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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

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## JUDICIAL APPOINTMENT, CAREER, DISMISSAL
## SELF-GOVERNANCE OF THE JUDICIARY
## PROCEDURAL LINKS BETWEEN THE JUDICIARY AND THE BAR

April 2019

## LIST OF ABBREVIATIONS

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| CCJE | Consultative Council of European Judges |
| CoE | Council of Europe |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| JRC | Judicial Reform Council |
| HCJ | High Council of Justice |
| HQCJU | High Qualification Commission of Judges of Ukraine |
| PIC | Public Integrity Council |

## EXECUTIVE SUMMARY

1. The Ukrainian justice system has been characterised in the past by insufficient independence of the judiciary from the executive and legislative branches, a complex court system, inconsistent court practice, lack of efficiency and lack of trust on the part of society. To address this situation, significant judicial reforms were introduced in Ukraine during 2014-2018, with major changes to the system of judicial appointment, career and dismissal. A new version of the law "On the judiciary and the status of judges" was adopted on 2 June 2016 and entered into force on 30 September 2016, at the same time as the new constitutional provisions on justice.

2. A significant change to the system of judicial appointment was the introduction of the guarantee of judges' irremovability and the abolishment of the previous arrangement of a five year probationary period for judges. The role of the Parliament in appointing judges was abolished, and appointments are by the President of Ukraine based on submissions by the High Council of Justice (HCJ). In the appointment procedure, the HJC is assisted by advice from the High Qualification Commission of Judges of Ukraine (HQCJU). A new body, the Public Integrity Council (PIC), is tasked with advising the HQCJU on the integrity of judicial candidates.

3. The judgment of the European Court of Human Rights (ECtHR) in the case of *Oleksandr Volkov v. Ukraine*[1], which involved the dismissal of a judge of the Supreme Court of Ukraine, 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 judicial reform has introduced new provisions which entail that decisions on judges' promotions, transfers and dismissals now rest to the HCJ.

4. The legal framework for judicial self-governance is now well in line with Council of Europe (CoE) standards. For the purpose of this report, and based on CoE standards, judicial self-governing bodies will refer to the bodies composed fully or partially of judges, independent of the government and the legislature, established by law or under the Constitution and endowed with powers for the governance of certain aspects of the judicial branch.

5. According to the law, judicial self-governing bodies are meetings of judges of a respective 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. However, with reference to their functions, composition and competences they could as well be seen as bodies for the self-governance of the judiciary and they are therefore included in this assessment.

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

6. The self-governing bodies are established by law or under the Constitution, and not less than half of their members are judges elected by their peers. The legal framework opens the possibility for representation from all levels of the judiciary and with respect for pluralism within the judiciary. The composition of both the HCJ and the HQCJU has been modified in order to ensure that a substantial part of these bodies are judges elected by their peers. The current legal framework promotes the independence of the self-governing bodies with regard to the manner of the appointment of their members, the members' term of office and the existence of guarantees against outside pressure. Judicial self-governance now operates pursuant to the law in protecting the professional interests of judges and deciding the internal activity of the courts.

7. As is the case with the judiciary, the independence of the bar is guaranteed by the Constitution. According to the Constitution, the fundamentals of the organization and functioning of the bar and advocates' activity shall be defined by law. However, amendments to the law on the bar is still under preparation, and therefore this assessment will be restricted to an evaluation of the introduction of lawyers' monopoly, which entails that, as a main rule, only an advocate can represent another person before a court and defend a person against prosecution.

8. Sufficient progress in the introduction and implementation of the judicial reform has been achieved. The provisions regarding appointment of judges, and decisions on their career, discipline and dismissal, are now closer in line with CoE standards. The new procedure has improved the process for appointing judges and may thus have a positive impact on the public trust in the courts. The formal procedure for the selection and appointment of judges is now in general in line with CoE standards. The selection and appointment procedure is based on competition, merit and objective criteria, having regard to qualifications, professional skills and integrity. The composition and selection of members to the judicial bodies involved in the recruitment and appointment process meet the CoE standards. The procedure allows for a transparent and fair process, although the process is quite complex, involving a number of bodies.

9. In general, the provisions regarding the dismissal of judges are now much more closely aligned with CoE standards. The HCJ conducts all disciplinary proceedings against judges, including dismissal proceedings. This was an important innovation of the judicial reform. The disciplinary chambers of the HCJ review cases on the disciplinary responsibility of judges, and the chambers are preferably – but not always – composed by a majority of judges. An automated case allocation system of cases involving disciplinary complaints provides for enhanced impartiality in the procedure. The law also regulates recusal and self-recusal. Furthermore, decisions of the HCJ's Disciplinary Chamber relating to the imposition of dismissal of a judge may also be appealed, first to the plenary of the HCJ and then to the Grand Chamber of the Supreme Court.

10. The legal and formal framework for judicial self-governance is now well in line with CoE standards. The current legal framework promotes the independence of the self-governing bodies, including the HCJ, with regard to the manner of the appointment of the members of the self-governing bodies, their term of office and the existence of guarantees against outside pressures. The self-governing bodies are established by law or under the Constitution, and not less than half of the members are judges chosen by their peers. The legal framework opens up for representation from all levels of the judiciary and with respect for pluralism within the judiciary.

11. 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 may entail provisions on legal aid and legal assistance when such assistance proves indispensable for an effective access to court. The Ukrainian authorities should be encouraged to follow up the Justice Reform Strategy 2015-2020, pointing out that access to justice currently is insufficient owing to *inter alia* insufficient funding and support for the legal aid system.

12. Key recommendations with regard to the judicial reforms in the areas of this assessment include:

- The need for fine-tuning of the procedure for selection and appointment should be evaluated and assessed by an in-depth analysis.

- In the long run, the process of selection and appointment of judges should be streamlined and the number of bodies involved should be reduced.

- In the long run, it should be considered to merge the competences of various bodies involved in the judicial appointment process in one single and independent judicial governance authority.

- As to the appointment of judges, it should be considered to clarify in the Constitution that the President of Ukraine is obliged to follow the recommendations of the HCJ.

- When dealing with a case that may involve the dismissal of a judge, all disciplinary chambers of the HCJ should be composed of a majority of judges. This should be introduced as a statutory obligation for the HCJ, either by law or by its internal Rules of Procedure.

- It should be considered to provide the HCJ, by law, with some more effective means in order to filter manifestly ill-founded disciplinary complaints.

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

term, the judicial self-government system should be streamlined and the number of bodies reduced.

- The Ukrainian authorities should be encouraged to follow up on the Justice Sector Reform Strategy 2015-2020 prepared by the Judicial Reform Council (JRC), pointing out that access to justice currently is insufficient owing to *inter alia* insufficient funding and support for the legal aid system.

## I. INTRODUCTION

13. The aim of this report is to provide an assessment of the reform steps undertaken by the Ukrainian authorities in 2014-2018 with regard to the system of appointment of judges, their career and the system for dismissal of judges. Furthermore, the assessment covers the Ukrainian system of self-governance of the judiciary and some aspects of the procedural links between the judiciary and the bar.

14. The Ukrainian justice system has in the past been characterised by insufficient independence of the judiciary from the executive and legislative branches, a complex court system including four court levels, inconsistent court practice, lack of efficiency and lack of trust on the part of society. There have been insufficient mechanisms for the protection of individual rights and freedoms. In addition, the under-developed legal culture in the society has been one of the main reasons why the administration of justice has not met the high standards set for it in the Constitution.[2]

15. The need for reforms has been tangible, and significant changes have taken place since 2014. A strategic framework designed for the reform was developed by the JRC, which is an advisory body to the President of Ukraine. The key tasks of the JRC include elaborating proposals on the improvement of the Ukrainian legislation and drafting respective laws, reviewing and evaluating proposals and initiatives of governmental authorities, non-governmental and international organisations. The JRC prepared the *Justice Sector Reform Strategy 2015-2020,* which was adopted by a presidential decree in 2015. The strategy sets priorities for reforming the justice sector by way of constitutional amendments, legislative and other regulatory reforms and institutional development. The objective of the strategy is to define priorities for ensuring the rule of law in the administration of justice, including an independent judiciary, based on European standards.

16. On several occasions, CoE bodies previously addressed the need for constitutional amendments in order to exclude political bodies in the appointment and removal of judges and in the composition of the HCJ.[3] In 2016, *Verkhovna Rada* (the Ukrainian parliament) adopted amendments to the Constitution, *inter alia* with regard to Chapter VIII of the Constitution, which concerns justice. The judicial reform introduced innovations to the system of appointment of judges, the status of judges and the composition of the HCJ. The reform provided for strengthening of the

[2] This is according to the *Justice Sector Reform Strategy 2015-2020*. See also PACE Resolution 2145(2017) on the functioning of democratic institutions in Ukraine, and GRECO Fourth Evaluation Round, Ukraine; *Corruption prevention in respect of members of parliament, judges and prosecutors* (GrecoEval4Rep(2016)9).

[3] See *Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe: On the Law on the Judicial System and the Status of Judges, and Amendments to the Law on the High Council of Justice of Ukraine*, adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015, CDL-AD(2015)007, paragraph 13.

powers and the institutional capacity of the HCJ to deal with issues of judicial discipline and the careers of judges. This was part of a broader reform.

17. A new version of the law "On the judiciary and the status of judges" was adopted on 2 June 2016, and it entered into force on 30 September 2016, at the same time as the new constitutional provisions on justice. The law implemented a three-tier court system instead of the previous four-tier system. It also entailed a removal of the Supreme Court of Ukraine. All sitting judges of the Supreme Court of Ukraine were dismissed by consequence of the law, and a competitive selection procedure was undertaken for the appointment of 120 new Supreme Court of Ukraine judges. The new bench was announced in July 2017.

18. The reform also includes amendments to Ukraine's key procedural laws – the Code of Civil Procedure, the Code of Criminal Procedure, the Code of Commercial Procedure, and the Code of Administrative Procedure

19. As regards the methodology for this assessment, it is prepared on the basis of CoE standards and recommendations, as well as the relevant Ukrainian legislation and practice. The consultant was provided with relevant documents by the Justice and Legal Cooperation Department of the Directorate General of Human Rights and Rule of Law of the CoE. The written material includes *inter alia* translated versions of the Constitution of Ukraine and other laws concerning the judiciary referred to in the assessment, as well as previous reports and recommendations prepared by experts in the context of the CoE project "Support to the implementation of the judicial reform in Ukraine". Furthermore, the report draws on meetings with relevant stakeholders held on 3-4 July 2018 in Kyiv. The assessment provides a brief description of the major changes introduced in 2014-2018, followed by a description of the relevant CoE standards. Finally, the Ukrainian legislation and practice will be described and compared to the CoE standards. For each specific topic the reforms undertaken will be described, the reform achievements will be assessed and finally possible steps for further improvements will be addressed.

20. This assessment was prepared within the CoE projects "Supporting Ukraine in execution of judgments of the European Court of Human Rights", which is funded by the CoE Human Rights Trust Fund, and "Support to the implementation of the judicial reform in Ukraine". Both projects are being implemented in Ukraine by the Justice and Legal Co-operation Department of the CoE.

21. The assessment is prepared by Judge Nils Engstad, Hålogaland Court of Appeal, Tromsø, Norway, who is the former President of the CoE's Consultative Council of European Judges (CCJE).

## II. JUDICIAL APPOINTMENT, CAREER, DISMISSAL

### Appointment, career and dismissal of judges in Ukraine

22. A significant change to the system of judicial appointment by the constitutional amendments in 2016 was the abolishment of the previous arrangement of a five year probationary period for judges. Article 126 of the Constitution now states that a judge holds office for an unlimited term. Correspondingly, Article 48 of the law "On the judiciary and the status of judges" states that the independence of judges shall be ensured *inter alia* by a special procedure for their appointment and by the irremovability of judges. Article 53 of the same law determines that the judges shall be guaranteed irremovability until they reach the age of 65, except for dismissal or termination of the judge's powers pursuant to the Constitution and the law. Nor may a judge be transferred to another court without his or her consent, except following a disciplinary measure or following reorganisation or liquidation of a court.

23. Furthermore, the role of the Parliament in appointing judges was abolished, and instead the new provisions in Article 128 of the Constitution prescribe that the President of Ukraine appoints judges on the basis of the submissions of the HCJ, according to the procedure prescribed by law. Correspondingly, Article 36 of the law "On the HCJ" determines that judges shall be appointed by the President of Ukraine upon the formal suggestion of the HCJ. Similarly, Article 80 of the law "On the judiciary and the status of judges" determines that appointment to a position of judge shall be made by the President of Ukraine on the grounds, and within the proposal. of the HCJ.

24. Candidates for appointment as judges are selected by the HQCJU based on criteria defined by law and with the advice of the PIC. The Constitution provides for a procedure based on competition.[4] The appointment procedure is still complex due to the number of bodies involved, but the procedure is highly transparent.

25. The HQCJU plays a crucial role in the selection of candidates for judicial positions. The HQCJU operates on a standing basis and adopts its own Rules of Procedure. The HQCJU is not a constitutional body. Articles 92-103 of the law "On the judiciary and the status of judges" define the status of the HQCJU as well as its powers and composition. The HQCJU consists of 16 members (chapter 3 of the law "On the judiciary and the status of judges"), of which eight are elected by the Congress of Judges of Ukraine. The term of office of a member of the HQCJU is four years, and the same person may not exercise the powers for two consecutive terms. The

[4] Article 128.2 of the Constitution. The procedure is developed further in Section IV of the Law On the Judiciary and the Status of Judges, Chapter 2 of the Law On the High Council of Justice, the Rules of Procedure of the High Council of Justice and other relevant legal documents.

chairperson of the HQCJU is elected in a secret voting by a majority vote of all its members.

26. According to Article 83 of the law "On the judiciary and the status of judges", qualifications examinations shall be conducted in order to establish whether a judge or a judicial candidate is capable of administering justice in a relevant court according to criteria determined by law. The HQCJU selects candidates to be appointed to a position of a judge, including organizing their background check and the conduct of the qualification evaluation.

27. Section V of the law "On the judiciary and the status of judges" contains provisions regarding the qualifications level of a judge. The law distinguishes between *qualifications evaluation* of judges and *regular evaluation* of judges. Qualifications evaluation is conducted in order to establish whether a judge or a judicial candidate is capable of administering justice in a relevant court (article 83).

28. . As mentioned, half of the 16 HQCJU members are judges elected by the Congress of Judges of Ukraine. According to Article 93 of the law, the HQCJU shall select the necessary number of candidates to be appointed to a position of judge, and submit its recommendation to the HCJ.

29. The reform also included the formation of a new body, the PIC, which by the law "On the judiciary and the status of judges", Article 87, was tasked with advising the HQCJU on the integrity of judicial candidates. The PIC consists of 20 members appointed by a meeting of representatives of civil society organisations for a term of two years. They may be representatives of civil society organisation, law scholars, attorneys and journalists who are recognised specialists in the sphere of their professional activity and meet the criteria of political neutrality and integrity.

30. The involvement of a new body – the PIC – is a novelty at the European level in a process of selecting candidates for a judicial office. Such a body is not mentioned or envisaged in any of the standards of the CoE. The PIC is established with the purpose of assisting the HQCJU in determining the eligibility of a candidate to 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 PIC shall provide the HQCJU with an assessment of whether a candidate meets the required professional and integrity criteria. The PIC has no decisive influence in the appointment process, but is a consultative and advisory body to the HQCJU, which in turn recommends to the HCJ the candidates to be appointed.

31. The HQCJU reviews the candidates with the participation of the PIC. The HQCJU holds a plenary session to decide on the opinion of the PIC in respect of each candidate. It approves the final rating and scores of each candidate. The HQCJU submits its recommendations to the HCJ on appointing a candidate to a judicial position.

32. The HCJ is a collective independent constitutional body of public authority and judicial governance which functions on a permanent basis to guarantee the independence of the judiciary, cf. Article 1 of the law "On the HCJ". According to Article 5 of the law, the HCJ consist of 21 members, including ten judicial members elected by the Congress of Judges of Ukraine. Members of the HCJ are elected for a term of four years. The same person may not hold membership for two consecutive terms. In addition, the President of the Supreme Court is a member of the HCJ *ex officio*. According to Article 22 of the law "On the HCJ", the Chairperson of the HCJ shall be elected from among the HCJ members for a two-year term.

33. According to Article 128 of the Constitution and Article 36 of the law "On the HCJ", a judge shall be appointed by the President of Ukraine upon recommendation by the HCJ. The HCJ is competent to review the recommendations made by the HQCJU, and makes a final selection based on the procedure described in Articles 36 and 37 in the law "On the HCJ". The provisions set forth in Article 36 that a rapporteur shall draw up a report on the possibility of a judicial appointment and the rapporteur shall submit the report for consideration to the HCJ.

34. Previous legislation granted the HCJ an amount of leeway that could create a risk of decision-making not being based on objective criteria or the merits of the candidates.[5] The judicial reform has provided for a more precise description of the role of the HCJ in the selection process. The HCJ may reject the recommendation of the HQCJU only if the statutory procedure has been violated or if there are reasonable doubts as to the compliance of the candidate with the criterion of integrity or professional ethics, or if there are other circumstances which might have a negative impact on public trust in the judiciary (Article 37 of the law "On the HCJ" and Article 79, item 1 of paragraph 19 of the law "On the judiciary and the status of judges"). Any decision of the HCJ rejecting the appointment or transfer of a judge may be challenged before the Supreme Court on certain procedural grounds only.

35. The HCJ presents submissions for appointment to the President of Ukraine, who in turn issues a decree of appointment on the basis of the submission of the HCJ.

36. When, with a view to promotion or transfer to another court, a judge undergoes a qualification assessment leading to a decision by the HQCJU as to his or her ability to administer justice, the decision can be challenged before the Supreme Court in the manner prescribed by Article 266 of the Code of Administrative Justice.[6]

[5] See *Judicial self-governing bodies*, Project report, Strasbourg, September 2011, Eastern Partnership Enhancing Judicial Reform in the Eastern Partnership Countries, Working Group on Independent Judicial Systems.

[6] See Minister's deputies CM/Notes/1318/H46-28 1318th meeting, 5-7 June 2018 (DH) Human rights: H46-28 Salov group (Application No. 65518/01), Oleksandr Volkov group (Application No. 21722/11) v. Ukraine Supervision of the execution of the European Court's judgments.

37. Decisions on judges' promotions, transfers and dismissals now rest with the HCJ, according to Article 131 of the Constitution. Under the new constitutional regulations, the Parliament no longer has any influence on judicial discipline and careers. This is to be welcomed. Judicial careers are no longer based on recommendations submitted by the presidents of the courts or their presidiums, with higher courts and the presidents henceforth having no influence on the promotion of judges. This change is intended to exclude internal pressure from the judicial hierarchy on judges.[7]

38. Judges must compete in case of transfer to another court, including to a court of higher rank.[8] There are some exceptions provided for by Article 55 of the law "On the judiciary and the status of judges" regarding the secondment of judges to another court, not to be dealt with here. Hence, the regulatory framework for the appointment of judges comprises both judges applying for transfer or promotion, and judicial candidates applying for a position as a judge.

39. The formation of the new Supreme Court was finalized in November 2017. Judges were appointed on a competitive basis, and the new Court began its activities in December 2017. Out of 1 436 persons registered for the competition, 381 made it to the final stage and of 120 positions available, 118 judges were appointed to the Court. The competition was open also for practicing lawyers and scholars. The second competition to the Supreme Court envisages an additional selection of 80 judges by May 2019.

40. The selection process of judges to the new Supreme Court was a test of the new procedures, and it was significantly more transparent and competitive than previously. The new procedure has improved the process of appointment judges and may thus have a positive impact on the public trust in the courts.

41. The *Oleksandr Volkov v. Ukraine* case[9], which involved the dismissal of a judge of the Supreme Court, revealed structural defects in the Ukrainian system of judicial discipline. The European Court of Human Rights (ECtHR, Court) stated in the judgment that systems of judicial discipline should ensure sufficient separation of the judiciary from the other branches of state power and provide appropriate guarantees against abuse and misuse of disciplinary measures to the detriment of judicial independence (paragraph 199 of the judgment). Appropriate safeguards could

[7] See the status of execution of judgments of the European Court of Human Rights, the Salov group: http://hudoc.exec.coe.int/eng#{"EXECIdentifier":["004-31310"]}

[8] According to Article 17 of the *Law On the Judiciary and Status of Judges,* the court system is comprised of (1) local courts, (2) courts of appeal and (3) the Supreme Court. In addition there is a High Intellectual Property Court and the High Anti-corruption Court – both not established yet.

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

include the substantial participation of judges on the disciplinary body, the exclusion of the Prosecutor General from such a body, a limitation period for bringing disciplinary proceedings and an appropriate scale of sanctions applied in accordance with the principle of proportionality (paragraphs 109, 114, 139 and 182 of the judgment). Furthermore, it may not be compatible with the requirements of independence and impartiality of a tribunal and the principle of legal certainty under Article 6 of the European Convention on Human Rights (ECHR, Convention), for members of Parliament to adopt a binding decision on a judge's dismissal, especially where they are not required to have any legal or judicial experience and where they have abused the electronic voting system (paragraphs 122 and 145 of the judgment).

42. In the case of *Kulykov and Others*[10] the Court found violations of Article 6 § 1 and Article 8 of the Convention, similar to its findings in the case of *Oleksandr Volkov*. In particular, the Court found that the domestic bodies dealing with the applicants' cases lacked independence and impartiality, and that the subsequent judicial review had not remedied these shortcomings. Additionally, the Court found that the applicants' dismissal from their judicial posts was unlawful, being based on legal provisions that lacked the requisite "quality of law", i.e. legal certainty.

43. The cases of the *Salov group* concern violations of the applicants' right to a fair trial (Article 6 § 1), in particular due to the lack of impartiality and/or independence of the courts hearing their cases. In the *Salov* judgment, the Court pinned its relevant findings primarily on the excessively wide powers of the presidiums of the regional courts, referring in particular to the "lack of clear criteria and procedures in domestic law concerning the promotion, disciplinary liability, appraisal and career development of judges or limits to the discretionary powers vested in the presidents of the higher courts" (§ 83), as well as "the binding nature of the instructions given by the presidium of regional courts…" (§ 86).[11]

44. As already noticed, the Ukrainian authorities have undertaken substantial legislative and institutional reforms to respond to the violations found by the Court in the cases cited above, *inter alia* changes to the Constitution of Ukraine and the reform of the laws on the functioning of the judiciary. The previous statutory regulations regarding judicial discipline were vaguely or widely defined, and there was a need for more precise and narrow regulation regarding grounds for removal from office of a judge. In addition, the role of the Parliament in the dismissal process served to contribute to the politicisation of the procedure and aggravated the inconsistency of the procedure in terms of the separation of powers.[12]

[10] *Kulykov and Others v. Ukraine* no. 5114/09+, 19 January 2017.

[11] See Minister's deputies CM/Notes/1318/H46-28 1318th meeting, 5-7 June 2018 (DH) Human rights: H46-28 Salov group (Application No. 65518/01), Oleksandr Volkov group (Application No. 21722/11) v. Ukraine Supervision of the execution of the European Court's judgments.

[12] See *Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe: On the Law on the Judicial System and*

45. Section VI of the law "On the judiciary and the status of judges" sets out the provisions for the disciplinary liability of judges, and Section VII sets out provisions for the dismissal of a judge from office and the termination of the powers of a judge. The HCJ conducts all disciplinary proceedings against judges, including dismissal proceedings. Although the law "on the HCJ" limits the scope of review by the Supreme Court of the HCJ decisions to formal grounds, several cases of the Grand Chamber of the newly-composed Supreme Court indicate that it can also review issues of proportionality, with specific reference to the findings of the ECtHR in the case of *Oleksandr Volkov*.[13] An operational judicial review mechanism has been introduced for review of complaints against dismissal by the HCJ plenary and the newly composed Supreme Court, which complies with the criteria of "tribunal established by law".[14]

46. Another cause for concern has been the influence of prosecutors in the area of discipline and dismissal of judges. This influence is limited by legislation through the prohibition on being both a prosecutor and a member of the HCJ simultaneously.[15] Furthermore, the Prosecutor General is excluded from being an *ex officio* member of the HCJ. A majority of the HCJ is required to adopt a decision on the dismissal of a judge. It is now the exclusive right of the HCJ members to open disciplinary proceedings against a judge.

47. Furthermore, the principle of legal certainty has been better safeguarded by the introduction of a three-year limitation period for disciplinary sanctions, thus protecting potential defendants from out-dated claims, based on unreliable or incomplete evidence, due *inter alia* to the passage of time.

48. The last examination by the Committee of Ministers of the CoE of the execution of the aforementioned ECtHR cases took place at the 1318th meeting (5-7 June 2018). Concerning general measures regarding the *Volkov* case, the Committee noted with satisfaction the progress achieved on the issues concerning judicial discipline and careers previously identified by the Committee as outstanding. The Committee of Ministers further welcomed the fact that the HCJ and its Disciplinary Chambers, as well as the new composition of the Supreme Court, including its Grand Chamber, were now fully operational under the new regulations. According to the Committee of Ministers, these bodies had developed consistent practice on the application of

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*the Status of Judges, and Amendments to the Law on the High Council of Justice of Ukraine*, adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015, CDL-AD(2015)007, paragraph 52.

[13] See Minister's deputies CM/Notes/1318/H46-28 1318th meeting, 5-7 June 2018 (DH) Human rights: H46-28 Salov group (Application No. 65518/01), Oleksandr Volkov group (Application No. 21722/11) v. Ukraine Supervision of the execution of the European Court's judgments.

[14] Notes on the agenda for the CM meeting on 7 June 2018 for the Supervision of the execution of the European Court's judgments.

[15] See Chapter 2 on the composition of the HCJ in the Law On the High Council of Justice.

disciplinary sanctions to judges, based on respect for the fundamental principles identified in the Convention, the case-law of the ECtHR and CoE recommendations.

49. The *Salov group* is closed as regards its execution. The legislative, institutional and practical measures related to the reform of the system of judicial discipline and careers of judges are now examined within the *Oleksandr Volkov group*.

**Relevant CoE standards**

50. According to Article 6 § 1 of the ECHR, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In determining whether a tribunal can be considered to be independent for the purposes of Article 6 § 1 of the Convention, the ECtHR has had regard, *inter alia*, to the manner of appointment of its members and the duration of their term of office. However, neither the Convention itself nor the Court has defined a special procedure for the appointment of judges in national jurisdictions, but the CoE has during the past decades developed standards for judges' selection, appointment and career.

51. The CoE Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (hereafter CM/Rec(2010)12), is probably, apart from the ECHR, the most authoritative text at the European level on the independence of the judiciary. The recommendation states that decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity (paragraph 44).

52. The CCJE has taken a similar position and it recommends that the authorities responsible in member States for making and advising on appointments and promotions should introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection and career of judges are based on merit, having regard to qualifications, integrity, ability and efficiency.[16]

53. The selection procedure may be separate from the appointment procedure. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers (CM/Rec(2010)12, paragraph 46).

54. Appointment of judges by the executive or the legislature is permissible, provided that appointees are free from influence or pressure when carrying out their

[16] Opinion No 1 (2001) of the CCJE "On standards concerning the independence of the judiciary and the irremovability of judges", paragraph 25.

adjudicatory role.[17] However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power takes decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorized to make recommendations or express opinions which the relevant appointing authority follows in practice (CM/Rec(2010)12, paragraph 47).

55. Security of tenure and irremovability are key elements of the independence of judges. Irremovability of judges from office by the executive during their term of office must in general be considered as a corollary of their independence, and thus included in the guarantees of judicial independence.[18] Accordingly, judges should be guaranteed tenure until a mandatory retirement age where that exists. The terms of office of judges should be established by law. A permanent appointment should only be terminated in case of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions criteria (CM/Rec(2010)12, paragraphs 49 and 50). Similar recommendations on judges' tenure and dismissal are made by the CCJE in its Opinion No. 1 "On standards concerning the independence of the judiciary and the irremovability of judges" and in its Magna Carta of Judges, adopted in 2010.

56. With regard to disciplinary sanctions and dismissal, principles of foreseeability, fair procedure and proportionality prevail.[19] The failings that may give rise to disciplinary sanctions as well as the procedures to be followed should be defined, as far as possible in specific terms, in the statute or fundamental charter applicable to judges.[20] The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to disciplinary liability, except in cases of malice and gross negligence. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner (CM/Rec(2010)12, paragraphs 68 and 69).

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[17] *Maktouf and Damjanović v. Bosnia and Herzegovina* (Nos. 2312/08 and 34179/08, European Court of Human Rights, judgment of 18 July 2013, paragraph 49).

[18] *See Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, 30 November 2010, §§ 51 53. A court composed of assessors was not independent because assessors could have been removed by the Minister of Justice at any time during their term of office and there were no adequate guarantees protecting them against the arbitrary exercise of that power by the minister.

[19] These standards are widely recognized. In the preliminary observations of 25 April 2013 on the official visit to the Russian Federation, the UN Special Rapporteur on the independence of judges and lawyers stated: "Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair and transparent procedures ensuring objectivity and impartiality set out in the constitution or the law. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. Judges have the right to a fair hearing and due process and shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. Decisions in disciplinary proceedings should be subject to an independent review."

[20] See Magna Carta of Judges (fundamental principles) adopted by the CCJE in 2010, paragraph 19, and the CCJE Opinion No 3, paragraph. 77.

57. In his report of February 2012, the Commissioner for Human Rights of the CoE pointed out that it is essential to institute adequate safeguards to ensure fairness and eliminate the risk of politicization in disciplinary procedures against judges. The Commissioner recalled that judges should not have reasons to fear dismissal or disciplinary proceedings against them because of the decisions they take.[21] Hence, disciplinary proceedings initiated against judges should be determined by an independent tribunal, with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction (CM/Rec(2010)12, paragraph 69).

58. If the disciplinary tribunal is not itself a court, then its members should be appointed by an independent body with a substantial representation of judges chosen democratically by other judges.[22] In its judgment in the case *Volkov v. Ukraine*, the ECtHR held it appropriate to note that with respect to disciplinary proceedings against judges, the need for substantial representation of judges on the relevant disciplinary body had been recognized in the European Charter on the statute for judges.[23] The arrangements regarding disciplinary proceedings should be such as to allow an appeal from the initial disciplinary body to a court. Judges should not be personally accountable where their decision is overruled or modified on appeal.[24]

59. The ECHR, Article 6 § 1, requires not only a fair hearing, but also a public hearing. The principle of transparency applies also for disciplinary proceedings against judges. In his report of 30 June 2011 following his visit to Georgia from 18 to 20 April 2011, the Commissioner for Human Rights of the CoE expressed concern with regard to transparency, as disciplinary proceedings against judges and their outcome were confidential.

60. Disciplinary sanctions should be proportionate. The sanctions available in case of a proven misconduct should be defined as far as possible in specific terms, by the statute or fundamental charter of judges, and should be applied in a proportionate manner.[25]

**Assessment of the reform with regard to the appointment, career and dismissal of judges**

61. The overall assessment is that the formal procedures for the selection and appointment of judges, as well as decisions on their career, are in general in line with

[21] Report by Thomas Hammarberg, Commissioner for Human Rights of the CoE, following his visit to Ukraine (19-26 November 2011), CommDH(2012)10, 23 February 2012.
[22] See the CCJE Opinion No 3, paragraph. 77.
[23] See *Volkov v. Ukraine*, ECtHR judgment of 9 January 2013 (Application no. 21722/11), paragraph 109.
[24] As to the fair procedure, see CM/Rec(2010)12 on judges; independence, efficiency and responsibilities, paragraph 69, and the CCJE Opinion No 3, paragraph 77.
[25] The Council of Europe Recommendation (2010) 12 on judges; independence, efficiency and responsibilities, paragraph 69, and CCJE Opinion No 3, paragraph. 77.

CoE standards. The abolishment of the previous arrangement of a five year probationary period for judges, and of the role of Parliament in appointing judges, is much welcomed. Furthermore, judges are guaranteed irremovability until they reach the age of 65, and they may not be transferred to another court without their consent. This again is important.

62. The new procedures significantly improved the process of appointment of judges. The selection and appointment procedure is based on competition, merits and objective criteria, having regard to qualifications, professional skills and integrity. The selected criteria are generally in line with CoE standards. The procedure allows for a transparent and fair process, although the process is quite complex and involves a number of bodies.

63. Both the composition of and selection of members to the HCJ and the HQCJU meet the CoE standards. The HCJ complies – in legislation – with the CoE standards as regards its composition, and the number of judges exceeds half of the members of the HCJ. Furthermore, the judicial members are elected by their peers, and their four-year term of office is secured by law, which also provides grounds for termination of their term. The more precise description of the role of the HCJ in the selection process must also be welcomed.

64. The process of appointment of judges has been criticised for lack of transparency with regard to the candidates' score and the evaluation criteria. Criticism has also been raised regarding other parts of the process, notably lack of transparency in terms of grading the results, that the selection methodology is unclear and that the reliability of the results were not verified by experts. The psychological testing has been criticized as it allegedly favours candidates loyal to the system and thus places at a disadvantage candidates oriented towards independence and change of the system. The HCJ and the HQCJU have been criticized for not acting as independent bodies and for ignoring important facts that testified against some candidates.[26] The criticism is understood to be of a more general nature, also to be applied to the qualifications assessment in general and not limited to the process of selecting judges to the new Supreme Court.

65. The appointment process is quite complex, involving a number of bodies. In the future, the process should be streamlined and the number of bodies involved should be reduced. In a longer term, it should be considered to merge the competences of the various bodies involved in one single and independent judicial governance authority.

[26] See for example *Establishment of the New Supreme Court: Key lessons*. Analytical review / R. Kuibida, B. Malyshev, R. Marusenko, T. Shepel, January 2018, printed by the DEJURE Foundation.

66. Following the principles outlined by the Committee of Ministers of the CoE in its CM/Rec(2010)12, the President of Ukraine may appoint judges, and when doing so he or she should in practice follow the recommendation from the HCJ. The Constitution of Ukraine does not explicitly oblige the President to do so. It could be considered to clarify in the Constitution that the President of Ukraine is obliged to follow the recommendation of the HCJ.[27]

67. The provisions regarding dismissal of judges are now, essentially, in line with the CoE standards. Decisions of a disciplinary chamber of the HCJ relating to the imposition of dismissal of a judge may also be appealed, first to the HCJ and then to the Grand Chamber of the Supreme Court.

68. When dealing with a case that may involve the dismissal of a judge, all Disciplinary Chambers of the HCHJ should be composed of a majority of judges. This should be introduced as a statutory obligation for the HCJ, either by law or by its internal Rules of Procedure.

69. According to the law "on the judiciary and the status of judges", Article 107, abuse of the right to complaint, i.e. not having sufficient grounds for the complaint or by using the right as a means of pressure on a judge related to the judge's administration of justice, is not allowed. There is further regulation on the repeated filing of obviously unjustified disciplinary complaints. However, the experts noted from meetings with stakeholders in Kyiv, that numerous disciplinary complaints were related to the judges' decisions and judgments, which must be challenged through the appeals system, not by the disciplinary system. It may be considered to provide the HCJ, by law, with some more effective means in order to filter manifestly ill-founded disciplinary complaints.

## III. SELF-GOVERNANCE OF THE JUDICIARY

### Major changes introduced to the system of self-governance of the judiciary in Ukraine

70. As there is no clear-cut definition of the term "judicial self-governing bodies", for the purpose of this report and based on the CoE standards, judicial self-governing bodies will refer to bodies composed fully or partially of judges, independent of the government and the legislature, established by law or under the Constitution and endowed with powers for the governance of certain aspects of the judicial branch.

71. According to Article 130 of the Constitution of Ukraine, judicial self-governance functions pursuant to the law and is tasked with the protection of the professional interests of judges, and with deciding on the internal activities of courts. The

[27] A reference is made to the situation in Poland when the President of the Republic of Poland on 22 June 2016 refused to appoint as judges ten candidates presented by the National Council of the Judiciary, see Comments of the CCJE Bureau of 26 October 2016 following the request of the Polish Judges' Association IUSTITIA.

constitutional reform of the HCJ entailed reduced influence on the HCJ by political bodies, notably through the election of its members from among judges by the Congress of Judges of Ukraine; cf. Article 131 of the Constitution.

72. Section VIII of the law "On the judiciary and the status of judges" deals with judicial self-governance, seen as one of the guarantees of ensuring the independence of judges and of the judiciary. According to the law, judicial self-governing bodies are meetings of judges of a respective court (Article 28), the Congress of Judges of Ukraine (Article 129) and the Council of Judges of Ukraine (Article 133). The HCJ and the HQCJU are not defined as self-governing bodies in Ukrainian law

73. There is a variety of mechanisms within the member states of the CoE with respect to the protection of judicial independence. The CCJE recommended in its Magna Carta of Judges that each state should, in order to ensure the independence of judges, create a Council for the Judiciary or another specific body endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions.[28] The said body must itself be independent from legislative and executive powers. The CCJE has, in its Opinion No. 10 "On council for the judiciary in the service of society", listed a number of tasks that should fall within the competences of a council for the Judiciary, such as selection and appointment of judges, decisions on their career and training, management of courts and protection of the image of judges.

74. The principles applied by the ECtHR for assessing whether a tribunal in the sense of Article 6 § 1 is independent or not, could also serve as indicators for whether such a judicial self-governing body can be considered an independent body. These indicators are the manner of appointment of the members of the body, their term of office, the existence of guarantees against outside pressures, and the question whether the body presents an appearance of independence.

75. Such self-governing bodies should be established by law or under the constitution. Not less than half of the members should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism within the judiciary. The body should exercise transparency, operate under pre-established procedures and deliver reasoned decisions (CM/Rec(2010)12, paragraphs 26-29).

76. Several bodies are recognized as bodies of judicial self-governance in Ukraine. Section VIII of the law "On the judiciary and the status of judges" deals with judicial self-governance, seen as one of the guarantees of ensuring the independence of judges. According to Article 126 of the law, the activity of these bodies are intended to promote the establishment of proper organizational and other conditions for the adequate functioning of courts, maintain the independence of the judiciary, protect

[28] Magna Carta of Judges (fundamental principles) adopted by the CCJE in 2010, paragraph 13.

judges from interference in their activity and raise the level of work with personnel within the court system.

77. The Congress of Judges of Ukraine is the highest body of self-governance. The procedures for convening and conducting the Congress are stipulated by Article 130-132 in the law "On the judiciary and the status of judges". The procedures for the election of candidates to the congress were changed by the judicial reform. Previously candidates from general, commercial and administrative courts were elected by open voting, with regard being paid to regional criteria. Now the meeting of judges of every court shall by secret ballot elect to the Congress one candidate from twenty judges employed in each court.[29] If the court has less than twenty judges, the court shall elect one delegate.

78. As a new provision following the judiciary reform, the Congress of Judges of Ukraine elects the members of the HCJ from among judges and decides on their dismissal. The procedure for electing the HCJ members is envisaged in Article 10 of the law "On the HCJ". The members of the HCJ are elected by a secret ballot by a majority of the votes among candidates who applied for a membership in the HCJ or who are nominated directly at the Congress by at least twenty per cent of the delegates.

79. The Congress of Judges of Ukraine also elects the judge members of the HQCJU. The Congress hears reports of the Council of Judges of Ukraine and of the HQCJU on their activities. Furthermore, the Congress appoints judges of the Constitutional Court of Ukraine in accordance with the Constitution and laws.

80. According to Article 133 of the law "On the judiciary and the status of judges", the Council of Judges of Ukraine is the supreme body of judicial self-governance in between the Congresses of Judges of Ukraine. The 32 members of the Council of Judges of Ukraine are elected by the Congress of Judges of Ukraine. The Council of Judges shall ensure the implementation of decisions of the Congress of Judges of Ukraine. Additional tasks related to the independence and functioning of courts are listed in Article 133 of the law.

81. The meeting of judges of local courts shall be held at least once every three months to discuss issues concerning the internal operations of the court.

**Assessment of the reform with regard to judicial self-governing bodies**

82. The legal and formal framework for judicial self-governance is now well in line with CoE standards. 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. Ten of the 21 HCJ members and eight of the 16 HQCJU members are judges

[29] See Communication from Ukraine concerning cases of Oleksandr Volkov and Salov v. Ukraine, Annex to the letter of the Agent of Ukraine before the European Court of Human Rights of 28 February 2018.

appointed by the Congress of Judges of Ukraine, compared to three and six members, respectively, pursuant to previous laws. The current legal framework promotes the independence of the self-governing bodies with regard to the manner of the appointment of their members, the members' term of office and the existence of guarantees against outside pressures. The legal framework opens participation for representatives of all levels of the judiciary and with respect for pluralism within the judiciary.

83. The independence and the impartiality of the HCJ have been strengthened by the judicial reform. The influence by political bodies on the Council is reduced as the judicial members are elected by the Congress of Judges of Ukraine, cf. Article 131 of the Constitution. A HCJ member shall be a legal professional, meet the requirement of political neutrality.

84. The reform also provided for regulation of incompatibility of the members of the HCJ and the HQCJU. Now they exercise their authority on a permanent basis. They cannot concurrently hold any positions in the government and in bodies defined by the law as judicial self-governing bodies. Furthermore, they cannot concurrently have the status of people's deputy, they cannot engage in entrepreneurial activity, any other paid work and they cannot be a member of the governing body or supervisory board of a legal for-profit entity.

85. The current legal framework clearly fosters the appearance of the independence of the judicial self-governing bodies. The actual appearance of independence is determined by other circumstances as well, such as the legal culture and whether the executive and lawmakers refrain from undue criticism of theses bodies and the judiciary. The consultants noted from meetings with stakeholders in Kyiv that undue pressure on judges and interference in their activities were not uncommon. Such pressure comprise undue actions from individuals and others to bring judges to criminal liability for their judgments, protests held near the courthouse or in the courtrooms demanding a certain outcome of cases, and even threats made against judges.

86. That being said, as already noted, the independence and the impartiality of the HCJ and the HQCJU have been strengthened by the judicial reform. The influence by political bodies on the HCJ is reduced as the judicial members are elected by the Congress of Judges of Ukraine. The provisions for election of delegates to the Congress of Judges of Ukraine, as well as the election of members to the Council of Judges of Ukraine and to the HCJ seem to foster free and fair elections. As a consequence of the judicial reform, both these bodies seem to be better prepared and equipped for their defence of judicial independence.

87. It should be noted that the election of judicial representatives to these bodies is quite cumbersome, and simplifications to the procedures should be considered. The

Congress of Judges of Ukraine elects judges within the quota of the judiciary to the Constitutional Court of Ukraine, to the HCJ and to the HQCJU. The organisation of these elections is very time-consuming. It may result in an under-representation of judges in the mentioned bodies simply for the reason that the Congress of Judges of Ukraine does not elect the members required. There is a risk that such a system may block the functioning of these judicial self-governing bodies when no representatives are elected or when elections take a lot of time.

88. The judicial self-government system should also be streamlined and the number of bodies reduced. In a longer term, it should be considered to merge the competences of the various bodies in one single and independent judicial governance authority.

## IV. PROCEDURAL LINKS BETWEEN THE JUDICIARY AND THE BAR

89. Judges and lawyers have different roles to play in the legal process. The contribution of both professions is necessary in order to arrive at a fair and efficient solution to all legal processes according to law. The provision of legal assistance to the parties is an important component of access to justice for litigants. In some CoE member states, lawyers enjoy a monopoly of representation before the courts. In other member states, the intervention of a lawyer during the proceedings is not necessary, while some states draw distinctions according to the level of financial interest and the type of dispute or proceedings.[30]

90. The right of effective access to court may entail legal aid and legal assistance. Article 6 § 1 of the ECHR may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court. This will be the case where legal representation is required by national law.[31]

91. Similarly to the judiciary, the independence of the bar is guaranteed by the Constitution. According to Article 131 of the Constitution, the fundamentals of the organisation and functioning of the bar and advocates' activity shall be defined by law. The amendments to the law on the bar are still pending before Parliament at the time of writing, and therefore this assessment will be limited to an evaluation of the introduction of a lawyer's monopoly.

92. The Constitution now determines that only an advocate can represent another person before a court and defend a person against prosecution. Exceptions can be determined by law in labour disputes, social rights protection disputes, disputes related to elections and referendums or in disputes of minor importance, and for representation before the court of minors or adolescents.

93. As already mentioned, in some CoE member states, lawyers enjoy a monopoly of representation before the courts. The requirement of the intervention of a lawyer during the proceedings does not run contrary to CoE standards. However, where such a system exists, the right of effective access to court may entail the provision of

[30] See the CEPEJ report on access to justice in Europe, prepared by the Research Team on enforcement of court decisions (University Nancy (France) / Swiss Institute of comparative law), discussed by the CEPEJ-GT-EVAL at their 8th meeting). See also Opinion No. 6 (2004) of the Consultative Council of European Judges (CCJE) "On fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlements", paragraph 25.

[31] *Airey v. Ireland*, ECtHR judgment 9 October 1979 (Application no. 6289/73), paragraph 26.

effective legal aid and legal assistance when such assistance proves indispensable for an effective access to court.[32]

94. In the majority of CoE member states, legal aid is provided for legal representation, legal advice or other forms of legal assistance. The scope of legal aid in Ukraine comprises representation in court for both criminal and other cases. Legal aid can also be granted for pre-trial investigation. In criminal cases, there is a possibility for the defendant to be assisted by a lawyer free of charge, but not for the victim. Courts grant or refuse legal aid. There is also a private system of legal expense insurance. In Ukraine, it is not possible to refuse legal aid on the basis of the merit of the case.[33]

95. The free secondary legal aid system in Ukraine has previously been assessed within the framework of the CoE project "Continued Support to the Criminal Justice Reform in Ukraine". [34] According to this report, the Ukrainian legal aid system envisages a wide range of beneficiaries of free secondary legal aid in criminal proceedings as well as administrative detention and arrest cases, thus ensuring a large-scale access to justice and stronger protection of human rights. However, the report also envisages areas for improvement, and the Ukrainian authorities should be encouraged to follow up on the JRC's Justice Reform Strategy 2015-2020 which noted that access to justice currently is insufficient owing *inter alia* to insufficient funding and support for the legal aid system. Access to legal aid should be facilitated through the improvement of, and respect for, quality and delivery standards, by extension of legal aid to areas of representation beyond criminal cases, improving coverage in the regions, enhancing the quality of legal aid services and ensuring proper financing of the legal aid system from both State and private funding.[35]

[32] *Airey v. Ireland*, ECtHR judgment 9 October 1979 (Application no. 6289/73), paragraph 26.

[33] Source of information: *European judicial systems. Efficiency and quality of justice.* CEPEJ Studies No 20 Edition 2014 (2012 data), pp. 69-89.

[34] Report: *Assessment of the free secondary legal aid system in Ukraine in the light of Council of Europe standards and best practices*, 2016.

[35] The Justice Sector Reform Strategy 2015-2020, chapter 5.6., prepared by the JRC.