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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

UKRAINE

**DRAFT AMENDMENTS
TO THE LAW “ON THE JUDICIARY AND THE STATUS OF JUDGES”
AND CERTAIN LAWS
ON THE ACTIVITIES OF THE SUPREME COURT
AND JUDICIAL AUTHORITIES**

Draft
Introduced by the President of Ukraine

LAW OF UKRAINE

on Amendments to the Law of Ukraine
"On the Judiciary and the Status of Judges"
and certain laws of Ukraine
on the activities of the Supreme Court and judicial authorities

The Verkhovna Rada of Ukraine r u l e s:

I. To amend the Law of Ukraine "On the Judiciary and the Status of Judges" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2016, No. 31, p. 545, amended as follows)as follows:

1. In Article 19:

Part Six, the words "State Judicial Administration of Ukraine as agreed by the High Council of Justice" shall be replaced with the words "High Council of Justice upon recommendation of the State Judicial Administration of Ukraine";

Part Seven shall be excluded.

2. In Part Four of Article 31, the words "State Judicial Administration of Ukraine as agreed by the High Council of Justice" shall be replaced with the words "High Council of Justice upon recommendation of the State Judicial Administration of Ukraine."

3. Part One of Article 37, shall be excluded.

4. In Part Nine of Article 49, the word "regional" shall be replaced with the word "oblast".

5. Part Two of Article 71 shall be edited to read as follows:

"2. The form and content of the application to participate in the selection of candidates for the position of judge, questionnaires of the candidate for the position of a judge, shall be approved by the High Qualification Commission of Judges of Ukraine as agreed by the High Council of Justice and posted on the official website of the High Qualification Commission of Judges of Ukraine".

6. Part Six of Article 73 shall be edited to read as follows:

"6. The procedure for passing the screening examination and the method of evaluating its results shall be approved by the High Council of Justice upon recommendation of the High Qualification Commission of Judges of Ukraine".

7. Part Two of Article 77 shall be edited to read as follows:

"2. The special training program and curriculum for the judge's position candidates shall be approved by the High Qualification Commission of Judges of Ukraine on the recommendation of the National School of Judges of Ukraine...

The special training procedure for the judge's position candidates shall be approved by the High Qualification Commission of Judges of Ukraine on the recommendation of the National School of Judges of Ukraine and as agreed by the High Council of Justice".

8. Part Five of Article 78 shall be edited to read as follows:

"5. The procedure for passing the qualifying examination and the method of evaluating the candidates shall be approved by the High Council of Justice upon recommendation of the High Qualification Commission of Judges of Ukraine".

9. In Part Two of Article 79, Part Five of Article 83, Paragraph Two of Part Two of Article 85, the words "by High Qualification Commission of Judges of Ukraine" shall be replaced with the words "by High Council of Justice upon recommendation of the High Qualification Commission of Judges of Ukraine".

10. Paragraph Two of Part Six of Article 85 shall be edited to read as follows:

"The formation and maintenance of a judge's file (candidate's file for the position of a judge) shall be carried out in accordance with the procedure approved by the High Council of Justice upon recommendation of the High Qualification Commission of Judges of Ukraine after consultations with the Council of Judges of Ukraine".

11. In Article 92:

the Article title after the word "Status" shall be supplemented with the words "and composition";

Part Two shall be followed by a new Parts with the following content:

"3. The High Qualification Commission of Judges of Ukraine consists of sixteen members, who are appointed by the High Council of Justice pursuant to the results of a competition for a term of four years. The same person may be reappointed as a member of the High Qualification Commission of Judges of Ukraine only once.

4. The High Qualification Commission of Judges of Ukraine shall be considered authorised provided that it is comprised of at least eleven members appointed thereto.

If the High Qualification Commission of Judges of Ukraine may become invalid due to the expiration of the term of appointment of a member of the High Qualification Commission of Judges of Ukraine, such member of the Commission shall continue to exercise his powers until another person is appointed, but in any case not to exceed three months from the day on which the term of appointment of such a member of the High Qualification Commission of Judges of Ukraine ended".

In this regard, Parts three to Five shall be considered as Parts Five to Seven, respectively.

12. In Article 94:

in Article title the word "Members" shall be replaced with the words "Requirements for a member";

Part One shall be excluded;

in Part Two, the words "May be appointed as a member of the High Qualification Commission of Judges of Ukraine" shall be replaced with the words " A member of the High Qualification Commission of Judges of Ukraine may be";

Clause 4 of Part Eight shall be edited to read as follows:

"4) persons who were members of the High Judicial Council, the High Council of Justice, as well as persons who were members of the High Qualification Commission of Judges of Ukraine and were elected (appointed) to this position not pursuant to the results of a competition conducted by the Competition Committee formed in accordance with Article 95-1 of this Law".

13. Articles 95 and 95-1 shall be edited to read as follows:

"Article 95. The procedure for conducting the competition and appointment to the position of a member of the High Qualification Commission of Judges of Ukraine

1. Appointment to the position of a member of the High Qualification Commission of Judges of Ukraine shall be made by the High Council of Justice pursuant to the results of a competition held in accordance with the procedure established by this Law.

2. Regulations on the competition for the position of a member of the High Qualification Commission of Judges of Ukraine shall be approved by the High Council of Justice.

3. The announcement of the competition commencement, its conditions and terms shall be published in the newspaper "Voice of Ukraine" and made public on the official website of the High Council of Justice not later than three months before the expiration of the term of appointment of a member of the High Qualification Commission of Judges, or not later than ten days from the day of early termination of appointment or dismissal of a member of the High Qualification Commission of Judges of Ukraine.

4. The competition for the position of a member of the High Qualification Commission of Judges of Ukraine shall be conducted by a Competition Committee established in accordance with Article 95-1 of this Law, based on the principles of the rule of law, publicity and political neutrality in the manner set forth by this Law.

5. A person who meets the requirements set out in this Law for a member of the High Qualification Commission of Judges of Ukraine and intends to be appointed as a member of the High Qualification Commission of Judges of Ukraine shall apply to the Office of the Secretary of the High Council of Justice.

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

6. Along with the Application of intention to be appointed as a member of the High Qualification Commission of Judges of Ukraine, a person shall submit:

- 1) autobiography;
- 2) motivation letter, which sets out the reasons for the appointment of a member of the High Qualification Commission of Judges of Ukraine;
- 3) a copy of an identity document confirming the citizenship of Ukraine;
- 4) a copy of the employment record book (if available);
- 5) a declaration of the person authorised to perform the functions of the state or local self-government for the year preceding the year in which the announcement of the competition commencement was published;
- 6) copies of documents on education, academic titles and scientific degrees;
- 7) a certificate from a medical institution on the state of the candidate's health with a conclusion on his suitability for work in a position related to the performance of state functions;
- 8) a copy of the military service record card (for servicemen or persons liable for military duty);
- 9) written consent to the processing of personal data and publication of copies of documents specified in this Article (except for copies of documents provided for in Clauses 3, 7, 8 of this Part);
- 10) a written statement on the absence of restrictions on membership in the High Qualification Commission of Judges of Ukraine, as well as on compliance with the requirements for incompatibility or the obligation to comply with the requirements for incompatibility in case of appointment as a member of the Commission;
- 11) a statement about conducting an inspection specified by the Law of Ukraine "On Purification of Government";
- 12) consent to a special inspection being conducted in accordance with the law.

7. The Office of the Secretary of High Council of Justice shall accept documents in the chronological order applications were received, and no later than the next working day, shall publish the received information together with copies of submitted documents (except for documents provided for in Clauses 3, 7, 8 of Part Six of this Article) on the official website of the High Council of Justice.

8. The acceptance of documents shall end at 24:00 on the last day of the documents submission deadline set by the High Council of Justice. Acceptance of documents may not be refused for reasons other than the expiration of the documents acceptance deadline.

9. The Office of the Secretary of the High Council of Justice shall compile a list of candidates to be published on the official website of the High Council of Justice no later than the day following the documents acceptance deadline.

10. The Office of the Secretary of High Council of Justice shall ensure that a special verification is conducted in respect of the candidates selected by the Competition Committee for the interview.

11. The High Council of Justice shall appoint a member of the High Qualification Commission of Judges of Ukraine pursuant to the Minutes of the meeting of the Competition Committee no later than five days from the date such Minutes are received.

Article 95-1. Competition Committee for conducting a competition for the position of a member of the High Qualification Commission of Judges of Ukraine

1. The High Council of Justice shall establish a Competition Committee and approve its composition to hold a competition for the position of a member of the High Qualification Commission of Judges of Ukraine.

2. The Competition Committee members may be persons who have an impeccable business reputation, high professional and moral qualities, public authority, meet the criteria of integrity and professional ethics, and are lawyers with a recognised level of competence.

3. The Competition Committee shall be comprised of:

- 1) three judges or retired judges nominated by the Council of Judges of Ukraine;
- 2) three international experts appointed by the High Council of Justice on the basis of proposals from international and foreign organisations that provide international technical assistance to Ukraine or carry out their activities in the field of justice and /or the judiciary, and /or in the field of preventing and combating corruption.

Each such organisation may nominate no more than three candidates to the Competition Committee or agree on a joint list of candidates.

The entities that participate in the formation of a Competition Committee shall nominate persons thereto within twenty days from the date the announcement of the competition commencement is published.

4. Should the entities that participate in the formation of the Competition Committee fail to nominate persons thereto within the term specified by this Law or nominate an insufficient number of persons to form the authorised Competition Committee, such persons shall be nominated by the Verkhovna Rada of Ukraine Commissioner for Human Rights within fifteen days.

5. Proposals with regard to the Competition Committee composition shall be published on the official website of the High Council of Justice by its Office of the Secretary no later than the next working day after their receipt by the High Council of Justice.

6. The procedure for receiving proposals by the High Council of Justice from the entities that form the Competition Committee and approval of its composition shall be governed by the regulations on the competition.

7. The High Council of Justice shall approve the Competition Committee composition from among the persons nominated in accordance with the requirements set forth in this Article, no later than five days from the deadline specified in Parts Three, and Four of this Article.

8. The Competition Committee is considered authorised in the case when four members are approved therein, two of which have been selected on the basis of proposals from international (foreign) organisations or on the basis of proposals of the Verkhovna Rada of Ukraine Commissioner for Human Rights.

The term of appointment of the Competition Commission member shall constitute four years from the date of approval.

9. The Rules of Procedure of the Competition Committee shall be approved by the Competition Committee members at its first meeting and published on the official website of the High Council of Justice.

10. The Competition Committee shall hold open meetings. Information on their time and venue, the agenda and the decision of the Competition Committee shall be published on the official website of the High Council of Justice.

The High Council of Justice shall ensure broadcasting of the meetings of the Competition Committees in real-time on the official website of the High Council of Justice.

11. The Competition Committee decision shall be considered adopted if the majority of the Competition Committee members voted for it, provided that two persons from among those who voted for this decision are international experts or persons appointed on the basis of proposals of the Verkhovna Rada of Ukraine Commissioner for Human Rights.

A member of the Competition Committee shall have the right to participate in the meetings and decision approval of the Competition Committee remotely using electronic means of communication.

The decision of the Competition Committee shall be recorded in the Minutes.

12. The Competition Committee shall have the right:

1) to collect, verify and analyse information about candidates for the position of member of the High Qualification Commission of Judges of Ukraine in the prescribed manner, receive information from state and local governments, enterprises, institutions and organisations necessary to exercise the powers of the Competition Committee;

2) address the candidates for the position of a member of the High Qualification Commission of Judges of Ukraine, as well as any legal entity, state body or local self-government body, their officials with a request to provide explanations, documents or information in order to verify candidates for the position of member of the High Qualification Commission of Judges of Ukraine;

3) to free access to open state registers.

13. The Competition Committee is obliged:

1) to participate in its work personally, without the right to delegate their powers to other persons;

2) not to use, transfer or disclose personal data and other information that became known to him while working in the Competition Committee, for purposes other than ensuring the exercise by the Competition Committee of the powers provided by this Law;

3) not to participate in the collection of information about a candidate for the position of a member of the High Qualification Commission of Judges of Ukraine, consideration of such a candidate if a member of the Competition Committee has or had a personal or business relationship with the candidate and/ or if other conflicts of interest or circumstances exist which may impact the objectivity of the Competition Committee member;

4) take measures to protect personal data and other information, which became known to him in connection with the exercise of his powers.

14. Competition Committee:

1) shall consider documents submitted by candidates for the position of a member of the High Qualification Commission of Judges of Ukraine;

2) shall select from the total number of candidates those who, in accordance with the justified decision of the Competition Committee, have the best professional experience, knowledge and qualities to perform the duties of a member of the High Qualification Commission of Judges of Ukraine and meet the requirements set by the law;

3) shall publish on the official website of the High Council of Justice information on the candidates selected for the interview by the Competition Committee;

4) shall conduct an interview with the selected candidates at its meeting, select by open voting from among the candidates who passed the interview, one candidate for each vacant position who meets the requirements for a member of the High Qualification Commission of Judges of Ukraine and according to the justified decision of the Competition Committee has the best professional experience, knowledge and qualities to perform the duties of a member of the High Qualification Commission of Judges of Ukraine.

15. Organisational and technical support of the Competition Committee shall be provided by the Office of the Secretary of the High Council of Justice, including the possibility of attracting international technical assistance".

14. In Article 96:

Parts Four and Five shall be edited to read as follows:

"4. In case of revealing facts that may result in dismissal of a member of the High Qualification Commission of Judges of Ukraine on the grounds specified in Clauses 3 – 6 of Part One of this Article, the High Council of Justice shall take a decision to verify such facts. Such verification shall not take longer than one month.

From the date of the decision to start verifying these facts, such member of the Committee shall be removed from office, and his powers shall be suspended until the High Council of Justice adopts its decision.

5. In case of establishing the grounds for dismissal of a member of the High Qualification Commission of Judges of Ukraine, stipulated by Clauses 3– 6 of Part One of this Article, the High Qualification Commission of Judges of Ukraine shall adopt a decision in which it recommends the High Council of Justice to dismiss the relevant member of the Commission.

Such recommendation shall be made if at least eleven members of the High Qualification Commission of Judges of Ukraine voted for it.

From the date the decision on the recommendation of dismissal is adopted, such member of the Commission shall be removed from office, and his powers shall be suspended until the High Council of Justice adopts its decision";

Part Six after the word "Procedure" shall be supplemented with the words "performing verification of the facts that may result in dismissal of the member of the High Qualification Commission of Judges of Ukraine on grounds stipulated in Clauses 3 –6 of Part One of this Article".

15. In Clause One of Part One of Article 97, the words "selected (appointed)" shall be replaced with the word" appointed".

16. Article 98:

shall be supplemented with Parts One – Three of the following content :

"1. Organisational forms of the High Qualification Commission of Judges of Ukraine activity shall be meetings in the plenary composition of the Committee, as part of the chambers and boards – depending on the issues specified by this Law and the Rules of Procedure of the Committee.

A member of the Committee shall have the right to participate in meetings and decision-making remotely using electronic means of communication in the cases and in the manner prescribed by the Rules of Procedure of the Committee.

2. There are two Chambers that shall function within the High Qualification Commission of Judges of Ukraine. Each Chamber shall consist of eight members of the Committee.

If necessary, the Committee may approve the decision to involve members of one Chamber in the work of another Chamber.

3. The Board of the High Qualification Commission of Judges of Ukraine shall be formed of at least three members of the Committee".

In this regard, Parts One to Thirteen shall be considered as parts Four to Sixteen, respectively;

in Part Four the words "a member of the High Qualification Commission of Judges of Ukraine who has the longest professional experience in the field of law" shall be replaced with the words " the oldest member of the High Qualification Commission of Judges of Ukraine";

in Part Six, the words "a member of the Committee elected by the quota of the Congress of Judges of Ukraine who has more experience as a judge" shall be replaced with the words "the oldest member of the Committee";

in Part Ten, the words "members of the chambers appointed under the quota of the Congress of Judges of Ukraine who have more experience as a judge" shall be replaced with the words "the oldest members of the chambers".

17. In Part One of Article 107, the words "Commission on Integrity and Ethics – through its Chairman or members of the Commission" shall be excluded.

18. Clause 3 of Part Three of Article 135 shall be edited to read as follows :

"3) Judges of the Supreme Court – 75 subsistence minimums for able-bodied persons, the amount of which is set for January 1 of the calendar year".

19. Clause 7 of Section XII "Final and transitional provisions" shall be supplemented with new paragraphs of such content:

"The Supreme Court of Ukraine as a legal entity shall be terminated as a result of reorganisation by joining the Supreme Court with the consequences provided by law.

Judges of the Supreme Court of Ukraine shall be enrolled in the Supreme Court personnel of the Court of Cassation of the jurisdiction corresponding to the jurisdiction of the Judicial Chamber of the Supreme Court of Ukraine in which the judge administered justice and shall be subject to qualification assessment within one year from such enrolment. Peculiarities of the procedure and methodology of qualification assessment of such judges, indicators of compliance with qualification assessment criteria and means of their establishment shall be approved by the High Council of Justice upon recommendation of the High Qualification Commission of Judges of Ukraine.

When the said assessment detected the incompatibility of a judge enrolled to the personnel of the Supreme Court with the position according to the criteria of competence, professional ethics or integrity, or the refusal of such a judge to undergo the said assessment shall be grounds for dismissal of a judge".

II. Final Provisions

1. This Law shall enter into force on the day following the day of its publication, except for Clause 4 of Section I, which shall enter into force on the date regional prosecutor's offices commence their operation.

2. To amend the following laws of Ukraine:

1) in the Law of Ukraine "On the High Council of Justice" (the Official Bulletin of Verkhovna Rada of Ukraine, 2017, No. 7–8, p. 50 amended as follows):

a) in Article 3:

in Clause 12 of Part One the word "agrees" shall be replaced with the word "determines"

Clause 20-2 shall be edited to read as follows:

"20-2) shall adopt a decision to dismiss members of the High Council of Justice on the grounds set forth by Clauses 1, 2 of Part One of Article 24 of this Law";

6) Part Three of Article 24 shall be edited to read as follows:

"3. The decision to dismiss a member of the High Council of Justice from office on the grounds specified in Clauses 3 – 6 of Part One of this Article shall be adopted by the body that elected (appointed) the member of the High Council of Justice upon recommendation of the High Council of Justice. The decision to recommend dismissal of a member of the High Council of Justice shall be deemed adopted if at least fourteen members of the High Council of Justice have voted for it.

From the date of the said recommendation, such member of the High Council of Justice shall be removed from office, and his powers shall be suspended until the decision is made by the body that elected (appointed) this member of the High Council of Justice";

c) Article 28-1 and Part Eight of Article 31 shall be excluded;

d) Part One Article 43 shall be edited to read as follows:

"1. Disciplinary proceedings shall be initiated after receiving a complaint about a judge's disciplinary misconduct (disciplinary complaint) filed in accordance with the Law of Ukraine "On

the Judiciary and the Status of Judges" or at the initiative of the Disciplinary Chamber of the High Council of Justice or the High Qualification Commission of Judges of Ukraine in cases stipulated by law";

e) Part Three of Article 47 shall be excluded;

f) Part Four of Article 48 shall be edited to read as follows:

"4. The judge and the complainant must be notified of the meeting of the Disciplinary Chamber no later than seven days before the day it is convened in the manner prescribed by the Rules of Procedure of the High Council of Justice and by posting the relevant information on the official website of the High Council of Justice";

2)in Section II "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine" On the Judiciary and the Status of Judges "and certain laws of Ukraine on the activities of judicial authorities" (The Official Bulletin of the Verkhovna Rada Ukraine, 2019, No. 50, p. 354) Clauses 3 – 7, 9, 10 shall be excluded.

**Chairman of the Verkhovna Rada
of Ukraine**