemblies of Judges of Ukraine appoint eight members of the Higher Justice Council of Ukraine, the President of Ukraine and the Senate appoints four High Justice Council members each from retired judges. Members of the High Justice Council of Ukraine carry on their duties on permanent basis and may not embrace the judge of public prosecutor office or devote themselves to advocacy.

Issues that belong to the competence of the Higher Justice Council of Ukraine are considered at its plenary sessions, meetings of the Judges Qualification Commission and Judges Disciplinary Commission that are formed in the Higher Justice Council from its members. The Head of the Constitutional Court of Ukraine, the Minister of Justice of Ukraine and the Prosecutor General may participate in these gatherings.

The Prosecutor General of Ukraine is appointed by the President of Ukraine with the concern of the Senate and dismissed from his office by the President of Ukraine on grounds determined by law.

Supervision of human and citizen's rights and freedoms observation, obedience of relevant legislation by executive authorities, local self-government bodies and their officials as well as conduction of pre-trial investigations were excluded from the powers of the prosecutor's office.

Section VIII "The Constitutional Court of Ukraine"

Provisions of this Section have been changed in regard of the procedure of the Constitutional Court of Ukraine forming and definition of the scope of its powers.

The judge of the Constitutional Court of Ukraine is appointed for a nine year period on proposal of the President of Ukraine by the decision of the Senate adopted with no less than two third majority vote from its entire composition without the right of re-appointment for another term.

The judge of the Constitutional Court of Ukraine is dismissed by the Senate on proposal of the President of Ukraine. Decision on demission from office of the judge of the Constitutional Court of Ukraine on the basis of incompatibility of duties requirement violation by the judge, violation of the oath by the judge is adopted by the Senate by no less than two third majority vote of its entire composition.

The text of the oath of the judge of the Constitutional Court of Ukraine is formalized. The judge is empowered by taking it at the plenary session of the Constitutional Court of Ukraine.

Issues that belong to the competence of the Constitutional Court of Ukraine are considered at plenary sessions of the Constitutional Court of Ukraine and during meetings of its Chambers. Both Chambers of the Constitutional Court of Ukraine are formed by the plenary session of the Constitutional Court of Ukraine. Each of them is comprised of nine judges of the Constitutional Court of Ukraine. Constitutional appeals of persons are considered at meetings of the Chambers of the Constitutional Court of Ukraine.

According to a constitutional appeal of a person the Constitutional Court of Ukraine rules on compliance with the Constitution of Ukraine (constitutionality) of a law, whereby a court of general jurisdiction has made its ultimate judgment related to constitutional rights and freedoms of the person, if that person believes that the law, on which the decision is based, contradicts the Constitution of Ukraine.

The Constitutional Court of Ukraine rules on the official interpretation of the Constitution of Ukraine and compliance of the laws of Ukraine, acts of the Chambers of the National Assembly of Ukraine, acts of the President of Ukraine and acts of the Cabinet of Ministers of Ukraine with the Constitution of Ukraine (constitutionality).

The Constitutional Court of Ukraine draws conclusions on the following: on compliance with the Constitution of Ukraine (constitutionality) of international treaties submitted to the National Assembly of Ukraine for receiving consent to their binding powers, on compliance with the Constitution of Ukraine (constitutionality) of issues that are brought forward to a national referendum, on consistency of the procedure of investigation and consideration of the case the President of Ukraine powers termination by the way of impeachment with its definition in the Constitution of Ukraine, regarding violations of the Constitution of Ukraine by the Verkhovna Rada (Verkhovna Rada, Parliament) of the Autonomous Republic of Crimea.

Judgments of the Constitutional Court of Ukraine are ultimate and may not be appealed.

Laws, other acts or their provisions that are declared to be unconstitutional, become null and void from the date when judgments of the Constitutional Court of Ukraine on their unconstitutionality are officially announced.

Section IX “Local Self-Government and Territorial Organisation of Power”

Local self-government shall be defined as a right and possibility of community members to effect, in the interests of the local population and within the limits set by the Constitution of Ukraine and its laws, the regulation and management of social matters of local importance.

Community shall mean the administrative and territorial unit and a totality of citizens of Ukraine residing on its territory. Other communities cannot form a part of this community.

Local self-government shall be effected by the community members both directly and through the local self-government bodies, i.e. their own representative local self-government bodies, communities' chairmen, and representative self-government bodies that represent common interests of communities and their executive bodies.

Community council shall be the representative self-government body. Representatives (deputies) to the community council shall be elected for the term of four years by the community members having voting rights. A community member having voting rights may be elected deputy to the community council.

The community chairman shall preside at the community council meetings and head the community council's executive body that shall be formed by the community council at his submission. The community chairman shall be elected for the term of powers of the community council by the community members having voting rights. A community member having voting rights may be elected chairman of the community council.

Communities shall, both directly and through the local self-government bodies created by them in accordance with the law, approve the community statutes; manage property owned

by the community; approve programs of socioeconomic and cultural development and control their implementation; approve local budgets and control their implementation; establish local taxes, charges, and mandatory payments; provide for holding local referendums and implementation of their results; establish, reorganise and abolish municipal enterprises, organisations and institutions as well as control their activities; make decisions, within their terms of reference, on other matters that are not excluded from their terms of reference and whose decision is not vested with other bodies.

Communities shall, both directly and through the councils established by them, make common decisions within their terms of reference for their more efficient implementation.

The community council shall have the right, according to the procedure established by law, to delegate by contract its certain powers to other councils.

The local self-government bodies representing common interests of communities shall be district, oblast councils, and their executive committees. Deputies to these councils shall be elected for the term of four years by community members having voting rights, within the limits of the district or oblast. A community member having voting powers within the limits of district or oblast correspondingly may be elected deputy of a district or oblast council.

District, oblast council shall approve: district or oblast budget; district or oblast programs of socioeconomic and cultural development; rational use of natural resources, environment protection, and control their implementation; in accordance with the law, manage the objects that are collectively owned by the community make decisions, in accordance with the law, on the use of natural resources of local importance; approve decisions on the organisation of territories and objects of natural reserves of local importance and other territories subject to special protection; make decisions on the issues of the educational, cultural, and health protection establishments; make decisions on providing for law enforcement and public safety; initiate introduction of emergency situation and establishing zones of environmental emergency in corresponding localities; decides on other issues within its terms of reference stipulated by law.

District, oblast council also shall exercise powers delegated to it under the contract by the community council according to the procedure stipulated by law.

District, oblast council shall elect, out of its composition, the chairman of a corresponding council; form the council's executive committee headed by the executive committee chairman appointed by the council.

The local self-government bodies shall have the right to interact while performing their duties and, on a voluntary basis, to establish associations of local self-government bodies, the status of which shall be defined by the law, for the implementation of common tasks.

On the terms and conditions stipulated by the law, the local self-government bodies shall have the right to engage in trans-border cooperation with the local self-government bodies of other countries.

The local self-government bodies may, in accordance with the law, be delegated certain powers of the executive power bodies. The delegation of local self-government bodies' powers to the executive power bodies is not envisaged.

The status of the Autonomous Republic of Crimea established by the Constitution in force in Ukraine shall be generally preserved.

The Autonomous Republic of Crimea shall have the Constitution of the Autonomous Republic of Crimea that is adopted by the Verkhovna Rada of the Autonomous Republic of Crimea and approved by the law.

The Verkhovna Rada of the Autonomous Republic of Crimea shall be the representative body of the Autonomous Republic of Crimea. The deputies of the Verkhovna Rada of the Autonomous Republic of Crimea shall be elected by the community members, having the voting rights, within the boundaries of the Autonomous Republic of Crimea for the term of four years. A member of the corresponding community having the voting rights may be elected deputy of the Verkhovna Rada of the Autonomous Republic of Crimea.

The Council of Ministers of the Autonomous Republic of Crimea shall be the Government of the Autonomous Republic of Crimea. The Chairman of the Council of Ministers of the Autonomous Republic of Crimea shall be appointed to and dismissed from his office by the Verkhovna Rada of the Autonomous Republic of Crimea.

In the Autonomous Republic of Crimea, oblasts, city of Kyiv, in cities whose status is equalled to oblasts, there function the heads of state administrations who are appointed to and dismissed from their office by the President of Ukraine.

The head of the state administration within the boundaries of the corresponding administrative and territorial unit shall: control the observance of the Constitution of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine by the territorial divisions of ministries, other central bodies of executive power and local self-government bodies, their officials; provide for the interaction between the territorial divisions of ministries, other central bodies of executive power and local self-government bodies.

The head of the state administration in the Autonomous Republic of Crimea shall exercise corresponding powers also with regard to the Verkhovna Rada of the Autonomous Republic of Crimea, Council of Ministers of the Autonomous Republic of Crimea, and their acts.

The heads of state administrations may, for exercising their powers, establish representative offices in districts and towns.

Section X “Amendments to the Constitution of Ukraine”

A draft law amending the Constitution of Ukraine or proposing a new wording of the Constitution of Ukraine may be submitted to the National Assembly of Ukraine by a collective submission of deputies and senators who account for not less than one third of the total number of each chamber, or by the people’s initiative at the request of not less than a million and a half of citizens of Ukraine having voting rights.

The draft law amending the Constitution of Ukraine or proposing a new version of the Constitution of Ukraine shall be considered by the Chamber of Deputies and preliminarily adopted by no less than two thirds of its total composition. In case of adoption article-by-article and in general by not less than two thirds of the Chamber of Deputies’ total composition, the draft law shall be forwarded to the Senate.

In case the draft law is approved within ninety days by the Senate (by not less than two thirds of its total composition) the President of Ukraine shall make a decision on organising the all-Ukrainian referendum for the adoption of a corresponding constitutional law. Such a referendum may be held not earlier than ninety days and not later than one year after the Senate has adopted the draft law.

The constitutional law shall, within three days of its adoption according to the procedure stipulated by the Constitution of Ukraine, be signed and officially published by the President of Ukraine. The constitutional law shall come into force within fifteen days of its official publication if not otherwise provided in the law itself, but not earlier than the day of its publication.

The Constitution of Ukraine may not be amended if such amendments stipulate the abolishment or limitation of the human and citizens' constitutional rights and freedoms.

Section XI "Final Provisions"

28 June is a state holiday, the Day of the Constitution of Ukraine.

Section XII "Transitional Provisions"

The transitional provisions shall, in particular, include the issues of time frames for the establishment of state bodies and local self-government bodies; it is envisaged that within five years after this Constitution takes effect the existing oblasts cannot be abolished.

4. Other Information Necessary for the Consideration of the Draft Law

The draft Law corresponds to the requirements of part one of Article 157 of the Constitution of Ukraine. In particular, the Draft Law does not contain the provisions (or those similar to them) which previously had been found, by conclusions and decisions of the Constitutional Court of Ukraine, as those that abolish or limit human and citizens' rights and freedoms, or aimed at the abolishment or violation of territorial integrity of Ukraine.

The proposed amendments do not envisage abolishment or limitation of human and citizens' rights and freedoms, but expand their constitutional affirmation, and strengthen the guarantees for the protection of these rights and freedoms.

The amendments are aimed at further development of Ukraine's statehood, strengthening independence and territorial integrity of Ukraine. Besides, they will not lead to the violation of international commitments of Ukraine.

The submission of this draft Law corresponds to part two of Article 156, and Article 158 of the Constitution of Ukraine.

The draft requires approval by the all-Ukrainian referendum (part one of Article 156 of the Constitution of Ukraine).

Adoption and confirmation of the draft Law in the version submitted shall provide for the systemic, all-round, clear and undisputed nature of the Constitutional regulation of social relations. With a view to the stage-by-stage implementation of changes in the regulation of civic relations at the constitutional level, transitional provisions are included, with it all having positive legal consequences for the subjects of relevant legal relations.

The draft Law implementation will not directly affect the expenditure and revenues parts of the State Budget of Ukraine and local budgets for 2009.