COUNCIL OF EUROPE

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Support to the implementation of the judicial reform in Ukraine

ASSESSMENT OF THE 2014-2018 JUDICIAL REFORM IN UKRAINE AND ITS COMPLIANCE WITH THE STANDARDS AND RECOMMENDATIONS OF THE COUNCIL OF EUROPE

CONSOLIDATED SUMMARY

April 2019

LIST OF ABBREVIATIONS

CCJE	Consultative Council of European Judges
CoE	Council of Europe
ECtHR	European Court of Human Rights
HCJ	High Council of Justice
HQCJU	High Qualification Commission of Judges of Ukraine
PIC	Public Integrity Council

I. Executive summary

1. During a meeting in Strasbourg on 11 September 2017, the Ukrainian authorities requested that the Council of Europe (CoE) assess the progress of the judicial reform in Ukraine. The assessment was carried out by four international experts[1] within the CoE projects "Supporting Ukraine in the execution of judgments of the European Court of Human Rights", which is funded by the Human Rights Trust Fund, and "Support to the implementation of the judicial reform in Ukraine". Both of the said projects are being implemented by the Justice and Legal Co-operation Department within the Directorate General of Human Rights and the Rule of Law of the CoE.

2. The present document is a consolidated summary of four reports written by the experts with the aim of assessing the steps undertaken by the Ukrainian authorities to implement the reform of the judiciary, with a focus on the compliance of the reform with the standards and recommendations of the CoE, including the execution by Ukraine of relevant judgments of the European Court of Human Rights (ECtHR). The assessment focuses in particular on how the judicial reform addressed the problems of the Ukrainian judiciary, if the authorities have correctly defined the areas of reform in order to achieve the planned goals, and the main results of the reform. Further, the assessment looks into whether the reform process as a whole has been transparent and inclusive, two requirements that are crucial in assessing the democratic level of any legal reform process.

3. The Ukrainian justice system has been characterised by insufficient independence of the judiciary from the executive and legislative branches, by a complex court system, inconsistent court practice, lack of efficiency and lack of trust on the part of society at large.

4. During the period from 2014 to 2018, Ukraine undertook a large-scale legislative effort to adjust the judicial system to the principle of the rule of law and to strengthen the judicial independence in order that the judiciary may play an effective role in ensuring the democratic checks and balances between the different state powers. At the same time, those reforms have also been directed towards making the judiciary more efficient, transparent and above all, more trustworthy.

5. Besides constitutional legitimacy, the judicial power is based upon functional legitimacy[2], which requires a high quality of judgments rendered and impeccable

[1] Prof. Dr. Lorena BACHMAIER WINTER (Spain), Complutense University of Madrid; Mr Nils ENGSTADT (Norway), Judge, member of the Consultative Council of European Judges; Prof. Dr. Diana KOVATCHEVA (Bulgaria), University of Sofia; Mr Gerhard REISSNER (Austria), Judge, member of the Consultative Council of European Judges (CCJE). The experts are not affiliated with any of the institutions and stakeholders responsible for the implementation of the specific areas that were evaluated.

[2] CCJE (2015)4, Opinion No. 18 "On the position of the judiciary and its relation with the other powers of state in a modern democracy", London, 16 October 2015: "19. Like all other powers, the

ethical conduct on the part of the members of the judiciary. Confidence in the judiciary is a core element of every democracy, and trust needs to be accompanied by a reliable system of accountability. The 2015-2020 Justice Sector Reform Strategy adopted in May 2015 ("the Strategy") identified correctly the main problems of the Ukrainian judiciary. During recent years, Ukraine has striven to pass the necessary legal framework in order to achieve a balance between independence, accountability and efficiency, all crucial elements for building up trust in the judicial power.

6. The number of legal amendments passed in the field of the judiciary show how the Ukrainian authorities (the Parliament, the Ministry of Justice of Ukraine, the Administration of the President of Ukraine, as well as judicial institutions) have committed themselves to adapting the legislative and institutional setting, as well as the practice of the judiciary, to the CoE standards. The reform has operated at three stages: firstly, the laws "On the restoration of the trust in the judiciary in Ukraine" and "On ensuring the right to a fair trial" were adopted in 2014 and 2015, respectively, they addressed the most urgent issues of the judiciary and preceded the constitutional reform; secondly, the amendments to the Constitution and the new version of the law "On the judiciary and the status of judges" were adopted on 2 June 2016 in order to align the legislative framework on the judiciary with European standards on judicial independence; and, thirdly, the adoption of other legislative acts (such as the laws "On the High Council of Justice", "On the Constitutional Court of Ukraine", on the new procedural codes, and others) and implementation of the new legislation.

7. The Ukrainian authorities have invested very significant efforts into reforming the judiciary and this is to be commended. These impressive efforts in carrying out the legislative amendments as foreseen in the Strategy are to be praised. At the legislative level, and in large part also at the institutional level, the goals set out in the Strategy have been achieved. According to the Ukrainian authorities, at the legislative level, around 90% of the objectives set out in the Strategy have been accomplished. It has to be acknowledged that this has been done in a very efficient way and in a quite short time compared to other major judicial reforms and lustration or cleansing procedures. The institutional re-organisation has also been accomplished, as well as the selection and re-appointment of judges, while the regulation of the bar is a process that is still on-going.

8. The system introduced obliges every judge to undertake a qualification test to remain in office. This has produced the following effects: out of approx. 8 000 serving judges, approx. 2 000 resigned voluntarily once the law was passed, not wishing to undergo the qualification assessment for various reasons. By the end of 2018, all currently serving judges (5 700) that have requested to undergo the qualification procedure, should have been tested.

9. The change from a four-tier court system to a three-tier system has led to the

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judiciary must also earn trust and confidence by being accountable to society and the other powers of the state. It is therefore necessary next to examine why and how the judicial power and individual judges are to be accountable to society."

establishment of the new Supreme Court and to the selection and appointment of its judges. So far this competition is seen as a success. The process is considered very positive for ensuring an objective selection of its members which should strengthen the judicial independence and improve the professionalism of the Supreme Court judges. The process has been praised by external observers for its transparency, and its thoroughness.

10. The new governing and self-governing bodies[3] of the judiciary are also regulated in a way aimed at strengthening their independence and objectivity. With regard to the other specific topics assessed by the experts, the main findings can be summed up as follows: the new procedure on judicial discipline is now aligned with CoE standards and, if correctly implemented, should diminish the risks of interferences in the independence of judges, providing at the same time enough mechanisms for accountability; the quality of the judicial training has improved partly due to the adoption of the comprehensive Guide on National Standards of Judicial Education which defines the principles, methodology and structure of the judicial training; court management still needs to improve, and the reforms of the codes of procedure might improve the handling of cases in a more efficient way; the involvement of civil society – through the establishment of the Public Integrity Council (PIC) – in the appointment of judges is a major novelty, responding to the demands of the Ukrainian society. While it is positive that the legal reforms have taken into account such demands, the role PIC played in the procedure had a confrontational effect during the selection process.

11. The reform process as a whole is still in a transitional phase, and it is too early to make any definitive assessment. However, note must be made of the extremely low level of execution of judgments of national courts.[4] The legislative reforms may end up having limited positive impact if national judgements are not executed. Even if the system of execution of judgments is beyond the judiciary as such, it is so closely connected that it needs to be addressed jointly. Major efforts are under way on the part of the authorities to address the issues identified in this area in the judgments of the ECtHR over a period spanning several decades. It is crucial that this systemic dysfunction be addressed in a manner that provides redress for those who have suffered loss or damage as a result of non-enforcement, addresses the underlying causes so that such cases do not continue to accumulate, and introduces an effective remedy before a national authority. It is to be welcomed and encouraged that the issue is the subject of considerable attention by the authorities in collaboration with the CoE projects and in the context of the supervision by the Committee of Ministers of the CoE of the execution of the judgments of the ECtHR in respect of Ukraine.

[3] The Ukrainian law differentiates between the governing and the self-governing bodies of the judiciary. The governing bodies include primarily the HCJ and the HQCJU, while the self-governing bodies – the meetings of judges of various levels (meeting of the judges of a court, national Congress of Judges) and the Council of Judges of Ukraine. This distinction is taken into account in the assessment.

[4] See, for example, *Yuriy Nikolayevich Ivanov v. Ukraine*, Appl. no. 40450/04, of 15 October 2009; *Burmych and others v. Ukraine*, Appl.nos. 46852/13 et al., of 12 October 2017.

12. From the legislative point of view, the implementation of the Justice Sector Reform Strategy has contributed to bringing the Ukrainian justice system closer to the European standards. Compliance with CoE standards is generally achieved at the legislative level. Minor issues will need further adjusting and fine-tuning and monitoring of the implementation will also be necessary. So far the results seem to show a positive trend in improving the professionalism, efficiency and quality of the judiciary, and also in reducing the widespread corruption.

13. The full findings of the experts are set out in the main reports. The CoE and the experts would like to thank all their partners and interlocutors in Ukraine for their excellent collaboration and support during the preparation of this assessment.

II. Summary of the content of the assessment by area
Methodology

14. The assessment seeks to analyse the main changes introduced by the judicial reform that was carried out in Ukraine during the period from 2014 to 2018, with the aim of assessing the compliance of the reform with CoE standards, confirming the results achieved, and identifying further steps that still need to be taken, as well as new issues that have emerged during the process of the reform. The assessment has been carried out based on an analysis of English translations of the laws and regulations in question, which were provided by the CoE, against the background of the CoE standards and recommendations. The information provided in the main legal texts was further complemented and compared with the information obtained from the representatives of the institutions in the exercise of their office. The consultation visits took place in February, July and November 2018.[5]

15. For each specific topic, the reforms introduced have been described, the reform achievements have been assessed and, finally, possible steps for further improvements have been identified. This consolidated summary focuses on the main results achieved and includes some recommendations for further improvement.

Trust in the judiciary and cleansing of the judiciary

16. The CoE standards regarding lustration and cleansing are set out mainly in the judgments of the ECtHR in the cases of *Bobek v. Poland,* 68761/01, of 17 July 2007, and *Matyjek v. Poland,* 38184/03 of 24 April 2007, in the Council of Europe's Parliamentary Assembly Resolution 1096 (1996) on Measures to dismantle the heritage of former communist totalitarian systems of 27 June 1996, and in the Opinion of the Venice Commission "On the Law of Government Cleansing".[6]

17. The Law No. 1188-VII "On the restoration of the trust in the judiciary in Ukraine" was passed on 8 April 2014. The text of the Law in the wording adopted included most of the recommendations formulated by the CoE experts' opinions in order to be in line with the European standards, in particular, the right to a fair trial, safeguarding the independence of the judiciary, legal certainty and equality before the law. Several recommendations that were not followed in the adoption of this law, specifically regarding the special temporary commission, are not relevant anymore as this commission ceased functioning.

[5] The CoE project "Supporting Ukraine in execution of judgments of the European Court of Human Rights" organized meetings of the experts with representatives of the following institutions and organizations (heads or deputy heads): the Supreme Court; the Administration of the President of Ukraine; the High Council of Justice (HCJ); the High Qualification Commission of Judges of Ukraine (HQCJU); the State Judicial Administration of Ukraine; the Council of Judges of Ukraine; the National School of Judges of Ukraine; the European Union project PRAVO-Justice; and the Public Integrity Council.

[6] Opinion no. 788/2014, CDL-AD (2014)044, of 16 December 2014 "On the Law on Government Cleansing of Ukraine".

18. The Strategy has been successful and led to the adoption of a new legal framework for screening and re-assessing judges, checking their assets and providing for the dismissal of judges who have manifestly infringed their duties to protect the rule of law and individuals' human rights. Most of the judges to be "lustrated" in relation to the Maidan events have undergone disciplinary proceedings and many of them have been dismissed, after an adequate legal proceeding with relevant safeguards.

19. With regard to the law "On the judiciary and status of judges", most of the recommendations made by the Venice Commission were taken into account. The screening procedures in the form of qualification assessment are being carried out at present and the institutional framework to carry out the integrity check and to control the declaration of assets of judges is in place. There is a general perception that the transparency of the judiciary has increased and that the quality of judgments has improved.

20. Despite the advancement in the fight against corruption and the drastic cleansing process that has been put in place there are, however, certain remaining gaps, as well as uncertainties.

The system of judicial discipline

21. With the law "On ensuring the right to a fair trial" of 12 February 2015, Ukraine undertook a comprehensive reform on the disciplinary liability of judges and corresponding proceedings. This law introduced amendments to Section VI (Disciplinary liability of judges) of the law "On the judiciary and status of judges" (former articles 92 - 99, now articles 106-111). While this represented a significant improvement aimed at ensuring accountability and legal certainty, foreseeability, fairness and impartiality of the proceedings for establishing disciplinary liability and imposing sanctions, it was noted that there was still margin for arbitrariness, as for example under the broad conduct described in article 109.9.1 of the law "On the judiciary and status of judges".

22. As to the proceedings, the law "On the High Council of Justice" of 21 December 2016 established that disciplinary proceedings against judges will be within the powers of the HCJ. The disciplinary proceedings will be carried out by the disciplinary chambers whose majority should be made up of judges. The rules on these disciplinary proceedings included in the law "On the High Council of Justice" were previously assessed by CoE experts, and in general it was agreed that the final text was in line with the CoE standards.

23. The new regulation has brought the disciplinary proceedings in compliance with CoE standards, by defining and specifying the acts that can lead to disciplinary liability and by introducing a diversity of sanctions to be imposed according to the gravity of the infringement and the principle of proportionality. The proceedings are also respectful of the impartiality principle and due process safeguards, as required by the judgment in the landmark ECtHR case of *Volkov v. Ukraine*.[7] Nevertheless,

[7] *Oleksandr Volkov v. Ukraine*, no. 21722/11, 9 January 2013.

further fine-tuning with regard to the composition of the chambers could be undertaken, so as to ensure that the disciplinary chambers and the plenary of the HCJ – a new and welcome feature – are judges who have been elected by their peers.

24. With regard to the objective of improving the disciplinary framework (including a proportionate system of disciplinary sanctions, revision of the statute of limitations, improved disciplinary proceedings, etc.), this goal has been in general achieved. The newly adopted legal framework is aligned with CoE standards with regard to specification of the grounds for disciplinary liability, the proportionality of the sanctions and the fairness of the proceedings. Nevertheless, some aspects will need to be corrected in practice to bring some provisions in line with CoE standards, notably the high number of disciplinary complaints; the criminal liability for unjust decisions; and closely linked to the latter, the disciplinary liability linked to the delivery of judgments by the ECtHR. Moreover, it will be important to follow the implementation of the new disciplinary regime closely.

The transfer from the four-level to a three-level system of courts

25. The long-awaited reform from a four-tier system to a three-tier courts system has finally been introduced, dissolving the former system where the three high specialised courts exercised the cassation functions.

26. This re-organization is embedded into a major reform of the structure of the system of courts in Ukraine, characterised by the elimination of the former local courts, and the establishment of the new district courts (while before there where 716 local and district courts, after the reform there are only 336 district courts). In total, the whole reform, once implemented, will result in fewer and larger courts at the district level. This assessment will focus only on the transfer from a four-level to a three-level system of courts.

27. The dissolution of the Supreme Court of Ukraine and of the three former high specialized courts (the High Specialized Court on Civil and Criminal Cases, the High Commercial Court and the High Administrative Court) imply that the judgments of the appellate courts should be final, except when there are grounds for cassation.

28. The law “On the judiciary and the status of judges” introduces the structure of the judiciary, which involved changing from a four-tier system to a three-tier system (first and second instance courts, and the Supreme Court with specialized integrated courts of cassation). The three-tier system shall promote efficiency and improve the coherence and consistency of the jurisprudence, by making also the case-law of the Supreme Court binding. This re-organisation of the judiciary merits a positive assessment, as it should contribute to an improvement of the efficiency and a stronger basis for ensuring coherence and uniformity of the legal system.

29. Though the overall structure and design of the Supreme Court appears complex, it seems to work well based on the new procedural legislation to ensure the role of the Supreme Court as the highest court instance securing unity of practice and case-law.

30. The process for the re-structuring of the system has not been without debate. However, it should be assessed within the framework of the specific circumstances in Ukraine. All judges of the Supreme Court of Ukraine were dismissed, and a new transparent competition process was carried out. Of the previously serving judges of the Supreme Court of Ukraine only those, who successfully passed the new competition, have been appointed. This procedure is based on the transitional provisions of the amendments to the Constitution stating that in cases of reorganization or dissolution of particular courts, established before the Law of Ukraine "On amending the Constitution of Ukraine (as to justice)" came into force, judges concerned shall have the right to retire or apply for a new position through a competition according to the procedure prescribed by law.

31. In abstract, the simplification of the system seems to be logical and positive for its potential in reducing delays. The concept of concentrating the cassation powers in a Supreme Court, with a strong admissibility filter, is not only the most common in the European democracies, but is also the system that has proven to serve better the need for coherence and a uniformly high quality of jurisprudence.

The Supreme Court competition

32. According to the Strategy, the rules for the selection and appointment of the Supreme Court judges should enable the selection of the best candidates in a transparent and objective way. To that end, the HQCJU should evaluate the candidates through a newly introduced competition process. In such a process the civil society should be involved.

33. At its initial stage, the procedure for the competition is held before the HQCJU with the involvement of the PIC. The competition consists of a written exam to test the legal knowledge, and of the testing of candidates' moral and psychological qualities and general skills through an interview carried out by qualified psychologists. The HQCJU reviews the candidates' dossiers and holds an interview with each of them, with the participation of the PIC. The HQCJU takes its decision based on the final scores of the candidates. The recommendations for the successful candidates are considered by the HCJ which makes the final proposal to the President of Ukraine for their appointment. Finally, the President issues a decree to appoint the competition winners to the position of a judge at the Supreme Court.

34. One of the important advantages of the procedure is that the competition is conducted in an atmosphere of extremely high publicity. The overall objective is to secure the integrity, transparency and efficiency of the judicial system. The complexity and novelty of the procedure and the very high number of candidates to be re-examined, has led to certain delays. However, it can be expected that, with the number of candidates decreasing, the existing difficulties shall be overcome and the procedure will become smoother and faster.

35. Although some discrepancies between the law and its practical application were registered, the legislative framework can be assessed in a very positive way. It should be noted that the new regulation for the competition procedure makes a

great difference compared to previous procedures of recruitment, assessment and evaluation of judges. This welcome trend should be encouraged and assessed in a positive way. It is expected that the present extraordinary circumstances of re-qualification of all the judges will come to an end soon, and the HQCJU will be able to focus on its ordinary functions.

36. One of the biggest assets of the legal regulation is that it provides a procedure which is marked by transparency, objectivity and predictability. In this respect it differs significantly from the previous one. The conduct of the procedure is based on a methodology announced well in advance and available to the candidates and to the public at large. The objective and subjective criteria for assessment are in relatively good balance.

37. The review of the legislative framework indicates that recommendations can be made for its improvement on certain points. It should be mentioned that some of the recommendations as regards the procedure for selection and appointment are not related to lack of compliance with the CoE standards but rather to problems resulting from the large number of candidates, from technical problems and from the fact that the procedures have been applied for the first time.

The system of appointment, career and dismissal of judges

38. A significant and welcome change to the system of judicial appointment has been the introduction of the guarantee of judges' irremovability and the abolition of the previous arrangement of a five-year probationary period for judges. Moreover, the appointment procedure has been depoliticised with the removal of parliament from the process and now the President of Ukraine appoints judges based on the submissions of the HCJ. In the appointment procedure, the HCJ is assisted by advice/recommendation from the HQCJU, as already described.

39. As mentioned above, the new PIC is tasked with advising on the integrity of judicial candidates. The PIC has been established with the purpose of assisting the HQCJU in determining the eligibility of a candidate for judicial office in terms of the criteria of professional ethics and integrity (cf. Article 87 of the law "On the judiciary and the status of judges"). The involvement of such a body is a novelty at the European level in a process of selecting candidates for judicial office, and is not mentioned in any of the standards of the CoE.

40. With regard to the procedure of dismissal of judges, the ECtHR case of *Oleksandr Volkov v. Ukraine*, which involved the dismissal of a judge of the Supreme Court, revealed structural defects in the Ukrainian system of judicial discipline, *inter alia* with regard to the role of the Ukrainian Parliament in the dismissal procedure. The reform introduced new provisions, which entail that the decisions on judges' promotions, transfers and dismissals now rest with the HCJ.

41. The rules regarding appointment of judges, decisions on their career, discipline and dismissal are now much closer in line with the CoE standards. The selection and appointment procedure is based on competition, merit and objective criteria, having

regard to qualifications, professional skills and integrity. The new procedure has strengthened the process of appointing judges and should have a positive impact on public trust in the courts. The formal procedure for the selection and appointment of judges is now in general in line with CoE standards.

42. The psychological testing is understood to be of a more general nature, also to be applied to the qualification assessment as such and not limited to the process of selecting judges for the new Supreme Court. It is important that this process in all its aspects is geared towards a full and balanced assessment of each candidate. It is recommended to conduct an in-depth analysis of the application of psychological testing and to ensure proper justification of its results, as well as the possibility of challenging them before the court.

43. The composition and selection of members of the judicial bodies involved in the recruitment and appointment process meet the CoE. The procedure allows for a transparent and fair process, although the procedure is quite complex, at least due to the number of bodies involved.

44. In general, the provisions regarding dismissal of judges are now also much closer in line with CoE standards. The HCJ conducts all disciplinary proceedings against judges, including dismissal proceedings. This was an important innovation of the judicial reform. The three disciplinary chambers of the HCJ review cases on disciplinary responsibility of judges, and the chambers are preferably – but not always – composed by a majority of judges. An automated system of allocation of cases involving disciplinary complaints provides for enhanced impartiality in the procedure.

45. The law also provides for the regulation of recusal and self-recusal. This provision, together with the reforms introduced into the judicial disciplinary proceedings, providing for the possibility to appeal against the decision of the Disciplinary Chamber on dismissal first to the HCJ and then also to the Grand Chamber of the Supreme Court, is to be assessed as very positive.

46. Although much has been achieved, there is still room for improvement. Regarding the procedure for appointment of judges, there might be a need to fine-tune the procedure following an in-depth analysis of the adjustments needed.

Participation of civil society in the selection and assessment of the judiciary

47. The involvement of civil society organisations in the selection and assessment of the judiciary can be a means to increase transparency. Transparency is one of the core elements of the judiciary, which follows the principles of Rule of Law. The reforms as a whole, undertaken in the period since 2014, have certainly resulted in a much more transparent and, in principle, more accountable justice system.

48. There are no European standards envisaging that civil society organisations should be involved in the selection and assessment of the judiciary. If they are involved, they may inform and advise but they should not have a direct impact on the decisions to be taken by the competent authorities. The PIC, which was established

in Ukraine, has a confirmed role in contributing to the decisions of the HQCJU, with a qualified majority of members of this latter body needed to overcome a negative opinion of the PIC. The PIC opinions also become a part of the judicial dossier.

49. The law entrusts the PIC with advising as far as the criteria of professional ethics and integrity are concerned, but not with regard to the criterion of competence. The correctness – or lawfulness – of judicial decisions is to be checked within the system of appeals, in order not to infringe the independence of the judiciary.

50. The exercise of its tasks by PIC has shown conflicting aspects, which should be addressed.

Self-governance of the judiciary

51. According to the law, judicial self-governing bodies are meetings of judges of a given court, the Congress of Judges of Ukraine and the Council of Judges of Ukraine. The HCJ and the HQCJU are not defined as self-governing bodies in the Ukrainian law; they are seen as bodies of governance, not of judicial self-governance.

52. The self-governing bodies are established by the law "On the judiciary and the status of judges" or by the Constitution, and not less than half of their members should be judges elected by their peers. The legal framework thus creates the opportunity for representation from all levels of the judiciary and with respect for pluralism. The compositions of both the HCJ and the HQCJU have been modified in order to ensure that a substantial part of these bodies are judges elected by their peers, although the transitional provisions to the Constitution have left untouched the composition of the HCJ till 30 April 2019.

53. The current legal framework promotes the independence of the self-governing bodies, including the HCJ, with regard to the manner of the appointment of their members, the members' term of office and the existence of guarantees against outside pressures. Judicial self-governance now operates pursuant to the law protecting the professional interests of judges and deciding on the internal activities of courts. The current legal framework clearly fosters the appearance of independence of the judicial self-governing bodies.

The system of judicial/court administration

54. Interferences with the independence of judges through influence exercised by presidents of courts – which was frequently reported in the past, - have clearly diminished since 2014. The time limitation of the term in office of court presidents and the change in the election process have contributed to this positive development.

55. Whilst the selection of judges of the Supreme Court and the election of the President of the Supreme Court were seen positively by international observers, the possibility to dismiss the President of the Supreme Court by a vote of no confidence puts permanent pressure on the President and thus hampers his/her independence.

56. With regard to further increase of the effectiveness of the administration of courts, detailed studies on organisation and procedure should continue to be carried out.

The system of judicial training

57. In the period since 2014, major efforts have been undertaken with regard to improving the training for judges. They succeeded in bringing about a training system which meets European standards and which has contributed to raising the quality of the justice system.

58. The National School of Judges of Ukraine is exclusively entrusted, among other tasks, with the initial training of judicial candidates and with providing on-going training for sitting judges and staff. It also provides scientific and methodological support to the HCJ and the HQCJU.

59. The legislation on higher education does not apply to the National School of Judges of Ukraine. It is created under the HQCJU and its statute has to be approved by that body, which also appoints and dismisses the rector of the School. A concept of standards for the training was developed, which contains the principles of judicial training, a course development methodology and a course delivery methodology.

60. Sitting judges have to complete an on-going training at the National School of Judges of Ukraine at least once every three years, which each training lasting at least 40 academic hours. Following Article 131 para. 10 of the Constitution, the law “On the judiciary and the status of judges” designates the HQCJU as the body in charge of the assessment of judges.

61. Apart from the qualification assessment, there is a second type of assessment – the so-called “regular assessments”. The results of this assessment are also incorporated into the judicial dossier and they “may be taken into account when considering the issue of conducting the competition for filling a vacancy in a relevant court”, which means they can be used, but that their use is not mandatory or decisive.

62. The regular assessment is exercised by lecturers of the National School of Judges of Ukraine after trainings, by civil society associations, by other judges of the same court or by the judge him/herself.

63. Both for training and assessment, the HQCJU plays an important role, be it as the body which has to appoint and dismiss the rector of the National School of Judges of Ukraine, approve the training concepts, programme and the status of the school, and organise and carry out the assessments. The HQCJU meets all the requirements which the European standards envisage for Councils for the Judiciary.

64. The institution in charge of the training of judges should be independent, especially from the legislative and the executive powers. The National School of Judges complies with this criterion and so does the HQCJU, which supervises the National School of Judges and is responsible for its organisation. Initial training is mandatory. A short course is also organized for newly appointed judges to the Supreme Court.

The on-going training of judges is very broad in its content, offering a wide range of topics not only regarding legal knowledge but also with respect to soft skills. All these regulations and their implementation are fully in line with European standards.

65. It is unclear which role the regular assessment of judges by the trainers of the National School of Judges of Ukraine plays in practice. According to CoE recommendations, there should not be a strong or direct impact of the trainers on decisions regarding the career of judges. It is clear that trainers should assess the success of a judge in the training as far as the acquisition of knowledge on the topic of the training is concerned. However, grading or making statements about other abilities of the judge which are not the subject of the training concerned is unusual and, as a rule, should be avoided.

Procedural links between the bar and the judiciary

66. The independence of the bar is guaranteed by the Constitution. According to the Constitution, the principles of organization and functioning of the bar and the activity of advocates shall be defined by law. However, the law on the bar is still awaiting adoption.

67. A lawyers' monopoly of representation before the courts does not run contrary to CoE standards. However, where such a system exists, the right of effective access to court shall entail provisions on legal aid and legal assistance when such assistance proves indispensable for the interests of justice. The Ukrainian authorities should be encouraged to follow up on the Strategy, which notes that access to justice is inadequate owing *inter alia* to insufficient levels of funding and of support for the legal aid system.

RECOMMENDATIONS

Trust in the judiciary and cleansing of the judiciary

1. The experts recommend to follow the development of the institutional resetting of the judiciary system, including new competitions, structural optimization, evaluation of all judges based on competence, ethics and integrity criteria and ensure a transparent, balanced and professional approach to those procedures.

2. It is also important to follow up on the execution of judgments of the ECtHR in cases related to the dismissal of judges, as there is a number of applications pending before the ECtHR at present on this issue.

3. As the whole process of cleansing and qualification assessment has faced some delays, it is recommended to further streamline and optimize the procedures to finalize them as soon as possible. In any case, it is important to maintain and improve the existing safeguards to keep the whole procedure transparent so that judges are recruited and evaluated taking into account only their merits, skills and integrity.

4. The objective of all these measures is to identify and sanction those who breached their duties as judges and to prosecute those judges who committed criminal offences, all with the aim of restoring trust in the judiciary. While some data suggest that things are moving in the right direction, this objective cannot be said to have been fully achieved yet. It is recommended to analyse not only the perception indicators, but to follow up the investigations undertaken that touch upon corruption within the judiciary and the verification of the assets of judges and their relatives.

The system of judicial discipline

5. Ensure that the composition of the Disciplinary Chambers and of the Plenary of the HCJ always includes a majority of judges elected by their peers, especially when such a severe sanction as dismissal is to be imposed.

6. Eliminate the disciplinary offence for rendering a judgment which is later found to be the basis of a finding of a violation of the European Convention on Human Rights by the ECtHR.

7. Follow closely the application of Article 375 (delivery by a judge of an unjust decision) of the Criminal Code, to ensure that in practice it does not lead to an undue interference with judicial independence.

8. Follow closely the application of the Law “On the judiciary and the status of judges” to ensure a restrictive interpretation of this very broadly drafted disciplinary offence concerning the breach by a judge of ethical norms and morals (Article 109.9.1) and the disciplinary offence resulting from an ECtHR judgment (Article 109.12).

9. Ensure that disciplinary proceedings and sanctions are removed from the judge’s dossier within a reasonable time, so that a minor breach cannot damage a judge’s

career and promotion in a disproportionate way.

10. Monitor the filtering of manifestly unfounded disciplinary complaints so that the filtering does not lead to covering up certain offences, and at the same time that a lack of filtering does not end up paralysing the system of judicial accountability.

11. Ensure that precise statistics are kept and monitored, both on the number of cases and types of sanctions and the types of infringements detected.

The transfer from the four-level to three-level system of courts

12. Follow up on the implementation of the rules on admissibility of appeals in cassation in order to prevent /detect any arbitrariness.

13. Analyse the new functioning of the Supreme Court as a true cassation instance, together with the outcome of the selection process for the judges of the Supreme Court.

The Supreme Court competition

14. In future, in due course, after the transition period is completed, ~~T~~ the scoring system could be reconsidered: giving more weight to the objective indicators and the assessment of the professional competence and judicial qualities of the candidates; defining the minimum passing score in advance; introduction of an automated system to significantly shorten the deadlines and simplify the work of the HQCJU to strengthen further the transparency of the procedure and ensure faster access to documents.

15. The simplification of the procedure could also be considered as one of further steps in the future by entrusting the entire process of selection and appointment of judges to one judicial body (preferably one with a constitutional mandate), which would simplify and accelerate the process.

16. Improvements to the Rules of Procedure for the PIC could be made in order to bring them into full compliance with the CoE standards in order to ensure fairness and certainty of the procedure.

17. The recommendations for the PIC concern several aspects: to resolve internal issues of conflict of interest (e.g. that serving lawyers are evaluating judges); to introduce a public methodology for the assessment of the candidates; to enhance the procedure for the verification of information; to refrain from using the reputation of the candidates as a main basis of evaluation; and to refrain from entering into the evaluation of the merits of the judicial decisions.

The system of appointment, career and dismissal of judges

18. The process of selection and appointment of judges should be streamlined and the number of bodies involved should be reduced. In the longer term, a consideration should be given to merging the competences of the various bodies involved into one single and independent judicial governance authority.

Participation of civil society in the selection and assessment of the judiciary

19. The functions of the PIC should be limited to collection and provision of information on judges, and advising in the assessment process. It should not have any direct or binding impact on the deciding body.

20. Although the contribution of civil society, by providing additional information about judges' background, is positive, it should be discussed whether a separate body is needed to that end. Consideration should be given to whether the role of civil society can be strengthened in the composition of the HQCJU itself, which may simplify the procedure.

21. The regulatory framework of the PIC needs to be improved, in particular regarding the functions and resources of this body, as well as the legal qualifications and liability of its members.

22. The procedural regulations of the HQCJU, regarding its relationship with the PIC, should be amended and included in the ordinary law.

23. The assessment of judicial candidates, which is based on a number of indicators for each criterion under assessment, should always contribute to objectivity to the extent possible by reducing the margin for arbitrariness.

24. The application of psychological testing is a challenge for the members of the HQCJU. The task is to take the results of such testing into account in a reliable and transparent way within the context of an assessment which is based on different sources of information.

25. The results of the assessment of an individual judge should not be published except when the assessment is exercised in the course of a competition for a vacant position.

Self-governance of the judiciary

26. The elections of judicial representatives to the judicial self-governing bodies are quite cumbersome, and simplifications to the procedures should be considered.

27. The judicial self-government system should be streamlined and the number of bodies reduced. In the longer term, consideration should be given to merging the competences of the various bodies in one single and independent judicial governance authority.

The system of judicial/court administration

28. The possibility to dismiss the President of the Supreme Court by a vote of no confidence should be abolished or at least reduced as far as possible.

29. Further analysis and action shall be undertaken in order to improve the management of the judicial system.

The system of judicial training

30. The indicators for several criteria for the assessment of judges may be further clarified by, for example, interpretation guidelines, which could contribute to the objectivity and reliability of the application of such indicators.

31. For the assessment of sitting judges with permanent tenure, testing should be substituted by assessing the work and performance of the judge.