



Strasbourg, 25 November 2013

CDL-REF(2013)058

Opinion no. 747 / 2013

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

**"On the Amendments to the Constitution of Ukraine on the
Enhancement of the Guarantees of the Independence of Judges"**

OF UKRAINE

**(with references to Proposals for amendments by 156 Deputies
of the *Verkovna Rada*
CDL-REF(2013)050)**

The draft Law pending before the Venice Commission	The draft Law pending before the Verkhovna Rada
<i>The Draft Law</i>	<i>The Draft Law</i>
THE LAW OF UKRAINE	THE LAW OF UKRAINE
“On the Amendments to the Constitution of Ukraine on the Enhancement of the Guarantees of the Independence of Judges”	“On the Amendments to the Constitution of Ukraine on the Enhancement of the Guarantees of the Independence of Judges”
The Verchovna Rada of Ukraine e n a c t s :	The Verchovna Rada of Ukraine e n a c t s :
I. To introduce to the Constitution of Ukraine (<i>Відомості Верховної Ради України, 1996 р., № 30, ст. 141</i>) the following amendments:	I. To introduce to the Constitution of Ukraine (<i>Відомості Верховної Ради України, 1996 р., № 30, ст. 141</i>) the following amendments:
	1. Article 55 is hereby amended by the insertion after the second part of the following part: ¹
	"Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
	In this regard, the parts third – fifth shall be deemed as the parts fourth – sixth respectively
1. Paragraph 27 of the first part of the Article 85 shall be expounded in the new wording:	2. Paragraph 27 of the first part of the Article 85 shall be expounded in the new wording: ²
27) determination of the network, establishment, reorganization and abolishment of the courts upon the motion of the President of Ukraine;	27) determination of the network, establishment, reorganization and abolishment of the courts upon the motion of the President of Ukraine;
2. Article 106:	3. Article 106:
a) paragraph 23 of the first part shall be read in the following wording:	a) paragraph 23 of the first part shall be read in the following wording: ³

¹ Proposal 1.² Proposal 2.³ Proposal 3.

“23) upon and in accordance with the motion of the High Council of Justice appoints the judges to their posts and dismisses them from their posts”;	“23) upon and in accordance with the motion of the High Council of Justice appoints the judges to their posts and dismisses them from their posts”;
б) figure “23” shall be deleted from the the fourth part.	б) figure “23” shall be deleted from the fourth part. ⁴
	4. The second part of the Article 122 shall be deleted.
3. In the Article 125:	5. In the Article 125:
a) the first part shall be read in the following wording:	a) the first part shall be read in the following wording: ⁵
Article 125. The system of the courts of general jurisdiction in Ukraine is established according to the principles of territoriality, specialization and instances; their network is determined by law.	Article 125. The system of the courts of general jurisdiction in Ukraine is established according to the principles of territoriality, specialization and instances; their network is determined by law. б) the second part after the words “the Supreme Court of Ukraine” shall be supplemented by the following words ⁶ “which in the order and manner prescribed by law shall ensure equal implementation of the norms of Ukrainian legislation by the all courts of general jurisdiction as well as exercise other powers stipulated by the Constitution and laws of Ukraine”;
б) after the fourth part the new part shall be inserted of the following context:	в) after the fourth part the new part shall be inserted of the following context: ⁷
The courts of general jurisdiction are established, reorganized and abolished through the law.	The courts of general jurisdiction are established, reorganized and abolished through the law.
In this regard, the fifth part shall be deemed as the sixth.	In this regard, the fifth part shall be deemed as the sixth.
4. In the Article 126	6. In the Article 126

⁴ Proposal 4.

⁵ Proposal 5.

⁶ Proposal 6.

⁷ Proposal 7.

a) the third part shall be read in the following wording: “The judge cannot without consent of the High Council of Justice, given upon the motion of the judges’ qualification commission, be detained or arrested before the verdict of the court establishing his culpability is issued”;	a) the third part shall be read in the following wording: ⁸ “The judge cannot without consent of the High Council of Justice, given upon the motion of the judges’ qualification commission Ukraine, be detained or arrested before the verdict of the court establishing his culpability is issued. The grounds and procedure for granting of or denial in the consent of the High Council of Justice to the detention or arrest of a judge are established by the law.”
б)in the fourth part the words “and judges who are appointed for the first time” shall be deleted;	б)in the fourth part the words “and judges who are appointed for the first time” shall be deleted;
в)the fifth part shall be read in the following wording: “The judge is dismissed from his/her post by the body that appointed him/her in case:	в)the fifth part shall be read in the following wording: ⁹ “The judge is dismissed from his/her post by the body that appointed him/her in case:
1)when the judge applied for dismissal at his/her own will;	1) when the judge applied for dismissal at his/her own will;
	2) the judge is incapable of performing the assigned duties for the health reason;
2) the judge reached the age of seventy;	
3) the judge is incapable of discharging the duties of the office due to poor health;	
4) the judge breached the requirements of incompatibility;	3) the judge breached the requirements of incompatibility;
5) the judge breached the oath of office;	4) subjection to disciplinary liability for commitment of disciplinary offense which is incompatible with the of the post of judge;
6) the court sentence against him entered into force;	5) the court sentence against him entered into force;
7) his/her citizenship is discontinued or when he/she moves abroad	6) his/her citizenship is discontinued or when he/she moves abroad for

⁸ Proposal 8.⁹ Proposal 9.

for permanent residence;	permanent residence;
8) he/she is recognized missing for unknown reasons or proclaimed dead;	7) he/she is recognized missing for unknown reasons or proclaimed dead;
9) recognized legally incapacitated;	8) recognized legally incapacitated;
10) consent is not given by the judge for his/her transfer to another court in case of elimination or reorganization of the court of general jurisdiction, where he/she holds his/her position.	9) consent is not given by the judge for his/her transfer to another court in case of elimination or reorganization of the court of general jurisdiction, where he/she holds his/her position.
	r) the sixth part after the words “his death” shall be supplemented by the following words “reaching the age of seventy years”; ¹⁰
r) after the fifth shall be supplemented by the new part of the following wording: “The judge of the Constitutional Court of Ukraine is dismissed from his/her post by the body that appointed him/her and in case of the expiration of the term of office, for which he/she was appointed.”	д) after the sixth part shall be supplemented by the insertion of the new part following wording: ¹¹ “The powers of the judge of the Constitutional Court of Ukraine shall be terminated in case of termination of the term for which he/she has been appointed but not earlier than the day of taking up office by the newly appointed instead of him/her judge to the Constitutional Court of Ukraine.”
In this regard, the sixth and seventh parts shall be deemed as the seventh and eighth parts respectively.	In this regard, the seventh part shall be deemed as the eighth part.
5. In the Article 127:	7. In the Article 127:
a) in the third part the words “twenty five years” shall be substituted by the words “thirty years,” and the words “three years” shall be substituted by the words “five years”;	a) In the third part the words “judges’ qualification commission” shall be substituted by the words “High judges’ qualification commission of Ukraine”, the words “twenty five years” shall be substituted by the words “thirty years” and the words “three years” shall be substituted by the words “five years”; ¹²
б) the fourth part shall be read in the following wording: “Selection of the candidates for the positions of the judges is done	б) the fourth part shall be read in the following wording: ¹³ “Selection of the candidates for the positions of the judges is done through

¹⁰ Proposal 10.

¹¹ Proposal 11.

¹² Proposal 12.

¹³ Proposal 13.

through contest according to the procedure set by law.”	contest according to the procedure set by law.”
6. The first part of the Article 128 shall be read in the following wording:	8. The first part of the Article 128 shall be substituted by the two part of the following wording: ¹⁴
“Article 128. Appointment to the position of a judge is done for unlimited term by the President of Ukraine upon and in accordance with a motion of the High Council of Justice. The transfer of the judge to another court is done by the President of Ukraine upon and in accordance with a motion of the commission for qualification of the judges. The transfer of the judge to another court is possible only upon his/her consent.”	“Article 128. Appointment to the position of a judge to the court of general jurisdiction is done for unlimited term by the President of Ukraine upon and in accordance with the motion of the High Council of Justice. The transfer of the judge to another court is done by the President of Ukraine upon and in accordance with a motion of the commission for qualification of the judges. The transfer of the judge to another court is possible only upon his/her consent, including the case of liquidation or reorganization of the court of general jurisdiction, where he/she holds the post. Transfer of judge to the higher court shall be made only on a competitive basis in the manner prescribed by law.”
	In this regard, the second part shall be deemed as the third part
7. The third part of the Article 129 after the paragraph 8 shall be supplemented by the insertion of the new paragraph of the following wording:	9. The third part of the Article 129 after the paragraph 8 shall be supplemented by the insertion of the new paragraph of the following wording:
“9) automatic division of cases among the judges;”	“9) automatic division of cases among the judges;”
In this regard, the paragraph ninth shall be deemed as the tenth paragraph.	In this regard, the paragraph ninth shall be deemed as the tenth paragraph.
8. In the Article 131:	10. In the Article 131 shall be read in the following wording: ¹⁵
a) the first part shall be supplemented by the paragraphs 4 and 5	“Article 131. The High Council of Justice and the High judges’ qualification

¹⁴ Proposal 14.

¹⁵ Proposal 15.

<p>of the following wording:</p> <p>4) “appointment of the judges to the administrative positions and the dismissal of the judges from the administrative positions in the courts of general jurisdiction except for the Supreme Court of Ukraine upon the motions of the respective councils of the judges;</p> <p>5) exercise the other powers determined by the Constitution and laws of Ukraine.”</p> <p>6) the second part and the third part shall be read in the following wording:</p> <p>“The High Council of Justice shall comprise twenty members. The congress of the judges of Ukraine shall appoint twelve members to the High Council of Justice who are judges, providing for representation of the judges of the courts of different instances and specializations. The Congress of the Members of the Bar of Ukraine, the Congress of Representatives of Higher Legal Educational Establishments and Research Institutions each appoint two members of the High Council of Justice. Requirements to a person, who can be appointed a member of the High Council of Justice are set by law.</p> <p>The Chairman of the Constitutional Court of Ukraine, the Chairman of the Supreme Court of Ukraine, the Chairman of the Council of the Judges of Ukraine and the Prosecutor General of Ukraine shall be <i>ex officio</i> members of the High Council of Justice.”</p>	<p>commission of Ukraine shall operate in Ukraine”</p> <p>The High Council of Justice is in charge of and is entitled to:</p> <p>1) submit a proposals for the appointment of judges to office or for their dismissal from office;</p> <p>2) adopt decisions on the violation by judges and prosecutors of the incompatibility requirements;</p> <p>3) execute disciplinary proceedings regarding judges of the Supreme Court of Ukraine and judges of high specialised courts, and the consideration of complaints regarding decisions on bringing judges of courts of appeal and local courts, and prosecutors to disciplinary liability.</p> <p>4) appointment of the judges to the administrative positions and the dismissal of the judges from the administrative positions in the courts of general jurisdiction except for the Supreme Court of Ukraine upon the motions of the respective councils of the judges;</p> <p>5) exercise other powers determined by the Constitution and laws of Ukraine.</p> <p>The High Council of Justice shall comprise twenty members. The congress of the judges of Ukraine shall appoint twelve members to the High Council of Justice who are judges, providing for representation of the judges of the courts of different instances and specializations. The Congress of the Members of the Bar of Ukraine, the Congress of Representatives of Higher Legal Educational Establishments and Research Institutions each appoint two members of the High Council of Justice. Requirements to a person, who can be appointed a member of the High Council of Justice are set by law.</p> <p>The Chairman of the Constitutional Court of Ukraine, the Chairman of the Supreme Court of Ukraine, the Chairman of the Council of the Judges of Ukraine and the Prosecutor General of Ukraine shall be <i>ex officio</i> members of the High Council of Justice.</p> <p>The Prosecutor General of Ukraine shall not be entitled to participate in the voting of the High Council of Justice on the approval of decisions regarding</p>
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	<p>the judges.</p> <p>The High judges' qualification commission of Ukraine, composition's majority of which is made up by judges who have been appointed to the office by the congress of judges of Ukraine, shall execute powers prescribed by the Constitution and laws of Ukraine.”</p>
II. Final and Transitional Provisions	II. Final and Transitional Provisions
<p>1. This Law shall enter into force since ..., with the exception of the subparagraph “a” of the paragraph 4 of the Section I, which shall enter into force one month after the date of the composition's formation of the High Council of Justice in accordance with the Constitution of Ukraine (with the amendments introduced by this Law).</p>	<p>This Law shall enter into force 90 days since the date which follows the date of its publication, with the exception of the subparagraph “a” of the paragraph 6 of the Section I, which shall enter into force one month after the day of the composition's formation of the High Council of Justice in line with the Constitution of Ukraine (with the amendments introduced by this Law), but not before the enactment of the law that defines the grounds and procedure for grant or denial of the High Council of Justice consent to the detention or arrest of a judge.¹⁶</p>
<p>2. Since the date of this Law enactment:</p>	<p>2. Since the date of this Law enactment:</p>
<p>1) the judges of the courts of general jurisdiction who have been appointed to the their posts for the first time and whose five year term of office of has not expired up to the day of this Law entering into force, shall gain the status of the judges appointed to their posts with no limit of their term of office;</p>	<p>1) the judges of the courts of general jurisdiction who have been appointed to the their posts for the first time and whose five year term of office of has not expired up to the day of this Law entering into force, shall gain the status of the judges appointed to their posts with no limit of their term of office;¹⁷</p>
<p>2) the judges of the courts of general jurisdiction who have been appointed to the post for the first time and whose five year term of office was expired to the day this Law entering into force, but if they have applied under the prescribed by law procedure for their recommendation for the election to the posts of judges with the</p>	<p>2) the judges of the courts of general jurisdiction who have been appointed to the post for the first time and whose five year term of office was expired to the day this Law entering into force, but if they have applied under the prescribed by law procedure for their recommendation for the election to the posts of judges with the unlimited term of office and decision regarding their</p>

¹⁶ Proposal 16.

¹⁷ Proposal 17.

<p>unlimited term of office and decision regarding their election has not been taken to the day this Law entering into force, shall gain the status of the judges appointed for the unlimited term of their office;</p>	<p>election has not been taken to the day this Law entering into force, shall gain the status of the judges appointed for the unlimited term of their office;¹⁸</p>
<p>3) persons, regarding whose before the day this Law entering into force, the motions of the High Council of Justice on their initial appointment have been submitted, shall be considered as those who comply with the requirements of the third part of the Article 127 of the Constitution of Ukraine (with the amendments introduced by this Law) and shall be appointed by the President of Ukraine to the positions of the judges with no limits of their terms of office without submission of additional materials</p>	<p>3) persons, regarding whose before the day this Law entering into force, the motions of the High Council of Justice on their initial appointment have been submitted, shall be considered as those who comply with the requirements of the third part of the Article 127 of the Constitution of Ukraine (with the amendments introduced by this Law) and shall be appointed by the President of Ukraine to the positions of the judges with no limits of their terms of office without submission of additional materials¹⁹</p>
<p>3. The judges of the courts of general jurisdiction elected with unlimited duration of their term of office, the judges of the Constitutional Court of Ukraine shall continue to perform the powers of their office until their dismissal from their posts or until their office is terminated on the grounds listed in the parts fifth – seventh of Article 126 of the Constitution of Ukraine (with the amendments, introduced by this Law).</p> <p>The judges of the courts of general jurisdiction, the judges of the Constitutional Court of Ukraine who to the day of this Law entering into force have reached the age of sixty five, but the decision on their dismissal from their posts of judges has not been adopted to the day of this Law entering into force, shall continue to perform their powers until they would be dismissed from their positions or until the termination of the term of their office on the grounds listed in parts fifth – seventh of the Article 126 of the Constitution of</p>	<p>3. The judges of the courts of general jurisdiction elected with unlimited duration of their term of office, the judges of the Constitutional Court of Ukraine shall continue to perform the powers of their office until their dismissal from their posts or until their office is terminated on the grounds listed in the parts fifth – seventh of Article 126 of the Constitution of Ukraine (with the amendments, introduced by this Law).</p> <p>The judges of the courts of general jurisdiction, the judges of the Constitutional Court of Ukraine who to the day of this Law entering into force have reached the age of sixty five, but the decision on their dismissal from their posts of judges has not been adopted to the day of this Law entering into force, shall continue to perform their powers until they would be dismissed from their positions or until the termination of the term of their office on the grounds listed in parts fifth – seventh of the Article 126 of the Constitution of Ukraine (with the amendments introduced by this Law).²⁰</p>

¹⁸ Proposal 18.

¹⁹ Proposal 19.

²⁰ Proposal 20.

<p>Ukraine (with the amendments introduced by this Law).</p> <p>The Dismissal of the judges of the courts of general jurisdiction who have been elected for unlimited term and specified in the first and second paragraphs of this part shall be done by the President of Ukraine following the procedure set by the law.</p>	<p>The Dismissal of the judges of the courts of general jurisdiction who have been elected for unlimited term and specified in the first and second paragraphs of this part shall be done by the President of Ukraine following the procedure set by the law.²¹</p>
<p>4. The requirements to the persons who could be recommended to the post of judge, are stipulated by the third part of the Article 127 of the Constitution of Ukraine (with the amendments, introduced by this Law), shall not be extended to the persons, who had passed qualification examination before this Law has entered into force. These persons shall be appointed to the posts of judge by the President of Ukraine following the procedure established by law for an unlimited term</p>	<p>4. Before the enactment of the Law which establishes disciplinary offences which are incompatible with the further stay on the judge's post, judge could be dismissed from their office by the President of Ukraine for violation of the oath of judge under the motion of the High Council of Justice, submitted in case of High judges' qualification commission of Ukraine or the High Council of Justice ascertainment of facts which prove the violation of the oath by the judge.²²</p>
<p>5. The motions on the dismissal of the judges of the courts of general jurisdiction, which had not been considered by the Verkhovna Rada of Ukraine to the day this Law entering into force, shall be forwarded to the High Council of Justice within two weeks. The High Council of Justice shall submit its motion on the dismissal of the judges from their positions within two weeks from the day those motions were received.</p>	<p>5. The requirements to the persons who could be recommended to the post of judge, are stipulated by the third part of the Article 127 of the Constitution of Ukraine (with the amendments, introduced by this Law), shall not be extended to the persons, who had passed qualification examination before this Law has entered into force. These persons shall be appointed to the posts of judge by the President of Ukraine following the procedure established by law for an unlimited term</p>
<p>6. The motions on the dismissal of the judges of the courts of general jurisdiction from their office, which were submitted for the President of Ukraine consideration before this Law has entered into</p>	<p>6. The motions on the dismissal of the judges' of the courts of general jurisdiction from their posts, which have not been considered by the Verkhovna Rada of Ukraine before the day of this Law entering into force,</p>

²¹ Proposal 21.

²² Proposal 22.

<p>force, shall be considered by the President of Ukraine; any other additional materials shall not be submitted.</p>	<p>within the two weeks shall be transmitted to the High Council of Justice, which within the two weeks after their receipt shall submit the motion on judge's dismissal from the office.²³</p>
<p>7. The materials, on the transfer of the judges who have been elected permanently, which had not been considered by the Verkhovna Rada of Ukraine to the day of this Law enactment, shall be forwarded to the High judges' qualification commission of Ukrain, which within two weeks from the day of their reception, shall submit the motion on the judges' transfer to the President of Ukraine.</p>	<p>7. The motions for dismissal of judges of courts of general jurisdiction which have been submitted to the President of Ukraine before the date of enactment of this Law shall be considered without submitting any additional materials.²⁴</p>
<p>8. Materials for granting of the consent to the detention or arrest of the judge of the court of general jurisdiction, of the judge of the Constitutional Court of Ukraine, which, before the date of the paragraph "a" of the fourth part of the Section I of this Law entering into force had not been considered by the Verkhovna Rada of Ukraine, shall be forwarded to the High Council of Justice within one week.</p>	<p>8. The materials, on the transfer of the judges who have been elected permanently, which had not been considered by the Verkhovna Rada of Ukraine to the day of this Law enactment, shall be forwarded to the High judges' qualification commission of Ukraine, which within two weeks from the day of their reception, shall submit the motion on the judges' transfer.²⁵</p>
<p>9. The congress of the judges of Ukraine, the congress of the members of the Bar of Ukraine, the congress of the representatives of the High legal educational institutions and scientific establishments shall be convened and held within the three months from the date of this Law entering into force with the purpose of appointment of the members of the High Council of Justice in</p>	<p>9. Materials for granting of the consent to the detention or arrest of the judge of the court of general jurisdiction, of the judge of the Constitutional Court of Ukraine, which, before the date of the paragraph "a" of the fourth part of the Section I of this Law entering into force had not been considered by the Verkhovna Rada of Ukraine, shall be forwarded to the High Council of Justice within one week.²⁶</p>

²³ Proposal 23.

²⁴ Proposal 24.

²⁵ Proposal 25.

²⁶ Proposal 26.

accordance with the Article 131 of the Constitution of Ukraine (with amendments, made by this Law).	
	<p>10. The congress of the judges of Ukraine, the congress of the members of the Bar of Ukraine, the congress of the representatives of the High legal educational institutions and scientific establishments shall be convened and held within the three months from the date of this Law entering into force with the purpose of appointment of the members of the High Council of Justice in accordance with the Article 131 of the Constitution of Ukraine (with amendments, made by this Law).²⁷</p>
	<p>11. The High Council of Justice which have been formed before the date of this Law entering into force shall performe its powers stipulates by the paragraphs 1 – 4 of the second of the Article 131 of the Constitution of Ukraine (with the amendments, introduces by this Law) and shall terminate its activity simultaneously with the formation of the High Council of Justice in accordance with the Constitution of Ukraine (with the amendments, introduced by this Law).</p> <p>The High Council of Justice shall be considered as formed in line with the Constitution of Ukraine (with the amendments, introduced by this Law) after not less than two thirds (2/3) of the total number of its members, stipulated by the Constitution of Ukraine, have taken the oath of office.</p> <p>The members of the High Council of Justice of Ukraine, who, before the date of this Law enactment, have been appointed to the High Council of Justice of Ukraine by the Congress of Judges of Ukraine, shall continue to perform their powers until the termination of term for which they have been appointed. For</p>

²⁷ Proposal 27.

	the purpose of the second paragraph of this part, these members are considering as those, who have taken the oath of office. ²⁸
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²⁸ Proposal 28.