Strasbourg, 14 October 2025 **CDL-AD(2025)044**

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OF THE COUNCIL OF EUROPE

(VENICE COMMISSION)

UKRAINE

JOINT OPINION

OF THE VENICE COMMISSION AND THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (DGI) OF THE COUNCIL OF EUROPE

ON

DRAFT AMENDMENTS ON DISCIPLINARY PROCEDURES AGAINST JUDGES, DECLARATIONS OF INTEGRITY, AND OTHER PROCEDURES

Adopted by the Venice Commission
at its 144th Plenary Session
(Venice, 9-10 October 2025)

on the basis of comments by

Mr Martin KUIJER (Member, Netherlands)
Mr Tomáš LANGÁŠEK (Substitute Member, Czechia)
Ms Angelika NUßBERGER (Member, Germany)
Mr Đuro SESSA (Expert, DGI)

Table of Contents

I. Introduction

1. By letter of 29 May 2025, Mr Hryhorii Usyk, Chairman of the High Council of Justice of Ukraine, requested an Opinion of the Venice Commission of the Council of Europe on the draft laws "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Disciplinary and other Procedures" (Nos. 13137 and 13137-1, of 26 March 2025 and 7 April 2025 respectively) (CDL-REF(2025)033) and "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Declarations of Integrity of Judges and Judges' Family Relations" (No. 13165-2, of 25 April 2025) (CDL-REF(2025)034). The Commission decided to prepare the present Opinion jointly with the Directorate General Human Rights and Rule of Law of the Council of Europe (DGI).

2. Mr Kuijer, Mr Langášek, and Ms Nußberger acted as rapporteurs for this Opinion on behalf of the Venice Commission. Mr Sessa acted as rapporteur on behalf of DGI.

3. On 24 and 25 July, a delegation of the Venice Commission and DGI had online meetings with representatives of the High Council of Justice (hereinafter, the HCJ), the Parliamentary Committee on Legal Policy of the Verkhovna Rada, Members of Parliament from the majority and from the opposition, the Supreme Court, the High Qualification Commission of Judges (hereinafter, the HQCJ), the Council of Judges, the Bar association in Ukraine, the Public Integrity Council, as well as representatives of the international community and civil society organisations. Subsequent written contributions were submitted by several of these stakeholders. The Venice Commission and DGI are grateful to the Council of Europe's Office in Kyiv for the excellent organisation of the online meetings and to the interlocutors for their availability.

4. This Joint Opinion was prepared in reliance on the English translation of the draft laws. The translation may not accurately reflect the original version on all points.

5. This Joint Opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 24 and 25 July 2025. The Joint Opinion was adopted by the Venice Commission at its 144th Plenary Session (Venice, 9-10 October 2025).

II. Background

A. Context

6. For many years, the Ukrainian authorities have been taking measures to reform the judiciary and addressing the challenges related to corruption, politicisation, and low level of public trust in courts. Ukraine has adopted a number of measures aimed to tackle these issues. Following constitutional amendments in 2016, a number of judges of the new Supreme Court were appointed by the HQCJ with the assistance of the Public Integrity Council, in which civil society is represented. In 2022, several members of the HJC resigned, depriving the institution of a quorum. In January 2023, the HCJ started working with a new composition of vetted members, and in June that year it appointed the members of the HQCJ, which had not been operational since late 2019. However, problematic persistent practices hindering the implementation of the reform process have been reported.[1] Despite being identified as a strategic objective under the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023 (Presidential Decree No. 231/2021 of 11 June 2021), trust in the judiciary remains low.

[1] Reznik, O., Bondarenko, O., Utkina, M., Klypa, O. and Bobrishova, L., 2023, "Anti-Corruption Transformation Processes in the Conditions of the Judicial Reform in Ukraine Implementation", *International Journal for Court Administration*, 14(1), p. 2; Lashyn, S., Leshchyshyn, A., Popova, M., 2023, "Civil Society as an Informal Institution in Ukraine's Judicial Reform Process", *German Law Journal*, 24(8), 1488-1502.

7. Ukraine was granted European Union (EU) candidate status on 24 June 2022 subject to the condition that seven key steps be taken.[2] On 3 February 2023, the Ukraine-EU Summit was held in Kyiv. The EU acknowledged the considerable efforts made by Ukraine in difficult times and encouraged the country over its membership application.

B. National legal framework and overview of the amendments

8. Judicial independence is guaranteed by Article 126 of the Constitution of Ukraine. At present, the rules on disciplinary offences, disciplinary proceedings, disciplinary sanctions, and integrity checks for judges are set out in the Ukrainian Law on the Judiciary and Status of Judges of 6 December 2019 (hereinafter, the LJSJ). According to its Article 108, the competent body to conduct disciplinary proceedings against a judge should be disciplinary chambers of the HCJ within the procedure established by the Law of Ukraine on the High Council of Justice of 3 October 2017 (hereinafter, the LHCJ).

9. The judicial reform process in Ukraine has undergone numerous analyses. These include rulings by the European Court of Human Rights (ECtHR), Opinions of the Venice Commission and DGI, as well as Council of Europe's reports, including those by the Group of States against Corruption (GRECO).

10. In a series of judgments since 2013, the ECtHR has identified multiple violations of the right to a fair trial in Ukraine in the context of judicial disciplinary proceedings. These include concerns about overly broad and vague definitions of disciplinary offences, such as "breach of oath", the absence of detailed interpretative guidance in law or practice, and the lack of limitation periods, all of which conflict with the principles of legal certainty and foreseeability. In *Oleksandr Volkov v. Ukraine*, the Court found four violations of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), including the absence of an impartial disciplinary body, lack of effective judicial review, procedural irregularities in parliamentary voting, and flaws in the composition of the adjudicating chamber.[3] A violation of Article 8 was also found due to the arbitrary and unforeseeable nature of the dismissal. The ECtHR called for urgent structural reform, particularly in the disciplinary system. Similar findings were made in *Kulykov and Others*[4], *Denisov*[5], and *Gumenyuk and Others*[6], which confirmed systemic deficiencies in the guarantees of judicial independence and procedural safeguards. During its last examination of the group of cases at its 1492nd Human Rights meeting (12–14 March 2024), the Committee of Ministers of the Council of Europe acknowledged the

[2] The European Commission recommended "that Ukraine be granted candidate status, on the understanding that the following steps are taken: enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations; finalise the integrity vetting of the candidates for the High Council of Justice members by the Ethics Council and the selection of candidate to establish the High Qualification Commission of Judges of Ukraine; further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine; ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF); adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment; implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation; tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers the independent media regulator; finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission, and adopt immediate and effective implementation mechanisms." European Commission's Directorate-General for Neighbourhood and Enlargement Negotiations, Opinion on Ukraine's application for membership of the European Union, pages 20-21.

[3] ECtHR, *Oleksandr Volkov v. Ukraine*, Application no. 21722/11, 9 January 2013.

[4] ECtHR, *Kulykov and Others v. Ukraine*, Applications nos. 5114/09 and 17 others, 19 January 2017.

[5] ECtHR [GC], *Denisov v Ukraine*, Application No. 76639/11, 25 September 2018.

[6] ECtHR, *Gumenyuk and Others v Ukraine*, Application no. 11423/19, 22 July 2021.

significant reforms undertaken. At the same time, the Committee of Ministers announced its intention to review the overall execution of this group of cases in 2025, with a view to assessing the remaining steps required.[7]

11. The Venice Commission has been involved in the process of reforming the judiciary in Ukraine and has prepared many Opinions on this issue since 1997.[8] In its successive Opinions, the Venice Commission, together with DGI, has provided comprehensive guidance on judicial reform in Ukraine. In its 2019 Opinion, the Venice Commission welcomed some structural reforms but raised serious concerns about the sequencing of changes, the politicisation of judicial appointments, and the reduction in the number of Supreme Court judges, warning that these measures risk undermining judicial independence and public confidence in the judiciary.[9] It also recommended revising aspects of the disciplinary framework, notably limiting excessive remedies and re-establishing appropriate procedural deadlines. In 2020, the Commission and DGI issued recommendations on the relaunching of the HQCJ, assessed the attribution of additional competences to the HCJ, and addressed issues related to disciplinary proceedings.[10] In 2021, they welcomed draft legislation subjecting the HCJ to a vetting procedure involving international experts and assessed the activities of disciplinary inspectors of the HCJ.[11] More recently, the Commission and DGI raised concerns over a draft law proposing court monitoring and lie detector tests as anti-corruption measures, warning that such provisions were premature, overly broad, insufficiently safeguarded, and posed risks to judicial independence.[12] Throughout these Opinions, the Venice Commission and DGI have consistently urged the authorities to ensure that reforms are implemented through a holistic, coherent, and stable approach.

12. In its fourth evaluation round on corruption prevention in respect of members of parliament, judges and prosecutors, GRECO recommended defining disciplinary offences relating to judges' conduct more precisely, including by replacing the reference to "norms of judicial ethics and standards of conduct which ensure public trust in court" with clear and specific offences.[13] While GRECO welcomed the inclusion of a catalogue of disciplinary offences in Article 106 LJSJ, as amended in 2016, it expressed concern that these provisions continue to rely on vague and imprecise language, such as references to conduct "which disgraces the status of judge" or to breaches of judicial ethics. In its last compliance report, GRECO has found that this recommendation has been partly implemented, welcoming efforts by the HCJ to compile disciplinary case-law and the proposals for legislative reform, as well as measures set out under the 2023–2025 State Anti-Corruption Programme to clarify grounds for judicial liability and improve disciplinary procedures.[14] Nevertheless, GRECO still notes that these reforms remain in progress and that further efforts will be required to fully meet the recommendation.

13. In the October 2024 Report on Ukraine, the European Commission stated that "Ukraine has some level of preparation in the functioning of the judiciary. […] The High Qualification

[7] Committee of Ministers of the Council of Europe, CM/Del/Dec(2024)1492/H46-38, Oleksandr Volkov group v. Ukraine.
[8] See Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, CDL-AD(2021)018, Ukraine - Urgent joint opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068), para. 7.
[9] Venice Commission, CDL-AD(2019)027, Ukraine - Opinion on the Legal framework in Ukraine governing the Supreme Court and judicial self-governing bodies.
[10] Venice Commission and DGI, CDL-AD(2020)022, Ukraine - Joint Opinion on the draft amendments to the Law 'on the Judiciary and the Status of Judges' and certain Laws on the activities of the Supreme Court and Judicial Authorities (draft Law no. 3711).
[11] Venice Commission and DGI, CDL-AD(2021)018, *op. cit.*
[12] Venice Commission and DGI, CDL-AD(2023)027, Ukraine - Joint Follow-up Opinion to the joint opinion on the draft amendments to the Law "On the Judiciary and the Status of Judges" and Certain Laws on the Activities of the Supreme Court and Judicial Authorities.
[13] GRECO, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, Ukraine, Evaluation Report, 8 August 2017, para. 183.
[14] GRECO, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, Ukraine, Addendum to the Second Compliance Report, 20 February 2025, paras 82 *et seq*.

Commission of Judges (HQCJ) resumed the selection of ordinary judges on the basis of legislation that was improved in December 2023. It also restarted the process of qualification evaluation (vetting) for sitting judges with the involvement of the Public Integrity Council (PIC). A transparent selection of the management and staff of the Service of Disciplinary Inspectors continued. One new member of the High Council of Justice (HCJ) was elected."[15] At the same time, improvement is expected in terms of strengthened disciplinary proceedings, by ensuring consistent application of prioritisation rules, clearer definitions of judicial misconduct, and greater uniformity in HCJ decisions. In parallel, the system of integrity declarations should be revised through legislation introducing independent verification mechanisms, particularly for Supreme Court judges, alongside enhanced asset and lifestyle monitoring.[16]

14. The scope of asset disclosure in Ukraine has been found to be in line with international standards, as confirmed by the recent OECD's Istanbul Anti-Corruption Action Plan 5th Round of Monitoring follow-up report.[17] The OECD also noted that "Ukraine has set a high bar for advanced asset and interest disclosure in the region."[18] The World Bank commended the Ukrainian system that "made it stand out as one of the most promising asset and interest disclosure systems around the world."[19]

15. The Joint Opinion encompasses three draft laws, out of which two are versions of the same law: the "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Disciplinary and other Procedures" (No. 13137 of 26 March 2025 and 13137-1 of 7 April 2025). The scope of the amendments include the grounds for bringing judges to disciplinary liability, the disciplinary sanctions that may be applied to judges, mechanisms to prevent the abuse of the right to file disciplinary complaints, the temporary suspension of a judge from the administration of justice in connection with disciplinary proceedings, the legal status of court ruling stablishing disciplinary violations, as well as the entry into force of a decision to bring a judge to disciplinary liability. The amendments also propose modifying the voting procedures at the HCJ for the appointment of a judge to office.

16. These draft laws are aimed at reinforcing the independence, integrity, and accountability of the judiciary and justice sector institutions in Ukraine. Since the adoption of the LJSJ of 2 June 2016, Section VI on disciplinary liability has not undergone substantive revision. According to the explanatory note, nearly a decade of application has revealed deficiencies in legal clarity, fairness, and effectiveness. Concerns persist over vaguely defined grounds for disciplinary responsibility and the potential for unfounded proceedings against judges. The draft laws attempt to address these concerns by revising disciplinary procedures for judges, addressing legislative gaps, and ensuring clearer mechanisms for the review of court rulings that may involve misconduct. The main difference between the alternatives No. 13137 and No. 13137-1 is that the latter excludes from Article 109 LJSJ the disciplinary sanction consisting in transferring a judge to a lower court.

17. According to the statistics provided by the HCJ, between 2020 and the first half of 2025, the Disciplinary Chambers of the HCJ received 43,611 disciplinary complaints and have completed the review of 36,587 of these complaints. Based on the results of the review of disciplinary complaints (including disciplinary cases open in previous periods), the Disciplinary Chambers of the HCJ have left 1,155 complaints without consideration and returned them; refused to open disciplinary proceedings in 2,200 cases; and adopted a total of 1,067 decisions to initiate disciplinary proceedings against judges (representing between 11% and 33% of the annual complaints received). These proceedings resulted in 430 judges being held disciplinarily liable,

[15] European Commission, 2024, Report on Ukraine, page 5.
[16] *Ibid,* page 30.
[17] OECD, 2025, Ukraine Fifth Round of Anti-Corruption Monitoring Follow-Up Report: The Istanbul Anti-Corruption Action Plan.
[18] OECD, 2020, Anti-corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2016-2019, page 99.
[19] World Bank, 2021, Reform of Asset and Interest Disclosure in Ukraine, page 237.

yielding a cumulative liability rate of approximately 37.2% of the open disciplinary cases. The sanctions imposed during this period included 206 warnings, 73 reprimands, 52 severe reprimands, 10 motions for temporary suspension from the administration of justice, and 90 motions for dismissal from office.

18. Thirdly, the Opinion examines the "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Declarations of Integrity of Judges and Judges' Family Relations" (No. 13165-2 of 25 April 2025). The proposed amendments affect the statements included in the declaration of integrity and family ties of a judge, expanding the content of such declarations, and formalising the rules governing their verification. According to the authorities, this draft law complements broader reforms to strengthen judicial accountability by setting clearer requirements and procedures for verifying judges' declarations of integrity and family ties.

C. International standards

19. Setting an appropriate balance between judicial independence and judicial accountability is a crucial feature of any judicial system. It is essential for the judiciary's effective functioning with regards to protecting democracy, the rule of law, and human rights, as well as for the public confidence in courts. Judicial disciplinary liability forms a major part of the punitive accountability of judges, which is a corollary of society granting extensive powers to the judiciary.[20] Nonetheless, there is an inherent risk of abusing mechanisms of disciplining judges as their employment may be driven by attempts to harass or punish certain judges for legitimate exercise of their professional activities.[21]

20. Judicial integrity and accountability are indispensable pillars of the rule of law, ensuring that courts retain both the confidence of the public and the legitimacy of their decisions. As the ECtHR has consistently underlined, "justice must not only be done, it must also be seen to be done", since perceptions of bias or lack of probity undermine the very essence of a fair trial under Article 6 ECHR.[22] The Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities also highlights that respect by judges of ethical requirements is a duty which comes with their powers.[23]

21. When it comes to disciplinary procedures against judges, the ECtHR regularly applies the fair trial requirements stemming from Article 6 ECHR. The Court regards as falling within the scope of Article 6(1) proceedings which, in domestic law, come under "public law" and whose result is decisive for private rights and obligations. In the light of its case-law, the Court has declared Article 6(1) to be applicable to proceedings regarding the unfair dismissal of several public servants, including disciplinary proceedings against a judge. In this regard, the ECtHR has stressed the importance of an appropriate framework for independent and impartial review.[24]

22. As regards in particular measures interfering with the right to respect for judges' private or family life, it is noted that such measures may be in breach of Article 8 ECHR, unless they can be justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order

[20] Consultative Council of European Judges (CCJE), 2015, Opinion no. 18, The position of the judiciary and its relation with the other powers of state in a modern democracy, para. 33.
[21] Report of the UN Special Rapporteur on the independence of judges and lawyers, 2020, A/75/172: Disciplinary measures against judges and the use of 'disguised' sanctions.
[22] See e.g., ECtHR, *De Cubber v. Belgium,* Application no. 9186/80, 26 October 1984, para. 26: *Micallef v. Malta,* Application No. 17056/06, 15 October 2009, para. 98; *Oleksandr Volkov v. Ukraine,* Application no. 21722/11, 9 January 2013, para. 106. See also Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, para. 89.
[23] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2010)12 to member states on judges: independence, efficiency and responsibilities, Explanatory Memorandum, para. 69.
[24] ECtHR, *Oleksandr Volkov v. Ukraine*, Application no. 21722/11, 9 January 2013, para. 184.

to achieve the aim or aims concerned.[25] Under the ECtHR's case-law in these cases, "domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention […] The law must, moreover, afford a degree of legal protection against arbitrary interference by the authorities. The existence of specific procedural safeguards is material in this context. What is required by way of safeguard will depend, to some extent at least, on the nature and extent of the interference in question."[26]

23. Several decisions of the ECtHR on disciplinary procedures for judges also establish an infringement of the right to an effective remedy (Article 13 ECHR). Article 13 secures the granting of an effective remedy before a competent national authority to everyone whose rights and freedoms as set forth in the ECHR have been violated. In accordance with the application of Article 13 ECHR, protection afforded by this article does not go so far as to require any particular form of remedy, in view of the margin of appreciation afforded to Contracting States. A non-judicial body under domestic law may be qualified as a "court", in the substantive sense of the term, if it quite clearly performs judicial functions.[27]

24. The Committee of Ministers of the Council of Europe addresses disciplinary liability of judges in Recommendation (2010)12, paras 66-71, stating that "disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate."[28] Judges shall not incur civil, disciplinary, or criminal liability for their interpretation of the law, assessment of facts, or weighing of evidence when adjudicating cases, except in instances of malice or, in the case of civil and disciplinary liability, gross negligence.[29] Likewise, judicial decisions that are overturned or amended on appeal shall not in themselves give rise to personal accountability.[30]

25. The European Charter on the Statute for Judges states in its para. 5.1 that "[t]he dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction as envisaged herein, is open to an appeal to a higher judicial authority." Furthermore, para. 5.3. adds that "[e]ach individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body. This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference."

26. According to the CCJE, "[g]rounds for disciplinary liability of judges must refer to judicial conduct that contradicts one of the basic values enshrined in the Convention: independence,

[25] ECtHR, *Ovcharenko and Kolos v. Ukraine*, Applications nos. 27276/15 and 33692/15, 12 January 2023, paras 91 *et seq*. See also Venice Commission and DGI, CDL-AD(2023)027, *op. cit.*, para. 34.
[26] ECtHR, *Ovcharenko and Kolos v. Ukraine*, Applications nos. 27276/15 and 33692/15, 12 January 2023, para. 94.
[27] ECtHR, *Oleksandr Volkov v. Ukraine*, Application no. 21722/11, 9 January 2013, paras 88-91.
[28] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2010)12, *op. cit.*,, para. 69.
[29] *Ibid,* para. 66.
[30] *Ibid,* para. 70.

impartiality, propriety, integrity, equality, non-discrimination, competence and diligence."[31] The CCJE also cautions against justifying grounds of disciplinary liability of judges by reference to the reputation of the judiciary, except when it is intended to refer to the authority of and public confidence in the judiciary.

27. In Opinion No. 21 (2018) on preventing corruption among judges, the CCJE considers that a robust system for declaring assets can contribute to the identification and subsequent avoidance of conflicts of interests if relevant steps are taken, and thereby leading towards more transparency and judicial integrity. It warns, however, to the need of proportionality, in order to guarantee the judge's right to privacy and the right to privacy of their family members, and to the fact that "in the many member states where corruption has not been an issue", the implementation of an obligation of systematic asset declaration may have as consequence that "suitable candidates for a judge's post might refrain from applying because they see such a far reaching obligation as an unjustified intrusion into their private lives."[32] The CCJE also recommends that disclosure to stakeholders outside the judiciary should only be done on demand, and only if a legitimate interest is credibly shown and confidential information should never be divulged, and that the privacy of third parties, such as family members, should be protected even more strongly than that of the judges.

28. The Venice Commission has also formulated a set of standards addressing both substantive and procedural aspects of disciplinary accountability of judges, guided, *inter alia*, by the case law of the ECtHR and other Council of Europe's reference documents. The Venice Commission's Rule of Law Checklist affirms that judicial independence requires that the judiciary be free from external pressure, in particular political influence or manipulation by the executive or the legislature.[33] The independence of individual judges must also be ensured, which excludes both influence from the legislative and executive powers as well as supervision by their colleague-judges.[34] As concerns disciplinary proceedings, offences leading to disciplinary sanctions and their legal consequences should be set out clearly in law, and the disciplinary system should respect procedural fairness, including the right to a fair hearing and the possibility of appeal.[35]

29. In its (Joint) Opinions, the Venice Commission emphasises that disciplinary liability of judges should only follow as a result of a violation of a (sufficiently precise) duty expressly defined by law, the existence of fair trial safeguards including full hearing of the parties and representation of the judge, pre-defined proportional sanctions, and a right to appeal to a higher judicial authority.[36] Simultaneously, the Venice Commission has acknowledged a significant variety in the conception and design of judicial disciplinary accountability across countries.[37] Accordingly, it is necessary to perceive disciplinary systems in context, considering constitutional history of the country but also more recent developments and specific challenges to judicial authority and integrity.

[31] CCJE, 2024, Opinion n° 27 on the disciplinary liability of judges, para. 32. The CCJE had previously delt extensively with disciplinary liability in its Opinion No. 3: CCJE, 2002, on ethics and liability of judges, paras 58 *et seq*.
[32] CCJE, 2018, Opinion n° 21 on preventing corruption among judges.
[33] Venice Commission, CDL-AD(2016)007, *op. cit.*, paras 74 *et seq*.
[34] *Ibid*, paras 86-87.
[35] *Ibid*, para. 78.
[36] Venice Commission, the Directorate of Human Rights (DHR) of DGI and of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), CDL-AD(2014)006, Republic of Moldova - Joint opinion on the draft law on disciplinary liability of judges, para. 12; Venice Commission, CDL-AD(2016)009, Albania - Final Opinion on the revised draft constitutional amendments on the Judiciary, para. 34.
[37] Venice Commission and OSCE/ODIHR, CDL-AD(2014)018, Kyrgyz Republic - Joint opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges, para. 23.

30. The Venice Commission and DGI have also stressed that full asset disclosure has proved a valuable weapon in combating corruption.[38] Whereas countries have in principle broad discretion in the regulation of asset and other kinds of declarations, the Venice Commission and DGI have been wary of rules which exempt judges from the general legal regime and repeatedly warned about the risk of judicial corporatism, cronyism and self-protection amongst judges.[39] Nevertheless, the Venice Commission and DGI have also found that "[t]he judge cannot be required to explain every single expenditure he or she might incur, but only those which are clearly out of proportion to his or her official income. Moreover, it is important that the requirements to the content of the declarations are reasonable, that they do not put an impossible obligation on the judges and on their close relatives, and do not expose their private lives more than necessary for preventing corruption."[40]

D. Scope of the Opinion

31. The current Opinion focuses on the scope of the amendments under the draft laws "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Disciplinary and other Procedures" (Nos. 13137 and 13137-1, of 26 March 2025 and 7 April 2025 respectively) and "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Declarations of Integrity of Judges and Judges' Family Relations" (No. 13165-2 of 25 April 2025). During the online meetings, the delegation of the Venice Commission and DGI was informed that the draft amendments on improving declarations of integrity of judges and judges' family relations under examination (No. 13165-2) were an alternative to the draft law initially proposed by the Ministry of Justice on 9 April 2025. In contrast to the amendments under examination (i.e., No. 13165-2), the initial package included an integrity declaration verification process of Supreme Court justices with the potential involvement of international experts. Several interlocutors argued that a key issue in the judicial reform in Ukraine was, in fact, the integrity of the judges at the Supreme Court, and that the proposal by the Ministry of Justice was aimed at addressing this shortcoming. Having listened to all interlocutors, the Venice Commission and DGI understand that the judges at the Supreme Court are a priority and that, in the Ukrainian context, it could also be useful to have international experts (temporarily) involved in this process, as it has outlined for other issues in previous Opinions.[41] Nevertheless, the Venice Commission and DGI's assessment is defined by the scope of the present request.

32. The absence of comments on other provisions of the laws or the drafts should not be seen as tacit approval of these provisions.

III. Analysis

A. General remarks: judicial reforms and the need for a stable judicial system

33. As in previous cases, the Venice Commission and DGI deplore that there is no holistic approach to the reform of the judiciary in Ukraine.[42] The judicial system of Ukraine has been

[38] Venice Commission, CDL-AD(2014)008, Bosnia and Herzegovina - Opinion on the draft Law on the High Judicial and Prosecutorial Council, para. 120; Venice Commission and DGI, CDL-AD(2019)024, Armenia - Joint Opinion of the, on the amendments to the Judicial Code and some other Laws, para. 42.
[39] Venice Commission and DGI, CDL-AD(2020)038, Urgent Joint Opinion on the Legislative Situation regarding anti-corruption mechanisms, following Decision N° 13-R/2020 of the Constitutional Court of Ukraine, para. 53.
[40] Venice Commission and DGI, CDL-AD(2019)024, *op. cit.*, para. 42.
[41] See *inter alia* Venice Commission, CDL-AD(2017)020, Ukraine - Opinion on the Draft Law on Anticorruption Courts and on the Draft Law on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences), para. 47; Venice Commission and DGI, CDL-AD(2020)022, *op. cit.*, para. 41; Venice Commission and DGI, CDL-AD(2021)018, *op. cit.*, paras 21 *et seq*.
[42] Venice Commission, CDL-AD(2020)022, *op. cit.*, paras 6-8, 19, 69-71; Venice Commission and DGI, CDL-AD(2021)018, *op. cit.*, paras 13 *et seq.*; Venice Commission and DGI, CDL-AD(2023)027, *op. cit.*, paras *et seq*.

subject to numerous changes in recent years, frequently as a result of "a plethora of bills dealing with specific aspects, often in a rushed manner, [resulting in] a fragmentated approach."[43]

34. It is clear that an effective system of judicial discipline contributes to public confidence in the administration of justice. In light of the low trust in the judiciary, the matter deserves priority, and the Venice Commission and DGI welcome the efforts of the Ukrainian legislator to improve the system. Nevertheless, the Commission and DGI reiterate that a continuous flow of bills reforming the judiciary may be harmful for the public trust in the judiciary as an independent and impartial institution. The principle of stability and consistency of law, as a core element of the rule of law, requires stability in the judicial system.[44] While judicial reforms in Ukraine have been considered necessary in order to increase public confidence in the judicial system, persistent institutional instability where reforms follow changes in political power may also be harmful for the public trust in the judiciary as an independent and impartial institution.[45] In this regard, during the online meetings, the Rapporteurs were informed that the implementation of some of the judicial reforms undergone in recent years is rather recent or still unfinished, including those related to disciplinary procedures. In this situation, convincing justifications must be presented for yet another reform.

35. Furthermore, reforms of fundamental state institutions, such as the judiciary, should be undertaken only following proper analysis of the current situation and the possible impact of new legislation that show the necessity of the proposed changes.[46] It is necessary to "legislate with a comprehensive and coherent approach when making further changes to the framework governing the judiciary [based on a] proper analysis of the situation and [respecting] the need for a transparent and inclusive dialogue with all stakeholders when changing the legal framework."[47] Those preconditions are equally applicable to a draft law that emanates from a parliamentary group.

36. While the Venice Commission and DGI acknowledge the need to improve the provisions on disciplinary procedures against judges and on their integrity declarations and family relations, they regret that these amendments are not being adopted as part of a larger, more holistic approach.[48] Notwithstanding this, they recognise that with the legislative initiative at issue, Ukraine is attempting to implement the commitments and conditionalities it has agreed upon with the EU. The Venice Commission and DGI would, however, like to reiterate that this legislative initiative can only be successful if different stakeholders are effectively involved in the preparation of the legislative initiative and if a sound justification for the proposed amendments is given in the explanatory note to the legislative initiative.

B. Disciplinary procedures against judges

1. Grounds for disciplinary liability

a. General approach

37. Article 106 LJSJ regulates the grounds for disciplinary liability of judges, and currently contains more than twenty separate disciplinary offences. The proposed amendments now list ten disciplinary offences, albeit some with sub-headings. According to the explanatory note to draft laws nos. 13137 and 13137-1, nearly a decade of practice has demonstrated the need for

[43] Venice Commission, CDL-AD(2020)022, *op. cit.*, para. 7.
[44] Venice Commission, CDL-AD(2016)007, *op. cit.*, II.B.4.i. See also Venice Commission, CDL-AD(2019)027, *op. cit.*, para. 13.
[45] Venice Commission, CDL-AD(2019)027, *op. cit.*, para. 13.
[46] *Ibid*, para. 9.
[47] Venice Commission, CDL-AD(2020)022, *op. cit.*, para. 34. See also the documents referred to in Venice Commission, CDL-PI(2021)003, Compilation of Venice Commission opinions and reports concerning the Law making procedures and the quality of the law.
[48] Venice Commission, CDL-AD(2019)027, *op. cit.,* paras 13 *et seq.;* Venice Commission and DGI, CDL-AD(2020)022, *op. cit.,* paras 6 *et seq.;* Venice Commission and DGI, CDL-AD(2021)018, *op. cit*., paras 13 *et seq*.; and Venice Commission and DGI, CDL-AD(2023)027, paras 24 *et seq.*

revision of some of these grounds. Furthermore, statistical data provided in the explanatory report and by the HCJ support this argument.

38. Generally, the simplification of the grounds resulting in disciplinary liability of judges is a welcome step. The Venice Commission has previously highlighted the importance of clear, precise, and foreseeable definitions of the grounds for judicial disciplinary liability, complying with the rule of law requirements, and warned against the dangers of vague and incoherent provisions.[49] The latter increase the risk of overbroad interpretation, arbitrary action, and abuse which can be detrimental to judicial independence.[50] For this reason, the Venice Commission has expressed a preference for enumerating specific and detailed descriptions of grounds for disciplinary liability in an exhaustive list.[51] However, it has also recognised that a more general formula for judicial misconduct may be acceptable under certain conditions.[52]

39. Articles 106(1)(1), 106(1)(4), and 106(2) LJSJ specify that disciplinary liability may only result from acts committed *intentionally or with gross negligence.* This is welcome, as the Venice Commission has repeatedly stated that only failures performed intentionally or with gross negligence should give rise to disciplinary actions.[53] In this regard, a judge must not face disciplinary liability because of *bona fide* errors or simply for disagreeing, in good faith, with a particular interpretation of the law preferred by the executive, the legislative, or other non-judicial entities. However, this provision is not applicable to all disciplinary grounds listed in Article 106 LJSJ. For example, Article 106(1)(2), as it will be discussed below, refers more broadly to "unreasonable delays." Therefore, and in line with international standards, the Venice Commission and DGI recommend broadening the scope of intent and/or gross negligence to all the disciplinary grounds mentioned in Article 106 LJSJ.

40. Pursuant to Articles 106(3) to 106(9) LJSJ, a system which distinguishes between minor, serious, and substantial disciplinary offences is introduced. According to the explanatory note, this system aims to ensure that less severe offences are also sanctioned with less severe penalties. The Venice Commission and DGI find this aim commendable. Nevertheless, the regime introduced by the amendments is imprecise, thereby diminishing the foreseeability of the classification and, by extension, undermining legal certainty. In particular, the negative consequences of a judge's disciplinary offence are not defined in the statutory regulations but are to be determined in accordance with the criteria approved by the HJC (Article 106(9) LJSJ). As it will be discussed in paras 60 and 61 below, clarifying the requirement of proportionality when imposing a sanction, pursuant to Article 109(2) LJSJ, should suffice.

b. Examination of specific grounds

41. It is appropriate to examine the substantive elements concerning the grounds giving rise to disciplinary liability. From the outset, it is worth highlighting that several disciplinary offences

[49] Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.*, para. 23; Venice Commission, CDL-AD(2024)004, Bulgaria - Joint Opinion on The Code of Ethical Conduct for Judges, para. 18. See also CCJE, 2024, Opinion no. 27, para. 27.
[50] Venice Commission, CDL-AD(2016)013, Republic of Kazakhstan - Opinion on the Draft Code of Judicial Ethic, para. 24.
[51] Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.*, para. 15; Venice Commission, CDL-AD(2014)008, *op. cit.*, para. 90; Venice Commission, CDL-AD(2015)042, North Macedonia - Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "The Former Yugoslav Republic of Macedonia", para. 16; Venice Commission, CDL-AD(2016)013, *op. cit.*, para. 27; Venice Commission, CDL-AD(2018)032, Kazakhstan - Opinion on the Concept Paper on the reform of the High Judicial Council, para. 78.
[52] Venice Commission, CDL-AD(2015)042, *op cit.*, para. 16; Venice Commission, CDL-AD(2017)018, Bulgaria - on the Judicial System Act, para. 108; Venice Commission and DGI, CDL-AD(2023)015, France - Joint Opinion on the Superior Council of Magistracy and the Status of the Judiciary as Regards Nominations, Mutations, Promotions and Disciplinary Procedures, para. 56. See also ECtHR, *Oleksandr Volkov v. Ukraine*, Application no. 21722/11, 9 January 2013, paras 175 *et seq*.
[53] Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.*, paras 19 and 35. See also Venice Commission and OSCE/ODIHR, CDL-AD(2014)018, *op. cit.*, para. 32; Venice Commission, CDL-AD(2015)042, *op. cit.*, para. 31; Venice Commission, CDL-AD(2016)013, *op cit.*, para. 28.

consider judges' decision-making, including the interpretation and application of law, i.e. the core of their function highly protected by judicial independence standards. For example, pursuant to Article 106(1)(1)(b) LJSJ, judges may be found liable as a result of their "failure to specify in a court decision the reasons for sustaining or rejecting the substantive arguments of the parties to the case regarding the merits of a dispute, contrary to the rules of procedural law." According to Article 106(1)(4) LJSJ, judges are liable for "intentional or grossly negligent violation of human rights and fundamental freedoms or other gross violation of the law by a judge who participated in the adoption of a court decision, which led to an arbitrary court decision or other significant negative consequences." Likewise, judges may be found liable after a court decision in whose adoption they participated is cancelled or amended as a result of intentional violation of the law, crime or gross negligence (Article 106(2) LJSJ).

42. The Venice Commission and DGI question whether these matters should constitute grounds for disciplinary liability, given that such issues are ordinarily addressed through appellate or cassation proceedings where higher courts may annul a lower court's decision for failing to adequately consider arguments duly raised by the parties. According to the Recommendation of the Committee of Ministers, "[a] judge's decision, including the interpretation of the law, assessment of facts or weighing of evidence and/or departing from established case law, must not give rise to disciplinary liability, except in cases of malice, wilful default or serious misconduct."[54] Even when liability in these cases may be subject to bad faith intent or gross negligence, it should be borne in mind that disciplinary proceedings "should never extend to differences in legal interpretation of the law or judicial mistakes."[55] Therefore, the Venice Commission and DGI recommend limiting the disciplinary liability for the grounds related to the arbitrary interpretation of the law and/or breaches of procedural law in Articles 106(1)(1)(b), 106(1)(4), and 106(2) LJSJ to cases in which they are committed by the judge with intention or gross negligence.

43. Second, some of the grounds for disciplinary liability are described with excessively vague and overly broad terms. This is the case, for example, of Article 106(1)(1)(a) LJSJ, which refers to "other substantial violation of the norms of procedural law during the administration of justice." Likewise, Article 106(1)(3)(d) LJSJ includes "other public actions that do not constitute a crime or criminal offence, if they have caused damage to legally protected human and civil rights and freedoms or violated public safety and public order." The above-mentioned Article 106(1)(4) LJSJ refers broadly to "other significant negative consequences." These provisions are extremely broad and can be interpreted sanctioning any judicial act, even those not prohibited by law. This has the potential to have a chilling effect on the independence of judges.[56]

44. Due to the closeness of disciplinary proceedings against judges with criminal proceedings, the criminal procedure principles of foreseeability of statutory offences and of their narrow interpretation also apply *mutatis mutandis* to disciplinary proceedings.[57] The Venice Commission recalls that under its Rule of Law Checklist, a law has to *be inter alia* clear and predictable[58] (or, in the words of the ECtHR, "foreseeable as to its effects"[59]). Therefore, and as stated above, it is preferrable to enumerate specific and detailed descriptions of grounds for disciplinary liability in

[54] Committee of Ministers, Recommendation CM/Rec(2010)12, *op. cit.*, para. 66. See also CCJE, 2024, Opinion no. 27, para. 28.
[55] Venice Commission and OSCE/ODIHR, CDL-AD(2011)012, Kazakhstan - Joint Opinion on the constitutional law on the judicial system and status of judges, para. 60. See also Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.*, para. 22; Venice Commission, CDL-AD(2015)042, *op. cit.*, para. 44; Venice Commission, CDL-AD(2015)042, *op. cit.,* para. 43; Venice Commission, CDL-AD(2016)013, *op. cit.,* para. 53; Venice Commission, CDL-AD(2018)022, North Macedonia - Opinion on the law amending the law on the Judicial Council and on the law amending the law on Courts, paras 69-70; Venice Commission, CDL-AD(2018)033, North Macedonia - Opinion on the draft law amending the law on Courts, paras 53-54.
[56] Venice Commission, CDL-AD(2015)042, *op. cit.*, para. 42.
[57] Venice Commission, CDL-AD(2014)039, Republic of Moldova - *Amicus Curiae* Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing, para. 63.
[58] Venice Commission, CDL-AD(2016)007, *op. cit.*, para. 36.
[59] ECtHR [GC], *Sanchez v. France*, Application no. 45581/15, 15 May 2023, para. 124.

an exhaustive list, avoiding to the extent possible general formulas for judicial misconduct. It is therefore recommended to amend the above-mentioned provisions in this regard.

45. Furthermore, the fact that liability under Article 106(1)(4) LJSJ arises from the judge's *mere* participation in the adoption of a court decision may hamper the adequate assessment when judges sit and decide in panels by secret voting, as it may be challenging to assign particular responsibility to each of the judges, unless they issue a dissenting ruling. Limiting disciplinary liability to instances of intentional or grossly negligent violations of human rights and fundamental freedoms as proposed above will address this issue.

46. Pursuant to Article 106(1)(1)(d) LJSJ, disciplinary proceedings may result from the "violation of the rules for recusal (self-recusal)." The obligation to recuse oneself must be based on clearly defined legal criteria. A judge's decision not to withdraw from a case should give rise to disciplinary liability only where there exists an evident and legally established ground for recusal. Such a decision should be considered a very serious offence only in cases where the failure to withdraw is manifestly unjustified, and not where it results from the judge's good faith interpretation of the applicable legal provisions.[60] In any event, parties to the proceedings should retain the right to challenge the impartiality of the judge. For this reason, the Venice Commission and DGI recommend limiting disciplinary liability in such cases to instances committed in bad faith and/or with intent to benefit or harm a party at the proceeding, in order to reduce the risk of misuse.

47. Pursuant to Article 106(1)(2) LJSJ, judges may incur disciplinary liability for unreasonable and prolonged delays in taking measures to consider an application, complaint or case within the time limit established by law, or in issuing a reasoned court decision. This ground for disciplinary liability ought to be approached with caution. The CCJE has emphasised that any systemic backlog of cases must not be interpreted as amounting to serious misconduct of a judge.[61] Whether a judge is able to conduct proceedings (or certain procedural acts during those proceedings) in a timely fashion is dependent on their overall workload, the adequacy of support staff and/or IT facilities, and the procedural behaviour of the parties to the proceedings. An individual judge should not become the victim of structural deficiencies (including ones of a budgetary nature) within the judiciary as a body. This is especially pertinent in the context of Ukraine, where academic sources have identified excessive caseloads and heavy judicial workloads as primary challenges within the judiciary.[62] These difficulties are further exacerbated by the significant number of vacant judicial positions across all levels of the Ukrainian court system and by various objective factors that may hinder judges' ability to comply with statutory time limits. Moreover, ongoing armed conflict in several regions of Ukraine presents extraordinary circumstances that must be taken into account.

48. During online consultations and subsequent written exchanges, the HCJ informed the delegation that the mere violation of the time limits cannot be a ground for bringing a judge to disciplinary liability. Relevant factors to determine such liability may include the timeliness of case allocation, the scheduling and conduct of hearings, the validity of adjournments or breaks, and the adequacy of case preparation. Consideration is also given to the judge's supervision of court staff, the promptness of procedural steps, and the response of other state authorities to court requests. Additional factors may comprise the complexity of the case, the judge's workload, and the procedural behaviour of the parties. Despite these factors being taken into account by the HCJ, this provision as currently formulated poses a risk of holding individual judges accountable for systemic deficiencies within the justice system. Therefore, the Venice Commission and DGI recommend giving more precision to this ground for disciplinary liability taking due account of the objective criteria considered by the HCJ.

[60] Venice Commission, CDL-AD(2014)038, Montenegro - Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council, para. 65; Venice Commission, CDL-AD(2018)033, *op. cit.*, para. 38.
[61] CCJE, 2024, Opinion no. 27, fn. 31. See also Venice Commission, CDL-AD(2015)042, *op. cit.*, para. 18. Venice Commission, CDL-AD(2018)033, *op. cit.,* para. 57; Venice Commission, CDL-AD(2017)018, *op. cit.*, para. 106.
[62] Reznik *et al*., *op. cit.*, p. 6.

49. Pursuant to Article 106(1)(3) LJSJ, judges may be found liable if their conduct "disgraces a status of judge or undermines the authority of justice." The Article then lists five instances of such conduct, without specifying whether this list is exhaustive. On the one hand, the kinds of behaviours listed span from committing domestic or gender-based violence (Article 106(1)(3)(d)) or driving a vehicle under the influence of alcohol, drugs, or other intoxicating substances (Article 106(1)(3)(d)), to inconsistency between the judge's lifestyle and their status (Article 106(1)(3)(a)), and include using the status of a judge to illegally obtain material benefits or other advantages (Article 106(1)(3)(b)) and displaying gross disrespect toward other judges, lawyers, participants in the judicial process or persons present in the courtroom (Article 106(1)(3)(e)), to name just a few examples.

50. The legislator should remain cognisant of the distinction between disciplinary liability and other, less serious breaches of judicial ethical standards. The principal function of ethical standards is to offer guidance to judges in maintaining conduct that reflects the highest ethical ideals, both in their professional and private lives, thereby fostering public confidence in the judiciary. Given their aspirational nature, such standards are frequently articulated in broad and imprecise terms, rendering them unsuitable for direct application within the context of disciplinary proceedings.[63]

51. In this regard, the reference in Article 106(1)(3)(a) LJSJ to a "judge's lifestyle" is too vague as there can never be any official definition about what the adequate lifestyle of a judge should be.[64] Furthermore, the provisions under Article 106(1)(3)(a) LJSJ also include the expenditure by members of the judge's family members. This provision raises two issues. First, it is not defined which family members fall under this clause. More important, and as already stated by the Venice Commission, a judge should not be penalised for misbehaviours by members of their family over which they have no control.[65] Therefore, the Venice Commission and DGI recommend narrowing down the scope of the disciplinary grounds under Article 106(1)(3) LJSJ.

52. The thresholds in Article 106(5) LJSJ for misconduct related to personal integrity and property pursuant to Article 106(1)(3)(a) also seem excessively high, taking into account the relatively low official minimum subsistence level and the average monthly salary in Ukraine, and should be revisited.[66] Furthermore, the proposal in Article 106(1)(3)(c) LJSJ that the misconduct of failure to confirm the lawfulness of the source of property should apply only to the property acquired after the appointment to a judicial office seems questionable.

53. Lastly, pursuant to Article 106(1)(7) LJSJ, a judge may be found liable for interfering with the process of administrating justice by other judges. Given the fact that *bona fide* consultations between peers about work-related issues are common and welcome in the sense of knowledge-sharing, the Venice Commission and DGI recommend specifying that disciplinary liability may only arise when such influence is *undue*.

---

[63] Venice Commission and DGI, CDL-AD(2024)004, *op. cit*., para. 16. In a similar vein, see Venice Commission, CDL-AD(2013)035, Republic of Tajikistan - Opinion on the draft Code on Judicial Ethics of the, paras 8, 12 *et seq.*, 30-31; Venice Commission, CDL-AD(2014)018, *op. cit.*, paras 25-27; Venice Commission, CDL-AD(2018)033, *op. cit.*, para. 58; Venice Commission, CDL-AD(2015)042, *op. cit.*, para. 32; and Venice Commission, CDL-AD(2016)013, *op. cit.*, paras 6 and 7.

[64] Venice Commission and OSCE/ODIHR, CDL-AD(2014)018, *op. cit.*, para. 29; Venice Commission, CDL-AD(2015)042, *op. cit.*, para. 35; Venice Commission and DGI, CDL-AD(2023)032, Republic of Moldova - Joint Opinion on the Draft Law on the Anti-Corruption Judicial System and on Amending Some Normative Acts, para. 71.

[65] Venice Commission, CDL-AD(2015)008, Ukraine - Preliminary Opinion on the Draft Law on amending the Law on the Judicial System and the Status of Judges, para. 56.

[66] Pursuant to Articles 106(1)(3)(a) and 106(5) LJSJ, disciplinary liability on judges for misconduct related to the amount of the relevant expenses, property, material benefits, other benefits or non-compliance is between 100 and 500 times the subsistence minimum for able-bodied persons established by the law of Ukraine on State Budget as of 1 January of the current calendar year set by law (Article 106(5)(1) LJSJ), whereas they are considered substantial disciplinary offences if they exceed 500 times the subsistence minimum for able-bodied person (Article 106(8)(1) of the same Law).

54. Further provisions on disciplinary breaches related to asset and integrity declarations, as well as on family relations, pursuant to Articles 106(1)(9) and 106(1)(10) LJSJ, will be examined below.

2. Sanctions

55. Pursuant to Article 109 LJSJ, sanctions include, for minor disciplinary offences, admonition, reprimand (with deprivation of the right to receive bonuses to judicial salary for one month), and serious reprimand (with deprivation of the right to receive bonuses to judicial salary for three months); for serious offences, financial penalties, including with deprivation of the right to receive additional payments to the judge's salary, and transfers to a lower court, also including the above-mentioned deprivation of the right to receive additional payments to the judge's salary (the latter sanctions only in one of the two alternative drafts); and, for substantial offences, dismissal. Financial penalties for serious offences can represent from 25% of the monthly judicial remuneration to 100%, in case of severe financial penalties. The deprivation of the right to receive additional payments to the judge's salary in case of a serious offence can last either six or nine months in case a financial penalty is imposed, also respectively depending on the severity, and one year in case of demotions.[67] Additionally, pursuant to Article 109(3) LJSJ, compulsory additional training may be imposed on a judge who is found liable for a disciplinary offence under Article 106(1)(1) LJSJ.

56. From the outset, the Venice Commission and DGI underline that, according to international standards, sanctions for disciplinary offences may entail "a warning, reprimand, appropriate fine, reassignment, suspension from office, early (compulsory) retirement and dismissal."[68] In this regard, three kinds of sanctions deserve particular attention. The first one is the financial penalties under Article 109(1)(2) LJSJ. The Venice Commission has not been fundamentally opposed to this kind of sanction.[69] However, the amendments do not specify under what circumstances severe financial penalties may be imposed. Given the broad range of grounds that may give rise to liability for serious disciplinary offences, the Venice Commission and DGI recommend clarifying which offences correspond to which types of financial penalties, for example by reserving severe penalties for intentional disciplinary breaches.

57. The second kind of sanction that merits discussion is the transfer of a judge to a lower court, pursuant to Article 109(1)(2)(c) LJSJ. This, in fact, constitutes the sole distinction between draft laws Nos. 13137 and 13137-1. The Venice Commission has been fairly critical in respect of such a sanction, but noted that "[t]ransfers against the will of the judge may be permissible only in exceptional cases."[70] Likewise, the CCJE takes the position that a demotion can only be justified in cases of serious judicial misconduct.[71] Therefore, the Venice Commission and DGI do not see a need of repealing such a disciplinary sanction as long as it remains only applicable to serious disciplinary offences.

58. The third kind of sanction that ought to be examined is the referral of the judge to the National School of Judges of Ukraine (Article 109(3) LJSJ). While continuing judicial training is essential

[67] In this case, the sanction amounts not to a deprivation of salary (see Venice Commission, CDL-AD(2022)010, Georgia - Opinion on the December 2021 amendments to the organic Law on Common Courts, para. 52; Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.*, paras 41; and Venice Commission and OSCE/ODIHR, CDL-AD(2011)012, *op. cit.*, para. 54; but more recently: CCJE, 2024, Opinion no. 27, para. 40), but to a deprivation of bonuses to the judicial salary and other payments in addition to the judicial salary.
[68] CCJE, 2024, Opinion no. 27, para. 40.
[69] Venice Commission, CDL-AD(2024)012, Montenegro – Urgent Follow-up Opinion on the revised draft amendments to the Law on the Judicial Council and Judges, paras 38 and 39.
[70] Venice Commission, CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, para. 43. See also Venice Commission, CDL-AD(2016)007, *op. cit.,* para. 80; CDL-AD(2025)021, Chile - Opinion on the draft Constitutional amendments in respect of the judiciary, para. 54.
[71] CCJE, 2024, Opinion no. 27, para. 40. See also CCJE, 2001, Opinion no. 1 on standards concerning the independence of the judiciary and the irremovability of judges, para. 60(a).

for maintaining professional standards and should be strongly encouraged, its use as a disciplinary sanction raises concerns. Framing a training referral as a punitive measure risks undermining the fundamental purpose of judicial education, which is to support professional development rather than to serve as a form of reprimand. The Venice Commission and DGI therefore recommend repealing training as a form of sanction.

59. Lastly, pursuant to Article 109(8) LJSJ, a judge who has an outstanding disciplinary sanction may not participate in a competition for a position in another court. Whereas this limitation is acceptable under certain circumstances, such a blanket ban can be employed to single out particular individuals with only minor outstanding sanctions and prevent them from applying to positions in higher courts. Given the extensive catalogue of disciplinary offenses under the drafts under examination, the risk of this clause being misused is particularly acute. Therefore, the Venice Commission and DGI recommend limiting this restriction to serious offences.

60. As mentioned above, pursuant to Article 109(2) LJSJ, disciplinary sanctions should be imposed according to the principle of proportionality. From the outset, the Venice Commission and DGI stress that having this criterion is welcome and in line with international standards as well as previous Venice Commission and DGI's recommendations. In this regard, Recommendation CM/Rec(2010)12 of the Committee of Ministers prescribes that "disciplinary sanctions should be proportionate".[72] Likewise, the Venice Commission has argued that the imposition of the sanction should be subject to the principle of proportionality.[73]

61. Notwithstanding the foregoing, the current text does not seem foreseeable enough as to what offences should be penalised with which sanctions (see for example para. 56 above). Pursuant to Article 109(2) LJSJ, the circumstances that shall be considered during the selection of the type of disciplinary sanction against a judge include the nature of a disciplinary offence, its negative consequences, the judicial personality, the extent of their guilt, the existence of outstanding disciplinary sanctions, as well as other circumstances which influence the possibility of disciplining a judge. This list of circumstances is broad and some of the circumstances vague. Furthermore, the inclusion of "other circumstances which influence the possibility of disciplining a judge" may in practice allow for the assessment of any circumstances. Likewise, the negative consequences of a judge's disciplinary offence are not set in the law but are to be determined by the HJC (see para. 40 *supra*). In practice, this means that the same violations could be treated differently depending on the minor, serious, and substantial consequences to be determined by the HJC.

62. The Venice Commission and DGI also observe that, while the LJSJ establishes transitional provisions on the revised grounds of disciplinary liability, it does not establish clear rules for the application of the revised sanctions after its entry into force. Due to the closeness of disciplinary proceedings against judges with criminal proceedings, the general application of these new and harsher sanctions could contradict the principle of non-retroactivity. In this regard, and whereas Article 7 ECHR does not necessarily apply to disciplinary proceedings, the Venice Commission considers that the retroactive limitation of the rights of individuals or imposition of new duties may be only permissible if done in the public interest and in conformity with the principle of proportionality (including temporally).[74] Therefore, the Venice Commission and DGI recommend introducing clear transitional provisions on the retroactive application of new and harsher sanctions.

63. Furthermore, the negative effects of a judge's previous disciplinary sanctions might be considered more than once, raising breach of *ne bis in idem*. First, prior sanctions can affect how a new offence is classified (see Articles 106(4) and 106(8)(3) LJSJ). Second, they can also

[72] Committee of Ministers, Recommendation CM/Rec(2010)12, *op. cit.*, para. 12.
[73] See Venice Commission, CDL-AD(2007)009, Georgia - Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts, para. 9; Venice Commission, CDL-AD(2016)009, *op. cit.*, para. 34; and Venice Commission, CDL-AD(2014)039, *op, cit.*, paras 68 *et seq*.
[74] Venice Commission, CDL-AD(2016)007, *op. cit.,* para. 62.

influence how severe the new sanction is (see Articles 109(2) and 109(7) LJSJ). In some cases, this repeated use of the same fact could lead to disproportionate penalties. Therefore, the Venice Commission and DGI recommend clarifying the link between the grounds for disciplinary liability and the related sanctions, ensuring that the negative consequences of a judge's disciplinary offence are set in the law, while preventing that the provisions on prior sanctions are applied concurrently.

3. Procedural aspects

a. Overview of disciplinary procedures

64. The procedural aspects related to disciplinary proceedings are sparsely regulated in the LHCJ, the LJSJ, and several other acts. Pursuant to Article 42 LHCJ in force, disciplinary proceedings can be initiated either based on a disciplinary complaint submitted in accordance with Article 107(1) LJSJ (see para. 65 below) or by the Disciplinary Chamber of the High Council of Justice at its own initiative. The proposed amendments further broaden the right to file complaints with reference to particular institutions (see para. 67 below) and introduce the possibility of starting disciplinary proceedings following a separate ruling of a higher court (see para. 68 below).

65. Pursuant to Article 107(1) LJSJ, any person has the right to submit a complaint against a judge, alleging a disciplinary offence. In past Opinions, the Venice Commission and DGI have expressed concerns about a general right to initiate disciplinary proceedings against judges, recalling that only the individual affected by a judge's potential misconduct is well placed to inform disciplinary bodies about such behaviour.[75] In this regard, disciplinary proceedings can have far-reaching consequences even when these proceedings do not result in finding a judge disciplinarily liable or in the imposition of a disciplinary sanction, including reputation damage. Judges under disciplinary proceedings also have to defend themselves, which means that they are not able to focus exclusively on their primary task of adjudication. Furthermore, a high number of disciplinary complaints against judges will also diminish public confidence in the judiciary, even if a substantial percentage of these complaints do not actually result in finding that a judge has committed a disciplinary offence.

66. Likewise, the system of judicial disciplinary mechanism must be effective and operable. A significant number of unmeritorious complaints can clog up the system of disciplinary proceedings as such and thereby diminish its effectiveness. In the case of Ukraine, the above-mentioned statistics also show the need for taking action in this regard (see para. 17 above). At the same time, the Venice Commission has expressed concerns in contexts of high levels of judicial corporatism in a given jurisdiction.[76] Therefore, the regulation of disciplinary proceedings against judges has to find a reasonable balance between on the one hand safeguarding the disciplinary bodies from a massive caseload of unfounded complaints that would lead to significant delays and ineffectiveness, and on the other hand the risk of too many complaints not being followed up at the early stage. In this context, the Venice Commission and DGI recommend limiting the right to notify or file complaints against actions which may constitute disciplinary offenses committed by judges to persons who have been affected by the acts of the judge or to those who have some form of 'legitimate interest' in the matter.

67. The proposed amendments introduce specific provisions entrusting investigative commissions of the Parliament of Ukraine (Articles 12 and 24 of the Law of Ukraine on Temporary

[75] Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.* para. 64. See also Venice Commission, CDL-AD(2016)013, *op. cit.*, para. 46; Venice Commission, CDL-AD(2013)005, Opinion on Draft amendments to Laws on the Judiciary of Serbia, para. 68.

[76] See, *mutatis mutandis*, Venice Commission and DHR of DGI, CDL-AD(2014)032, Georgia - Joint Opinion of the of the Council of Europe, on the draft Law on making changes to the Law on disciplinary Liability and disciplinary Proceedings of Judges of General Courts, para. 24; and Venice Commission, CDL-AD(2018)022, *op. cit.*, para. 31.

Investigative Commissions and Temporary Special Commissions of the Verkhovna Rada of Ukraine), a meeting of judges (Articles 128(8) LJSJ), the Council of Judges (Article 133(13) of the same Law), as well as the HQCJ (Article 43 LHJC) to submit complaints. The Venice Commission and DGI refer to their recommendation above that the right to submit a complaint against a judge should be limited to persons who have been affected by the acts of the judge or to those who have some form of 'legitimate interest' in the matter. Of particular concern is empowering investigative and special commissions of the Verkhovna Rada to refer potential disciplinary offences to the HCJ, which is at odds with the independence of the judiciary. The Venice Commission and DGI recall that both the independence of the judiciary and that of individual judges should be ensured, freeing them from external pressure, political influence or manipulation, also by the legislative power.[77] Therefore, the Venice Commission and DGI recommend not introducing the proposed amendments.

68. In addition to disciplinary complaints, disciplinary proceedings shall be initiated based upon a separate ruling of a higher court, i.e. on appeal, regarding a violation of substantive or procedural law by a lower court. Pursuant to amendments to the Commercial Code of Ukraine (Article 246), the Civil Procedure Code of Ukraine (Article 262), the Code of Administrative Procedure of Ukraine (Article 249), it is specified that, should a higher court issue a separate ruling in the event that a lower court has committed a violation of substantive or procedural law, these ruling shall be sent to the body authorised to conduct disciplinary proceedings against the judge.[78] In those cases, under the proposed amendments the HCJ is required to assess such potential misconduct. These provisions are most unusual. From the outset, the Venice Commission and DGI stress once again that a judge's interpretation of the law, assessment of facts or weighing of evidence and/or departing from established case law should only give rise to disciplinary liability in cases of malice, wilful default or serious misconduct (see paras 41 and 42 above). Moreover, the goal of the appeal system is not to subject the judges to supervision by a hierarchical power, as it would contravene their individual independence.[79] Lastly, and as noted above (see para. 65 above), the individual affected by a judge's potential misconduct is best placed to inform disciplinary bodies about such behaviour. Therefore, the Venice Commission and DGI recommend not introducing the proposed amendments either.

69. A preliminary check of the disciplinary complaint is conducted by a disciplinary inspector of the HCJ. The findings of the disciplinary inspector-rapporteur are submitted to the Disciplinary Chamber of the HCJ for consideration. The Venice Commission and DGI welcome the separation of the investigating and decision-making roles between, respectively, the Disciplinary Inspectorate Service and the Disciplinary Chamber of the HCJ.[80] The establishment and functioning of the Disciplinary Inspectorate Service of the HCJ have been previously examined by the Venice Commission and DGI.[81] The Venice Commission and DGI recommended that the amendments enter into force only after the one-time vetting of the members of the HJC. Based on the exchanges held with the Ukrainian interlocutors, the delegation was informed that the Service had been set up recently and had just started to operate.

70. The Venice Commission and DGI also observe that other recommendations regarding this Service have been partially implemented. For example, it was recommended to foresee the

[77] Venice Commission, CDL-AD(2016)007, *op. cit.*, paras. 74 and 86.
[78] Similar provisions are also foreseen in the case of arbitration managers (Article 21(6) of the Code of Ukraine on Insolvency Proceedings), judicial experts (Article 14 of the Law of Ukraine on Judicial Expertise), lawyers (Article 36(3) of the Law of Ukraine on the Bar and Practice of Law), prosecutors (Article 46(3) of the Law of Ukraine on the Public Prosecutor's Office), as well as state enforcement officers (Article 12(2) of the Law of Ukraine on Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies), as well as private enforcement officers (Articles 34(8) and 35(4) of the same Law).
[79] Venice Commission, CDL-AD(2016)007, *op. cit.*, para. 87.
[80] Venice Commission, CDL-AD(2021)018, *op. cit.*, paras. 67-71; Venice Commission and DGI, CDL-AD(2023)027, *op. cit.*, para. 50. See also Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.*, para. 68; Venice Commission, CDL-AD(2022)022, Bulgaria – Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council of Bulgaria, para. 29.
[81] See Venice Commission and DGI, CDL-AD(2021)018, *op. cit.*, paras 67-71.

possibility to extend the 30-day deadline for the preparation of documents by the disciplinary inspector under Article 43(5) LHCJ.[82] Pursuant to Article 43(3) of the amendments to the LHCJ, this period may be extended if there is a justified need for additional verification of the materials, but not more than 15 days. Whereas the possibility to extend the 30-day deadline is welcome, limiting this extension to 15 days may fall short for providing an adequate timeframe for accurate investigations.

71. Despite the above, the simultaneous competences of the Disciplinary Chamber of the HCJ to initiate disciplinary proceedings (Article 42(2)(2)(a) LHJC) and to conduct disciplinary proceedings (Article 42(1) of the same Law) raises concerns. As the Venice Commission concluded previously, "a mixture of different powers in one hand, in particular, the power to initiate the proceedings and the power to adjudicate […] risks leading to problems."[83] The Venice Commission and DGI recommend that, should a disciplinary proceeding be initiated by the Disciplinary Chamber of the HCJ under Article 42(2)(2)(a) LHCJ, the members of that Disciplinary Chamber should be excluded from the deliberations of the case and should not take part in the vote.

72. Furthermore, Article 42 LHCJ is amended to allow for prioritising the disciplinary proceedings related to proceedings initiated by the HQCJ (Article 42(5)(1)(1) LHCJ) and those in relation to judges being considered by the HCJ following the results of a competition (Article 42(5)(1)(2) of the same Law). Whereas some sort of prioritisation would in principle not be against international standards, the current proposal fails to justify why these proceedings should take priority over other disciplinary offences. Furthermore, Article 42(6) empowers the HCJ to establish other criteria for the prioritisation of disciplinary proceedings against judges. As this broad delegation of powers may be misused by the HCJ to prioritise proceedings against particular judges, it is recommended to provide an exhaustive list of justified criteria for prioritising disciplinary proceedings in the Law on the HCJ itself, such as the severity of the offence.

73. Pursuant to Article 50(11) LHCJ, the decision of the Disciplinary Chamber to bring a judge to disciplinary responsibility shall take effect on the day of its adoption and shall be subject to immediate enforcement regardless of any appeal, except for a decision to apply disciplinary punishment in the form of a motion to dismiss a judge from office. The Venice Commission and DGI recall that under the case-law of the ECtHR, there should exist procedural safeguards and the possibility of appeal against decisions affecting the career, including the status, of a judge. In the Court's words, "In matters concerning their career […] there should be weighty reasons exceptionally justifying the absence of a judicial review."[84] In its 2016 Rule of Law Checklist, the Venice Commission also stresses that "[t]he disciplinary system should fulfil the requirements of procedural fairness by way of a fair hearing and the possibility of appeal(s)."[85] In view of these standards, it is unclear why there is need for an immediate enforcement regardless of appeal. Every appeal against disciplinary proceedings should prevent the decision from becoming enforceable until the appeal is determined.[86] The Venice Commission and DGI recommend harmonising the provisions on the enforcement of disciplinary decisions, which if appealed should only enter into force after the appeal is formally decided on. Whereas there may be weighty reasons exceptionally justifying immediate enforcement, these should be narrowly defined by law.

74. Lastly, the Venice Commission and DGI would like to stress the importance of transparency in disciplinary proceedings. The value of transparency in these procedures is twofold: on the one hand, for the judge who is accused; and, on the other hand, for the general public, which is interested in understanding what is going on behind the doors of the courts. This principle is

[82] *Ibid*, *op. cit.*, para. 69.
[83] Venice Commission and DHR of DGI, CDL-AD(2014)032, *op. cit.*, para. 16. See also Venice Commission, CDL-AD(2015)042, *op cit.*, para. 73; Venice Commission, CDL-AD(2018)022, *op. cit.*, para. 22.
[84] ECtHR, *Bilgen v. Turkey*, Application no. 1571/07, 9 March 2021, para. 96.
[85] Venice Commission, CDL-AD(2016)007, *op. cit.*, para. 78.
[86] Venice Commission, DHR of DGI, and OSCE/ODIHR, CDL-AD(2014)006, *op. cit.*, para. 81.

compromised if the accused judges are excluded from parts of the procedure. The same applies to those requesting disciplinary procedures. Pursuant to Article 109(11) LJSJ, information on disciplining a judge shall be published on the official website of the HCJ and the website of the court where they work. This information must contain data on the disciplined judge, imposed disciplinary sanction, and a copy of the decision of the judicial disciplinary body on imposing such sanction. The law also requires the publication of the decisions taken, which is usually a means to ensure transparency and accountability.[87] At the same time, the publication of all this information can have adverse effects. During the exchanges held with the different interlocutors, the Venice Commission and DGI were informed that the publication of this information in Ukraine is justified only as an exceptional temporary measure, in view of the extraordinary circumstances of lack of trust in the judiciary in the country. In the future, however, the Venice Commission and DGI recommend that such information on disciplining a judge should be anonymised, and individual decisions should remain in the public domain only for a limited period of time.[88]

b. Measures against potential abuse of disciplinary complaints

75. According to the explanatory note, the draft amendment to Article 107 LJSJ aims to protect judges against groundless or far-fetched disciplinary complaints. According to the quantitative data provided in the explanatory note to the draft Law, the vast majority of disciplinary complaints against judges are unfounded due to a widespread practice of filing superficial complaints without proper analysis, which burdens resources of the HCJ. Since anyone has the right to submit a disciplinary complaint, the draft aims to introduce novel tools to prevent the filing of such manifestly unmeritorious complaints. From the outset, the Venice Commission and DGI welcome this aim, as judges deserve to be protected as much as possible against frivolous, unmeritorious, and groundless accusations. Nevertheless, the Venice Commission and DGI invite the Ukrainian authorities to first consider limiting the right to file complaints to persons who have been affected by the acts of the judge or to those who have some form of 'legitimate interest', as recommended above.

76. The examined drafts introduce two series of measures. On the one hand, the person submitting the complaint "is obliged to verify the facts" (Article 107(1) LJSJ). In the opinion of the Venice Commission and DGI, the current wording seems too strong. In many cases, what are "the facts" will be the very object under dispute, and the complainant will not have sufficient powers to "verify" them. Therefore, the current wording may prevent any complaints from being submitted at all, as it shifts the burden of proof onto the complainant. An alternative approach would be to prevent a person from knowingly providing false information. This approach would also be more in line with the stated aim to preventing "filing a disciplinary unfounded complaint" and with the wording of Article 50_1(1)(1) LHCJ, which refers to "filing of a knowingly unfounded disciplinary complaint." Likewise, pursuant to the amended Article 107(2)(3) LJSJ, a disciplinary complaint must contain information as to whether, in the opinion of the complainant, such an offence is minor, serious, or substantial, and its negative consequences. It is not advisable that the citizens should be responsible for the legal qualification of a misconduct as minor, serious, or substantial. Therefore, the Venice Commission and DGI recommend reviewing the wording in the draft amendments to ensure that those filing a complaint are only prevented from knowingly providing false information, and that they are not required to classify the offence nor to provide information on its negative consequences.

77. On the other hand, the draft amendments propose that a person who "abuses" the right to file disciplinary complaints may "be subject to measures established by law" (Article 107(5) LJSJ), where the measure foreseen in the draft amendments is the obligation to pay a fee for filing subsequent disciplinary complaints (Articles 50_2 and 50_3 LHCJ). Whereas this measure does not

[87] Venice Commission, CDL-AD(2011)010, Opinion on the Draft Amendments to the Constitution of Montenegro, as well as on the Draft Amendments to the Law on Courts, the Law on the State Prosecutor's Office and the Law on the Judicial Council of Montenegro, para. 41. See also CCJE, 2024, Opinion no. 27, paras 27 and 36.
[88] Venice Commission, CDL-AD(2011)004, Opinion on the Draft Law on Judges and Prosecutors of Turkey, para. 58. See also CCJE, 2024, Opinion no. 27, para. 36.

seem in principle to go against international standards, it should be ensured that this is the only one under the proposed amendments, as the current wording of Article 107(5) LJSJ does not preclude the adoption of additional measures. Likewise, it should be ensured that the fee is only applicable to "subsequent" applications, once the individual has been found to abuse the system, and for a limited period of time. Additionally, the fee should be returned and the obligation to pay subsequent fees lifted if the complaint is found to be founded and a decision is taken to bring disciplinary proceedings against the judge (pursuant to Article 50_3(11) LHCJ, the fee is refunded but the obligation to pay is not lifted).

78. By contrast, the envisaged fee of "ten times the subsistence minimum" seems to be excessive for the lay citizen and may compromise the access to justice for a certain part of the population. Likewise, it may hamper the work of civil society organisations who regularly submit complaints in case they have suspicion of wrongdoings. In this regard, it is suggested to ensure proportional fees, which may be different for lay citizens than for legal entities, including state authorities and local self-government bodies. The Venice Commission and DGI therefore recommend limiting the available measures to imposing a fee, which should be only required after someone is found to submit ungrounded complaints, for a limited period of time, with the fee returned and the obligation to pay lifted should disciplinary proceedings finally be brought against the judge. The fees should also be proportional and not impair the access to justice of the lay persons nor of civil society actors who have some form of 'legitimate interest' in the matter.

c. Temporary suspension of a judge during disciplinary proceedings

79. The temporary suspension of judges is a measure intensely regulated in the draft law. It is to be found in the LJSJ (Article 49) as well as in the LHCJ (Articles 48 and 49, 62, and 65_1 *et seq*). Pursuant to Article 62 LHCJ, a judge may be temporarily suspended from the administration of justice by decision of the HCJ in connection with being brough to disciplinary liability, additionally to the current provision of a judge being suspended because they are brought to criminal liability. From the outset, the Venice Commission and DGI would like to stress that there seems to be a duplication of regulations and recommend harmonising the provisions on temporary suspension across the different laws, as well as within the Law on the HCJ.

80. According to the proposed amendments, a judge may be temporarily suspended during disciplinary proceedings for a period of up to two months (Article 49(7) LJSJ and Article 65_2(1) LHCJ), which can be extended for a maximum of two additional months (Article 49(7) LJSJ and Article 65_1(1) LHCJ). Pursuant to Article 48 of the amendments to the LHJC, if the disciplinary complaint concerns an alleged serious disciplinary offence committed by a judge, the Disciplinary Chamber may request the temporary suspension from the administration of justice of such judge to the HJC. Pursuant to Article 49(7) LJSJ, if the period of temporary suspension of a judge in connection with disciplinary proceedings expires before the completion of the disciplinary case review, the Disciplinary Chamber may request the HCJ to extend the period of temporary suspension. However, there are no grounds for requesting the temporary suspension other than the proceedings being due to an alleged serious offence. In this regard, the Venice Commission and DGI do not preclude the possibility of temporary suspending a judge under disciplinary proceedings, but such suspension should be based on the particular circumstances of the case and not only the gravity of the *alleged* offences. Furthermore, the objective grounds allowing for such temporary suspension should be specified in the law.

81. The HCJ must consider a motion for the temporary suspension of a judge no later than seven days from the date of its receipt (Article 65_1(3) LHCJ), and an extension shall be granted if the circumstances that served as the basis for the temporary suspension from the administration of justice continue to exist (Article 65_2(3) of the same Law). The judge in respect of whom the motion has been filed should be notified "without delay", without specifying a particular deadline, and the failure to appear at the meeting of the HCJ does not prevent the consideration of the motion. In view of the important nature of the decision at stake, and the short deadlines for making a decision, the Venice Commission and DGI recommend setting a minimum deadline for the

notification of the judge, as well as the possibility for the judge to request the postponement of the decision of the HCJ under justified circumstances. As the current amendments foresee a deadline of seven days from the moment the decision is made until it is notified to the judge (Articles 65_1(7) and (8) LHCJ), the decision to temporarily suspend a judge should not be effective from the moment the decision is made, but from the moment it is notified.

82. Pursuant to Articles 48 and 49 LHCJ, neither the decision to request the temporary suspension of a judge nor the decision to request an extension of such temporary suspension are subject to appeal. Nevertheless, Article 65_3 LHCJ foresees the possibility for appeal, without specifying to which body. The Venice Commission and DGI stress that an appeal against disciplinary measures to an independent court should be available.[89] Furthermore, the appeal against the decision of the HCJ is limited to four procedural grounds (i.e., due to the flawed composition of the HCJ which made the relevant decision; due to the lack of signature of the decision; and due to the decision not containing a reference to the grounds for its adoption as defined by law or the reasons for which the HCJ reached the relevant conclusions) and does not suspend its enforcement. The Venice Commission and DGI recommend not limiting the grounds for appeal and annulment of a decision by the HCJ to procedural issues. Likewise, and in line with their recommendation above (see para. 73 above), the effects of the temporary suspension should not be enforced during the appeal procedure. Whereas there may be weighty reasons exceptionally justifying immediate enforcement, these should be narrowly defined by law and implemented taking due account of the interests of the litigants.

83. In view of the shortcomings identified both in the legislation currently in force and in the proposed amendments, in particular those concerning the general right to lodge disciplinary complaints against judges and the shortcomings in disciplinary proceedings outlined above, the Venice Commission and DGI warn about the risk of abuse arising from the temporary suspension of a judge during disciplinary proceedings. Such a measure may be misapplied so as to even alter the composition of the bench lawfully assigned to hear a case. Therefore, the Venice Commission and DGI, concerned about of this risk of misuse, advise against the introduction of the measure in the form presently envisaged in the draft amendments.

C. Declarations of integrity of judges and judges' family relations

84. The second set of amendments concerns the judges' obligation to submit a declaration of integrity and family ties of a judge (Article 56(7)(3) LJSJ). The draft law proposes to provide that the declaration of integrity and family ties of a judge shall include statements about the legality of the source of their property, the correspondence of the judge's standard of living to the property owned by them and their family members and the income they receive, the absence of grounds for bringing a judge to disciplinary responsibility, the faithful performance of judicial duties and the Code of Judicial Ethics, as well as the absence of actions to acquire citizenship (nationality) of a foreign state (Articles 61(2)(1) and (2) LJSJ). Furthermore, the judge must submit the information of persons with whom the judge is related, their place of work, and position held for a considerably long list of positions (Article 61(2)(3) of the same Law).[90]

85. From the outset, the Venice Commission and DGI would like to clarify that requirements for the periodical submission of asset and other kind of declarations must not be confused with the "vetting" of judges.[91] Integrity checks are typically understood as ongoing or periodic measures aimed at maintaining ethical standards and transparency within the judiciary. These may include requirements such as the annual submission of asset declarations or regular updates concerning conflicts of interest. They function as part of a routine accountability mechanism and do not

[89] Venice Commission, CDL-AD(2007)028, Report on Judicial Appointments, para. 25.
[90] The Article lists more than 18 sub-entries, spanning from members of the HQCJ, the HCJ, judges and court staff, prosecutors, members of the Cabinet of Ministers of Ukraine, the President, etc.
[91] See, for example, Venice Commission, CDL-AD(2018)034, Albania - Opinion on draft constitutional amendments enabling the vetting of politicians, paras 40 *et seq.*

ordinarily carry immediate consequences for judicial status unless irregularities are identified.[92] Vetting, by contrast, particularly when applied to serving judges, constitutes a far more intrusive and exceptional measure. It is generally associated with transitional or crisis contexts and is designed to assess the suitability of judicial officials by examining their integrity, independence, and possible connections to corruption or organised crime. Unlike integrity checks, vetting may lead to immediate and severe consequences, including removal from office, and often involves broader scrutiny, including aspects of a judge's personal background and private life.

86. Under the current system, a judge is supposed to submit an annual declaration of assets to the National Agency on Corruption Prevention (hereinafter, NACP), and two declarations to the HQCJ: a declaration of integrity and a declaration on family relations. Pursuant to amended Article 61(2) LJSJ, it is proposed to merge the two latter declarations into one. During the online meetings, several interlocutors complained that the task of completing the forms was cumbersome, in particular giving the broad scope of the declarations on family relations. Therefore, the merging of these two declarations is welcome.

87. Despite the above, the HQCJ may require "other" statements determined by the HQCJ as to a judge's adherence to integrity indicators, adherence to ethical standards, and impeccable behaviour in professional and private life (Article 61(2)(2) LJSJ). These broad provision can result in a disproportionate interference with the life of the judges. Therefore, the Venice Commission and DGI recommend setting an exhaustive list of statements that can be requested by the HQCJ.

88. Furthermore, declarations are published online (Article 61(4) LJSJ). As mentioned above, different interlocutors consider the publication of these declarations necessary in the Ukrainian context, as an exceptional measure, and for a limited period of time. However, the Venice Commission and the DGI note that this provision allows for this information not to be published in the cases provided by this Law (Article 61(4) of the same Law). As the Law is silent about these exceptions, they should be clarified.

89. In view of the proposed amendments to the procedure for the verification of the declarations, the Venice Commission and DGI welcome *inter alia* the provisions entitling a judge to get acquainted with the materials and the results of the verification of their declarations (Article 62(9) LJSJ), the right of the judge to provide oral and written submissions (Articles 62(9) and 11 of the same Law), the right to appeal a decision (Article 61(13)), and the fact that the member of the HQCJ who initiated the audit shall not participate in the verification process (Article 62(17)). Notwithstanding the foregoing, pursuant to Article 62(2) LJSJ, the verification procedure is regulated by the Rules of Procedure of the HQCJ. Given the importance and possible consequences of the HQCJ's decision, the main features and safeguards of the procedure should be regulated at the statutory level and only the regulation of the details should be left to the sub-statutory regulations. Similarly, pursuant to Article 62(4) of the same Law, there is no time limit in which the HQCJ can decide to conduct such audits when they are started upon its own initiative. The possibility to audit the declarations should be detailed in the law itself, with clear time limits for all possible verifications, including those that have started at the HQCJ's own initiative.

90. During the meetings with the Ukrainian interlocutors, the delegation was informed that the NACP has tools for the automatic processing of asset declarations, which are then analysed when the system raises certain flags. By contrast, the declarations submitted to the HQCJ are only examined upon receiving a complaint, given the limited resources of the Commission and the considerable backlog of vacancies in judicial positions to be filled. In view of these shortcomings, the Venice Commission and DGI wonder if additional resources should also be devoted to the HQCJ for the proper assessment of the declarations of integrity and family relations. The Venice Commission and DGI therefore recommend reviewing the process for submitting the judges' declarations and invite the Ukrainian authorities to envisage a system that is more sensible of the existing resources and concerns.

[92] See for example Venice Commission and DGI, CDL-AD(2019)024, *op. cit.*, paras 42 *et seq*.

91. The late submission and the failure to submit the declaration of integrity and/or the declaration of family ties, as well as the submission of false or and/or incomplete information in such declarations, is a ground for disciplinary liability under Articles 61(7),106(1)(9), and 106(1)(10) LJSJ. Pursuant to Article 109(4) LJSJ, such disciplinary offence will be considered minor, provided it has resulted in minor negative consequences and is committed by a judge who does not have outstanding disciplinary sanctions, whereas it can be considered serious if it leads to serious negative consequences. The lack of clarity on what should be understood as minor or serious negative consequences is not only at odds with the principle of legal certainty but may also render the declarations of integrity and of family ties as irrelevant tools in the fight against corruption. In the opinion of the Venice Commission and DGI, the requirement to disclose assets and revenues should be associated with a sanction which is serious enough to serve the purpose of deterrence, while an exception should be made for minor or unintended omissions in the declarations.[93] In the most serious cases, or when a judge repeatedly commits such breaches, dismissal could be an option. Therefore, the Venice Commission and DGI recommend recognising the disciplinary grounds in Article 106(1)(9) LJSJ as serious or even substantial disciplinary offences, with clear delimitations for each case.

D. Other procedures

92. The examined amendments also propose reducing the quorum for decisions at the HCJ on appointment of judges from 14 members to two-thirds of the elected (appointed) members (Articles 30 LHCJ) and the required majorities from 14 votes to two-thirds of the elected (appointed) members (Article 37 LHCJ). The Venice Commission and DGI are aware of the shortcomings in various judicial institutions due to the lack of timely appointment of its members, and that the required majorities may hamper these institutions from addressing some of the shortcomings in Ukraine's judicial reform. Despite the above, providing for a general formula without a minimum quorum of members or votes required to adopt a decision at the HCJ enables decisions to be made without sufficiently broad support and could further erode the citizens' trust in these institutions. Instead of reducing the quorum and required votes to two-third of the elected (appointed) members, the Venice Commission and DGI recommend exploring different mechanisms to ensure the full composition of judicial self-governing bodies.[94]

IV. Conclusion

93. By letter of 29 May 2025, Mr Hryhorii Usyk, Chairman of the HCJ, requested an Opinion of the Venice Commission on the draft laws "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Disciplinary and other Procedures" (Nos. 13137 and 13137-1) and "Amendments to Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving Declarations of Integrity of Judges and Judges' Family Relations" (No. 13165-2). The Commission decided to prepare the present Opinion jointly with DGI.

94. The draft laws aim to strengthen on the one hand judicial independence and on the other hand accountability of judges in Ukraine by addressing gaps in the existing disciplinary framework, which has remained largely unchanged since 2016. Key concerns include vague

[93] Venice Commission, CDL-AD(2015)042, *op. cit.*, para. 39. See also Venice Commission, CDL-AD(2018)033, *op. cit.*, para. 37; Venice Commission, CDL-AD(2019)008, North Macedonia - Opinion on the Draft Law on the Judicial Council, para. 42.

[94] See the documents referred to in Venice Commission, CDL-PI(2023)018, Compilation of Venice Commission Opinions and Reports relating to Qualified Majorities and Anti-Deadlock Mechanisms in relation to the election by Parliament of Constitutional Court Judges, Prosecutors General, Members Of Supreme Prosecutorial and Judicial Councils and the Ombudsman. In particular, see Venice Commission, CDL-AD(2018)015, Montenegro - Opinion on the draft law on amendments to the law on the Judicial Council and Judges, paras 13-15; see also Venice Commission, CDL-AD(2022)054, Ukraine – Opinion on the draft law "On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis", para. 67.

grounds for disciplinary liability and insufficient procedural clarity. The reforms are aimed at simplifying the grounds for disciplinary liability and address some shortcomings in the submission of unfounded disciplinary complaints. They also elaborate extensively on the temporary suspension of a judge under disciplinary proceedings. Complementary measures also seek to improve the regulation and verification of integrity-related declarations.

95. The Venice Commission and DGI recall their general previous recommendations: when making such substantial changes to the framework governing the judiciary, the authorities must take a comprehensive and coherent approach with due regard to the consideration of stability of the judicial system; it is essential to respect the sequence of changes in the judicial reforms and give priority to the effective enforcement of the existing ordinary tools of judicial accountability. A holistic reform could avoid an overly complex legislative framework in which too many administrative burdens are placed on judges.

96. Notwithstanding the foregoing, and aware that there are pressing issues in the Ukrainian context as well as existing commitments and conditionalities, the Venice Commission and DGI make the following key recommendations with a view to a necessary reform of the judiciary:

- Reviewing further the grounds for disciplinary liability, broadening the scope of gross negligence and/or intent to all the disciplinary grounds mentioned in Article 106 LJSJ. Several grounds for disciplinary liability should be reconsidered, particularly those related to conduct that "disgraces a status of judge or undermines the authority of justice." Grounds for disciplinary liability described with excessively vague and overly broad terms need to be more precise.

- Repealing or at least revisiting the distinction between minor, serious, and substantial disciplinary offences, ensuring the foreseeability and legal certainty of the classification. The link between the grounds for disciplinary liability and the related sanctions should be clarified, and the negative consequences of a judge's disciplinary offence should not be determined in accordance with the criteria approved by the HJC, but should be spelled out in the statutory regulations. The provisions in Articles 106(4) and 106(8)(3) LJSJ and those in Articles 109(2) and 109(7) LJSJ should not be applied concurrently to avoid breaches of the principle of *ne bis in idem*.

- The referral for training of the judge to the National School of Judges of Ukraine should be repealed.

- The right to file disciplinary complaints against a judge should be limited to persons who have been affected by the acts of the judge or to those who have some form of 'legitimate interest' in the matter. The proposed provisions entrusting specific institutions, and particularly the Verkhovna Rada, to file disciplinary complaints, as well as those provisions according to which disciplinary proceedings may start following a separate ruling of a higher court on appeal, should not be adopted.

- The wording in the draft Articles 107(1) and 107(2)(3) LJSJ should be reviewed to ensure that citizens are only prevented from knowingly providing false information in disciplinary complaints, and that they are not required to classify the offence nor to provide information on its negative consequences. Any measures against those filing a knowingly unfounded disciplinary complaint should be limited to a fee, which should be only required after someone is found to submit ungrounded complaints, be limited in time, and the fee returned and the obligation to pay lifted should disciplinary proceedings finally be brought against the judge. The fees should also be proportional and not impair the access to justice of the lay persons nor of civil society actors.

- Should a disciplinary proceeding be initiated by the Disciplinary Chamber of the HCJ under Article 42(2)(2)(a) LHCJ, the members of that Disciplinary Chamber should be excluded from the deliberations of the case and should not take part in the vote.

- Harmonising the provisions on the enforcement of disciplinary decisions which, if appealed, should only enter into force after the appeal is formally decided on. Whereas there may be weighty reasons exceptionally justifying immediate enforcement, these should be narrowly defined by law.

- Refraining from introducing the temporary suspension of a judge pending disciplinary proceedings due to the risk of misuse. Temporarily suspending a judge under disciplinary proceedings should be based on the particular circumstances of the case and not only on the gravity of the alleged offences. Furthermore, objective grounds allowing for such temporary suspension should be specified in the law. Grounds for appeal and annulment of a decision by the HCJ on the temporary suspension of a judge should not be limited to procedural issues, and the effects of the temporary suspension should not be enforced during the appeal procedure. Whereas there may be weighty reasons exceptionally justifying immediate enforcement, these should be narrowly defined by law and implemented taking due account of the interests of the litigants. Given the importance and possible consequences of the HQCJ's verification of declarations of integrity and family relations, the main features and safeguards of the procedure should be regulated at statutory level. The late submission and the failure to submit the declaration of integrity and/or the declaration of family ties, as well as the submission of false or and/or incomplete information in such declarations, should be considered as serious or even substantial disciplinary offences, with clear delimitations for each case.

97. In addition to the aforementioned key recommendations, the Venice Commission and DGI also advise giving more precision in the statutory regulation to disciplinary grounds related to unreasonable and prolonged delays, to avoid holding individual judges accountable for systemic deficiencies within the justice system. Furthermore, only *undue* influence into the process of administrating justice by other judges should result in disciplinary liability. The thresholds in Articles 106(1)(3)(a) and 106(5) LJSJ, seem excessively high, taking into account the relatively low official minimum subsistence level and the average monthly salary in Ukraine, and should be revisited. Furthermore, the proposal in Article 106(1)(3)(c) LJSJ that the misconduct of failure to confirm the lawfulness of the source of property should apply only to the property acquired after the appointment to a judicial office seems questionable. The prohibition for judges who are subject to disciplinary sanctions to participate in a competition for a position in another court should be limited to serious offences. Clear transitional provisions should be established in the LJSJ on the retroactive application of new and harsher sanctions. As concerns the disciplinary procedures, it is recommended to provide an exhaustive list of justified criteria for prioritising disciplinary proceedings in the law itself. In case of a temporary suspension of a judge, the Venice Commission and DGI recommend setting a minimum deadline for the notification to the judge, as well as the possibility for the judge to request the postponement of the decision of the HCJ under justified circumstances. As the current amendments foresee a deadline of seven days from the moment the decision is made until it is notified to the judge (Articles 65_1(7) and (8) LHCJ), the decision to temporarily suspend a judge should not be effective from the moment the decision is made, but from the moment it is notified. The Venice Commission and DGI also recommend setting an exhaustive list of statements that can be requested by the HQCJ as part of its integrity checks. As the Law is silent about the exception to the publication of integrity declarations pursuant to Article 61(4) LJSJ, these exceptions should be clarified. Lastly, the Venice Commission and DGI recommend exploring mechanisms to ensure the full composition of judicial self-administration bodies, rather than reducing the threshold for the appointment of judges by the HJC.

98. The Venice Commission and DGI remain at the disposal of the Ukrainian authorities for further assistance in this matter.