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

UKRAINE

**DRAFT LAW AND EXPLANATORY NOTE
ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS
OF UKRAINE REGARDING THE IMPROVEMENT OF THE
COMPETITIVE SELECTION PROCESS
FOR THE POSITION OF JUDGES OF THE
CONSTITUTIONAL COURT OF UKRAINE**

The draft law is submitted by members of the Ukrainian Parliament.

LAW OF UKRAINE
On Amendments to Certain Legislative Acts of Ukraine Regarding the
Improvement of the Competitive Selection Process for the Position of Judge
of the Constitutional Court of Ukraine

The Verkhovna Rada of Ukraine resolves:

I. To amend the following legislative acts of Ukraine:

1. Part eight of Article 208⁴ of the Regulations of the Verkhovna Rada of Ukraine, approved by the Law of Ukraine "On the Regulations of the Verkhovna Rada of Ukraine" (Bulletin of the Verkhovna Rada of Ukraine, 2010, Nos. 14-17, Article 133, as amended), shall be amended to read as follows:

"8. The Advisory Group of Experts shall provide the Verkhovna Rada with a list of evaluated candidates for the position of judge of the Constitutional Court of Ukraine, a reasoned decision on the assessment of the moral qualities and level of competence in the field of law for each candidate, as well as copies of all documents and information collected and/or received by the Advisory Group regarding the evaluated candidates.

If a competitive selection is held for all vacant positions of judges of the Constitutional Court of Ukraine, but the list of candidates assessed by the Advisory Group who meet the criteria of high moral qualities and recognised level of competence in the field of law is less than two per vacant position, the committee responsible for issues relating to the legal status of the Constitutional Court of Ukraine may, within 30 days of receiving the list, announce a new competitive selection process for such vacant position.

If the competitive selection is held for one vacant position of judge of the Constitutional Court of Ukraine, but the list of candidates assessed by the Advisory Group of Experts who meet the criteria of high moral character and recognised competence in the field of law is less than two, the committee responsible for issues relating to the legal status of the Constitutional Court of Ukraine shall announce a new competitive selection process for such a vacant position.

2. In the Law of Ukraine "On the Constitutional Court of Ukraine" (Bulletin of the Verkhovna Rada of Ukraine, 2017, No. 35, p. 376, as amended):

1) in Article 10²:

part one shall be amended to read as follows:

"1. The Advisory Group of Experts (hereinafter referred to as the Advisory Group) is an auxiliary body of the entities responsible for appointing judges to the Constitutional Court and is established to assist them in assessing the moral qualities and level of competence in the field of law of candidates for the position of judge of the Constitutional Court";

Part thirty-one shall be amended as follows:

"31. Organisational and technical support for the Advisory Group's activities (including, but not limited to, document management, registration of incoming and outgoing correspondence, storage and protection of personal data and other confidential information collected and/or received by the Advisory Group in the course of its duties) shall be entrusted to the body responsible for the organisational support of the Constitutional Court, within the limits of the

expenditure provided for in the State Budget of Ukraine for the relevant year for the financing of the activities of the Constitutional Court";

2) in Article 10⁸:

in part six:

the fourth paragraph shall be amended to read as follows:

"If a competitive selection is held for one vacant position of judge of the Constitutional Court, but according to the results of the evaluation, the number of candidates who meet the criterion of recognised competence in the field of law is less than two persons, the competitive selection committee, the Committee, and the Council of Judges of Ukraine shall immediately, but no later than 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";

add a paragraph with the following content: "If a competitive selection is held for all vacant positions of judges of the Constitutional Court of Ukraine, but according to the results of the assessment, the number of candidates who meet the criterion of recognised competence in the field of law is less than two persons per vacant position of judge of the Constitutional Court, the Advisory Group shall inform the competition commission, the Committee, and the Council of Judges of Ukraine of such circumstances";

Part seven, after the fifth paragraph, shall be supplemented with the following paragraph: "If competitive selection is conducted for all vacant positions of judges of the Constitutional Court of Ukraine, but the list of candidates assessed by the Advisory Group who meet the criteria of high moral character and recognised competence in the field of law is less than two per vacant position, the competition commission, the Committee, and the Council of Judges of Ukraine may announce a new competition for such a vacant position within 30 days of receiving the list."

In this regard, the sixth paragraph shall be considered the seventh paragraph;

the first paragraph of part eight shall be amended to read as follows:

"8. After receiving from the Advisory Group a list of evaluated candidates for the position of judge of the Constitutional Court, the decisions of the Advisory Group regarding the assessment of the suitability of each candidate, as well as copies of all documents and information collected and/or received by the Advisory Group regarding the evaluated candidates, the competition commission, the Committee, the Council of Judges of Ukraine shall conduct interviews with the candidates included in the list of evaluated candidates";

add part ten with the following content:

"10. Within five days of the Advisory Group submitting the documents specified in part eight of this article, the Advisory Group shall transfer all information obtained and/or collected by it during the evaluation of candidates to the Secretariat of the Constitutional Court of Ukraine for storage."

II. Final provisions.

1. This Law shall enter into force on the day following the day of its publication.

2. Competitive selection procedures for the position of judge of the Constitutional Court of Ukraine announced prior to the date of entry into force of this Law shall continue in accordance with the rules in force after its entry into force.

Chairman of the Verkhovna Rada of Ukraine

EXPLANATORY NOTE
to the Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on
Improving the Competitive Selection of Judges of the
Constitutional Court of Ukraine”

1. Objective

The Draft Law aims to improve the competitive selection of judges to the Constitutional Court of Ukraine.

2. Rationale for the Adoption of the Act On 22 May 2024, upon submission of the Parliamentary Committee on Legal Policy, the Secretariat of the Verkhovna Rada of Ukraine announced, on the official website of the Verkhovna Rada of Ukraine, the launch of a competitive selection of candidates for two vacant positions of judges of the Constitutional Court of Ukraine.

Following respective competitive selection, in the recommendations of the Parliamentary Committee on Legal Policy on the appointment of Yuliia Mykolaivna Kyrychenko, Oksana Mykhailivna Klymenko, Zakhar Volodymyrovych Tropin, and Taras Olehovych Tsymbalistyi to the position of justice of the Constitutional Court of Ukraine, the Committee noted that the process of preparing the issue of appointment of judges of the Constitutional Court of Ukraine revealed a number of problems at the stage of “AGE’s facilitation to the authorities appointing judges of the Constitutional Court of Ukraine in assessing the moral qualities and the level of competence in the field of law of candidates for the position of justice of the Constitutional Court of Ukraine.” In particular, it is necessary to amend legislation on the protection of personal data of candidates for the position of justice of the Constitutional Court of Ukraine and/or third parties. It has been revealed that despite the fact that the Law of Ukraine “On the Constitutional Court of Ukraine” assigns the functions of organisational and technical support of the Advisory Group to the Secretariat of the Constitutional Court of Ukraine, in practice, such issues as ensuring its document flow, registration of incoming and outgoing correspondence, storage and protection of personal data and other confidential information collected and/or received by the Advisory Group in the course of the exercise of its functions are handled independently by the AGE itself.

In turn, this makes it impossible to properly protect the personal data of candidates for the position of justice of the Constitutional Court of Ukraine and/or third parties, since the AGE is not a public authority and, therefore, is not even required to designate a responsible person to organise the work related to protecting candidates’ personal data during their processing under the Law of Ukraine “On Personal Data Protection”. This is also confirmed by the AGE in its responses to the parliamentary inquiries submitted by MP Denys Maslov.

At present, the Secretariat of the Constitutional Court of Ukraine only forwards incoming correspondence addressed to it to the AGE and provides purely physical storage of documents that the AGE decides to transfer to it.

In view of the above, it seems appropriate to specify the mandate of the Secretariat of the Constitutional Court of Ukraine regarding organisational and technical support of the AGE’s activities, in particular in the part of ensuring the document flow of the AGE, registration of incoming and outgoing correspondence of the AGE, storage and protection of personal data and other confidential information collected and/or received by the Advisory Group in the course of the exercise of its functions. It is also advisable to clarify that after the completion of the competition, all documents received and/or collected by the AGE regarding the candidates shall be stored in the Secretariat of the Constitutional Court of Ukraine.

For the purposes of effective interaction, unambiguous and common understanding of the competitive process of appointing judges of the Constitutional Court of Ukraine between the appointing authorities and the AGE, it is advisable to clarify the auxiliary status of this body, as

well as the fact that the AGE shall provide the appointing authorities with copies of all documents collected during the background checks and evaluation of candidates. The AGE's interaction with the Parliamentary Committee on Legal Policy has revealed gaps in this area that require legislative regulation. Moreover, Article 108 of the Law of Ukraine "On the Constitutional Court of Ukraine" provides that if, as a result of the evaluation, the number of candidates meeting the criteria of high moral qualities and recognised level of competence in the field of law is fewer than two persons per one vacant position of justice of the Constitutional Court, the selection commission, the Committee, the Council of Judges of Ukraine shall immediately, but not later than 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. The aforementioned authorities are not in a position to take other course of action.

In the opinion to the authors of the Draft Law, if the respective competitive procedures for the positions of judges of the Constitutional Court of Ukraine are conducted for several or even all vacant positions, it may be inappropriate to announce an additional competition in the event of the insufficient number of candidates.

If the competition is conducted for several or even all vacant positions, it appears more appropriate to leave it to the discretion of the appointing authority to decide whether to announce an additional competition. In this way, the appointing authority will also have the right to consider the existing number of candidates.

3. Main Provisions of the Draft Law

This Draft Law proposes the following amendments to the Law of Ukraine "On the Constitutional Court of Ukraine":

- to clarify that the Advisory Group is an auxiliary body of the appointing authorities and is obliged to respond to their inquiries and recommendations in accordance with the law;

- to clarify that the organisational and technical support of the activities of the Advisory Group provided by the Secretariat of the Constitutional Court of Ukraine includes, in particular, but is not limited to, ensuring its document flow, registration of incoming and outgoing correspondence, storage and protection of personal data and other confidential information collected and/or received by the Advisory Group in the course of the expertise of its functions;

- to provide that if the competition is conducted for all vacant positions of judges of the Constitutional Court of Ukraine, but the list of candidates evaluated by the Advisory Group who meet the criteria of high moral qualities and recognised level of competence in the field of law includes fewer than two candidates per one vacant position, the selection commission, the Committee, or the Council of Judges of Ukraine may, within 30 days of receiving the list, announce a new competition for such a vacant position;

- to clarify that the selection commission, the Committee, the Council of Judges of Ukraine shall interview the candidates included in the list of evaluated candidates upon receiving from the Advisory Group such a list, the Advisory Group's decisions on the evaluation of each candidate's compliance, as well as copies of all documents and information collected and/or received by the Advisory Group regarding the evaluated candidates;

- to clarify that upon the completion of the competition, all documents received and/or collected by the AGE regarding the candidates shall be stored in the Secretariat of the Constitutional Court of Ukraine.

4. Legal Aspects

The Laws of Ukraine “On the Rules of Procedure of the Verkhovna Rada of Ukraine” and “On the Constitutional Court of Ukraine” constitute the legal framework governing this area of regulation.

5. Financial and Economic Justification

The implementation of the Draft Law will not require additional expenditures from the state or local budgets.

6. Expected Outcomes

Adoption of the Draft Law will improve the competitive selection procedure for the position of a justice of the Constitutional Court of Ukraine.

Members of the Parliament of Ukraine