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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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UKRAINE

DRAFT LAW

**“ON AMENDING SOME LEGISLATIVE ACTS OF UKRAINE
REGARDING IMPROVING PROCEDURE FOR SELECTING
CANDIDATE JUDGES OF THE CONSTITUTIONAL COURT OF
UKRAINE ON A COMPETITIVE BASIS”**

THE LAW OF UKRAINE

On Amending Some Legislative Acts of Ukraine Regarding Improving Procedure for Selecting Candidate Judges of the Constitutional Court of Ukraine on a Competitive Basis

The Verkhovna Rada of Ukraine **enacts**:

I. To amend the following legislative acts of Ukraine:

1. In part four of Article 22 of the Code of Administrative Procedure of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2017, No. 48, p.436) after the words "regarding the election (appointment) of members of the High Council of Justice, their dismissal from such positions" should be supplemented with the words "appealing against decisions, actions or inaction of subjects of appointment of judges of the Constitutional Court of Ukraine in the process of competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine, decisions, actions or inaction of bodies that evaluate candidates for the position of a judge of the Constitutional Court of Ukraine in the process of competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine".

2. In the Rules of Procedure of the Verkhovna Rada of Ukraine, approved by the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine" (Vidomosti Verkhovna Rada of Ukraine, 2010, No. 14-17, p. 133, as amended):

1) in Article 208⁴:

parts four and five shall be set out in the following wording:

"4. Within 30 days from the date of publication of the announcement on the start of the competitive selection, the Secretariat of the Verkhovna Rada shall receive from the persons applying for participation in such selection for the position of a judge of the Constitutional Court of Ukraine the documents specified in part two of Article 10⁵ of the Law of Ukraine "On the Constitutional Court of Ukraine" and register them in the chronological order of receipt. Information on persons applying for participation in the competitive selection for the position of a judge of the Constitutional Court of Ukraine, together with copies of the submitted documents, shall be published on the official website of the Verkhovna Rada, subject to the restrictions established by law.

The documents shall be submitted by persons applying for participation in the competitive selection for the position of a judge of the Constitutional Court of Ukraine in paper form in person or by post.

The acceptance of documents shall be completed at the end of the working hours of the Secretariat of the Verkhovna Rada. The Secretariat of the Verkhovna Rada shall not have the right to refuse to accept documents on other grounds than the expiration of the specified period.

5. Within 20 days from the date of expiry of the term stipulated in the first paragraph of part four of this Article, the Committee, whose subject matter includes issues of the legal status of the Constitutional Court of Ukraine, shall consider at its meeting the submitted documents from persons who have expressed their intention to hold the position of a judge of the Constitutional Court of Ukraine.

Persons who have expressed their intention to hold the position of a judge of the Constitutional Court of Ukraine may be invited to the meeting of the Committee, whose subject matter includes issues of the legal status of the Constitutional Court of Ukraine. Failure of such persons to attend the meeting of the committee shall not prevent consideration of their documents.

On the basis of the submitted documents, the committee, whose competence includes issues of legal status of the Constitutional Court of Ukraine, shall determine the compliance of the persons who have expressed their intention to hold the position of a judge of the Constitutional Court of Ukraine, establishes compliance of persons who have expressed their intention to hold the position of a judge of the Constitutional Court of Ukraine with the requirements set forth in the Constitution of Ukraine (regarding citizenship, proficiency in the state language, age, education and length of service) and decides on admission or non-admission of candidates to the competitive selection. Errors and inaccuracies found in the documents submitted by a person, if their presence does not impede the understanding of the content of the said information, are not grounds for refusal of admission to the competitive selection.

With regard to persons who have expressed their intention to hold the position of a judge of the Constitutional Court of Ukraine but do not meet the requirements set forth in the Constitution of Ukraine, the committee in charge of the legal status of the Constitutional Court of Ukraine shall make a reasoned decision to refuse admission to the competitive selection.

If a person who has expressed his/her intention to hold the position of a judge of the Constitutional Court of Ukraine meets the requirements set forth in the Constitution of Ukraine but has not submitted all the necessary documents specified by law or has submitted them with errors and inaccuracies that are not grounds for refusal of admission to the competitive selection, the committee in charge of the legal status of the Constitutional Court of Ukraine shall provide all such persons with an additional term for submission and correction of the relevant documents, which may not exceed ten working days. In case of failure to submit or correct the relevant documents within the additional period, the committee responsible for the legal status of the Constitutional Court of Ukraine shall decide to refuse such person's admission to the competitive selection.

If the number of persons admitted to the competitive selection is less than two for one vacant position, a new competitive selection shall be announced for such vacant position."

part sixteen shall be amended to read as follows:

"16. To determine the ranking of candidates for the position of a judge of the Constitutional Court of Ukraine, the Verkhovna Rada conducts an open rating vote separately for each candidate who received a "meets" rating from the Advisory Group of Experts according to the criterion of recognised level of competence in the field of law."

in part seventeen, the second paragraph shall be deleted;

part nineteen shall be deleted;

part twenty shall be amended to read as follows:

"20. If, according to the results of the voting, no candidate who received the "meets" assessment from the Advisory Group of Experts received a majority of votes of the MPs from the constitutional composition of the Verkhovna Rada, a new competitive selection shall be announced, which shall be conducted in accordance with the procedure established by the Law of Ukraine "On the Constitutional Court of Ukraine";

part twenty-one shall be deleted.

2) in Article 208⁵:

part three shall be amended to read as follows:

"3. The Secretariat of the Verkhovna Rada, upon submission of the committee in charge of the legal status of the Constitutional Court of Ukraine, publishes on the official website of the Verkhovna Rada an announcement on the start of accepting proposals for candidates to the Advisory Group of Experts from parliamentary factions (parliamentary groups) no later than two months before the expiry of the term for which the member of the Advisory Group of Experts was appointed.

In the event of early termination of powers of a member of the Advisory Group of Experts, the announcement of the start of accepting proposals for candidates to the Advisory Group of Experts from parliamentary factions (parliamentary groups) shall be made public within 10 days from the date of the relevant vacancy. At the same time, if such a member of the Advisory Group of Experts had an elected deputy and the deputy agreed to be appointed to the vacant position

of a member of the Advisory Group, such an announcement shall be made public within 10 days from the date of expiration of the term of office of this deputy."

in part four, replace the words "information confirming" with the words "documents confirming";

to be supplemented by part seventeen as follows:

"17. The Verkhovna Rada shall consider the election of a deputy for a member of the Advisory Group of Experts in accordance with the rules of this Article.

A parliamentary faction (parliamentary group) may propose only one candidate for deputy member of the Advisory Group of Experts."

3. Article 28 of the Law of Ukraine "On the Legal Regime of Martial Law" (Bulletin of the Verkhovna Rada (VRU), 2015, No. 28, p. 250) shall be supplemented with paragraph 2² as follows:

"2². Establish that, as an exception to the provisions of Article 10 of this Law, during the period of martial law, persons applying for the position of a judge, a judge of the Constitutional Court of Ukraine, a member of the High Council of Justice, a member of the High Qualification Commission of Judges of Ukraine shall be subject to a special check provided for by the Law of Ukraine "On Prevention of Corruption", as well as to the check provided for by the Law of Ukraine "On Purification of Government".

4. In the Law of Ukraine "On the Constitutional Court of Ukraine" (Vidomosti Verkhovnoi Rady (VVR), 2017, No. 35, p. 376):

1) in Article 10²:

part seventeen shall be amended to read as follows:

"17. The appointing authority, upon receipt of information from the Advisory Group about the termination of powers of the member of the Advisory Group whom it appointed, shall immediately appoint another person to the Advisory Group in accordance with the rules of this Article, unless such member of the Advisory Group of Experts had an elected deputy and the deputy agreed to be appointed to the vacant position of the member of the Advisory Group in accordance with Article 10¹² of this Law."

in part nineteen, the words "and in their absence - by the oldest member of the Advisory Group" shall be deleted;

in part twenty, after the words "at least four members", add the words "except as provided for by this Law";

in the second paragraph of part twenty-four, after the words "unless other terms are established by this Law", add the words ", indicating the results of roll-call voting";

part thirty shall be amended to read as follows:

"30. If a member of the Advisory Group has or had personal or business relations with a candidate for the position of a Constitutional Court judge that may affect his/her objectivity or impartiality as a member of the Advisory Group and/or if there is another conflict of interest or circumstances that may affect his/her objectivity or impartiality as a member of the Advisory Group, s/he is obliged to recuse himself/herself within two days from the moment s/he learned or should have learned about such circumstances, but not later than the beginning of the interviews with all candidates. On the same grounds, a candidate for the position of a judge of the Constitutional Court may recuse himself or herself from the Advisory Group, but not later than the beginning of the interviews with all candidates for the position of a judge of the Constitutional Court by the Advisory Group in accordance with part one of Article 10⁸ of this Law. Self-recusal of a member of the Advisory Group, as well as applications for recusal shall be considered by the Advisory Group. By its decision, the Advisory Group may refuse to satisfy the application for self-recusal of a member of the Advisory Group or refuse or satisfy the application for recusal submitted by a candidate. The respective member of the Advisory Group who has withdrawn or has been withdrawn shall not participate in the voting".

2) in part two of Article 10⁵, the word "ten" shall be replaced with the figure "30";

3) part two of Article 10⁶ shall be amended to read as follows:

"2. On the basis of the submitted documents, the competition commission, the Committee, and the Council of Judges of Ukraine shall determine the compliance of persons who have expressed their intention to hold the position of a judge of the Constitutional Court with the requirements set forth in the Constitution of Ukraine and this Law establishes the requirements for a judge (citizenship, proficiency in the state language, age, education and length of service), and then decides whether to admit or refuse to admit a judge to the competitive selection.

If a person who has expressed his/her intention to hold the position of a judge of the Constitutional Court of Ukraine meets the requirements set forth in the Constitution of Ukraine but has not submitted all the necessary documents specified in part two of Article 10⁵ of this Law or has submitted them with errors and inaccuracies that are not grounds for refusal of admission to the competitive selection, the competition commission, the Committee, the Council of Judges of Ukraine shall grant all such persons an additional term for submission and correction of the relevant documents, which may not exceed ten working days. In case of failure to submit or correct the relevant documents within the additional period, the competition commission, the Committee, the Council of Judges of Ukraine shall decide to refuse such person's admission to the competitive selection.

If less than two persons are admitted to the competitive selection for one vacant position, the competition commission, the Committee, the Council of Judges of Ukraine shall immediately, but not later than twenty days, announce a new competitive selection for such vacant position, which shall be conducted in accordance with the procedure established by this Law."

4) in Article 10⁸:

part two shall be supplemented with a paragraph as follows:

"Meetings of the Advisory Group, where the issues of assessing the moral qualities and level of competence in the field of law of candidates are considered, are quorate if at least five members are present."

parts four to seven shall be set out in the following wording:

"4. Based on the results of the assessment of the moral qualities of the candidates for the position of a judge of the Constitutional Court, the Advisory Group makes a reasoned decision on the assessment of the eligibility of each candidate.

Candidates receive a "suitable" or "not suitable" grade on the moral qualities criterion.

In case the Advisory Group gives a "not suitable" assessment according to the criterion of high moral qualities, the candidate is considered to have failed the relevant stage of the competitive selection for the position of a judge of the Constitutional Court from the moment the Advisory Group publishes its decision. In its decision on such a candidate, the Advisory Group states that for the purposes of the competitive selection of candidates for the position of a judge of the Constitutional Court, the candidate does not meet the criterion of high moral qualities.

5. Candidates who have received a "suitable" rating from the Advisory Group on the high moral qualities criterion are assessed for compliance with the legal competence criterion. The Advisory Group may decide to conduct additional interviews with all such candidates.

If, according to the results of the assessment, the number of candidates meeting the criterion of high moral qualities is less than two persons for one vacant position of a judge of the Constitutional Court, the competition commission, the Council of Judges of Ukraine shall immediately, but not later than within twenty days, announce a new competitive selection for such a vacant position, which shall be conducted in accordance with the procedure established by this Law.

6. Based on the results of the assessment of the level of competence in the field of law of the candidates for the position of a judge of the Constitutional Court, the Advisory Group decides on the assessment of each candidate's compliance and draws up a general list of all assessed candidates by means of a rating vote.

Candidates receive a "suitable" or "not suitable" grade based on the level of legal competence.

A candidate who receives at least five votes in favour from the Advisory Group is assessed as "suitable".

A "not suitable" rating is given to a candidate who received four or fewer votes in favour from the Advisory Group.

In case the Advisory Group gives a "not suitable" assessment according to the criterion of the level of legal competence, the candidate is considered to have failed the relevant stage of the competitive selection for the position of a judge of the Constitutional Court from the moment the Advisory Group publishes its decision. In the decision on such a candidate, the Advisory Group states that for the purposes of competitive selection of candidates for the position of a judge of the Constitutional Court, the candidate does not meet the criterion of a recognised level of competence in the field of law.

7. The Advisory Group publishes the lists of evaluated candidates and the decision on each candidate for the position of a judge of the Constitutional Court on the official website of the Constitutional Court and submits them to the Competition Commission, the Committee and the Council of Judges of Ukraine, respectively, no later than five days after the date of their preparation.

Each member of the Advisory Group shall have the right to state in writing the reasons for his/her voting for such decisions no later than three days after the date of adoption of the decision by the Advisory Group on the assessment of the candidates' compliance with the criteria of moral qualities or level of professional competence, which shall be published on the official website of the Constitutional Court and attached as annexes to such decision of the Advisory Group."

4) in Article 10¹¹:

part two shall be amended to read as follows:

"2. The ballot for the secret ballot for the appointment of a judge of the Constitutional Court shall include those candidates who have received a "meets" rating from the Advisory Group according to the criterion of recognised level of competence in the field of law."

parts three to five shall be deleted;

in part six, the words "second repeated" shall be deleted.

5) Chapter 21 shall be supplemented with Article 1012 as follows: "Article 1012. Deputy member of the Advisory Group

1. At the same time as appointing a member of the Advisory Group, the appointing authority may elect one deputy for such member for the term of office. The deputy may be a person who meets the requirements for a member of the Advisory Group.

2. The appointing authority shall make a separate decision on the election of a deputy for a member of the Advisory Group in accordance with the rules established by Article 102 of this Law.

3. The person elected as an alternate member of the Advisory Group shall have the right to attend all meetings of the Advisory Group and any matters considered by it as an observer. Such persons shall be subject to the restrictions on the use of information provided for by this Law for members of the Advisory Group.

4. If a member of the Expert Advisory Group is recused or removed and has a deputy, such deputy, with his/her consent and without a separate decision of the appointing authority, shall temporarily perform the powers of the relevant member of the Expert Advisory Group in terms of consideration of issues and decision-making in respect of which such member is recused or removed.

5. If the powers of a member of the Advisory Group are terminated early and if s/he has a deputy, such deputy, with his/her consent and without a separate decision of the appointing authority, shall be deemed to be appointed to such vacant position of a member of the Advisory Group for the term of office of such member."

6) in Section IV TRANSITIONAL PROVISIONS:

in clause 4, after the word "formed", add the words "and operates"; in clause 7, replace the word "four" with the word "five";

in clause 8, the word "thirty" shall be replaced with the figure "180";

in clause 10, the word "thirty" shall be replaced with the figure "180", and the following sentence shall be added:

"Within the same period, the Council of Judges of Ukraine has the right to elect one deputy for such a member."

in the third paragraph of clause 12, the word "thirty" shall be replaced with the figure "180";
Clause 14 shall be amended to read as follows:

"14. The European Commission for Democracy through Law and international organisations may submit a list of nominees for the first members of the Advisory Group of Experts along with their proposals for deputies. The list shall include no more than two alternates for each position of a member of the Advisory Group of Experts.

If a member of the Expert Advisory Group is recused or disqualified and has an alternate, such alternate shall, with the consent of the member, temporarily perform the duties of the relevant member of the Expert Advisory Group in respect of consideration of matters and decisions in respect of which the member is recused or disqualified. If a member of the Advisory Group has several deputies, the Advisory Group of Experts shall select from among such deputies a person to temporarily perform the powers of the recused/removed member on the basis of proposals of the European Commission for Democracy through Law and international organisations, respectively, which they may submit within 5 days from the date of the relevant circumstances. In the absence of such a proposal, the Advisory Group of Experts shall make its own choice.

If the powers of a member of the Advisory Group are terminated early and if s/he has a deputy, such deputy shall be appointed to such vacant position of the member of the Advisory Group with his/her consent. If a member of the Advisory Group had several deputies, the Cabinet of Ministers of Ukraine shall make such appointment on the basis of a proposal of the European Commission for Democracy through Law, international organisations, respectively, which they may submit within 10 days from the date of occurrence of the relevant circumstances. In the absence of such a proposal, the Cabinet of Ministers of Ukraine shall make the appointment independently.

If all the deputies refuse to be members of the Advisory Group of Experts, the central executive body responsible for the formation and implementation of state policy in the field of foreign relations shall apply to the European Commission for Democracy through Law and international organisations, respectively, for additional proposals."

to add paragraphs 20 and 21 as follows:

"20. During the transitional period of selection, a decision on a procedural or organisational issue or a decision to assess the suitability of any of the candidates based on the criterion of high moral qualities shall be taken by the Advisory Group by at least four votes of its members, two of whom shall be proposed by international organisations or the European Commission for Democracy through Law.

If the Advisory Group is unable to reach a decision on a procedural or organisational issue or a decision on the assessment of the suitability of any of the candidates based on the criterion of high moral quality due to an equal number of votes in favour and against, a second vote shall be taken.

In the event of an equal number of votes in favour and against in such a recount, the votes of three members of the Advisory Group, of whom at least two are nominated by international organisations or the European Commission for Democracy through Law, shall be decisive.

21. From the date of entry into force of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Clarification of Certain Provisions on Competitive Selection of Candidates for the Position of Judge of the Constitutional Court of Ukraine", all procedures for the selection of candidates for the position of judge of the Constitutional Court on a competitive basis, initiated by the appointing authorities and not completed as of the date of its entry into force, shall be deemed terminated without a separate decision of the appointing authorities.

The subjects of appointment of judges of the Constitutional Court shall immediately, but not later than twenty days after the entry into force of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Clarification of Certain Provisions on Competitive Selection

of Candidates for the Position of a Judge of the Constitutional Court of Ukraine", announce the competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine, vacant as of the day of its entry into force".

II. This Law shall come into force day following the day of its publication.

**Chairman of the Verkhovna Rada
of Ukraine**

R. STEFANCHUK