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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON AMENDING THE CONSTITUTION

OF UKRAINE

AS TO JUSTICE

**introduced by the President of Ukraine
to the Verkhovna Rada
on 25 November 2015**

LAW OF UKRAINE

On amending the Constitution of Ukraine (as to justice)

The Verkhovna Rada of Ukraine hereby decrees:

I. To amend the Constitution of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 1996, No. 30, Art. 141) as follows:

1) Articles 124 – 129, 130, 131, 147 – 148, 149, 151, 153 shall be amended as follows:

“Article 124. Justice in Ukraine shall be administered exclusively by courts.

Delegation of court’s functions as well as appropriation of these functions by other bodies or officials shall not be permitted.

The jurisdiction of the courts shall cover any legal dispute and any criminal charge. Courts shall consider also other matters in cases prescribed by the law.

Mandatory pre-trial dispute resolution procedures may be provided for in the law.

The people shall directly participate in the administration of justice through jurors.

Ukraine may recognize the jurisdiction of the International Criminal Court as provided for by the Rome Statute of the International Criminal Court.

Article 125. The judiciary system in Ukraine shall be based on the principles of territoriality and specialization and is defined by the law.

Court shall be established, reorganized and dissolved by law, which draft shall be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultation with the High Council of Justice.

The Supreme Court shall be the highest court in the system of judiciary in Ukraine.

Higher specialized courts may function in accordance with the law.

Administrative courts shall function aimed to protect human rights, freedoms, and interests of a person in the sphere of public law.

Establishment of extraordinary and special courts shall not be permitted.

Article 126. Independence and inviolability of a judge are guaranteed by the Constitution and laws of Ukraine.

Any influence on a judge is prohibited.

Judge shall not be detained or kept under custody or under arrest without the consent of the High Council of Justice until a guilty verdict is rendered by a court, except for detention of a judge caught committing serious or grave crime or immediately after it.

Judge shall not be held liable for the decision rendered by him or her, except the cases of committing a crime or a disciplinary offence.

Judge shall hold an office for unlimited term.

The grounds to dismiss a judge are the following:

- 1) inability to exercise his or her powers for health reasons;
- 2) violation by a judge of the incompatibility requirements;

3) commission by him or her of a serious disciplinary offence, flagrant or permanent disregard of his or her duties to be incompatible with the status of judge or reveal his or her non-conformity with being in the office;

4) submission of a statement of resignation or voluntary dismissal from office;

5) refusal to be removed from one court to another in case the court in which a judge holds the office is to be dissolved or reorganized;

6) violation of the obligation to justify the legality of the origin of property.

The powers of a judge shall be terminated in case of:

1) the judge's attainment of the age of sixty-five;

2) termination of Ukraine's citizenship or acquiring by a judge citizenship of another state;

3) taking effect of a court decision on recognition or declaration of a judge missing or dead, or on recognition of a judge to be legally incapable or partially legally incapable;

4) death of a judge;

5) taking effect of a guilty verdict against him or her for committing a crime.

The State shall ensure the personal security of a judge and members of his or her family.

Article 127. Justice shall be administered by judges. In cases prescribed by law justice shall be administered with participation of jurors.

Judge shall not belong to political parties, trade unions, take part in any political activity, hold a representative mandate, occupy any other paid office, perform other remunerated work except scholarly, teaching or creative activity.

A citizen of Ukraine, not younger than the age of thirty and not older than sixty five, who has a higher legal education and has professional experience in the sphere of law for no less than five years, is competent, honest and has command of the state language may be appointed to the office of a judge. Additional requirements to be appointed to the office of a judge may be provided for in the law.

As for judges of specialized courts other requirements with regard to education and professional experience may be provided by law.

Article 128. Judge shall be appointed by the President of Ukraine on submission of the High Council of Justice due to the procedure prescribed by law.

Judge shall be appointed on competition basis, except the cases provided for in the law.

The Chairman of the Supreme Court shall be elected to office and dismissed from office at the Plenary Sitting of the Supreme Court by secret ballot, due to the procedure prescribed by law.

Article 129. While administering justice, a judge shall be independent and governed by the rule of law.

The main principles of justice are:

1) equality of all participants in a trial before the law and the court;

2) ensuring the guilt to be proved;

3) adversarial procedure and freedom of the parties to present their evidence to the court and to prove the weight of evidence before the court;

4) exercising prosecution by the public prosecutor in court on behalf of the State;

5) ensuring to an accused the right to defence;

6) openness of a trial and its complete recording by technical means;

7) reasonable time of case consideration by a court;

8) ensuring the right to appeal and, in cases prescribed by law, the right to cassation;

9) the legally binding nature of a court decision.

Other principles of justice can be determined by law.

Justice shall be administered by a single judge, by a panel of judges, or by juries.

Persons found guilty of contempt of court or against a judge shall be held legally liable";

“Article 130. The State shall ensure funding and proper conditions for the operation of courts and the activity of judges. Expenditures for the maintenance of courts shall be allocated separately in the State Budget of Ukraine, taking into account proposals of the High Council of Justice.

Remuneration of judges shall be defined by the law on judiciary”;

“Article 131. In Ukraine, the High Council of Justice shall function having powers:

- 1) to present submission for the appointment of a judge to office;
- 2) to decide on the violation by a judge or a prosecutor of the incompatibility requirements;
- 3) to review complaints as regards decisions of the relevant body imposing disciplinary liability on a judge or a prosecutor;
- 4) to decide on dismissal of a judge from office;
- 5) to grant consent for detention of a judge or keeping him or her under custody;
- 6) to decide on temporal withdrawal the powers of a judge to administer justice;
- 7) to take measures to ensure independence of judges;
- 8) to decide on transfer and promotion of a judge;
- 9) to exercise other powers defined by the Constitution and laws of Ukraine.

The High Council of Justice shall consist of twenty one members: ten of them shall be elected by the Congress of Judges of Ukraine among judges or retired judges; two of them shall be appointed by the President of Ukraine; two of them shall be elected by the Verkhovna Rada of Ukraine; two of them shall be elected by the Congress of Advocates of Ukraine; two of them shall be elected by the All-Ukrainian Conference of Public Prosecutors; two of them shall be elected by the Congress of Representatives of Law Schools and Law Academic Institutions.

The procedure for election (appointment) of members of the High Council of Justice to office shall be prescribed by law.

The Chairman of the Supreme Court shall be a member of the High Council of Justice *ex officio*.

Term of the office for elected (appointed) members of the High Council of Justice shall be four years. The same person cannot hold the office for two consecutive terms.

A member of the High Council of Justice shall not belong to political parties, trade unions, take part in any political activity, hold a representative mandate, occupy any other paid office (except for the office of the Chairman of the Supreme Court), perform other remunerated work except scholarly, teaching or creative activity.

Member of the High Council of Justice shall be legal professional and meet the requirement of political neutrality.

Additional requirements to be a member of the High Council of Justice may be provided for in the law.

The High Council of Justice shall be authoritative as if not less than fifteen its members, the majority of which being judges, are elected (appointed).

In the system of the judiciary, according to the law there shall be established bodies and institutions which provide selection of judges, prosecutors, their professional training, assessment, consider disciplinary liability cases, provide financial and organizational support for the courts”;

“Article 147. The Constitutional Court of Ukraine shall decide on compliance of laws with the Constitution of Ukraine and, in cases prescribed by this Constitution, shall decide on compliance of other acts with the Constitution of Ukraine, shall provide official interpretation of the Constitution of Ukraine as well as shall exercise other powers in accordance with this Constitution.

The Constitutional Court of Ukraine shall act on the basis of principles of the rule of law, independence, collegiality, transparency, reasonableness and binding nature of its decisions and opinions”;

“Article 148. The Constitutional Court of Ukraine shall be composed of eighteen judges of the Constitutional Court of Ukraine.

The President of Ukraine, the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine each shall appoint six judges to the Constitutional Court of Ukraine.

Selection of candidates for the post of judge of the Constitutional Court of Ukraine shall be conducted on competitive basis under the procedure prescribed by the law.

A citizen of Ukraine who has command in the state language, attained the age of forty on the day of appointment, has a higher legal education and professional experience in the sphere of law not less than fifteen years, has high moral character and is a jurist of recognized competence can be a judge of the Constitutional Court of Ukraine.

A judge of the Constitutional Court of Ukraine shall not belong to political parties, trade unions, take part in any political activity, hold a representative mandate, occupy any other paid office, perform other remunerated work, except scholarly, teaching or creative activities.

A judge of the Constitutional Court of Ukraine shall be appointed for nine years without the right of reappointment.

A judge of the Constitutional Court of Ukraine shall step in his or her office as of the date of taking the oath at the special plenary sitting of the Court.

The Constitutional Court of Ukraine shall elect the Chairman among the judges of the Court at a special plenary sitting of the Court by secret ballot only for one three-year term”;

“Article 149. Independence and inviolability of a judge of the Constitutional Court of Ukraine are guaranteed by the Constitution and laws of Ukraine.

Any influence on a judge of the Constitutional Court of Ukraine is prohibited.

Judge of the Constitutional Court of Ukraine shall not be detained or kept under custody or under arrest without the consent of the Constitutional Court of Ukraine until a guilty verdict is rendered by a court, except for detention of a judge caught committing serious or grave crime or immediately after it.

Judge of the Constitutional Court of Ukraine shall not be held legally liable for voting on decision or opinions of the Court, except the cases of committing a crime or a disciplinary offence.

The State shall ensure the personal security of a judge of the Constitutional Court of Ukraine and members of his or her family”;

“Article 151. The Constitutional Court of Ukraine, on submission of the President of Ukraine or not less than forty-five People’s Deputies of Ukraine, or the Cabinet of Ministers of Ukraine, shall provide opinions on compliance with the Constitution of Ukraine of international treaties of Ukraine that are in effect, or the international treaties submitted to the Verkhovna Rada of Ukraine for granting agreement on their binding nature.

The Constitutional Court of Ukraine on submission of the President of Ukraine or not less than forty-five People’s Deputies of Ukraine shall provide opinions on compliance with the Constitution of Ukraine (constitutionality) of questions that are proposed to be put for the all-Ukrainian referendum on people’s initiative.

The Constitutional Court of Ukraine on the submission of the Verkhovna Rada of Ukraine shall provide an opinion on the observance of the constitutional procedure of investigation and consideration of the case of removing the President of Ukraine from office by the impeachment procedure”;

“Article 153. Organization and operation of the Constitutional Court of Ukraine, status of judges of the Court, grounds to apply to the Court and application procedure, case consideration procedure and enforcement of decisions of the Court shall be defined by the Constitution of Ukraine and by law”;

2) to incorporate new Articles 129¹, 130¹, 131¹ – 131², 148¹, 149¹, 151¹ – 151² as follows:

“Article 129¹. A court shall render the decision in the name of Ukraine. The court decision shall be legally binding and is to be enforced.

The State ensures that a court decision is enforced due to the procedure prescribed by law.

The court shall supervise the enforcement of the court decision”;

“Article 130¹. Judicial self-governance shall operate pursuant to the law protecting professional interests of judges and deciding internal activity of the courts”;

“Article 131¹. In Ukraine, public prosecutor’s office shall function with the powers of:

- 1) public prosecution in the court;
- 2) organizing and procedurally directing during pre-trial investigation, deciding other matters in criminal proceeding in accordance with the law, supervising undercover and other investigative and search activities of law enforcement agencies;
- 3) representing interests of the State in the court in exceptional cases and under procedure prescribed by law.

Organization and functioning of the public prosecutor’s office shall be determined by law.

Public prosecutor’s office in Ukraine shall be chaired by the Prosecutor General who shall be appointed and dismissed by the President of Ukraine on the consent of the Verkhovna Rada of Ukraine.

The term of the office of the Prosecutor General shall be six years. The same person can not hold the post of the Prosecutor General for two consecutive terms.

The Prosecutor General shall be early dismissed from his or her office exclusively in cases and on grounds prescribed by law.

Article 131². In Ukraine, the bar is functioning to provide professional legal assistance.

The independence of the bar is guaranteed.

The fundamentals of organization and functioning of the bar and advocates’ activity in Ukraine shall be defined by law.

Only an advocate shall represent another person before the court and defend a person against prosecution.

Exceptions for representation before the court in labour disputes, social rights protection disputes, disputes related to elections and referendums or in disputes of minor importance, and for representation before the court of minors or adolescents, legally incapable or partially legally incapable can be determined by law”;

“Article 148¹. The State shall ensure funding and proper conditions for operation of the Constitutional Court of Ukraine. Expenditures for operation of the Court shall be allocated separately in the State budget of Ukraine, taking into account proposals of its Chairman.

Remuneration of judges of the Constitutional Court of Ukraine shall be defined by the law on the Constitutional Court of Ukraine”;

“Article 149¹. The powers of a judge of the Constitutional Court of Ukraine shall be terminated in case of:

- 1) expiry of the term of his or her office;
- 2) his or her attainment of the age of seventy;
- 3) termination of Ukraine’s citizenship or acquiring him or her the citizenship of another state;
- 4) taking effect of a court’s decision on recognition or declaration of a judge of the Court missing or dead, or on recognition of a judge of the Court to be legally incapable or partially legally incapable;
- 5) taking effect of a guilty verdict against him or her for committing a crime;
- 6) death of a judge of the Constitutional Court of Ukraine.

The grounds of dismiss of a judge of the Constitutional Court of Ukraine are the following:

- 1) inability to exercise his or her powers for health reasons;
- 2) violation by him or her of incompatibility requirements;
- 3) commission by him or her of a serious disciplinary offence, flagrant or permanent disregard of his or her duties to be incompatible with the status of judge of the Court or reveals non-conformity with being in the office;
- 4) submission by a judge of statement of resignation or of voluntary dismissal from office.

Dismissal of a judge of the Constitutional Court of Ukraine from his or her office shall be decided by not less than two third votes of full Court”;

“**Article 151**¹. The Constitutional Court of Ukraine shall decide on compliance with the Constitution of Ukraine (constitutionality) of a law of Ukraine on constitutional complaint of a person alleging that the law of Ukraine applied in a final decision in his or her case contravenes the Constitution of Ukraine. A constitutional complaint may be logged after exhaustion of any other domestic remedies.

Article 151². Decisions and opinions adopted by the Constitutional Court of Ukraine shall be binding, final and can not be challenged”;

3) in paragraph four of Article 29 the word "legal" (*pravovoyu*) shall be substituted by the word "legal" (*pravnychoyu*);

4) in Article 55:

a) after paragraph three to incorporate new paragraph as follows:

“Everyone shall be guaranteed the right to apply with a constitutional complaint to the Constitutional Court of Ukraine on grounds defined in this Constitution and under the procedure prescribed by law”;

Thereby paragraphs four, five shall be paragraphs five, six accordingly;

b) in paragraph five the word "legal" (*pravovoho*) shall be substituted by the word "legal" (*yurydychnoho*);

5) in Article 59:

a) in paragraph one the word "legal" shall be substituted by the words "professional legal”;

b) paragraph two shall be deleted;

6) in paragraph one of Article 85:

a) sub-paragraphs 25 and 26 shall be amended as follows:

“25) granting consent for appointment and dismissal by the President of Ukraine of the Prosecutor General;

26) appointment of one-third of the composition of the Constitutional Court of Ukraine;”

b) sub-paragraph 27 shall be deleted;

7) sub-paragraph 14 of paragraph one of Article 92 shall be amended as follows:

“14) the judiciary, the judicial proceedings, the status of judges; the principles of judicial expertise; the organization and operation of the prosecution, the notary, the bodies of pre-trial investigation, the bodies and institutions for the execution of punishments; the procedure for

enforcement of the court decisions; the fundamentals of the organization and functioning of the bar”;

8) in Article 106:

a) in paragraph one:

sub-paragraphs 11 and 22 shall be amended as follows:

“11) appoints and dismisses the Prosecutor General with the consent of the Verkhovna Rada of Ukraine”;

“22) appoints one-third of the composition to the Constitutional Court of Ukraine”;

sub-paragraph 23 shall be deleted;

b) sub-paragraph 4 shall be amended as follows:

“Acts of the President of Ukraine, issued under his or her authority as envisaged in paragraphs 5, 18, 21 of this Article, shall be countersigned by the Prime Minister of Ukraine and the Minister responsible for the act and its execution”;

9) in sub-paragraphs 2 of paragraph two of Article 108 the word "inability" (*nemozhlyvosti*) shall be substituted by the word "inability" (*nespromozhnosti*);

10) in Article 110 the word "Inability" (*Nemozhlyvist*) shall be substituted by the word "inability" (*Nespromozhnist*), the words "the Supreme Court of Ukraine" shall be substituted by the words "the Supreme Court";

11) in paragraph six of Article 111 the words "the Supreme Court of Ukraine" shall be substituted by the words "the Supreme Court";

12) Chapter VII "The Prosecution" shall be deleted;

13) paragraph six of Article 136 shall be amended as follows:

“In the Autonomous Republic of Crimea, justice shall be administered by courts of Ukraine”;

14) in Article 150:

a) in paragraph one:

provision six of sub-paragraph 1 should be deleted;

in sub-paragraph 2 the words "and laws of Ukraine" shall be deleted;

to incorporate new sub-paragraph 3 as follows:

“3) exercising other powers defined by the Constitution of Ukraine”;

b) paragraph two shall be amended as follows:

“Matters under sub-paragraphs 1, 2 of paragraph one of this Article shall be considered following submissions of: the President of Ukraine; not less than forty-five People’s Deputies of Ukraine; the Supreme Court; the Commissioner for Human Rights of the Verkhovna Rada of Ukraine; the Verkhovna Rada of the Autonomous Republic of Crimea”;

15) in Article 152:

a) in paragraph one the word "legal" shall be deleted;

b) paragraph two shall be amended as follows:

“Laws, other acts, or their particular provisions, declared to be unconstitutional, shall lose legal effect from the day the Constitutional Court of Ukraine adopts the decision on their unconstitutionality, unless otherwise provided for in the decision but not earlier the day of its adoption”;

16) in Chapter XV “Transitional Provisions”:

a) sub-paragraph 9 shall be amended as follows:

“9. The Public Prosecution shall, in accordance with effective laws, continue to perform the function of pre-trial investigation until the agencies, to which the function is transferred under the law, will have been launched, and continue to perform the function of overseeing the observance of laws while enforcing court decisions in criminal cases, while application of other measures of coercion in relation to the restraint of personal freedoms of citizens, until the law on establishment of a dual system of regular penitentiary inspections takes effect”;

b) to incorporate sub-paragraph 16¹ as follows:

“16¹. Upon taking effect of the Law of Ukraine “On Amending the Constitution of Ukraine (as to justice)”:

1) prior to the establishment of the High Council of Justice (*Vyshcha Rada Pravosuddia*) its competence shall be exercised by the High Council of Justice (*Vyshcha Rada Yustytsii*). The High Council of Justice (*Vyshcha Rada Pravosuddia*) shall be established through reorganizing of the High Council of Justice (*Vyshcha Rada Yustytsii*). Prior to election (appointment) of members of the High Council of Justice (*Vyshcha Rada Pravosuddia*) it shall be composed of members of the High Council of Justice (*Vyshcha Rada Yustytsii*) during their term in office, but no longer than by April 30, 2019. Election (appointment) of members of the High Council of Justice (*Vyshcha Rada Pravosuddia*) shall be conducted not later than by April 30, 2019;

2) powers of judges appointed for a five-year term shall terminate with the expiration of the term for which they were appointed. Such judges may be appointed to the office of judge according to the procedure prescribed by law;

3) judges who were elected for unlimited term shall exercise their powers until being dismissed or their powers terminated on grounds defined in the Constitution of Ukraine;

4) conformity with being in the office of a judge, who was appointed to the office for a five-year term or elected for unlimited term, before the Law of Ukraine “On amending the Constitution of Ukraine (as to justice)” taking effect, should be assessed due to the procedure prescribed by law. Non-conformity of the judge with being in the office based on criteria of competence, professional ethics, or honesty, or refusal of the judge from such assessment shall constitute the ground to dismiss a judge. Procedure and exclusive grounds for appeal against the decision on dismissal of a judge resulted from the assessment shall be established by law;

5) in cases of reorganization or dissolution of particular courts, established before the Law of Ukraine “On amending the Constitution of Ukraine (as to justice)” taking effect, judges concerned shall have the right to retire or apply for a new position through a competition according to the procedure prescribed by law. Specifics of the transfer of a judge to another court may be prescribed by law;

6) until new administrative-territorial system of Ukraine is implemented according to the amendments to the Constitution of Ukraine as to decentralization, but not later than by December 31, 2017, the establishment, reorganization, and dissolution of courts shall be conducted by the President of Ukraine on the basis and under the procedure prescribed by the law;

7) within two years transfer and promotion of judge to another court shall be exercised by the President of Ukraine on the basis of the submission by the High Council of Justice (*Vyshcha Rada Pravosuddia*);

8) judges of the Constitutional Court of Ukraine, appointed before the Law of Ukraine "On amending the Constitution of Ukraine (as to justice)" taking effect, shall exercise their powers until being dismissed or their powers being terminated in accordance with the procedure prescribed in Article 149¹ of the Constitution of Ukraine and without right to reappointment. Powers of a judge of the Constitutional Court of Ukraine, who as of the day the Law of Ukraine "On amending the Constitution of Ukraine (as to justice)" taking effect has attained the age of sixty-five, but the decision on his or her dismissal from office has not been taken, shall be terminated;

9) the representation of citizens before courts by the public prosecution according to the law in cases in which proceedings had been initiated prior to the Law of Ukraine "On Amending the Constitution of Ukraine (as to justice)" taking effect, shall be exercised according to the rules have been effective prior to this Law taking effect, - until rendering the final court decisions that can not be challenged;

10) the Prosecutor General of Ukraine appointed to the office prior to the Law of Ukraine "On Amending the Constitution of Ukraine (as to justice)" taking effect shall exercise powers of the Prosecutor General until dismissal under the procedure prescribed by law but no longer within the term for which he or she was appointed, and may not hold the office for two consecutive terms;

11) in accordance with the sub-paragraph 3 paragraph one Article 131¹ and Article 131² of this Constitution representation before the Supreme Court and the courts of cassation shall be exercised exclusively by public prosecutors and advocates as from January 1, 2017; before the appellate courts – as from January 1, 2018; before the first instance courts – as from January 1, 2019.

Representation of the state and local authorities before courts shall be exercised exclusively by public prosecutors and advocates as from January 1, 2020.

Representation before courts in cases pending prior to the Law of Ukraine "On Amending the Constitution of Ukraine (as to justice)" taking effect shall be exercised according to the rules have been effective prior to this Law taking effect, - until rendering the final court decisions that cannot be challenged".

II. Final and transitory provisions

1. This Law shall take effect in three months as from the day following the day of its publication, except the paragraph 6 of Article 124 of the Constitution of Ukraine as amended by this Law, which shall take effect in three years from the day following the day of its publication.

2. As from the day of this Law taking effect:

appointment, termination of powers and dismissal of judges shall be conducted in accordance with the Constitution of Ukraine as amended by this Law;

the members of the High Council of Justice (*Vyshcha Rada Yustytsii*) appointed prior to this Law taking effect shall exercise powers of members of the High Council of Justice (*Vyshcha Rada Pravosuddia*) during the term for which they were appointed but not longer than by April 30, 2019;

the Minister of Justice of Ukraine and the Prosecutor General of Ukraine shall cease their powers as members of the High Council of Justice.

3. The Congress of Judges of Ukraine shall elect three members of the High Council of Justice (*Vyshcha Rada Pravosuddia*) not later than three months after the relevant law on regulating the activity of the High Council of Justice (*Vyshcha Rada Pravosuddia*) taking effect.

4. The Verkhovna Rada of Ukraine within thirty days after this Law taking effect shall transfer submissions of the High Qualification Commission of Judges of Ukraine along with relevant documents concerning election of judges for unlimited term which have not been considered by the Verkhovna Rada of Ukraine to the High Council of Justice (*Vyshcha Rada Pravosuddia*) for taking decision on appointment of judges.

Materials and submissions of the High Council of Justice (*Vyshcha Rada Yustytzii*) on appointment of judges to the office for a five-year term which have not been considered prior to the day this Law taking effect shall be returned to the High Council of Justice (*Vyshcha Rada Pravosuddia*) for taking decision on appointment of judges to the office in accordance with the Constitution of Ukraine as amended by this Law.

**Chairman
of the Verkhovna Rada of Ukraine**