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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

OF UKRAINE

**ON AMENDING CERTAIN LEGISLATIVE ACTS
OF UKRAINE
IN RELATION TO PREVENTION OF ABUSE
OF THE RIGHT TO APPEAL**

LAW of UKRAINE No. 2181–VI

On Amending Certain Legislative Acts of Ukraine in Relation to Prevention of Abuse of the Right to Appeal

The Verkhovna Rada hereby resolves:

I. To amend the following legislative acts of Ukraine:

1. In the Code of Ukraine for Administrative Infringement (Vidomosti Verkhovnoyi Rady URSR, 1984, Annex to #51, pages 1122):

1) To add Article 188³² which reads as follows:

“Article 188³². Failure to comply with legal requirements of the High Council of Justice regarding provision of information.

Failure to comply with legal requirements of the High Council of Justice regarding provision of information, a copy of a case file or deliberate provision of false information, as well as a failure to meet the established by the law time frame for provision of information, a copy of a case file to the High Council of Justice -

Shall entail imposition of a fine in the amount of twenty five up to one hundred minimum nontaxable incomes of citizens.

The same actions committed repeatedly in the course of one year after imposition of an administrative penalty –

Shall entail imposition of a fine in the amount ranging from one hundred to two hundred minimum nontaxable incomes of citizens”;

2) Article 221 after digits “188³¹” shall be supplemented with digits “188³²”;

3) Clause 11 of Part one of Article 255, after words and digits “Part two of article “127¹” shall be supplemented by the following word and digits “Article 188³²”.

2. In the Code of Administrative Adjudication of Ukraine (Vidomosti Verkhovnoyi Rady Ukrainy, 2005, ##35–37, page 446):

1) In Article 18:

“Part two, after words “officer or official” shall be supplemented with words “except cases envisaged in this Code, and”;

Part four shall be rendered as follows:

“4. Within the High Administrative Court of Ukraine’s jurisdiction, as the first instance court, shall be cases regarding establishment by the Central Elections Commission results of elections or of an all-Ukrainian referendum, as well as cases dealing with challenging acts, actions or

inaction of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice”;

2) In Article 19:

Part two shall be supplemented with words “with the exception of cases dealing with challenging acts on individual cases, as well as actions or inactivity of the Verkhovna Rada, the President of Ukraine, the High Council of Justice if they concern interests of an individual”;

Part three shall be rendered as follows:

«3. Administrative cases dealing with contesting regulations issued by the Cabinet of Ministers of Ukraine, a ministry or any other central executive power authority, the National Bank of Ukraine or any other authority (entity) exercising its power on the whole territory of Ukraine but for the cases established by this Code, administrative cases where a respondent is a Ukrainian diplomatic mission or consulate abroad, their official or officer, as well as administrative cases dealing with cancelation of a registration certificate of a political party, a ban (forced dismissal, liquidation) on a political party, shall be decided by a circuit administrative court, whose territorial jurisdiction extends to the city of Kyiv”;

3) In Part one Article 24 words “the President of Ukraine” shall be removed;

4) Part five, Article 117 shall be rendered as follows:

“5. It shall be prohibited to secure a lawsuit by means of:

1) Termination of acts /regulations issued by the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice, and prohibiting them from committing certain actions;

2) Termination of decisions of the National Bank of Ukraine concerning establishing and carrying out of a temporary administration or bank liquidation, prohibiting a temporary administrator, bank liquidator or the National Bank of Ukraine from taking certain actions in the course of carrying out temporary administration or bank liquidation”;

5) Article 171 shall be rendered as follows:

“Article 171. Peculiarities of proceedings in cases dealing with contesting regulations of executive power authorities, the Verkhovna Rada of the Autonomous Republic of Crimea, local self-governance bodies and other authorities

1. Rues established in this Article shall extend to consideration of administrative cases concerning:

1) Legality (except for the constitutional one) of resolutions and orders of the Cabinet of Ministers of Ukraine, resolutions of the Verkhovna Rada of the Autonomous Republic of Crimea;

2) Legality and conformity to superseding legal acts of regulations issued by ministries, other central executive power authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, local self-governance bodies, other authorities.

2. The Right to contest a regulation shall be granted to persons who this regulation extends to, as well as persons that are subjects/entities of legal relations that shall be regulated by the regulation in question.

3. Should proceedings begin in an administrative case seeking to contest a regulation, a court shall oblige the respondent to publish an announcement thereof in a publication, which officially published or should have published the regulation in question.

4. Such announcement shall list claims of a claimant in regards to the contested regulation, details of the regulation (requisites), scheduled date, time and place of the court hearing in the administrative case in question.

5. The announcement shall be published not later than seven days prior to the court hearing commencement.

6. Should such announcement be published in a timely manner, it should be assumed that all the interested persons have been properly notified about the court proceedings. In this event, complaints about a court decision passed in this case expressed by such persons if they did not participate in the case shall not be taken into consideration.

7. An administrative case seeking to contest regulations shall be decided within a reasonable term but not later than one month after the judicial proceeding started.

As an exception, taking into account peculiarities of proceedings in a case, a court may prolong the term of deciding a case, but not longer than for one month.

8. Court may deem a regulation illegal or not in conformity with a superseding regulation, fully or in part.

9. Should it be found in the course of deciding a case seeking to challenge a regulation that other regulations or their provisions failed to meet the requirements of legality or conformity to a superseding legal act, except for the regulation –the subject of the opened administrative proceedings, and they may affect a court ruling in a case, the court shall deem such acts or their provisions illegal or not in compliance with a legal act of a superseding legal force.

10. Court rulings in cases concerning contesting regulations shall be appealed in accordance with the established procedure.

11. The operative part of a court ruling deeming a regulation illegal or not in conformity with a regulation of the superseding legal force and thus deeming it void shall be immediately published by a respondent in a publication that officially originally published the regulation in question, after the ruling comes into force.

12. Rules established in this Article shall also be applicable in events when the issue of legality of a regulation or its conformity to a superseding legal act is raised in the course of consideration of another administrative case”;

6) To supplement it with Article 171¹, which renders as follows:

«Article 171¹. Peculiarities of proceedings in cases seeking to contest acts, actions or inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice

1. Rules established in this Article shall be applicable to consideration of administrative cases concerning:

1) Legality (except for the constitutional legality) of resolutions of the Verkhovna Rada, orders and decrees of the President of Ukraine;

2) Acts of the High Council of Justice;

3) Actions or inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice.

2. Acts, actions of inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, and the High Council of Justice shall be challenged in the High Administrative Court of Ukraine. For this purpose, a separate distinct chamber shall be created within the High Administrative Court.

3. In the event of opening an administrative case in seeking to contest a regulation issued by the Verkhovna Rada of Ukraine, the President of Ukraine, the High Administrative Court of Ukraine shall oblige the respondent to make an announcement thereof. Such announcement shall be published in accordance with the requirements envisaged in Parts three- five of Article 171 of this Code. If the announcement is disseminated in a timely manner, it should be believed that all interested persons have been properly notified about the proceedings.

4. An administrative case in regards to contesting acts, actions or inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice shall be decided by a panel of judges consisting of not less than five judges within a reasonable time frame but not later than one month after proceedings in the case started. Under exceptional circumstances, having taken into account peculiarities of a case consideration, a tribunal may pass a ruling to prolong the term of the case consideration, but not longer than for one month.

5. The High Administrative Court of Ukraine, based on the case consideration outcome may:

1) Deem an act issued by the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice illegal, in full or in part;

2) Deem actions of inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, and the High Council of Justice unlawful and therefore oblige the Verkhovna Rada of Ukraine, the President of Ukraine, and the High Council of Justice to commit certain actions.

Should a regulation be deemed illegal and void, the operative part of the corresponding court ruling shall be immediately published by the respondent in the publication that previously officially published the regulation in question, after the ruling comes into effect.

6. The High Administrative court of Ukraine decision regarding contesting acts, actions or inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice shall be final and shall not be reviewed in accordance with the appeal or cassation procedure.”

3. In the Law of Ukraine “On the High Council of Justice” (Vidomosti Verkhovnoyi Rady, 1998, # 25, page 146)

1) In Article 24:

In section one words “no less than two thirds” shall be replaced by “a majority of members of the High Council of Justice”;

In section five words “three quarters” shall be replaced with “two thirds”

2) Article 25 should be worded as follows:

«Article 25. Powers of the High Council of Justice in the course of examination of cases.

In order to exercise its duties, the High Council of Justice may request and obtain necessary information from the governmental agencies and local self-governance bodies, their officials, heads of enterprises, institutions, organizations regardless of the form of their ownership and subordination, citizens, and their associations. Such information shall be provided upon a written request from the High Council of Justice in connection with the review/control of certain cases.

A governmental agency, local self-governance body, their officials, heads of enterprises, institutions and organizations, associations of citizens that are an addressee of a request from the High Council of Justice shall be obliged within ten days from the day of its receipt to provide corresponding information. Should such be needed, the mentioned term may be prolonged up to thirty days, about which the High Council of Justice should inform in the request.

In order to exercise its duties, the High Council of Justice may demand that courts provide copies of case files that are still being processed, except for cases that are scheduled for hearing in private. Copies of case files shall be provided to the High Council of Justice according to the procedure established by Section one and two of this Article. Summoning of a copy of a case file shall not be a hindrance to the case’s consideration in court.

Failure to provide the High Council of Justice with copies of case files, as well as deliberate provision of false information shall result in liability pursuant to the law.

A member of the High Council of Justice shall have the right to familiarize him/herself with materials submitted for the High Council of Justice’s review, as well as to participate in elucidation and control thereof, to solicit petitions, to provide their reasoning, relevant documents”;

3) In Article 27:

Part one shall be supplemented by Clause 7 as follows:

“7) Other deeds within the High Council of Justice’s mandate”;

Shall be supplemented by Part 3 as follows:

«The High Council of Justice deeds may be challenged solely in the High Administrative Court of Ukraine, according to the procedure established by the Code of Administrative Adjudication of Ukraine”;

4) Articles 30 and 32 shall be rendered as follows:

«Article 30. Entities/subjects eligible to submit proposals regarding dismissal of judges

Following entities have the right to submit proposals to the High Council of Justice regarding acceptance of petitions about dismissal of judges from office:

- 1) A corresponding qualifications commission of judges;
- 2) A member of the High Council of Justice”;

«Article 32. Proposals regarding dismissal of a judge on special grounds

The High Council of Justice shall consider the issue of dismissal of a judge on grounds established by Clauses 4 – 6 of Part five of Article 126 of the Constitution of Ukraine (violation by a judge of requirements concerning incompatibility, breach of oath, the entry into force of a verdict of guilty against a judge) upon submission of a relevant conclusion by a qualifications commission, or on its own initiative.

Breach of oath by a judge is:

Commitment of actions that dishonor a judicial office, and may cause doubts in his/her impartiality, objectivity and independence, integrity, incorruptibility of the judiciary;

Illegal receipt by a judge of material benefits or incurring spending that exceed an income of the judge and members of his/her family;

Deliberate delay in consideration of a court case beyond terms established by the law;

Violation of moral and ethical principles of human conduct.

Violation of an oath by a judge fulfilling administrative functions shall be also his/her failure to fulfill his/her duties in the administrative position, related to procedural actions.

Inviting a judge whose case is under consideration shall be obligatory. Should the judge be unable to attend the High Council of Justice session due to sound reasons, the judge whose case is under consideration may offer a written explanation regarding the raised issues with further addition of such explanation to the case file. A written explanation of a judge shall then be pronounced at the High Council of Justice’s session. A repeated failure of a judge to attend shall constitute grounds for considering the case in his/her absence.

A decision about submission of the High Council of Justice’s petition regarding dismissal of a judge in accordance with Clauses 4, 5 and 6 of Part five of Article 126 of the Constitution of Ukraine shall be taken by a majority of members of the constitutional membership of the High Council of Justice;

- 5) Part four of Article 42 shall be rendered as follows:

«The High Council of Justice, while considering a disciplinary case, shall give a hearing to the judge’s explanation. Should it be impossible for the judge to participate in the High Council of Justice’s session for sound reasons, the judge may give a written explanation regarding the raised issues with further addition of such explanation to the case file. The judge’s written explanation shall then be pronounced at the High Council of Justice’s session. A repeated failure of a judge to attend shall constitute grounds for considering the case in his/her absence”.

- 6) Part six of Article 46 shall be rendered as follows:

«Considering a disciplinary case, the High Council of Justice shall give a hearing to the judge's explanation. Should it be impossible for the judge to participate in the High Council of Justice's session for sound reasons, the judge may offer his written explanation regarding the raised issues with further addition of such explanation to the case file. The judge's written explanation shall be mandatory to be pronounced at the High Council of Justice's session. A repeated failure of a judge to attend shall constitute grounds for considering the case in his/her absence»;

7) Part four of Article 47 shall be rendered as follows:

“Considering a disciplinary case that involves a prosecutor, the High Council of Justice shall give a hearing to his/her explanation. Should it be impossible for the prosecutor to participate in the High Council of Justice's session for sound reasons, the prosecutor may give a written explanation regarding the raised issues with further addition of such explanation to the case file. The prosecutor's written explanation shall be mandatory to be pronounced at the High Council of Justice's session. A repeated failure of the prosecutor to attend shall constitute grounds for considering the case in his/her absence”.

II. Final and transitional provisions

1. This Law shall enter into force on the day of its publication.
2. Upon this Law's entry into force, administrative courts shall finalize consideration of cases regarding contesting acts, actions or inactivity of the Verkhovna Rada of Ukraine, the President of Ukraine, the High Council of Justice should the proceedings have been in process on the day of this Law's entry into force, and according to the procedure valid before the Law's entry into force.
3. Administrative law suits, appeals, submitted to corresponding administrative courts before this Law's effective date that seek to contest acts, actions or inaction of the Verkhovna Rada of Ukraine, President of Ukraine, High Council of Justice, proceedings in which were not yet open as of the date, shall be redirected by corresponding administrative courts to the High Administrative Court of Ukraine.

President of Ukraine, Viktor Yanukovich

May 13, 2010