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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

EXPLANATORY NOTE

**TO THE
DRAFT LAW OF UKRAINE
ON
AMENDING CERTAIN LAWS OF UKRAINE REGARDING
PREVENTION OF ABUSE OF THE RIGHT TO APPEAL**

EXPLANATORY NOTE
to the Draft Law of Ukraine “On Amending Certain Laws of Ukraine
Regarding Prevention of Abuse of the Right to Appeal”

1. Arguments to support adoption of the Draft Law

Pursuant to Article 131 of the Constitution of Ukraine, the High Council of Justice is established in Ukraine that is responsible for: submission of petitions regarding appointment or dismissal of judges, taking a decision regarding breaking of incompatibility requirements by judges and prosecutors, disciplinary proceedings against justices of the Supreme Court of Ukraine and judges of high specialized courts, and examination of complaints about disciplinary decisions affecting judges of appellate and local first instance courts, as well as prosecutors.

Article 27 of the Law of Ukraine “On the High Council of Justice” empowers the High Council of Justice, within its mandate, to pass corresponding acts/regulations that shall have a binding effect.

At the same time, pursuant to the legislation, such acts/regulations may be challenged in court. Moreover, lack of clearly established order of subordination of agencies and jurisdiction of cases regarding contesting acts/regulations issued by the High Council of Justice lead to abuse of the right to appeal.

This Draft Law is being submitted in order to avoid such misuse practices.

2. Goals and objectives of the Draft Law adoption

The goal of the Draft Law is to prevent misuse of the right to appeal in cases where acts issued by the High Council of Justice are the matter of contention.

3. General description and basic provisions of the Draft Law

The Draft Law proposes to amend the Law of Ukraine “On the High Council of Justice” and the Code of Administrative Adjudication of Ukraine, and to establish that acts/regulations of the High Council of Justice may be challenged in the High Administrative Court of Ukraine, whose decision in such matters shall be final.

Adoption of this Draft Law does not require amending other laws.

4. Financial and economic justification

Adoption of the Draft Law shall not require increased budget spending.

5. Projection of socioeconomic outcomes in the case of adoption

Adoption of this Law will make it impossible to abuse the right to appeal in cases where acts/regulations of the High Council of Justice are the matter of dispute.

People’s Deputy of Ukraine

S. Oliynyk

People’s Deputy of Ukraine

M. Rudchenko