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**Opinion No. 969 / 2019**

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**UKRAINE**

**LAW NO. 193 OF UKRAINE(\*)**

**"ON AMENDING CERTAIN LAWS OF UKRAINE  
REGARDING ACTIVITY OF JUDICIAL GOVERNANCE BODIES"**

**AND**

**EXPLANATORY NOTE**

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(\*) *Unofficial translation*

The Verkhovna Rada of Ukraine r u l e s:

I. To amend the following laws of Ukraine:

**1. In the Law of Ukraine “On the Judiciary and the Status of Judges” (Vidomosti of the Verkhovna Rada of Ukraine, 2016, no. 31, p. 545 with subsequent changes):**

1) to replace, in Art. 37(1), the words "not more than two hundred" with the words "not more than one hundred";

2) to formulate Art. 92(1) as follows:

"1. The High Qualification Commission of Judges of Ukraine is a public collegial body of judicial governance that operates on a permanent basis in the justice system of Ukraine";

3) in Article 93(1):

to formulate clause 6 as follows:

"6) approves, with the consent of the High Council of Justice, the form and content of an application for taking part in the selection of candidates for judicial positions (judicial candidates); a questionnaire for judicial candidates, and the procedure for special training of judicial candidates";

to add paragraph 61 as follows:

"61) develops and submits for the approval the following drafts to the High Council of Justice for approval: a draft selection examination procedure and scoring method; a draft procedure for qualifying examinations and candidate assessment methodology; a draft regulation on competitive selection for vacant judicial positions; a draft procedure and methodology for qualification evaluation; a draft procedure for compiling and maintaining a judicial candidate's personal file (dossier)";

4) to formulate Articles 94 and 95 as follows:

"Article 94. Members of the High Qualification Commission of Judges of Ukraine

1. The High Qualification Commission of Judges of Ukraine shall be composed of twelve members appointed by the High Council of Justice based on the outcome of competitive selection, for four years.

2. A citizen of Ukraine who is fluent in the official language, has completed higher legal education and has at least 15 years of professional legal experience, belongs to the legal profession and meets the criterion of political neutrality may be appointed as a member of the High Qualification Commission of Judges of Ukraine.

Members of the High Qualification Commission of Judges of Ukraine may not be members of political parties, trade unions, participate in any political activity.

3. Members of the High Qualification Commission of Judges of Ukraine who are judges or public officials shall keep their positions, status and job for their term of office. Such members of the High Qualification Commission of Judges of Ukraine shall be seconded to the Commission for the duration of their tenure.

Attorneys elected as members of the High Qualification Commission of Judges of Ukraine shall be obliged to abandon legal practice as attorneys and cease to be members of any Bar Self-Governance Bodies, for the duration of their tenure on the Commission.

4. Members of the High Qualification Commission of Judges of Ukraine may not combine their position with any other position in a public agency, local self-government body, or body of judicial, bar or prosecutors self-governance; nor may they be members of parliament ("people's deputy of Ukraine"), members of the Verkhovna Rada of the Autonomous Republic of Crimea, or members of a regional, district, city, borough (city district), village or settlement council; nor undertake entrepreneurial activity or any other paid work, or receive remuneration (with the exception of teaching, research and creative activity, and remuneration for such activity); nor be members of the managing or supervisory board of a profit-making legal entity.

5. Requirements and restrictions of anti-corruption legislation shall be applicable to the members of the High Qualification Commission of Judges of Ukraine.

6. Persons who own shares or other corporate rights, or have other property rights or interest in any profit-making legal entity, shall be obliged to transfer such shares (corporate rights) or other relevant rights to an independent third party asset manager (with no right to instruct the latter as to how to dispose of such shares, and corporate or other rights, or how to exercise any rights arising therefrom) for the duration of their tenure as a member of the High Qualification Commission Judges of Ukraine. A member of the High Qualification Commission of Judges of Ukraine may receive interest, dividends and other passive income from property he/she owns.

7. Members of Parliament of Ukraine, members of the Cabinet of Ministers of Ukraine, chairpersons of courts, their deputies, secretaries, chairpersons of court chambers, their deputies, members of the Council of Judges of Ukraine, the High Council of Justice, the Ombudsman, persons who were held liable for corruption offences may not be appointed as members of the High Qualification Commission of Judges of Ukraine.

The following persons may not be members of the High Qualification Commission of Judges of Ukraine:

- 1) persons declared by court completely or partially incapacitated;
- 2) persons who have a conviction that has not been expunged or removed from their personal record in accordance with the procedure prescribed by law;
- 3) persons who have been sanctioned for a corruption-related administrative offence over the past year;
- 4) persons who used to be members of the High Qualification Commission of Judges of Ukraine or the High Council of Justice (in Ukrainian: Вища рада юстиції);
- 5) persons who hold administrative positions in courts;
- 6) persons who do not meet the requirements of this Law related to the prohibition on combining membership in the Commission with other jobs, and who have not removed this incompatibility within a reasonable time, but in any case no later than within 30 days from the moment when circumstances leading to such incompatibility arose.

9. Members of the High Qualification Commission of Judges of Ukraine shall be obliged, in their work and outside of it, adhere to the highest standards of ethical behaviour, including the principles and rules of ethics applied to judges.

10. Membership in the High Qualification Commission of Judges of Ukraine shall neither be incompatible with any prohibition for such person to hold positions with regard to which the purification of government applies according to the Law of Ukraine "On Purification of Government".

Article 95. Procedure of appointing to the positions of members of the High Qualification Commission of Judges of Ukraine

1. Appointment to the positions of members of the High Qualification Commission of Judges of Ukraine shall be effectuated by the High Council of Justice according to the competition results in a manner established by this Law.

Competition for a position of a member of the High Qualification Commission of Judges of Ukraine shall be conducted by the High Council of Justice based on principles of the rule of law, publicity and political neutrality in the manner stipulated by this Law.

A person meeting the requirements set forth in this Law for a member of the High Qualification Commission of Judges of Ukraine and intending to be appointed a member of the High Qualification Commission of Judges of Ukraine shall submit an application to the Secretariat of the High Council of Justice.

The application form shall be approved by the High Council of Justice.

4. Together with the application expressing the intention to be appointed a member of the High Qualification Commission of Judges of Ukraine, an applicant shall submit:

- 1) curriculum vitae;
- 2) a cover letter outlining motives for being appointed a member of the High Qualification Commission of Judges of Ukraine;
- 3) a copy of a personal identification document that confirms the citizenship of Ukraine;
- 4) a copy of the work record book (if any);
- 5) a declaration of the person authorised to perform functions of the state or local self-government;
- 6) copies of documents confirming education, academic titles and degrees;
- 7) certificate of a medical institution on the applicant's health condition with a conclusion as to his/her suitability to occupy a position related to performance of governmental functions;
- 8) a copy of the military card (for servicemen or persons subject to the draft);
- 9) a written consent to the processing of personal data and making public copies of the documents specified in this Article, except for the copies of documents referred to in clauses 3, 7, and 8 of this paragraph;
- 10) a written statement on the absence of restrictions regarding membership in the High Qualification Commission of Judges of Ukraine, as well as on compliance with the incompatibility requirements, or a commitment to comply with the incompatibility requirements, in case of appointment as a member of the Commission;
- 11) an application for conducting a verification stipulated by the Law of Ukraine "On Purification of Government";
- 12) consent to the vetting in accordance with the law.

5. The Secretariat of the High Council of Justice shall accept documents in chronological order of receipt of applications and, no later than the following working day, post the information received along with copies of the documents submitted, except for the documents listed in clauses 3, 7, and 8 of paragraph four of this Article on the official website.

6. The acceptance of documents shall end at midnight on the last day of the period specified by the High Council of Justice for submission of documents.

The Secretariat of the High Council of Justice may not refuse to accept documents on grounds other than the end of the established timeframe.

7. No later than the day following the completion of document acceptance, the Secretariat of the High Council of Justice shall compile a list of candidates, which shall be immediately posted on the official website of the High Council of Justice.

8. Notice on the time and venue of the competition shall be published in the Holos Ukrainy ("Voice of Ukraine") Newspaper and posted on the website of the High Council of Justice no later than 10 days before the competition start.

9. The Secretariat of the High Council of Justice shall conduct the vetting of candidates, as to whom such a decision was made by the Selection Board";

6) To add Article 95-1 to the Law as follows:

"Article 95-1. Selection Board Responsible for Holding a Competition to Fill in the Positions of Members of the High Qualification Commission of Judges of Ukraine

1. In order to hold a competition for filling in the positions of members of the High Qualification Commission of Judges of Ukraine, the High Council of Justice shall form a Selection Board and approve its composition.

The Selection Board shall comprise:

- 1) three persons selected by the Council of Judges of Ukraine from among its members;
- 2) three persons from among international experts nominated by international and foreign organizations, with which Ukraine cooperates in the sphere of corruption prevention and combating in accordance with international treaties of Ukraine, to serve as members of the [Public Council](#) of International Experts (PCIE) established in accordance with the Law of Ukraine On the High Anti-Corruption Court".

The Regulation on Competitive Selection shall set forth the procedure to be followed by the High Council of Justice when considering candidates from among international experts nominated by international and foreign organisations.

2. The Regulation on Competitive Selection shall be approved by the High Council of Justice.

The Rules of Procedure of the Selection Board shall be approved by members of the Board at its first meeting.

3. A decision of the Selection Board shall be considered approved if the majority of its members present at the meeting voted for this decision, provided that three persons from among those who voted in favour were international experts.

A member of the selection board has the right to participate in meetings and vote for the decisions of the Commission remotely using electronic means.

4. The Selection Board may:

- 1) collect, check and analyse information about candidates for the positions of members of the High Qualification Commission of Judges of Ukraine;
- 2) provide the High Council of Justice and request from it information on the candidates for members of the High Qualification Commission of Judges of Ukraine;
- 3) take measures to protect personal data, classified information that became known to members of the Selection Board in the course of fulfilment of their duties.

Members of the Selection Board shall be obliged:

- 1) to attend meetings of the Selection Board in person, without the right of delegation of their obligations to other persons;
- 2) not to use for the purposes other than fulfilment of their duties as a member of the Selection Board personal data and other information which became known to them due to their participation in activities of the Selection Board;
- 3) refuse to take part in gathering information about a candidate, considering the issue of whether a candidate qualifies for the position of the member of the Selection Board, has or had personal or business relationships with the candidate and/or if there is another conflict of interests or circumstances that may affect the objectivity or impartiality of a member of the Selection Board when taking decision on appointment of the candidate for the position of a member of the High Qualification Commission of Judges of Ukraine.

6. Organisational and technical support of the Selection Board shall be provided by the High Council of Justice.

The Selection Board may be financed from international technical assistance funds.

Members of the Selection Board not permanently residing in the territory of Ukraine shall be entitled to reimbursement of their travel expenses and costs of accommodation in Ukraine.

7. The Selection Board shall:

- 1) consider documents submitted by candidates for the positions of members of the High Qualification Commission of Judges of Ukraine;
- 2) select out of all candidates only those who in accordance with a substantiated decision of the Selection Board have the best experience, knowledge and qualities to fulfil duties of a

member of the High Qualification Commission of Judges of Ukraine and meet the requirements of law;

3) publish on the official website of the High Council of Justice information about the candidates, which have been selected for an interview with the Selection Committee;

4) hold interviews with the selected candidates during its meetings, select through the open voting one candidate (among the candidates who have passed the interview) per each vacancy who meets the requirements to a member of the High Qualification Commission of Judges of Ukraine and has the best experience, knowledge and qualities to fulfil duties of a member of the High Qualification Commission of Judges of Ukraine in accordance with a substantiated decision of the Selection Board.

8. Members of the High Qualification Commission of Judges of Ukraine shall be appointed by resolution of the High Council of Justice adopted at its meeting on the basis of minutes of the Selection Board signed by all its members which participated this meeting during the signing this resolution.

9. In case of early termination of office of a member of the High Qualification Commission of Judges of Ukraine, the High Council of Justice shall within ten days publish an announcement about the conditions and the term of competition on the official website of the High Council of Justice”;

7) to formulate Article 96 as follows:

Article 96. Dismissing Members of the High Qualification Commission of Judges of Ukraine

Grounds for dismissing a member of the High Qualification Commission of Judges of Ukraine shall be as follows:

1) submission of a resignation letter by a member of the High Qualification Commission of Judges;

2) inability to fulfil his/her authority for health reasons subject to a medical certificate;

3) revealed circumstances proving incompliance of a member with requirements established by this Law;

4) violation of legal requirements related to corruption prevention;

5) non-participation in the work of the High Qualification Commission of Judges of Ukraine over one calendar month running without any valid excuse or numerous refusals, without any valid excuse, to vote on issues under consideration;

6) gross or systematic negligence of his/her duties, which is incompatible with the status of a member of the High Qualification Commission of Judges of Ukraine or which revealed his/her incompetence for the post, or any other behaviour undermining authority of, and social trust in justice and the judiciary, including failure to comply with ethical standards of a judge, being an integral component of the professional ethics of a member of the High Qualification Commission of Judges of Ukraine.

2. A decision on dismissal of a member of the High Qualification Commission of Judges of Ukraine shall be adopted by the High Council of Justice at its meeting by a majority vote of its members, stipulated by the Law “On High Council of Justice”.

3. A decision to dismiss a member of the High Qualification Commission of Judges of Ukraine on the grounds referred to in clauses 1 and 2 of paragraph 1 of this Article shall be adopted by the High Council of Justice at the first meeting following receipt of the resignation letter.

4. A decision to dismiss a member of the High Qualification Commission of Judges of Ukraine on the grounds referred to clauses 3-6 of paragraph 1 of this Article shall be adopted by the High Council of Justice based on the submission received from the Integrity and Ethics Board which is established in accordance with the Law of Ukraine “On High Council of Justice”. From

the day of making this submission, respective member of the High Qualification Commission of Judges of Ukraine shall be removed from his/her post.

5. Shall grounds for dismissing a member of the High Qualification Commission of Judges of Ukraine, referred to in clauses 3-6 of paragraph 1 of this Article, be established, the Commission may decide to make a submission to the High Council of Justice requesting the respective member of the Commission to be dismissed. Starting from the day when the Commission adopted the decision to make the submission, this member of the Commission shall be removed from his/her post and his/her powers shall be terminated until a decision is made by the High Council of Justice.

6. Consideration and adoption of a decision on dismissing a member of the High Qualification Commission of the Judges of Ukraine shall be carried out in line with the requirements set forth in the Procedure of the High Council of Justice";

7) to exclude Article 97(1)(6);

8) in Article 98:

to add the words "for the members of the High Qualification Commission of Judges of Ukraine and officers of its Secretariat";

9) in Article 102:

to add a sub-paragraph to paragraph 2 as follows:

"The Secretariat shall be headed by a chief, who is appointed to the position according to the competition results in line with the provisions of this Law and the Law of Ukraine "On Civil Service";

to formulate paragraphs 3-5 as follows:

"3. Inspectors Service shall function at the Secretariat of the High Qualification Commission of Judges of Ukraine to support the members of the High Qualification Commission of Judges of Ukraine in the exercising of their powers.

4. Maximum number of officers in the High Qualification Commission of Judges of Ukraine, including the established number of the Commission members and inspectors, shall be approved by the High Council of Justice upon a submission by the High Qualification Commission of Judges of Ukraine.

5. Officers of the Secretariat of the High Qualification Commission of Judges of Ukraine shall be appointed to and dismissed from their positions in a manner stipulated by the legislation "On Civil Service";

in sub-paragraph 1 of paragraph 7, to replace words " Supreme Court judge multiplied by 1,5" with the words "High Specialized Court judge";

10) to add the words "including failure to provide information within the time period stipulated by the law" in clause 13 of paragraph 1 of Article 106;

11) in Article 107:

to formulate paragraph 1 as follows:

"1. Any person shall have the right to file a complaint pertaining to a disciplinary offence committed by a judge or to report a disciplinary offence committed by a judge (disciplinary complaint). This right shall be exercised by citizens in person or via an attorney, by legal entities, via an attorney, public authorities and local self-government bodies, via heads or representatives of these institutions, by the Integrity and Ethics Board, via its Head or members";

to delete paragraph 8;

12) to delete the words "and the High Qualification Commission of Judges of Ukraine" from Article 126(4)(6);

13) to delete Article 129(2)(6);

14) to delete the words "or the High Qualification Commission of Judges of Ukraine" from Article 130(7);

15) to replace the number "75" with "55" in Article 135(3)(3);

16) to delete clauses 22 and 23 of Section XII "Final and Transitional Provisions".

**2. In the Law of Ukraine "On the High Council of Justice" (Vidomosti of the Verkhovna Rada of Ukraine, 2017, no.7-8, p. 50 with subsequent changes):**

1) to add clauses 13-1, 20-1, 20-2 to Article 3(1) as follows:

"13-1) approve the Rules of Procedure of the High Qualification Commission of Judges of Ukraine; a selection examination procedure and scoring method; a procedure for qualifying examinations and candidate assessment methodology; a regulation on competitive selection for vacant judicial positions; a procedure and methodology for qualification evaluation; and a procedure for compiling and maintaining a judicial candidate's personal file (dossier)";

"20-1) appoint and dismiss members of the High Qualification Commission of Judges of Ukraine;

20-2) take decision to dismiss a member of the High Council of Justice";

2) in Article 20:

in paragraph 6:

in the first sentence, to replace the word and numbers "clauses 3-5" with "clauses 3-6", and the words "four months" with the words "two months";

in the second sentence, to replace the words "at least fourteen members of the High Council of Justice voted in favour" with the words "a majority of the members of the High Council of Justice voted in favour";

to add paragraph 7 as follows:

"7. 7. Members of the High Council of Justice shall be committed to the standards of judicial ethics both at work and outside of it, as a part of the professional ethics of members of the High Council of Justice";

3) to delete the words "multiplied by 1,5" in paragraph 1, 2 of Article 21;

4) in Article 24:

to add the words "including failure to comply with ethical standards as an integral component of the professional ethics of a member of the High Council of Justice" in clause 3 of paragraph 1;

to formulate paragraph 3 as follows:

"3. A decision to dismiss a member of the High Qualification Commission of Judges of Ukraine on the grounds referred to clauses 3-6 of paragraph 1 of this Article shall be adopted on the joint meeting of the High Council of Justice and the Integrity and Ethics Board based on the submission the Integrity and Ethics Board received from within five days from such submission.

A decision to dismiss a member of the High Council of Justice is considered to be adopted if the submission will not be rejected at a joint meeting of the High Council of Justice and the Integrity and Ethics Board by a majority vote of the meeting participants, provided that at least two international experts - members of the Integrity and Ethics Board have voted for it;

if the majority of members of the High Council of Justice who are present voted in favour of it";

6) To add Article 28-1 as follows:

"Article 28-1. Integrity and Ethics Board



1. The Integrity and Ethics Board (hereinafter referred to as the Board) is a collegial body functioning at the High Council of Justice established to ensure transparency and accountability of the members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine.

The Board shall comprise:

1) three members of the High Council of Justice;

2) three international experts nominated by international and foreign organisations to the Public Council of International Experts, established in accordance with the Law of Ukraine "On High Anti-Corruption Court" with which Ukraine cooperates in the prevention and combatting of corruption.

Proposals of international and foreign organisations with nominated experts shall be submitted to the High Council of Justice within 20 days from the date this Law comes into effect.

The participation of international experts in the Board shall expire six years after the entry into force of this Law. Each international expert shall be appointed for two years with the possibility of reappointment.

3. The procedure for selecting members of the High Council of Justice to join the Board and approving nominated international experts shall be determined by the Rules of Procedure of the High Council of Justice.

4. The decision on issues within the competence of the Board is considered to be adopted if the majority of its members voted in favour.

5. In the event of an equal number of votes "for" and "against", in accordance with this article, preference shall be given to the votes / decision of three international experts.

6. The work of the Board shall be based on the Regulation on the Integrity and Ethics Board, adopted at its first meeting.

7. The Board shall act based on the principles of the rule of law, legitimacy and openness, impartiality, freedom of expression, equality of its members and openness to the society.

7. The principal objectives of the Commission are as follows:

1) exercising assessment over compliance by a member or candidate to the member of the High Council of Justice and the High Qualification Commission of Judges of Ukraine with integrity principles and ethical standards of a judge as an integral component of the professional ethics of a member of the High Council of Justice, the High Qualification Commission of Ukraine and control over transparency in the activity of the High Council of Justice and the High Qualification Commission of Judges of Ukraine;

2) approving the conclusions on non-compliance with the requirements of the law for the candidates for the position of a member of the High Council of Justice before the election (appointment) of them to a position that prevents their appointment to the respective position;

3) submitting a proposal to dismiss a member of the High Council of Justice on the grounds referred to in Article 24 (clauses 3-6 of paragraph 1) of this Law;

4) submitting a proposal to dismiss a member of the High Qualification Commission of Judges of Ukraine on the grounds referred to in Article 96 (clauses 3-6 of paragraph 1) of the Law of Ukraine "On the Judiciary and the Status of Judges";

5) assisting with the consideration of the public opinion by the members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine when performing their tasks.

6) monitoring of information about judges of the Supreme Court in order to identify disciplinary violations, gross or systematic neglect of a judge by his / her duties, incompatibility

with the status of a judge or his / her non-compliance with the position, violation of the duty to confirm the lawfulness of the source of property.

8. The Board shall be entitled to:

1) collect, verify and analyse information, including confidential and personal information, about members of the High Council of Justice, to obtain information from other state and local governments, enterprises, institutions and organizations necessary for the fulfilment of its tasks, in addition to information that is consistent with defined by law as confidential / confidential information;

2) to request from candidates and members of the High Council of Justice, members of the High Qualifications Commission of Judges of Ukraine, as well as any other legal entity or person authorized to perform functions of state or local self-government, explanations, documents or information for the purposes examination of candidates and members of the High Council of Justice, members of the High Qualifications Commission of Judges of Ukraine;

3) free access to state registers and databases, full access to judges' files and candidate files for judicial office.

Members of the Commission, including Secretariat staff:

shall not use, for purposes other than their duties as a member of the Commission, personal data and other information they become aware of in the course of the work of the Commission;

shall not participate in the gathering of information about a member or nominee (during special screening) with the High Judicial Council and a member of the High Qualification Commission of Judges of Ukraine, if the member of the Commission has or had personal or business relations with the candidate and / or in the presence of another conflict of interest or circumstances that may affect the objectivity or impartiality of a member of the Commission;

take measures to protect personal data and confidential information that have become known to members of the Commission in the performance of their duties.

9. Decision on approval of the members of the Board shall be adopted by the High Council of Justice at its meeting according to, and within, the proposal submitted by bodies taking part in the formation of the Board, which are specified in paragraph 2 of this Article.

10. The Head of the High Council of Justice may not be a member of the Board.

11. Meetings of the Board shall be open. Announcements on holding a meeting, its agenda, minutes and conclusions of the Board shall be published on the official website of the High Council of Justice.

12. Organisational, material and technical support for the functioning of the Board is provided by the Secretariat of the High Council of Justice";

4) in Article 30(1):

to delete the words "by the legislation for closed court hearings or" in the second sentence

to delete the third sentence;

7) in Article 31:

to add a new paragraph after paragraph 7 as follows:

"8. Materials of a law case (their copies), explanations provided by judges or prosecutors with regard to law cases should be provided immediately, but not later than three days after the request has been received.

Therefore, consider paragraphs 8-11 paragraphs 9-12 respectively;

in paragraph 10, add the words "including the failure to comply with the terms set by the law" after the words "on their request";

8) to formulate paragraph 3 of Article 34 as follows:

"3. Decisions of the High Council of Justice, its Bodies shall be adopted at the session of the High Council of Justice, its Bodies, unless otherwise provided by this Law.

Decision of the High Council of Justice, its Bodies shall be adopted in the special premises (deliberation room), if:

an open hearing can result in a disclosure of a secret protected by the law;

it is necessary to prevent a disclosure of information about intimate or other personal aspects of life of the individuals participating in the hearing of the disciplinary case.

Only the members of the High Council of Justice entitled to vote during the adoption of the decision may be present in the special premises (deliberation room)";

9) to formulate Article 42 as follows:

"Article 42. Disciplinary proceedings

1. Disciplinary proceedings shall be initiated upon receiving, pursuant to the Law of Ukraine "On the Judiciary and the Status of Judges", a complaint on a disciplinary offence of a judge, a report on a disciplinary offence committed by a judge, or if members of the High Council of Justice identified (from any source) circumstances that can testify to a judge committing a disciplinary offence, or if initiated by the Disciplinary Chamber, Integrity and Ethics Board or by the High Qualification Commission of Judges of Ukraine in cases stipulated by the law (a disciplinary complaint).

2. Disciplinary proceedings with regard to judges shall be conducted by the Disciplinary Chambers of the High Council of Justice.

3. Disciplinary proceedings shall include:

1) a preliminary examination of the materials containing elements of the disciplinary offence committed by the judge and adoption of a decision to open a disciplinary case or refuse to open it;

2) a hearing on the disciplinary complaint and an adoption of a decision to impose disciplinary liability on the judge or refuse to impose disciplinary liability on the judge.

4. A disciplinary proceeding shall take a reasonable period of time. The time limits of the disciplinary proceedings shall not exceed sixty days from the receipt of the date the disciplinary complaint";

10) in paragraph 1 of Article 43:

to delete the words "and the availability of the grounds for dismissing the complaint or refusing to open a disciplinary case" in clause 1;

to delete the words "or paragraph 2" in clause 3;

to replace in clause 4 the words "shall collect, if necessary, the information, documents and other materials to verify the information referred to in the complaint and compile a grounded conclusion" with the words "shall prepare the materials";

11) in Article 44:

in clause 1 of paragraph 1 delete the words "or it is not signed or lacks the name, the last name or the parental name of the complainant or of the judge; or does not show the complainant's place of residence (temporary residence, official seat)";

to delete paragraph 2;

12) to add paragraph 3 in Article 47 as follows:

"3. Shall a judge, complainant be absent, the Disciplinary Chamber reviews the disciplinary case without them, with the exception of cases when a judge was not notified or notified with violations of part four of Article 49 hereof";

13) in Article 48:

in paragraph 1 delete the words "in particular, he/she shall request and gather additional information and documents, explanations by the judge and complainant, familiarise him/herself with the judge's file";

to delete paragraph 2;

in paragraph 4, replace the words "seven days" with "three days";

14) in Article 49:

to formulate paragraph 2 as follows:

"2. The review of the disciplinary case by the Disciplinary Chamber may be closed if:

an open hearing can result in a disclosure of a secret protected by the law;

it is necessary to prevent a disclosure of information about intimate or other personal aspects of life of the individuals participating in the hearing of the disciplinary case";

to delete paragraphs 3 and 4;

15) in Article 50:

to delete paragraph 1;

in paragraph 10 replace the words "within seven days" with the words "within three days";

16) in Article 51:

in paragraph 2, replace the words "thirty days" with the words "ten days";

to delete paragraph 4;

in paragraph 7:

in the first sentence, to replace the words "within thirty days" with the words "within thirty days within five days";

to delete the second sentence;

in paragraph 10 replace the words "within seven days" with the words "within three days".

## **II. Final Provisions.**

1. This Law shall enter into force on the day following the day of its publication, except for sub-clause 16 of clause 2 of Section I, which shall enter into force on 1 January 2020.

2. Starting from the date of entry into force of this Law, the powers of the members of the High Qualification Commission of Judges of Ukraine shall be terminated, and the Head of the Secretariat of the High Qualification Commission of Judges of Ukraine shall be appointed according to the results of the competition, taking into account requirements of the law.

The High Qualifications Commission of Judges of Ukraine completes the procedure for selection of candidates for the position of judge of a local court within two months from the date of formation of its new composition, announced by the decision of the Commission dated April 3, 2017 No. 28 / sn-17. Other procedures initiated by the High Qualifications Commission of Judges of Ukraine in accordance with the Law of Ukraine "On Judiciary and Status of Judges" before this Law enters into force shall be continued by the new composition of the High Qualifications Commission of Judges of Ukraine established under this Law.

3. Within 90 days from the day this Law enters into force the High Council of Justice shall:

form the composition of the High Qualifications Commission of Judges of Ukraine based on the results of the competition in accordance with the Law of Ukraine "On the Judiciary and the Status of Judges";

adopt the decision on approval of the members of the Board on Integrity and Ethics on the basis and within the proposals submitted by bodies taking part in the formation of the Board, according to Article 28-1 of the Law of Ukraine "On the High Council of Justice".

4. The number of positions in each of the cassation courts within the Supreme Court shall be determined taking into account the requirements of this Law for the chambers that are necessarily created in the cassation courts, the procedure for the formation of the Grand Chamber of the Supreme Court and taking into account other requirements defined by law.

5. Within two months from the date of formation of the new composition of the High Qualifications Commission of Judges of Ukraine, it shall select judges to cassation courts within the Supreme Court from among the judges of the respective cassation courts of the Supreme Court based on the criteria of professional competence, ethics and integrity.

The procedure for the selection of judges to the cassation courts within the Supreme Court shall be approved by the High Qualifications Commission of Judges of Ukraine, in agreement with the High Council of Justice.

6. Judges of the Cassation Courts within the Supreme Court shall continue to administer justice within the limits of the powers established by the procedural law, until the relevant decision the High Judicial Council is adopted.

The last day of work of a judge of the Cassation Court within the Supreme Court who failed to pass the selection procedure referred to in paragraph 5 of this section shall be the date specified in the decision of the High Council of Justice.

7. Judges of the Supreme Court who failed to pass the selection procedure envisaged in paragraph 5 of this section may be transferred to the relevant appellate courts, taking into account the rating, which results from the competitive selection.

8. Procedures initiated by the High Qualifications Commission of Judges of Ukraine in accordance with the Law of Ukraine "On the Judiciary and the Status of Judges", before this Law enters into force, shall be continued in accordance with the decision of the High Qualifications Commission of Judges of Ukraine established under this Law.

9. Within six years of the entry into force of this Act, the Integrity and Ethics Board is empowered to hold a judge of the Supreme Court responsible for committing a material disciplinary misconduct, grossly or systematically neglecting duties incompatible with the status of a judge or finding him or her in office, breach of duty to confirm the legality of the source of the property. In doing so, the Board is guided by the rules of Articles 48, 49 of the Law of Ukraine "On the High Council of Justice" and enjoys the powers of the Disciplinary Chamber.

If disciplinary proceedings are conducted by the Disciplinary Chamber of the High Council of Justice on the facts verified by the Integrity and Ethics Commission, it shall suspend the disciplinary proceedings and transmit the materials of the Integrity and Ethics Board collected so far.

Having established these facts, the Integrity and Ethics Board submits to the High Council of Justice a motion to dismiss a judge. Such judge shall be removed from the office until the decision is made from the day the motion for dismissal is filed.

10. the Integrity and Ethics Board shall, within 30 days of its formation, review the members of the High Council of Justice (other than the President of the Supreme Court) appointed (elected) to the entry into force of this Law, for compliance with the criteria of integrity, the ethical standards of a judge as part of a professional ethics of a member of the High Council of Justice, which may result in the decision to dismiss a member of the High Council of Justice.

President of Ukraine

## EXPLANATORY NOTE

### to the Draft Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Functioning of Judicial Governance"

#### 1. Rationale for the need to adopt an act

The judicial reform, which has been proclaimed and has taken place in recent years, has left many unresolved issues, including the provision of citizens' access to justice, their right to a fair trial, and the real independence of judges. This is evidenced by the lack of confidence in the judicial system in Ukraine, the unjust decisions of courts of all instances, the absence of judges in courts in some regions of Ukraine, which deprives citizens of their constitutional right to defense in court.

Most of the problems that currently exist in the judicial system are attributed by experts to the activities of the judiciary, for example by pointing out the virtually unlimited discretion of the members of the High Qualification Commission of Judges of Ukraine in conducting competitive procedures for selecting judges and qualifying them, or delaying consideration by members of the High Judicial Council. disciplinary action against judges. In addition, the qualification evaluation process initiated by the High Qualifications Commission of Judges of Ukraine in 2016 is still pending and only half of the judges from the entire Judicial Corps are considered to have passed the qualification evaluation. The recruitment process for vacancies started in 2017 is still ongoing. It is not clear to the judges, the expert community or the public why these processes are hindered and citizens are still unable to obtain a fair judgment in time.

In order to remedy these shortcomings, the bill proposes to clarify the powers of judicial administration bodies, including the principles of activity of the High Judicial Council, to change the procedure for forming the composition of the High Qualifications Commission of Judges of Ukraine, as well as to improve the procedure for considering disciplinary complaints.

#### 2. The purpose of the draft law

The purpose and task of the draft law is the regulation of the complex of issues of organization and activity of the High Qualification Commission of Judges of Ukraine and the High Council of Justice.

#### 3. General description and main provisions of the draft law

The draft law introduces a number of significant changes to the laws of Ukraine "On the Judiciary and Status of Judges", "On Purification of Power" and "On the High Council of Justice".

The draft law proposes to regulate the activities of the High Qualifications Commission of Judges of Ukraine and the High Council of Justice, in particular to introduce a new procedure for the formation of the High Qualification Commission of Judges of Ukraine, whereby the appointment of twelve members of the High Qualifications Commission of Judges of Ukraine will be carried out by the High Judicial Council. The High Council of Justice will form a competition commission, which will consist of: three persons elected by the Council of Judges of Ukraine from among its members; three persons from among the international experts proposed by the international organizations with which Ukraine cooperates in the field of preventing and combating corruption in accordance with the international treaties of Ukraine, to the Public Council of International Experts established under the Law of Ukraine "On the Supreme Anti-Corruption Court".

The draft law also envisages the establishment by the High Council of Justice of a commission on integrity and ethics, which will ensure that members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine adhere to high criteria of integrity and professional ethics.

Among other things, significant changes are made to the laws of Ukraine "On the Judiciary and Status of Judges" and "On the High Council of Justice" regarding judicial remuneration. Thus, the draft law proposes that judges' remuneration is set by uniform rules for all judges, regardless of the conditions for their qualification, since all judges of the judicial system have a single legal

status and are equal before the law. Legally enshrined in clauses 22 and 23 of section XII "Final and Transitional Provisions of the Law of Ukraine" On Judiciary and Status of Judges "the unequal position of judges performing the same work in terms of the amount of judicial remuneration received by them is inadmissible, since the judge is considered competent and so competent , unless otherwise specified in the manner prescribed by law.

The amendments proposed by the draft law also relate to the scope of the Law of Ukraine "On Purification of Power", in particular it is proposed to expand the categories of positions for which power purification (lustration) measures are implemented.

#### **4. State of the regulatory framework in the specified area of legal regulation**

Regulation of legal relations in the specified sphere is carried out by the Constitution of Ukraine, the laws of Ukraine "On the Judiciary and Status of Judges", "On Purification of Power" and "On the High Council of Justice".

#### **5. Financial and economic justification**

Adoption of this draft law does not require additional expenses, since the funds for the payment of judges' fees for judges are foreseen at the proposal of the State Judicial Administration of Ukraine each year in the State Budget of Ukraine.

#### **6. Forecast of socio-economic and other consequences of the adoption of the draft law**

Adoption of the Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Functioning of Judicial Governing Bodies" will improve access to justice for citizens of Ukraine, ensure their right to a timely and fair judicial decision.

Deputy Head of the  
Office of the President of Ukraine R.Ryaboshapko