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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

UKRAINE

OPINION

ON

**DRAFT AMENDMENTS TO CERTAIN LEGISLATIVE ACTS
REGARDING THE IMPROVEMENT
OF THE COMPETITIVE SELECTION PROCESS
FOR THE POSITION OF JUDGE OF THE CONSTITUTIONAL COURT**

**Adopted by the Venice Commission
at its 145th Plenary Session
(Venice, 12-13 December 2025)**

On the basis of comments by

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I. Introduction

1. By letter of 20 November 2025, Ms Oksana Vasyilchenko, Chair of the Advisory Group of Experts (hereinafter also referred to as "AGE"), requested an urgent opinion of the Venice Commission of the Council of Europe on the draft amendments to certain legislative acts of Ukraine regarding the improvement of the competitive selection process for the position of judge of the Constitutional Court of Ukraine (CDL-REF(2025)052) (hereinafter referred to as "Draft Law" or "draft amendments"). The urgency was determined by the expected imminent adoption of the Draft Law by Parliament.
2. The Bureau of the Venice Commission authorised the preparation of the Opinion through the urgent procedure, pursuant to Article 14a of the Commission's Revised Rules of Procedure.
3. Ms Cartabia, Mr Carozza and Mr Darmanović acted as rapporteurs for this opinion.
4. On 1 December 2025, the rapporteurs had online meetings with members of Parliament, judges of the Constitutional Court, members of the AGE, and with representatives of civil society organisations. The Commission is grateful to the authorities of Ukraine for the excellent organisation of the online meetings.
5. On 5 December 2025, the Bureau, having learned that the examination of the draft law by parliament was expected to take place during the week of 22 December, decided to revert to the ordinary procedure of adoption of the opinion.
6. This opinion was prepared in reliance on the English translation of the draft law. The translation may not accurately reflect the original version on all points.
7. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 1 December 2025. It was adopted by the Venice Commission at its 145th Plenary Session (Venice, 12-13 December 2025).

II. Background

A. Establishment of the AGE

8. The Advisory Group of Experts (AGE) is entrusted with supporting the authorities responsible for the appointment of judges to the Constitutional Court of Ukraine – namely the President of Ukraine, the Verkhovna Rada and the Congress of Judges. Its mandate consists in assessing the integrity, moral qualities and professional suitability of candidates for the position of judge of the Constitutional Court of Ukraine. The main function of the AGE is to preselect the candidates with high moral qualities and professional competence for each appointing authority. The latter may not appoint the candidates outside the pool preselected by the AGE.
9. In its Opinion¹ of 17 June 2022 on Ukraine's application for membership of the EU, the European Commission underscored the urgent need for the reform of the Constitutional Court of Ukraine in line with the Venice Commission's recommendations: *"Central to such reform is the introduction of a credible and transparent selection procedure for appointments of judges to the CCU, including an integrity check"*. Therefore, the European Commission recommended that granting candidate status to Ukraine is subject to, *inter alia*, enactment and implementation of the legislation on a selection procedure for judges of the [CCU], *"including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations; ..."*.²

¹https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en

² Venice Commission, CDL-AD(2022)054, 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", (Venice, 16-17 December 2022), paragraph 15.

10. The AGE is composed of six members appointed for a three-year term. Its members serve on a voluntary basis. Decisions are adopted by a minimum of four votes, save for those instances where the law provides otherwise. In its permanent configuration, the AGE comprises:

- 1) one member appointed by the President of Ukraine;
- 2) one member appointed by the Verkhovna Rada of Ukraine;
- 3) one member appointed by the Congress of Judges of Ukraine;
- 4) one member appointed by the National Academy of Legal Sciences of Ukraine;
- 5) one member appointed by the congress of representatives of higher legal education institutions and research establishments;
- 6) one member appointed by a meeting of representatives of civil society organisations active over the previous five years in the fields of constitutional reform, the rule of law, human rights, or the prevention and fight against corruption.

11. At the time of appointing a member to the AGE, each appointing body is required to designate a substitute member for the same term. A substitute may perform the functions of a full member, including participation in deliberations and voting on candidates, where the original member is recused or has self-recused. Where the mandate of a member who has a designated substitute ends prematurely, the substitute shall assume the corresponding seat for the remainder of the term, by decision of the AGE.

12. For a transitional period of six years following the entry into force of the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on Clarifying Provisions on Competitive Selection of Candidates for the Position of Constitutional Court Justice", the composition of the AGE is subject to specific rules. During this period, the AGE consists of:

- 1) one member appointed by the President of Ukraine;
- 2) one member appointed by the Verkhovna Rada of Ukraine;
- 3) one member appointed by the Congress of Judges of Ukraine; in respect of the first composition, this mandate was exercised by the Council of Judges of Ukraine;
- 4) one member appointed by the Cabinet of Ministers of Ukraine upon nomination by the European Commission for Democracy through Law (Venice Commission);
- 5) two members appointed by the Cabinet of Ministers of Ukraine upon proposals from international or foreign organisations which, under international or intergovernmental agreements, have provided technical assistance to Ukraine in the fields of constitutional reform, the rule of law, human rights protection, or the prevention and fight against corruption during the previous five years.

13. One of the key pillars of the legislation is that, for the first six years of its operation, the AGE is composed of six members (three internationals and three Ukrainians), with the casting vote of the international members, and that technical assistance projects may support the AGE's activities. The first composition of the AGE entered into force on 13 October 2023, following the appointment of its members by the Cabinet of Ministers of Ukraine.

B. Previous opinions of the Venice Commission

14. The Venice Commission adopted several opinions regarding these legislative reforms. In its urgent opinion of 23 November 2022,³ the Venice Commission welcomed the efforts of the Ukrainian authorities to improve the competitive selection of candidates for the Constitutional Court of Ukraine and noted that the draft amendments significantly advanced the implementation of its earlier recommendations. The Commission however highlighted the need to: introduce a sunset clause for international participation; establish a defined term of office and a formal Ukrainian act of appointment for international AGE members; simplify the parliamentary procedure for selecting AGE members; ensure the appointment of substitute members, at least for international experts; incorporate gender equality considerations into the criteria for selecting judges; require the AGE to transmit its reasoned assessments of candidates, with these made

³ Venice Commission, [CDL-PI\(2022\)046-e](#), Ukraine – Urgent 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", issued on 23 November 2022.

public; base the AGE's evaluation methodology on international best practice; provide a legal solution for situations where the AGE cannot reach a decision; define clear timeframes for the selection process; guarantee transparency of decisions taken by appointing bodies; and provide for the involvement of civil society in supplying information on candidates and monitoring the process.

15. In its follow-up opinion⁴ of 10 June 2023 to the abovementioned opinion, the Venice Commission noted with appreciation that, despite the ongoing war, the Ukrainian authorities and civil society had demonstrated a strong commitment to advancing reforms and implementing the Commission's recommendations. While regretting that the proposal to expand the AGE to seven members was not accepted, the Commission welcomed the substantial improvements introduced in response to its earlier opinions, including the exclusion of "not suitable" candidates, the casting vote for international members in all evaluation stages, the introduction of substitute members to ensure continuity, and other enhancements set out above. It nevertheless recommended removing the provision on the order of voting within the Congress of Judges, clarifying that the names of AGE members supporting each candidate in the ranking phase should also be published, and specifying that AGE decisions may be challenged only on procedural grounds.

16. On 9 October 2023, the Venice Commission adopted another urgent follow-up opinion.⁵ The Commission noted with satisfaction that the key recommendations set out in its follow-up opinion to Draft Law No. 9322 of 25 May 2023 had been duly implemented in the Law adopted on 27 July 2023, and considered that the conditions were therefore met for it to proceed with the selection of one member and one substitute member of the Advisory Group of Experts; it accordingly instructed its Bureau to take the necessary steps and to transmit without delay to the Ukrainian authorities the names of the proposed candidates, in line with the transitional provisions of the Law. The AGE was thereafter composed with one international member appointed on the basis of the selection carried out by the Venice Commission.

C. Key Features of the Draft Amendments

17. On 24 October 2025, the Verkhovna Rada of Ukraine registered Draft Law No. 14149 amending several legislative acts with a view to improving the competitive procedure for selecting judges of the Constitutional Court of Ukraine, followed on 27 October by the submission of an alternative Draft Law No. 14149-1. The two drafts are identical in substance, save for the provision governing the storage of documents generated during the selection process: Draft Law No. 14149 entrusts this task to the Secretariat of the Constitutional Court, whereas Draft Law No. 14149-1 assigns it to the respective appointing authority. This legislative package foresees amendments in two pieces of legislation: in the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine"⁶ and in Law of Ukraine "On the Constitutional Court of Ukraine".⁷

18. The draft amendments seek to underline the "auxiliary" status of the AGE. The draft reiterates that the AGE is an advisory body whose role is limited to assisting the appointing authorities in assessing the integrity, moral qualities, and professional competence of candidates.

19. The draft also provides that the AGE transmits to the appointing authority not only its list of candidates deemed suitable and the corresponding reasoned assessments, but also "copies of all documents and information collected and/or received by the Advisory Group regarding the

⁴ Venice Commission, [CDL-AD\(2023\)022](#), Follow-up Opinion to the 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 (Draft Law no. 9322 of 25 May 2023), (Venice, 9-10 June 2023).

⁵ Venice Commission, [CDL-AD\(2023\)042](#), Ukraine - Urgent follow-up opinion to the opinions on the Law "On Amendments to certain legislative acts of Ukraine to clarify the provisions on the competitive selection of candidates for the position of judge of the Constitutional Court of Ukraine", issued on 25 September 2023, (Venice, 6-7 October 2023).

⁶ [CDL-REF\(2017\)037](#)

⁷ [Legal acts | Constitutional Court of Ukraine](#)

evaluated candidates." As indicated in the explanatory note, the organisational and technical support of the AGE, including the handling of document flow, registration of correspondence, and the storage and protection of personal data and other confidential information is shifted to the Secretariat of the Constitutional Court since "the process of preparing the issue of appointment of judges of the Constitutional Court of Ukraine revealed a number of problems at the stage of AGE's facilitation to the authorities appointing judges of the Constitutional Court of Ukraine in assessing the moral qualities and the level of competence." This change responds to concerns raised by the Parliamentary Committee on Legal Policy that the AGE, not being a public authority, cannot ensure the level of data protection required under Ukrainian law, and is aimed at removing the ambiguities identified in the interaction between the AGE and the appointing bodies.

20. Finally, the draft amends the rules governing the announcement of additional competitions. Whereas the current law obliges the appointing bodies to call a new competition when fewer than two suitable candidates are identified per vacancy, the amendments would allow those bodies, where several or all vacancies are being filled concurrently, to assess whether an additional competition is necessary considering the number of candidates already identified.

D. Scope of the opinion

21. In this Opinion, the Venice Commission will assess the Draft Law in light of international standards and best practices, particularly those concerning the rule of law, separation of powers, legal certainty, legality, independence of the judiciary and other relevant principles. The Venice Commission underlines that the fact that this Opinion does not explicitly address some aspects of the draft law should not be interpreted as an endorsement by the Venice Commission or as indicating that these aspects will not be raised in the future.

III. Analysis

A. "Auxiliary" nature of the AGE

22. Pursuant to Article 10² (1) of the Law of on the Constitutional Court of Ukraine, "The Advisory Group of Experts (AGE) shall be established with a view to assist the subjects responsible for appointing judges of the Constitutional Court with evaluation of moral qualities and level of competence in the sphere of law of candidates for the position of the judge of the Constitutional Court". Revised draft Article 10² adds the following sentence: ["The Advisory Group of Experts] *is an auxiliary body of the entities responsible for appointing judges to the Constitutional Court and* [is established to assist them in assessing the moral qualities and level of competence in the field of law of candidates for the position of judge of the Constitutional Court"].

23. The Venice Commission has consistently underlined, in its earlier opinions, that the independence of the AGE and its members constitutes a key precondition for the integrity and effectiveness of the selection process.⁸ The AGE, hence, is an independent body with an autonomous function within the selection procedure. In this light, the Commission does not clearly discern the rationale for expressly characterising the AGE as "auxiliary", particularly given that the AGE stage forms an essential element of the procedure for selecting candidates for the Constitutional Court.

24. Moreover, the delegation of the Venice Commission was informed during the online meetings that, under Ukrainian law, "auxiliary bodies" constitute a specific category of institutions which are legally subordinated to, and operate under the direction of, the primary authorities they are meant to assist. Qualifying the AGE as an "auxiliary" body could therefore be interpreted as subjecting it to the direction or oversight of the appointing authorities, including in matters of document disclosure and internal decision-making. Such an interpretation would risk undermining its independence, which is indispensable for ensuring impartial and credible evaluations. In addition, and at any rate, it is unclear how the AGE could simultaneously function

⁸ Ibid. paragraph 69.

as an auxiliary body to three distinct appointing authorities without creating potential conflicts of loyalty.

25. This does not, of itself, diminish the fact that the AGE's purpose is indeed to support the appointing authorities. Nonetheless, the Commission observes that such qualification may convey a notion of optional or secondary involvement, which does not correspond to the statutory powers conferred upon the AGE. Article 10² (25) (1), (2) and (7) of the Law on the Constitutional Court, which sets out the AGE's authority to "development and adoption of the Regulation on the Advisory Group of Experts; development and adoption of the methodology of evaluation of moral qualities and level of competence in the sphere of law of candidates for the position of the judge of the Constitutional Court" as well as "adoption of a motivated decision on evaluation of compliance of moral qualities and level of competence in the sphere of law of candidates for the position of the judge of the Constitutional Court regarding each candidate, compiling a list of evaluated candidates and their submission to appointing entities" confirms that its role is not auxiliary.⁹

26. If the purpose of the amendment is solely to clarify that the AGE performs supporting functions and does not replace the appointing authorities—whose constitutional prerogative to select and appoint judges remains intact, —the Commission considers that the existing statutory formulation, which envisages that "the Advisory Group of Experts shall be established with a view to assist the subjects responsible for appointing judges of the Constitutional Court with evaluation of moral qualities and level of competence in the sphere of law of candidates for the position of the judge of the Constitutional Court" already reflects this balance appropriately and expresses the need for the AGE not to reduce the appointing authorities' role to a formal endorsement of its conclusions. The AGE's role is to assist the nominating bodies within the limits of its mandate, the final decision on the nomination of candidates rests with the three bodies designated by the Constitution.

27. A useful comparative point of reference may be found in the practice of other European bodies entrusted with assessing candidates for judicial office. The European Union's Article 255 Committee¹⁰ and the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights¹¹ both operate as independent expert bodies tasked with evaluating the suitability of candidates prior to their appointment by political institutions. In both systems, the advisory mechanism serves a distinct function: it reinforces the integrity and professionalism of the selection process without displacing the prerogative of the appointing authorities. These bodies are not "auxiliary" in a hierarchical sense; rather, they act as independent evaluators whose opinions carry significant weight and are essential for ensuring credibility and public confidence in the appointment process.

28. In this context, the Venice Commission recalls that strict political neutrality is an indispensable requirement for membership in the AGE. The proper discharge of its mandate presupposes that the AGE remains fully independent both from the appointing bodies and from the Constitutional Court itself. Independence from the appointing authorities is necessary because the AGE's *raison d'être* is to provide an impartial, external assessment of candidates' integrity and professional competence. Independence from the Constitutional Court is likewise essential to avoid any form of direct or indirect self-co-optation.

29. Furthermore, the establishment of the AGE—particularly with international participation during the initial period—was designed to reinforce public trust in the selection process.¹² The Venice Commission has repeatedly underlined that the temporary involvement of international experts in certain bodies does not, in itself, call into question the sovereignty of the Ukrainian

⁹ [Legal acts | Constitutional Court of Ukraine](#)

¹⁰ [Home Comit255 - comite255 - Publications Office of the EU](#)

¹¹ [CM/Res\(2010\)26](#)

¹² Venice Commission, [CDL-PI\(2022\)046](#), Ukraine – Urgent 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", issued on 23 November 2022, paragraph 45.

State, but serves to reinforce the legitimacy of the process during a period of institutional transition.¹³

30. The Commission takes note of the authorities' concern that, in the light of the very limited choice which is effectively left for the appointing authorities when only a very small number of candidates remains after the AGE's evaluation,¹⁴ the expert body might, in practice, have moved beyond its filtering role. The Commission reiterates that expert bodies, particularly mixed bodies with international participation, should exercise their mandate with restraint, so as to preserve a genuine and meaningful choice for the appointing authorities in the final selection.

31. In this respect, the Commission notes that the Ukrainian legal framework sets a demanding standard for the evaluation of candidates. Article 10⁸(3) of the Law "On the Constitutional Court of Ukraine" provides that a candidate may be deemed to possess high moral qualities only where no reasonable doubts exist as to the legality of their sources of income, the consistency between their lifestyle and declared earnings, and their integrity. By referring to "reasonable doubt", the law imposes a rigorous threshold which may, in practice, lead to the exclusion of a significant number of candidates. This strict standard should be borne in mind when considering how many candidates successfully pass the AGE stage.

32. At the same time, appointment procedures that combine expert input with political decision-making must maintain a careful balance between these two components. Expert bodies should exclude only candidates who clearly fail to meet the required moral or professional standards, leaving the appointing authorities a meaningful choice in the final decision. An overly restrictive approach by the expert body risks encroaching upon the decision-making prerogatives of the appointing authorities.

33. In conclusion, while fully acknowledging the central role of the appointing authorities in the final selection, the Venice Commission considers that the proposed amendment characterising the AGE as an "auxiliary" body is both unnecessary and potentially detrimental. It therefore recommends that the reference to the AGE as an "auxiliary" body not be included in the law.

B. AGE's Information Management

34. According to Part 8 of the current Article 208⁴ of the Regulations of the Verkhovna Rada, "The Advisory Group of Experts shall provide the Verkhovna Rada with a list of evaluated candidates for the position of judge of the Constitutional Court of Ukraine, as well as a reasoned decision on the assessment of the moral qualities and level of competence in the field of law of each candidate". The amended Article 208⁴ (8) adds the obligation to provide to the Verkhovna Rada also "copies of all documents and information collected and/or received by the Advisory Group regarding the evaluated candidates".

35. Furthermore, unlike the current regulations, the new draft Article 10⁸(8) to the Law on the Constitutional Court states that "After receiving from the Advisory Group a list of evaluated candidates for the position of judge of the Constitutional Court, the decisions of the Advisory Group regarding the assessment of the suitability of each candidate, as well as copies of all documents and information collected and/or received by the Advisory Group regarding the evaluated candidates, the competition commission, the Committee, the Council of Judges of Ukraine shall conduct interviews with the candidates included in the list of evaluated candidates". Moreover, Part 10 of the revised draft Article 10⁸(8) of the Law on the Constitutional Court states that "Within five days of the Advisory Group submitting the documents specified in part eight of this article, the Advisory Group shall transfer all information obtained and/or collected by it during the evaluation of candidates to the Secretariat of the Constitutional Court of Ukraine for storage."

¹³ 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", (Venice, 16-17 December 2022), paragraph 47.

¹⁴ During the online meetings, the delegation of the Venice Commission was informed that only 17 of the 116 initial candidates – i.e. less than 15% – remained in contention for the seven available positions.

36. The Venice Commission underlines that the confidentiality surrounding the AGE's internal assessments serves important purposes: protecting candidates from reputational harm, preventing undue external influence or pressure on the AGE, avoiding media leaks, and ensuring that highly qualified individuals are not discouraged from participating in the competition. Undermining these safeguards and disclosing all confidential information that was entrusted to the AGE would weaken the integrity of the evaluation process and could adversely affect public trust in the competitive selection mechanism.

37. The Commission considers that the proposed obligation for the AGE to transmit all documents and information concerning the candidates to the appointing bodies, in general, corresponds to the Constitutional roles of the appointing bodies. However, if applied unconditionally and without exceptions it would significantly affect the confidentiality of the procedure and alter the balance originally established between the AGE and the appointing authorities. The Venice Commission accepts that it is for the appointing authorities to announce competitions for positions of judge of the Constitutional Court. It further notes that, pursuant to Article 10⁵(2)(9) of the Law on the Constitutional Court of Ukraine, candidates give their "written consent to the appointing bodies for the processing of their personal data and for the publication of the documents listed in that provision...". On this basis, the appointing authorities are entitled to collect the information necessary to take an informed decision on appointments. This does not, however, imply that the AGE is obliged, without exception, to transmit all information and documents in its possession to the appointing bodies.

38. It is an essential feature of the AGE role that the appointing bodies may select a candidate only from among those whom the AGE has found suitable. By contrast, the proposed amendment could be interpreted as allowing the appointing bodies to re-examine the entire pool of candidates, including those whom the AGE has classified as unsuitable. Such an interpretation would, in effect, enable the appointing bodies to revisit and potentially set aside the AGE's assessments, thereby reintroducing candidates who have not met the integrity or professional competence requirements established by the AGE. In the opinion of the Venice Commission, even if the amendment does not necessarily lead to an ex-post reversal of the decisions of the AGE, it constrains the AGE's internal deliberations, subjecting all its communications and documentation-gathering processes to the appointing bodies' later scrutiny. Moreover, it would prevent the AGE from making a deliberate decision about which information not to release to protect the candidate's personal data. Thus, the amendment infringes the AGE's ex-ante deliberation autonomy.

39. During the online meetings, the Commission was informed that the drafters intend to require the AGE to share with the nominating bodies only the information concerning the pre-selected candidates which is in line with the existing legislative framework. However, the wording "as well as copies of all documents and information collected and/or received by the Advisory Group regarding the evaluated candidates" is open to different interpretations and may be understood as extending this obligation to all candidates assessed by the AGE, thereby creating an undesirable ambiguity. The Venice Commission thus considers that the draft laws should state this without any ambiguity, making clear that information about candidates who are not selected is not transmitted to the nominating bodies, perhaps other than a short, reasoned explanation of the basis of their decision. The draft amendments must be formulated in clear and unequivocal terms, so that it is beyond doubt that the appointing bodies may not nominate candidates whom the AGE has found whom the AGE has not approved.

40. As concerns the information which is transmitted by the AGE to the appointing bodies together with the list of suitable candidates, the Commission underlines that the independence of the AGE is a central safeguard of the system. However, this cannot be understood as excluding an appropriate degree of transparency as to how, from whom and by what means the information underpinning its assessments is obtained. Within the limits set by rules on data protection and confidentiality, the AGE could, for instance, establish a publicly accessible mechanism indicating, in general terms, the types of information, materials and submissions received and how they are taken into account, while ensuring that sensitive personal data are not disclosed. In this respect, it is relevant that Ukrainian law already permits public input during the nomination procedure:

Article 10⁶(5) of the Law on the Constitutional Court of Ukraine provides that individuals and civil society associations may submit information and materials to the selection commission, the Committee, the Council of Judges of Ukraine and the AGE regarding the compliance or non-compliance of specific candidates with the requirements for the office. Ideally, the procedure should also enable citizens to submit information capable of correcting or rebutting negative material concerning a candidate. In the absence of such safeguards, the assessment conducted by the expert body risks appearing one-sided, thereby giving rise to doubts as to how, and by whom, the underlying information has been provided.

41. Furthermore, the independence of the AGE from the political appointing authorities does not exclude appropriate institutional cooperation. Given the respective roles of the AGE and the appointing institutions, the latter have legitimate reasons to request and receive information concerning the preselected candidates, since much of this information is relevant to their ability to make an informed choice among them. At the same time, in order to safeguard its decisional autonomy and internal deliberations, as well as the privacy and reputational rights of the candidates and their relatives, in exceptional cases the AGE must retain the ability to be selective and to decline to transmit highly sensitive personal information that is not relevant to the appointing authorities' decision making.

42. For these reasons, in order to strike an appropriate balance between transparency and protection of sensitive personal data, the Commission recommends that additional statutory criteria should be laid down to determine which categories of information may legitimately be withheld by the AGE. In the Commission's view, such statutory criteria should, at a minimum, clarify that any documents and information covered by a candidate's disclosure agreement are to be transmitted by the AGE to the appointing bodies; that information provided during interviews which were broadcast to the public is likewise to be conveyed, while information obtained during those parts of the interviews which were held in camera should not; that the content of the AGE's internal deliberations should not be disclosed; and that other sensitive personal information which may be requested by the appointing authorities should only be released by the AGE if the candidate explicitly agrees.

C. AGE's Administrative Autonomy

43. The current wording of Article 10²(31) of the Law on the Constitutional Court provides in general terms that, "A body which provides organisational support of the activities of the Constitutional Court shall be responsible for organisational and technical support of activities of the Advisory Group within the scope of expenses envisaged in the State Budget of Ukraine for a respective year for financing the Constitutional Court's activities", the new draft Article significantly expands this provision by expressly specifying that "Organisational and technical support for the Advisory Group's activities (including, but not limited to, document management, registration of incoming and outgoing correspondence, storage and protection of personal data and other confidential information collected and/or received by the Advisory Group in the course of its duties) shall be entrusted to the body responsible for the organisational support of the Constitutional Court, within the limits of the expenditure provided for in the State Budget of Ukraine for the relevant year for the financing of the activities of the Constitutional Court."

44. The Venice Commission emphasises that the AGE is a body operating under the Constitution, the relevant legislation and its own Regulation. The manner of appointment of the members of an independent body, as well as the guarantees shielding them from external pressure, are essential elements of institutional independence.¹⁵ In addition, administrative autonomy—namely, the ability to manage its own internal functioning without external interference—constitutes a core component of independence for any such body.¹⁶ Although according to Article 10²(31) of the Law on the Constitutional Court, "a body which provides organisational support of

¹⁵ See, ECtHR, *mutatis mutandis*, Bryan v. The United Kingdom, Application no. 19178/91, 22 November 1995, paragraph 37.

¹⁶ Venice Commission, [CDL-AD\(2012\)014](#), Bosnia and Herzegovina - Opinion on legal certainty and the independence of the judiciary, paras 74-81.

the activities of the Constitutional Court shall be responsible for organisational and technical support of activities of the Advisory Group", the organisational support for the AGE is currently provided within the AGE itself, as set out in Section III, Article 14 of its Regulations.¹⁷ In the Commission's view, such self-organisation is an inherent component of institutional autonomy and a necessary condition for the effective exercise of the AGE's mandate. For this independence to be meaningful, the AGE must retain control over its internal working arrangements, including its secretariat, without structural dependence on any external body.

45. It should also be noted that placing the AGE in a position of full technical and informational dependence on the Constitutional Court may create unnecessary risks for the independence of the AGE and for the integrity of the appointment procedure as a whole. In a context where the Court may be divided, parts of the Court could have a strong interest in influencing the pre-selection of candidates in order to secure or consolidate a majority. By controlling the organisational and informational infrastructure on which the AGE relies, the Court could, in practice, exercise leverage over one of the key actors in its own appointment process. Furthermore, during the online consultations, representatives of the Constitutional Court themselves expressed reservations about assuming these functions, referring *inter alia* to the lack of adequate resources to carry out such tasks. Accordingly, the Venice Commission finds that the above-mentioned provisions of the Law on the Constitutional Court should be interpreted as permitting the Secretariat of the Court to provide limited logistical and technical support to the AGE, without transferring to the Constitutional Court's Secretariat the overall responsibility for organising and managing the activities of the Advisory Group.

46. In this context, the Commission is not persuaded by the concerns expressed in the explanatory note regarding the AGE's alleged inability to meet data-protection requirements, owing to its non-status as a public authority. First of all, Article 10² (25)(3) of the law on the Constitutional Court clearly envisages the possibility of consideration, check, and analysis by the AGE of documents of a candidate for the position of the judge of the Constitutional Court sent to the Advisory Group, including confidential information and personal data. Furthermore, according to Article 10² (29) of the same law, "A member of the Advisory Group shall: 1) not use personal data and other information which he/she has learned while working in the Advisory Group for purposes other than fulfilment of duties related to the Advisory Group's work; 2) take measures to ensure protection of personal data and confidential information which have become known to him/her in connection with fulfilment of duties related to the Advisory Group's work".

47. The Commission thus finds that the assertion that the Secretariat of the Constitutional Court should assume responsibility for document management, correspondence registration and the protection of personal data and confidential information would, in practice, result in the Secretariat of the Court acting as the Secretariat of the AGE—an outcome that would significantly alter the institutional balance envisaged by the existing framework. The Commission considers that transferring these functions to another institution does not necessarily advance the protection of personal data. On the contrary, the wider the circulation of documents and sensitive information, the greater the risk of inadvertent disclosure or unauthorised access. Ensuring confidentiality requires limiting the number of actors who handle such material, together with clear and robust internal safeguards within the AGE itself.

48. Should the legislator consider it necessary to introduce more explicit provisions requiring the AGE to designate a person responsible for data protection and, more generally, on the processing of personal data by the AGE secretariat, the appropriate solution would be to establish clear statutory obligations to that effect. Transferring the AGE's Secretarial and administrative functions to another body would not resolve this concern and would instead weaken the AGE's institutional autonomy. Moreover, during the online meetings, the delegation was informed that no breaches of data protection had so far been recorded on the part of the AGE Secretariat.

49. If the reasoning for these amendments stems from the current involvement of experts and specialists provided by international technical assistance projects in supporting the AGE, the

¹⁷ [Normative acts | Constitutional Court of Ukraine](#)

Commission recalls that this structure reflects the mixed—national and international—composition of the AGE, which was deliberately designed to enhance the credibility and impartiality of the evaluation process.¹⁸ Maintaining a mixed support structure is therefore consistent with the logic underlying the creation of mixed bodies in Ukraine.

50. Moreover, the above mentioned is confirmed with the provision of Point 19 of Section IV ("Transitional provisions") of the law on the Constitutional Court, which clearly envisages that "During the transitional period of selection additional experts, specialists of international organisations may be involved upon request of the Advisory Group of Experts to support its activities and work of its members at the expense of such organisations. Organisational and technical support of activities of the Advisory Group of Experts may be provided at the expense of involved international technical assistance". The Commission finds that this clause establishes a clear statutory basis for the functioning of the AGE's Secretariat with international involvement at least for the duration of the transitional period. At the same time, the Commission acknowledges that the AGE should not rely indefinitely on international technical support. This transitional period should instead be used to begin developing its own technical capacity, staffed by Ukrainian national experts with expertise in both Ukrainian and international public law.

51. Finally, the Commission stresses that the AGE is the sole body entrusted with the pre-selection of candidates for the Constitutional Court. In this light, transferring some crucial secretarial and administrative functions from the AGE to another body whose composition will be determined with the AGE's participation risks generating conflicts of interest and may adversely affect the independence and effectiveness of the pre-selection process.

52. In light of the foregoing considerations, the Venice Commission recommends that the AGE retain responsibility for its main secretarial and administrative functions, including the management of documents, correspondence and personal data. Any additional safeguards in the field of data protection should be introduced through precise statutory obligations, rather than by transferring these core functions to the Secretariat of the Constitutional Court.

D. Additional competitions

53. According to current Article 10⁸ (6) of the Law on the Constitutional Court, "If, according to the results of the evaluation, the number of candidates who meet the criterion of the recognised level of competence in the field of law is less than two persons for one vacant position of judge of the Constitutional Court, the competitive commission, the Committee, the Council of Judges of Ukraine shall immediately but not later than within twenty days, announce a new competitive selection for such vacant position, which shall be conducted in accordance with the procedure established by this Law". Under the amendments, if the competitive selection is held for one vacant position only, the appointing bodies are obliged to announce a new competition. If, instead, the selection concerns all vacant positions, the appointing bodies "may" decide, but are not obliged to, to hold a new competition. In this latter case, the decision is left to the discretion of the appointing bodies.

54. Under the current system, in the two years of operation of the AGE the obligation to relaunch the appointment procedure has led to the repetition of the competition for three out of seven vacant positions, despite the fact that in each of these cases there was at least one candidate who had successfully passed the assessment of moral qualities. In the light of these difficulties and delays, the Commission considers it appropriate to allow the appointing authority a margin of discretion to determine whether an additional competition should be announced, taking into account the number of candidates already assessed by the Advisory Group of Experts and the overall context of the selection procedure.

¹⁸ Venice Commission, [CDL-PI\(2022\)046-e](#), Ukraine – Urgent 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", issued on 23 November 2022, paragraph 45.

55. At the same time, the Commission considers it important that the exercise of this newly introduced discretion be framed by appropriate safeguards. In particular, it would be advisable to require that any decision not to announce a new competition in a situation where fewer than two qualified candidates per vacancy are identified be made public, and that the applicable time-limits be interpreted and applied so as to prevent prolonged vacancies on the bench.

IV. Conclusion

56. By letter of 20 November 2025, Ms Oksana Vasyilchenko, Chair of the Advisory Group of Experts of Ukraine, requested an urgent opinion of the Venice Commission of the Council of Europe on the draft amendments to certain legislative acts of Ukraine regarding the improvement of the competitive selection process for the position of judge of the Constitutional Court of Ukraine.

57. The Venice Commission recalls that the AGE is an independent body with an autonomous function within the procedure of selection of the candidates to the position of judge of the Constitutional Court. Its role is to evaluate the suitability of candidates prior to their appointment, while preserving a genuine margin of appreciation for the appointing authorities in the final selection. The independence of the AGE and its members from both the appointing bodies and the Constitutional Court constitutes an essential precondition for the integrity and effectiveness of the selection process. International participation during the initial period reinforces public trust in the selection process.

58. The key role of the AGE in protecting the selection procedure from undue political influence¹⁹ and in promoting objective, merit-based appointments, the constitutional significance of the Constitutional Court and the importance of maintaining public confidence in its composition makes it essential for the legal framework both to enable the AGE to discharge its mandate effectively and to ensure that the bodies designated by the Constitution retain the capacity to take sovereign and well-informed decisions on the appointment of judges to the Constitutional Court.

59. The Venice Commission thus recommends:

- Not including in the law the reference to the Advisory Group of Experts as an "auxiliary" body;
- That in order to strike an appropriate balance between transparency and the protection of sensitive personal data, additional statutory criteria be laid down to determine which categories of information may legitimately be withheld by the AGE;
- Ensuring that the AGE retain responsibility for its main secretarial and administrative functions, including the management of documents, correspondence and personal data. Any additional safeguards in the field of data protection should be introduced through precise statutory obligations, rather than by transferring these core functions to the Secretariat of the Constitutional Court.

60. The Venice Commission remains at the disposal of the Ukrainian authorities for further assistance in this matter.

¹⁹ Venice Commission, [CDL-AD\(2022\)054](#), 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", (Venice, 16-17 December 2022), paragraph 37.