

REPORT
of the Representative of the Supreme Court of Ukraine
at the Annual Review Meeting of the OSCE on Human Dimension Issues

Fair justice and adequate protection of human rights is one of the main features of a democratic, legal state. With this aim in 2010 Ukraine held the next stage of judicial and legal reform, which resulted in adoption of a conceptually new Law of Ukraine “On the Judiciary and the Status of Judges”.

I would like to concentrate on some novelties of this law.

1. The Law, instead of complex multilevel system of qualification commissions, created a single permanent body that is responsible for the selection and proper qualification of professional judges – the High Qualifications Commission of Judges of Ukraine.

The High Qualification Commission of Judges of Ukraine shall be composed of eleven members having Ukrainian citizenship, higher education in law and experience in working as a legal professional for at least twenty years. The majority within this special body consists of professional judges, elected by the Council of Judges of Ukraine.

2. The Law introduced a fundamentally new transparent procedure for the appointment of judges for the first time, which in particular includes: anonymous testing, qualification examination and special preparation in the National School of Judges of Ukraine.

The procedure of preparation of candidates for the position of judge is fully paid for by the public funds, since, according to international standards, such training should be free and done at the expense of the state. The abovementioned position is reflected in particular in paragraph IIIa of the Recommendations of the Committee of Ministers of the Council of Europe № (94) 12 “On the Independence, Efficiency and Role of Judges” (1994), paragraph 2.3 of the European Charter on the Law “On the Status of Judges” (1998) .

The new Law takes into account recommendations of the Venice Commission on the role of the President of Ukraine in the process of appointing a

person to a judicial position, which is reduced to formalizing the decision of the High Qualifications Commission of Judges of Ukraine.

In addition, the Act introduced a shortened procedure for electing a judge on a permanent post and dismissal of a judge: these issues are included in the agenda of the extraordinary session of the Verkhovna Rada of Ukraine without a vote and considered by the Verkhovna Rada of Ukraine without the opinion of the committees of Parliament. Thus, the acts of the Verkhovna Rada of Ukraine only formalize the decision of the High Qualifications Commission of Judges of Ukraine and the High Council of Justice.

3. The Law improved procedure for bringing judges to disciplinary responsibility. To date, the right to appeal (petition) about judicial conduct, which may result in disciplinary action against the judge, is given to anyone who is aware of such facts. Thus, the Law expanded the possibilities for protection against unlawful actions of a judge.

However, the decision of the High Qualifications Commission of Judges of Ukraine on bringing judges to disciplinary action may be appealed by the local judge or the judge of the Court of Appeals to the High Council of Justice or the High Administrative Court of Ukraine not later than one month from the date of service or reception of a copy of decision by mail.

To support the work of the High Qualifications Commission of Judges of Ukraine and improve the quality of disciplinary investigations there was established a service of disciplinary inspectors.

According to the Law, for consideration of a particular case, a member of the High Qualifications Commission of Judges of Ukraine is determined using an automated system, which is an additional guarantee of objectivity of decision making by the Commission.

4. In order to prevent influence of the Head on the distribution of cases, the Law introduced in all courts of general jurisdiction an automated workflow system through which such distribution is exercised.

5. The Law provides that funding for all courts in Ukraine is done at the expense of the State Budget of Ukraine.

Functions of the Chief Administrator of the State Budget of Ukraine for financial support of the courts' activities perform:

- The Constitutional Court of Ukraine, the Supreme Court of Ukraine, high specialized courts - on the financial support of these bodies;
- The State Judicial Administration of Ukraine - on the financial support of all other courts of general jurisdiction, the activities of the High Qualifications Commission of Judges of Ukraine, bodies of judicial self-government, the National School of Judges of Ukraine and the State Judicial Administration.

6. Along with the increasing requirements for a judicial candidate, increased responsibility of the judge, the Law established a substantial increase in social security of judges.

The size of judicial compensation and its components are currently being defined by the Law rather than regulation, as it was before.

By 2015, the Law provides for an increase of the salary of a judge of a local court to 15 minimum wages. Dependence of judicial salaries from the minimum wage prescribed by law shall provide annual increase of judicial compensation, as the minimum wage increases each year.

After the introduction of the provisions of this Law, in 2011 the salary of a judge, for example, of local and appellate court together with additional payments increased on average by more than 2.5 times.

In addition, the Law provides for an annual additional payment for the years of service for judges and additional payment for judges that are holding administrative positions in courts.

7. The Law eliminated qualification classes of judges, assignment of which was often used as a means of pressure on judges; it also determined that prior to his or her retirement a judge may be awarded state awards, as well as any other awards, distinctions, certificates of state authorities and local self-government

bodies, if only they are not related to the administration of justice, which is an additional guarantee the independence of judges.

8. I would like to focus on the system of judicial self-government, established under the new Law. By virtue of extensive multilevel structure of the judicial self-government bodies and their extended powers judges have the right to independently collectively solve the key issues of internal activities of courts (organizational support of judges and their activities, social protection of judges and their families, as well as other issues that not directly related to administration of justice).

Directly the Law provides that judicial self-government is one of the guarantees of the independence of courts and judges. Functioning of the respective bodies aimed at protecting the independence of courts and judges, as well as improving the quality of the work with staff in the system of courts of general jurisdiction, contributes to the creation of appropriate organizational and other conditions for normal operation of courts and judges. In particular, the judge has the right to report the threat to his or her independence to the Council of Judges of Ukraine, which is obliged to immediately verify and consider the report with the assistance of the judge and take the necessary measures to eliminate the threat.

Along with the positive changes in legislation of Ukraine on the judiciary system and the status of judges, there is a number of problems to be solved in the court system.

Despite the fact that by means of the Law the procedure of the appointment of judges to administrative positions has been improved, the composition of the body, which realizes such appointment (the High Council of Justice), does not meet the requirements for ensuring sufficient level of judges' independence.

Thus, the Head of the local court and his/her Deputy, Head of the Court of Appeal and his/her Deputies, Head of the High Specialized Court and his/her Deputies shall currently be appointed for a term of five years from among judges of a respective court and shall be dismissed by the High Council of Justice on the proposal of the relevant council of judges.

However, I would like to draw your attention that according to the Constitution of Ukraine (Part 2 of Article 131), with the exception of the President of the Supreme Court of Ukraine, who is a member of the High Council of Justice *ex officio*, only three out of twenty of its members are elected by the Congress of Judges. At the same time, six members of the High Council of Justice are delegated to it by the Verkhovna Rada of Ukraine and the President of Ukraine, two – by the prosecutor's office, and two more – by the Minister of Justice of Ukraine and the Prosecutor General of Ukraine. Functioning of the High Council of Justice, which plays a leading role in the election of judges for a life-long term, bringing them to responsibility and appointment of judges to administrative positions, in such composition poses a real threat to independence of judges. In our opinion, the majority in the composition of body given such powers should be consisting of professional judges (retired judges) elected by judicial self-government bodies.

Judicial reform is a complex process that does not end with the adoption of the basic legal act such as the Law of Ukraine "On the Judiciary and the Status of Judges". Currently changes in the judicial and related fields are still in progress.

Thus, on 5 July 2012 came into force the Law of Ukraine "On Amendments to Several Legislative Acts of Ukraine Regarding Strengthening of Guarantees of Independence of Judges" which abridges the right of prosecutors to initiate the consideration of issues on bringing judges to disciplinary responsibility or on their dismissal.

Prior to the adoption of the abovementioned Law, the right to appeal to the competent authorities with a complaint about judicial conduct, which may result in bringing the latter to the disciplinary action, was given by any person at any stage of the proceedings. With the entry into force of the abovementioned Law, in the case of participation in legal proceedings of the prosecutor, the prosecution may appeal to the High Qualifications Commission of Judges of Ukraine or the High Council of Justice with complaint (petition) about judicial misconduct, which may

result in a start of disciplinary proceedings against him, only if the court case in which there has been such a behavior, is not in the proceedings of any court, or if the applicable procedural law deadline for appeal or cassation is over. Verification of such information can not be assigned to a member of the High Council of Justice, which is nor was a prosecutor at the time of appointment as a member of the High Council of Justice.

I would like to emphasize that with the purpose of elaborating proposals for amendments to the Constitution of Ukraine on the basis of summarizing the practice of the realization of the Constitution of Ukraine, taking into account the achievements and trends of modern constitutionalism, providing of involvement in the prescribed manner of the work of leading scientists, representatives of civil society and various political forces, international experts of the European Commission “For Democracy through Law” (Venice Commission), experts from other international institutions and organizations, on 17 May 2012 the President of Ukraine signed a decree on the establishment of the Constitutional Assembly with the participation of leading experts in the field of law, academics and government officials. Assembly should work out changes including to Section VIII (“Justice”) of the Constitution of Ukraine.