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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

UKRAINE

DRAFT LAW

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

A draft law submitted by the Members
of Parliament of Ukraine

THE LAW OF UKRAINE

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

The Parliament of Ukraine **holds:**

I. To amend such legislative acts of Ukraine:

1. In the Law of Ukraine “On the Rules of Procedure of the Parliament of Ukraine” (Vidomosti Verkhovnoi Rady Ukrainy (VVR), 2010, No. 14-15, No. 16- 17, Article 133 with subsequent amendments):

1) to add “AND LAWS” after words “IN CASES PROVIDED BY THE CONSTITUTION” in the title of Chapter 33 of Title V;

2) for Article 208⁴ to have the following wording:

“Article 208⁴. Procedure for appointing justices of the Constitutional Court of Ukraine

1. Under Article 85(1)(26) of the Constitution of Ukraine, the Parliament shall appoint justices of the Constitutional Court of Ukraine.

2. Candidate justices of the Constitutional Court of Ukraine shall be selected via a competitive procedure in accordance with the procedure established by this article and given the peculiarities defined by the Law of Ukraine “On the Constitutional Court of Ukraine”.

The preparatory work regarding the appointment of candidate justices of the Constitutional Court of Ukraine in the Parliament is carried out by a committee whose purview is the legal status of the Constitutional Court of Ukraine.

3. No later than ninety days before the term of office of the justice of the Constitutional Court expires or before the justice of the Constitutional Court reaches the maximum age when s/he can hold this position, or no later than twenty days from the date when a vacancy for the position of a judge of the Constitutional Court of Ukraine appears if the mandate of a justice of the Constitutional Court of Ukraine has been terminated or s/he has been dismissed from office on the grounds provided for in Article 149¹ of the Constitution of Ukraine, the Secretariat of the Parliament, at the request of the committee whose purview is the legal status of the Constitutional Court of Ukraine, shall publish an announcement about the commencement of the competition for selecting candidate justices of the Constitutional Court of Ukraine on the official website of the Parliament.

4. The Secretariat of the Parliament, within thirty days from the date of publication of the announcement about the commencement of the competition, shall accept the documents specified in Article 104(2) of the Law of Ukraine “On the Constitutional Court of Ukraine” from persons intending to participate in the competition for the position of a justice of the Constitutional Court of Ukraine, and shall register them in chronological order based on the date the documents were received.

Information about applicants for the position of justice of the Constitutional Court of Ukraine, together with copies of the documents submitted, shall be published on the official website of the Parliament no later than the next working day, given the restrictions set forth in law.

The deadline for accepting documents is 24:00 on the last day of the period provided for in clause 1 of this paragraph if the documents are submitted electronically and at the end of the working hours of the Parliament Secretariat if the documents are submitted in paper form. The Parliament Secretariat does not have the right to refuse to accept documents for reasons other than if the deadline is over.

5. The committee whose mandate is the legal status of the Constitutional Court of Ukraine shall consider the documents submitted by persons who have expressed their intention to take up the position of a justice of the Constitutional Court of Ukraine.

Based on the documents submitted, the committee whose mandate is the legal status of the Constitutional Court of Ukraine shall check whether the persons who have expressed the intention to take up the position of a justice meet the requirements for a justice of the Constitutional Court of Ukraine determined by the Constitution of Ukraine and shall make a decision on admitting or not admitting candidates to the competitive selection.

Technical typos and inaccuracies made by a person in the documents submitted cannot be grounds for refusing admission to competitive selection.

If the persons who have expressed their intention to take up the position of a justice of the Constitutional Court of Ukraine but they do not meet the requirements set forth in the Constitution of Ukraine, the committee shall make a decision to refuse admission to competitive selection in respect of them.

If a person who has expressed his/her intention to take up the position of a justice of the Constitutional Court of Ukraine has not submitted all the necessary documents specified by law, the committee shall make a decision to refuse admission to the competitive selection in respect of such a person.

6. Within three days after making a decision to admit a candidate justice of the Constitutional Court of Ukraine to competitive selection, the Committee whose mandate is the legal status of the Constitutional Court of Ukraine shall submit the documents of such a candidate to the Secretariat of the Parliament to arrange a special background check in accordance with the Law of Ukraine "On Preventing corruption", as well as to the Advisory Group of Experts which operates in accordance with the Law of Ukraine "On the Constitutional Court of Ukraine" to assess the candidates' moral qualities and legal competence and to provide a list of candidates recommended for appointment to the position of justice of the Constitutional Court of Ukraine.

7. The Advisory Group of Experts shall provide the Parliament with a list of candidates recommended for appointment to the position of justice of the Constitutional Court of Ukraine, as well as a decision on recommending each candidate included in the respective list for the position of justice of the Constitutional Court. Such a list must contain the number of candidates which is at least three times more than the number of vacant positions of justices of the Constitutional Court of Ukraine.

If a person is not included in the list of candidates recommended by the Advisory Group of Experts for appointment to the position of justice of the Constitutional Court of Ukraine, such a person ceases to participate in the competition for the position of justice of the Constitutional Court.

If the number of candidates recommended is less than the number specified in clause 1 of this paragraph, a new competition shall be announced to be held in

accordance with the procedure provided by this article and the Law of Ukraine “On the Constitutional Court of Ukraine”.

8. Within three days after receiving the findings of a special background check from the central executive body implementing state policy in the field of public service, the Secretariat of the Parliament shall draw up and submit to the committee whose mandate is the legal status of the Constitutional Court of Ukraine, and to the Advisory Group of Experts the report on the findings of a special check regarding a candidate justice of the Constitutional Court of Ukraine.

In the event that, based on the findings of a special background check, there is information uncovered about the candidate that does not meet the requirements for taking up the position defined by the law, such a candidate will cease to participate in the competition for the position of a justice of the Constitutional Court of Ukraine based on the decision of the committee whose purview the legal status of the Constitutional Court of Ukraine.

9. Within three days from the date when the Advisory Group of Experts receives the list of candidates recommended for the position of justice of the Constitutional Court of Ukraine, the Parliament Secretariat shall publish the respective list on the official website of the Parliament.

10. After receiving a list of candidates recommended for the position of a justice of the Constitutional Court of Ukraine by the Advisory Group of Experts, the committee whose purview is the legal status of the Constitutional Court of Ukraine shall conduct interviews with such candidates and, based on the results of the interviews, shall make a decision regarding each candidate justice of the Constitutional Court of Ukraine.

11. The committee whose purview is the legal status of the Constitutional Court of Ukraine shall submit for the Parliament’s consideration with respect to each candidate justice of the Constitutional Court of Ukraine the committee’s decision, findings of a special background check, a decision on the recommendation of the Advisory Group of Experts, as well as documents submitted by the candidate.

12. Not later than five days before the date when the Parliament is to consider the respective issue, all documents (except information with restricted access) relating to candidate justices of the Constitutional Court of Ukraine are provided to the Members of Parliament of Ukraine.

13. Before voting on the candidates, a discussion shall be held at the plenary session of the Parliament.

Representatives of factions (MP groups), representatives of committees and the Members of Parliament take part in discussing candidate justices of the Constitutional Court of Ukraine.

During the discussion, each of the candidates has the right to speak at the plenary session of the Parliament.

Members of Parliament can ask questions to the candidate at the plenary session of the Parliament regarding any information about the candidate, except for information that concerns his private life and if there are no reasonable grounds to believe that this information may be important for determining whether the candidate is in a position to properly perform the duties of a justice of the Constitutional Court of Ukraine, as well as information constituting a state secret.

14. After discussing the candidates, after the candidates have delivered their statements and their answers to the questions asked by the Members of Parliament, a voting is held.

15. A justice of the Constitutional Court of Ukraine is appointed by the Parliament via open voting in two stages:

- 1) rating voting;
- 2) voting for the appointment of a justice of the Constitutional Court of Ukraine.

16. To determine the rating of candidate justices of the Constitutional Court of Ukraine, the Parliament conducts an open rating vote for each candidate separately.

17. Voting for the appointment of a justice of the Constitutional Court of Ukraine is carried out by the Parliament for the candidate who, according to the results of the rating vote, received the largest number of votes of the Members of the Parliament.

The Parliament shall appoint a candidate justice of the Constitutional Court of Ukraine by open voting by a majority of the votes of the Members of Parliament from the constitutional composition of the Parliament.

18. If, according to the results of the open voting, the candidate did not receive the majority of the votes of the Members of Parliament from the constitutional composition of the Parliament, his candidacy shall be considered rejected, and a second open vote shall be held for the next rated candidate.

If, according to the results of the second open voting, such a candidate did not receive the majority of the votes of the Members of Parliament from the constitutional composition of the Parliament, his candidacy is considered rejected, and a repeated open vote is held for the next rated candidate.

If, according to the results of repeated open voting no candidate received the majority of votes of the Members of the Parliament from the constitutional composition of the Parliament, a next competitive selection is announced, which is conducted in accordance with the procedure specified by the Law of Ukraine "On the Constitutional Court of Ukraine".

19. The decision on the appointment of justices of the Constitutional Court of Ukraine shall be formalized by a resolution of the Parliament."

3) to add new 208⁵ Article having the following wording:
"Article 208⁵. The procedure for designating a member of the Advisory Group of Experts

1. According to article 10³ of the Law of Ukraine "On the Constitutional Court of Ukraine", the Parliament shall designate one person as a member of the Advisory Group of Experts.

The preparatory work on designating the candidacy for the Advisory Group of Experts in the Parliament is carried out by a committee whose purview is the legal status of the Constitutional Court of Ukraine.

2. The Parliament shall designate the person to be a member of the Advisory Group of Experts on the basis of the proposals of the parliamentary factions (MP groups).

3. The Secretariat of the Parliament, at the request of the committee whose purview is the legal status of the Constitutional Court of Ukraine shall publish on the official website of the Parliament an announcement on the commencement of accepting proposals for candidacy to the Advisory Group of Experts from parliamentary factions (MP groups) within 5 days from the date when a corresponding vacancy appears in the Advisory Group of Experts.

4. Within ten days from the date of publication of the respective announcement, parliamentary factions (MP groups) submit to the committee whose purview is the legal status of the Constitutional Court of Ukraine proposals for candidacy for the Advisory Group of Experts together with information that such

candidates meet the requirements of Article 10³ of Law of Ukraine “On the Constitutional Court of Ukraine”.

The parliamentary faction (MP group) shall propose only one candidate to the Advisory Group of Experts.

Parliamentary factions (MP groups) can agree on a joint proposal regarding candidacy for the Advisory Group of Experts.

5. The Committee whose purview is the legal status of the Constitutional Court of Ukraine, Within fifteen days after the period established for submitting proposals for nominations to the Advisory Group of Experts by parliamentary factions (MP groups) is over, shall check whether the proposed candidates meet the requirements of Article 10³ of the Law of Ukraine “On the Constitutional Court of Ukraine” at its open session. Candidates proposed by parliamentary factions (MP groups) to the Advisory Group of Experts may be invited to the committee meeting whose purview is the legal status of the Constitutional Court of Ukraine.

7 The Committee whose purview is the legal status of the Constitutional Court of Ukraine shall make a decision to reject candidacies that do not meet the requirements of Article 10³ of the Law of Ukraine “On the Constitutional Court of Ukraine”.

8. The Committee whose purview is the legal status of the Constitutional Court of Ukraine shall submit nominations that meet the requirements of Article 10³ of the Law of Ukraine “On the Constitutional Court of Ukraine” for consideration by the Parliament.

9. Not later than five days before the date when respective issue will be considered of the Parliament, all documents (except for information with restricted access) relating to candidates proposed by parliamentary factions (MP groups) to the Advisory Group of Experts are provided to MPs.

10. Before voting on the candidates, a discussion is held at the plenary session of the Parliament.

Representatives of MP factions (MP groups), committee representatives, and MPs take part in discussing candidates.

During the discussion, each of the candidates has the right to speak at the plenary session of the Parliament.

MPs may ask a candidate questions at a plenary session of the Parliament regarding any information about the candidate, except for information that concerns his private life and for which there are no reasonable grounds to believe that it may be important for determining whether the candidate is in a position to properly carry out the functions of a member of Advisory Group of Experts, as well as information that is a state secret.

11. After the candidates have delivered their speeches and they have been discussed, a vote is held.

12. The Parliament shall designate a person to be a member of the Advisory Group of Experts by open voting in two stages:

- 1) rating voting;
- 2) voting for appointing a person as a member of the Advisory Group of Experts.

13. To determine candidates' rating, the Parliament shall conduct an open rating vote for each candidate separately.

14. The Parliament shall vote to appoint a candidate who, based on the results of the rating vote, received the largest number of votes of MPs, as a member of the

Advisory Group of Experts.

The Parliament shall appoint a person as a member of the Advisory Group of Experts by open voting by a majority of Members of Parliament from the constitutional composition of the Parliament. If, according to the results of the open voting, the candidate did not receive the majority of the votes of MPs from the constitutional composition of the Parliament, his/her candidacy is considered rejected, and a second open vote is held for the next candidate in the rating.

If, according to the results of the second open voting, no candidate proposed by the parliamentary factions (MP groups) has received the majority of votes of MPs from the constitutional composition of the Parliament, the Secretariat of the Parliament, upon the motion of the committee whose purview is the legal status of the Constitutional Court of Ukraine, shall publish an announcement on commencing another call for proposals for a vacancy in the Advisory Group of Experts from parliamentary factions (MP groups) on the official website of the Parliament.

15. The results of voting for appointing a person as a member of the Advisory Group of Experts shall be formalized by a resolution of the Parliament.”

2. To add clause 6 to Article 56(2) to the Law of Ukraine “On Preventing Corruption” (Vidomosti Verkhovnoi Rady (VVR), 2014, No. 49, Article 2056 with subsequent amendments) that reads as follows:

“Regarding candidates for positions of justices of the Constitutional Court of Ukraine appointed by the Congress of Judges of Ukraine, the special background check is entrusted to the Council of Judges of Ukraine.”

3. To the Law of Ukraine “On the Constitutional Court of Ukraine” (Vidomosti Verkhovnoi Rady (VVR), 2017, No. 35, Article 376 with subsequent amendments):

1) add a new chapter 2¹ that reads as follows:

“Chapter 2¹. PROCEDURE FOR SELECTING CANDIDATE JUSTICES OF THE CONSTITUTIONAL COURT OF UKRAINE

Article 10¹. Requirements for a justice of the Constitutional Court

1. A citizen of Ukraine who has a command of the state language, has reached forty years of age on the day of appointment, has a higher legal education and at least fifteen years of professional experience in the field of law, high moral qualities, and is a lawyer of a recognized competence can be a justice of the Constitutional Court.

2. A justice of the Constitutional Court of Ukraine (hereinafter referred to as the justice of the Constitutional Court or the Justice) shall, in his/her professional activity and outside it observe the standards of professional ethics of the justice of the Constitutional Court established by the Constitutional Court.

3. A justice of the Constitutional Court must meet the criterion of political neutrality. A justice may not belong to political parties or professional unions, publicly demonstrate support in their favor, or participate in any political activity.

A person, in particular, cannot be appointed as a justice of the Constitutional Court, who, on the day of appointment:

1) is a member or holds a position in a political party or other organization that has political goals or participates in political activities;

2) is elected to be an elected official in an authority or local self-government body or has a representative mandate;

3) participates in arranging or financing political campaigning or other political activities.

A justice of the Constitutional Court cannot hold concurrently with his/her position of a justice any position in an authority or a local self-government body, a professional legal self-government body, with the status of a member of Parliament of Ukraine, a position of a Member of Parliament of Ukraine, a Member of Parliament of the Autonomous Republic of Crimea or region, district, city, district in a city, village council, another representative mandate, advocate, perform entrepreneurial activity, hold any other paid positions, perform any other paid work or receive other remuneration, except teaching, scientific or creative activities and receiving remuneration for them, and also cannot be a member of the governing body or supervisory board of a legal entity whose purpose is to obtain profit.

4. A person who owns shares or owns corporate rights or has other property rights or other property interest in the activity of any legal entity which aims to obtain profit shall, while holding a position of a justice of the Constitutional Court, transfer such shares (corporate rights) or other respective management rights to an independent third party (without the right to give instructions to such a person regarding the disposal of such shares, corporate, other rights or instructions on the exercise of rights arising from them). A justice of the Constitutional Court may receive interest, dividends and other passive income from the property s/he owns.

5. In respect of persons applying for the position of justice of the Constitutional Court, with their written consent, a special background check is conducted in accordance with the procedure established by the Law of Ukraine "On Preventing Corruption".

Justices of the Constitutional Court are subject to the Law of Ukraine "On Preventing Corruption".

Article 10². Competitive rules for selecting candidates for the position of a justice of the Constitutional Court

1. Candidate justices of the Constitutional Court of Ukraine are selected a competitive basis in accordance with the procedure established by this Law.

2. Selection of candidate justice of the Constitutional Court of Ukraine on a competitive basis for persons appointed by the President of Ukraine is carried out by a competitive commission created by the President of Ukraine.

The commission established by the President of Ukraine shall be formed from lawyers of recognized competence who do not participate in the competitive selection for the position of justice of the Constitutional Court.

3. The preparatory work as to considering candidacies for the position of justice of the Constitutional Court in the Parliament of Ukraine on a competitive basis is carried out by a committee whose mandate is the legal status of the Constitutional Court of Ukraine (hereinafter – the Committee) in the manner determined by the Rules of Procedure of the Parliament of Ukraine given provisions of this Law.

4. The Council of Judges of Ukraine shall do the preparatory work as to competitive consideration of candidacies for the position of a justice of the Constitutional Court from the Congress of Judges of Ukraine (hereinafter – the Congress).

Article 10³. Advisory Group of Experts

1. The Advisory Group of Experts (hereinafter referred to as the Advisory Group)

is formed to assist the bodies appointing justices of the Constitutional Court in assessing the moral qualities and legal competence of candidate justices of the Constitutional Court of Ukraine.

2. The Advisory Group shall act in accordance with the Constitution of Ukraine, this Law and the Regulation on the Advisory Group of Experts (hereinafter – the Regulation) drafted and approved by the Advisory Group.

3. The Advisory Group shall consist of six members who are elected for an indefinite period and participate in its work pro bono.

4. The following person can be a member of the Advisory Group:

- 1) reached the age of forty on the day of appointment;
- 2) has a higher legal education (a master's degree) obtained in Ukraine and/or a higher legal education of the corresponding degree obtained abroad;
- 3) has at least fifteen years of professional experience in the field of law,
- 4) has high moral qualities;
- 5) is a lawyer of a recognized competence;
- 6) meets the criterion of political neutrality.

5. The following person cannot be a member of the Advisory Group:

- 1) is a member or holds a position in a political party, other organization that has political goals or participates in political activities, or has met these criteria for the past two years;
- 2) is elected to an elected position in a state authority or local self-government body, has a representative mandate, or has met these criteria for the past two years;
- 3) participates in the competitive selection of candidate justices of the Constitutional Court of Ukraine;
- 4) is recognized incapacitated or as having limited legal capacity by a court decision;
- 5) has a criminal record for committing a criminal offense, if such a criminal record has not been expunged or not removed in accordance with the procedure established by law (except for a rehabilitated person), or on whom an administrative fine was imposed for committing a corruption-related offense, or was held liable by a court for committing an intentional criminal offense;
- 6) is a judge, prosecutor, investigator, preliminary investigator, civil servant or holds a political position in accordance with the Law of Ukraine "On the Cabinet of Ministers of Ukraine";
- 7) is a citizen of a state recognized by law as an occupying state and/or an aggressor state in relation to Ukraine.

6. The Advisory Group shall include:

- 1) one person appointed by the President of Ukraine;
- 2) one person appointed by the Parliament of Ukraine;
- 3) one person appointed by the Congress of Judges of Ukraine;
- 4) one person appointed by the European Commission for Democracy through Law;
- 5) two persons appointed by international and foreign organizations that, in accordance with international or interstate agreements that, for the past five years, have been providing Ukraine international technical assistance in the field of constitutional reform and/or the rule of law, and/or human rights

protection, and/or preventing and countering corruption.

7. The President of Ukraine shall issue a decree on the appointment of a member of the Advisory Group. A person shall acquire the status of a member of the Advisory Group from the date when respective decree of the President of Ukraine was issued.

8. The procedure for designating a person to be a member of the Advisory Group by the Parliament of Ukraine is established by the Rules of Procedure of the Parliament of Ukraine. A person shall acquire the status of a member of the Advisory Group from the date the respective decision was issued by the Parliament of Ukraine.

9. The Congress of Judges of Ukraine shall decide on the appointment of a member of the Advisory Group under the provisions of Article 10¹⁰ of this law. A person shall acquire the status of a member of the Advisory Group from the date when respective decision was issued by the Congress of Judges of Ukraine.

10. Persons designated to be members of the Advisory Group of the European Commission For Democracy through Law, international and foreign organizations that, in accordance with international or interstate agreements, for the last five years have been providing international technical assistance to Ukraine in the field of constitutional reform and/or the rule of law, and/or protection of human rights, and/or preventing and countering corruption, shall acquire the status of members of the Advisory Group from the date when the Ministry of Foreign Affairs of Ukraine receives respective decisions of the European Commission for Democracy through Law, international and foreign organizations as to designating persons as members of the Advisory Group.

11. The advisory group shall be quorate provided that there are at least four members thereof.

The mandate of a member of the Advisory Group shall be terminated by the decision of the Advisory Group upon:

- 1) resignation of a member of the Advisory Group;
- 2) vote of no confidence against a member of the Advisory Group;
- 3) entry into force of the court's judgement that finds him/her guilty;
- 4) imposing an administrative fine on him/her for committing a corruption-related offense;
- 5) recognizing him as incapacitated or having limited capacity, missing or declaring him dead;
- 6) discovery by the Advisory Group that a member of the Advisory Group does not meet the requirements specified in this article;
- 7) his/her death.

If a member of the Advisory Group systematically fails to fulfill his duties or obstructs the work of the Advisory Group, which is recorded in at least two decisions of the Advisory Group, the Advisory Group shall consider the issue of expressing a no confidence to a member of the Advisory Group and terminating his/her mandate at the request of at least three other members of the Advisory Group.

12. The mandate of a member of the Advisory Group shall be terminated on the day when respective decision is adopted by the Advisory Group.

13. The Advisory Group shall inform the entity that appointed the member of the Advisory Group that the mandate of its member was terminated no later than the day following the day when the mandate of such a member of the Advisory Group was terminated.

14. The entity that appointed a member of the Advisory Group, if it receives information from the Advisory Group that the mandate of the member of the Advisory

Group who it appointed has been terminated, shall designate a new person to the Advisory Group according to the provisions of this article.

15. The members of the Advisory Group shall elect the chair and secretary of the Advisory Group from among themselves. The distribution of powers and duties related to administrative issues in the work of the Advisory Group between the chair, secretary and other members of the Advisory Group shall be determined by the Regulation.

16. The Advisory Group shall predominantly work in the format of meetings convened by the Chair of the Advisory Group, and in his/her absence – by the Secretary of the Advisory Group, and in their absence by the oldest member of the Advisory Group.

A meeting of the Advisory Group shall be quorate if at least four members are present.

17. The Advisory Group shall publish information on the date, time, venue, and agenda of the meeting on the official website of the Constitutional Court no later than five days before the day of the meeting, unless other terms are established by this Law.

18. Meetings of the Advisory Group shall be held openly.

The Secretariat of the Constitutional Court shall ensure the broadcasting of the Advisory Group's meetings in real time on the official website of the Court.

The Advisory Group may decide to hold a meeting in closed session. The relevant decision shall be taken unanimously by all members present at the meeting of the Advisory Group.

19. The Advisory Group may conduct its meetings remotely using electronic means of video communication.

If necessary, individual members of the Advisory Group have the right to participate in meetings and decision-making of the Advisory Group in remote mode using electronic means of video communication.

20. The Advisory Group shall make a decision by at least four votes. The decisions of the Advisory Group shall be drawn up in the form of a protocol and shall be published on the official website of the Constitutional Court within three days from the date of their adoption, unless other terms are established by this Law.

21. The powers of the Advisory Group include the following:

- 1) development and adoption of the Regulations on the Advisory Group of Experts;
- 2) development and approval of the methodology for assessing the moral qualities and legal competence of candidate justices of the Constitutional Court;
- 3) consideration, verification and analysis of documents of a candidate justice of the Constitutional Court that have been sent to the Advisory Group, including confidential information and personal data, and obtaining other information, which is necessary for the exercise of the powers by the Advisory Group, from state bodies and local self-government bodies, enterprises, institutions and organizations, citizens of Ukraine, other persons;
- 4) addressing to candidate justices of the Constitutional Court, as well as to any legal entity, natural person, state body or local self-government body, their officials, any other persons who owns or manage information, with a request for explanations, documents, or information for the purposes of evaluation of moral qualities and legal competence of candidate justices the of the Constitutional Court;

- 5) holding interviews with candidate justices of the Constitutional Court in accordance with the Regulation on the Advisory Group of Experts;
- 6) assessment of moral qualities and legal competence of candidates justices of the Constitutional Court;
- 7) drawing up a list of candidates recommended to be appointed as justices of the Constitutional Court; making a decision on issuing a recommendation for appointment as a justice of the Constitutional Court for each candidate on such a list, and submitting them to the appointing authorities;
- 8) exercising other powers defined by law.

In order to exercise its powers, the Advisory Group is granted with the right to receive information free of charge from open state registers, judicial dossiers (candidate justices' dossiers).

22. The Advisory Group is entitled to receive free of charge information and copies of documents and materials (including those with limited access) regarding a candidate justice of the Constitutional Court from any person who owns or manages the requested information (documents, materials).

The owners or managers of the requested information (documents, materials) (except family members or relatives of a candidate) are obliged to provide the information (documents, materials) to the Advisory Group within ten days from the date of receipt of the request.

23. A member of the Advisory Group shall:

1) not use personal data and other information that became known to him/her during his/her work in the Advisory Group for purposes other than the performance of duties related to the work of the Advisory Group;

2) ensure measures to protect personal data and confidential information that became known to him/her in connection with the performance of duties related to the work of the Advisory Group.

24. If a member of the Advisory Group has or had any personal or business relationship with the candidate and/or in the presence of other conflict of interest or circumstances that may affect his/her objectivity or impartiality as a member of the Advisory Group, de/she is obliged to withdraw within two days from the moment when he/she became aware or should have become aware of such circumstances, but in any case, until the moment of voting for any decision of the Advisory Group in respect of such a candidate justice of the Constitutional Court.

The self-withdrawal of an Advisory Group member shall be considered by the Advisory Group, which, by its decision, may deny the satisfaction of self- withdrawal of the Advisory Group member.

25. Organizational and technical support of the activities of the Advisory Group shall be entrusted to the Secretariat of the Constitutional Court within the limits of the expenditures provided for in the State Budget of Ukraine for financing the activities of the Constitutional Court in the relevant year.

Article 10⁴. Commencement of the Competition

1. The announcement of the commencement of the Competition for the selection of candidate justices of the Constitutional Court shall be published on the official website of the President of Ukraine, the Verkhovna Rada of Ukraine, and the Council of Judges of Ukraine, respectively, no later than ninety days before the end of the term of office or the reaching of the maximum age of stay in the position of the Constitutional Court justice, or no later than twenty days from the date of opening a vacancy for the position of the Constitutional Court justice in the event that the powers

of the Constitutional Court justice have been terminated or de/she was dismissed from the position based on the grounds provided for in Article 149¹ of the Constitution of Ukraine.

2. The persons who intend to apply for the position of the Constitutional Court justice and meet the requirements to a Judge established by the Constitution of Ukraine, shall submit the following documents, within thirty days from the date of publication of the announcement of the commencement of the competition, for consideration by the selection commission, the Committee, and the Council of Judges of Ukraine:

- 1) application for participation in the Competition in a free form;
- 2) autobiography;
- 3) motivational letter of a candidate justice of the Constitutional Court;
- 4) copy of an identity document confirming Ukrainian citizenship;
- 5) copies of documents confirming the length of professional experience in the field of law;
- 6) copy of the declaration of the person authorized to perform the functions of the state or local self-government, for the year preceding the year of submission of documents, and a link to the corresponding page of the Unified State Register of declarations of persons authorized to perform the functions of the state or local self-government;
- 7) copy of a diploma confirming the Master of Law degree (with appendices) obtained in Ukraine, and/or copies of documents confirming a respective degree in law obtained abroad, together with copies of documents confirming the recognition of the latter in Ukraine; as well as copies of documents confirming a scientific degree or an academic title (if available);
- 8) copy of a document that confirms knowledge of the state language at the level determined by the National Commission for State Language Standards;
- 9) written consent to the processing of personal data and the publication of copies of the documents specified in this article, except for the copy of the document specified in clause 4 of this paragraph;
- 10) application for undergoing the background check, provided for by the Law of Ukraine "On Purification of Power", or opinion based on the results of such a background check (if available);
- 11) written consent to undergo a special background check in accordance with the law
- 12) other documents provided for by the Law of Ukraine "On Prevention of Corruption" that are needed for the purposes of the special background check.

3. With regard to persons who intend to apply for the position of the Constitutional Court justice, the selection commission, the Committee, and the Council of Judges of Ukraine shall publish the documents submitted by the candidate justice of the Constitutional Court in accordance with part two of this Article, on the official website of the President of Ukraine, the Verkhovna Rada of Ukraine, and the Council of Judges of Ukraine, respectively, with the exception of:

- 1) information about the places of residence or stay, dates of birth of natural persons, their addresses, telephone numbers or other means of communication, e-mail addresses, tax payer's card numbers, series and numbers of passports, military registration cards, location of real estate (except for the region, district, settlement where the real estate is located), vehicle registration numbers;
- 2) medical information;

- 3) any information and data regarding minor children, except for information regarding property, property rights, assets, other objects to be declared, which are in their possession in accordance with the declaration of the person authorized to perform the functions of the state or local self-government, which shall be submitted by the candidate justice of the Constitutional Court;
- 4) information containing a state secret.

Article 10⁵. Admission to the Competition

1. Within twenty days from the date of expiry of the term provided for by paragraph two of Article 10⁴ of this Law, the selection commission, the Committee, and the Council of Judges of Ukraine shall check for completeness the documents submitted by the persons have intended to apply for the position of the Constitutional Court justice.

Technical typos and inaccuracies made by the person in the submitted documents shall not give grounds for refusing the admission to the competition.

2. On the basis of the submitted documents, the selection commission, the Committee, and the Council of Judges of Ukraine shall establish the compliance of persons who have intended to apply for the position of the Constitutional Court justice, with the requirements to a Judge defined in the Constitution of Ukraine and this Law, as a result of which they make a decision on whether to admit or refuse admission to the competition.

If a person who have intended to apply for the position of the Constitutional Court justice failed to submit all the necessary documents specified in clauses 1-12 of paragraph two of Article 10⁴ of this Law, the selection commission, the Committee, and the Council of Judges of Ukraine shall make a decision to refuse admission of such a person to the competition.

3. The decisions of the selection commission, the Committee, and the Council of Judges of Ukraine on the admission or refusal of admission to the competition of the persons who have intended to apply for the position of the Constitutional Court justice shall be published on the official website of the President of Ukraine, the Verkhovna Rada of Ukraine, and the Council of Judges of Ukraine, respectively, no later than the next day from the day the decision was made.

4. No later than the next working day after the decision to admit candidate for justices of the Constitutional Court to the competition, the selection commission, the Committee, and the Council of Judges of Ukraine shall send copies of the documents submitted by the candidate justices of the Constitutional Court to the Advisory Group so that they could assess moral qualities and legal competence of the candidate justices of the Constitutional Court and provide the list of candidates recommended by the Advisory Group to be appointed to the positions of the Constitutional Court justices.

Article 10⁶. Appointment and conduct of the special background check

1. All candidates admitted to the competition shall undergo a special background check in accordance with the procedure provided for by the Law of Ukraine "On Prevention of Corruption".

2. The results of the special background check shall be taken into account during the competitive selection process.

3. The selection commission, the Committee, and the Council of Judges of Ukraine shall immediately send a report upon the results of the special background check of a candidate justice of the Constitutional Court to the Advisory Group.

4. In the event that the findings of a special background check in respect of a candidate establish that he/she does not meet the requirements for holding the position, such a candidate shall terminate the participation in the competition under a separate decision of the selection commission, the Committee, and the Council of Judges of Ukraine.

Article 10⁷. Completion of the competition

1. Based on the results of the review and examination of the documents submitted by the candidates, the findings of a special background check and the relevant information from open sources, alongside conducting interviews with candidate justices of the Constitutional Court, the Advisory Group shall, within five days from the day of having conducted interviews with all candidates, evaluate moral qualities and legal competence of each candidate justice of the Constitutional Court and determine the candidates who, in the opinion of the Advisory Group, best meet the said criteria. The Advisory Group shall make a decision, in respect of such candidates, on recommending them for the positions of the Constitutional Court justices.

2. The Advisory Group shall compile the lists of candidates recommended for the positions of the Constitutional Court justices. Such lists shall contain at least three candidates per one vacant position. The candidates shall be listed in alphabetical order by their last names.

If a person is not included on the list of candidates recommended by the Advisory Group for appointment to the position of the Constitutional Court justice, such a person shall terminate his/her participation in the competition for the judicial position in the Constitutional Court.

3. The Advisory Group shall publish the lists of candidates recommended for the positions of the Constitutional Court justices on the official website of the Constitutional Court no later than three days after having compiled them.

4. If the number of candidates recommended by the Advisory Group is less than three persons per one vacant position of the Constitutional Court justice, the Advisory Group shall address to the selection commission, the Committee, and the Council of Judges of Ukraine respectively to announce and conduct an additional competitive selection of candidates.

5. The candidates who have undergone a special background check and are included on the list of candidates recommended by the Advisory Group for appointment to the position of the Constitutional Court justices shall be interviewed by the selection commission, the Committee, and the Council of Judges of Ukraine, respectively.

Based on the results of examining the documents and information provided by the candidates, and interviewing them, the selection commission, the Committee, and the Council of Judges of Ukraine shall make a decision regarding each candidate justice of the Constitutional Court.

Article 10⁸. Procedure for appointing a justice of the Constitutional Court by the President of Ukraine

1. Based on the results of the competitive selection, the President of Ukraine shall issue a decree on the appointment of a justice of the Constitutional Court.

Article 10⁹. Procedure for appointing a justice of the Constitutional Court by the Verkhovna Rada of Ukraine

1. The procedure for appointing a justice of the Constitutional Court by the Verkhovna Rada of Ukraine shall be established by the Regulations of the Verkhovna Rada of Ukraine.

Article 10¹⁰. Procedure for appointing a justice of the Constitutional Court by the Congress of Judges of Ukraine

1. The Congress of Judges of Ukraine (hereinafter – the Congress) shall appoint a justice of the Constitutional Court by secret ballot by submitting bulletins in two stages:

- 1) secret ranked preferential voting;
- 2) secret vote on the appointment of a justice of the Constitutional Court.

2. The Candidates recommended by the Advisory Group for the positions of the Constitutional Court justices shall be included in the bulletin for secret ranked voting.

Based on the results of the secret ranked voting, the ranking of the candidate justices of the Constitutional Court is formed.

The ranking of candidate justices of the Constitutional Court shall be formed as a list. Opposite the last name of each candidate, the number of votes received by him/her from the Congress delegates shall be indicated. The candidates are listed starting from the one with the highest number of votes received to the one with the lowest number of votes.

After having counted the votes and forming the ranking of candidates, the Chair of the Congress shall report on the results of the secret ranked voting.

3. The candidate who received the highest number of votes of the delegates to the Congress, according to the results of the secret ranked voting, shall be included to the secret voting bulletin for the appointment of a justice of the Constitutional Court.

The Congress shall appoint a candidate justice of the Constitutional Court by secret ballot by a majority of votes of the Congress delegates.

4. If, following the secret voting, the candidate failed to obtain the majority of votes of the Congress delegates, his/her candidacy shall be considered rejected, and another secret voting shall be held.

The next ranked candidate shall be included in the bulletin for a repeated secret voting for the appointment to the position of the Constitutional Court justice. If, following the repeated secret voting, no candidate has received the majority of votes of the Congress delegates, a new competition shall be immediately announce to be held in accordance with the procedure established by this Law.

5. The Congress' decision on the appointment of a Constitutional Court justice shall be signed by the Chair of the Congress and the Secretary.

6. The procedure for convening and conducting the congress of judges of Ukraine is determined by the Law of Ukraine "On the Judicial System and the Status of Judges."

3) Articles 11 to 15 shall be excluded.

4. The Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as a State Language" (Vidomosti Verkhovnoi Rady Ukrainy (VVR), 2019, No. 21, Article 81 with the following amendments):

1) paragraph one of Article 9 shall be supplemented by paragraph 9¹ which goes as follows:

"9¹) judges of the Constitutional Court of Ukraine;"

2) add the number “,91” after the number “9” in paragraph two of Article 10.

II. Final and transitional provisions.

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

2. For the purposes of formation of the Advisory Group of Experts, the following features apply:

- 1) the Advisory Group of Experts shall considered to be formed if six of its members are defined by all bodies that responsible for its formation;
- 2) the Council of Judges of Ukraine, instead of the Congress of Judges of Ukraine, is empowered to determine a person to become a member of the Advisory Group of Experts.

3. For the purposes of formation of the Advisory Group of Experts:

- 1) The President of Ukraine shall, within thirty days from the date of entry into force of this Law, determine a person to become a member of the Advisory Group of Experts, which shall be formalized in a decree;
- 2) The Secretariat of the Verkhovna Rada of Ukraine, at the request of the committee of the Verkhovna Rada of Ukraine whose scope of competence covers the legal status of the Constitutional Court of Ukraine, within five days from the date of entry into force of this Law, shall publish on the official website of the Verkhovna Rada of Ukraine an announcement about the start of accepting proposals on the membership in the Advisory Group of Experts from MPs factions (MPs groups);
- 3) The Council of Judges of Ukraine shall, within thirty days from the date of entry into force of this Law, determine a person to become a member of the Advisory Group of Experts, which shall be formalized in a decision;

4. The Ministry of Foreign Affairs of Ukraine, within five days from the date of entry into force of this Law, shall compile a list of international and foreign organizations that, in accordance with international or interstate agreements, have provided Ukraine, in the past five years, with international technical assistance in the field of constitutional reform and/or rule of law, and/or protection of human rights, and/or prevention and counteraction to corruption, and shall address to the bodies that are responsible for the formation of the Advisory Group of Experts, as defined in clauses 4 and 5 of paragraph six of Article 103 of the Law of Ukraine “On the Constitutional Court of Ukraine.”

5. The advisory group of experts within thirty days from the date of its formation shall:

- 1) conduct the first meeting at which the Chair and the Secretary of the Advisory Group of Experts shall be elected;
- 2) approve the Regulations on the Advisory Group of Experts.

6. From the date of entry into force of this Law, all competition-based procedures for the selection of candidates for the positions of justices in the Constitutional Court of Ukraine, launched by the bodies that are responsible for appointing and not completed as of the date of entry into force of this Law, shall be considered terminated without any separate decision of the appointing bodies.

The persons who participated in competition-based selection procedures to the positions of justices of the Constitutional Court of Ukraine, but have not been appointed by the appointing bodies as of the date of entry into force of this Law,

Апарат Верховної Ради України
 17/8-2022/166255 від 30.09.2022



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shall be considered as not appointed to the positions of justices of the Constitutional Court of Ukraine. Such persons have the right to participate, on equal and general terms, in the selections procedures to the positions of justices of the Constitutional Court of Ukraine in the framework of the competition announced in accordance with the terms of this Law.

7. The bodies that appoint judges of the Constitutional Court of Ukraine shall immediately, but no later than thirty days after the date of entry into force of this Law, announce the competition for filling positions of justices of the Constitutional Court of Ukraine that are vacant as of the date of entry into force of this Law. A new competition for the positions of justices of the Constitutional Court of Ukraine shall be held in accordance with the procedure established by this Law.

Chairman of the Verkhovna Rada
of Ukraine