HUMAN RIGHTS COMPLIANT CRIMINAL JUSTICE SYSTEM IN UKRAINE

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# Expert assessment of the Draft Law "On amending certain laws of Ukraine on improving the selection and training of prosecutors" #5158 and the Draft Law "On amendments to section II Final and transitional provisions of the Law of Ukraine "On amendments to certain legislative acts of Ukraine concerning priority measures to reform the bodies of the Prosecutor's Office" with regard to certain aspects of the transitional provisions" # 5157

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*"Human rights compliant criminal justice system in Ukraine"*

*on the basis of expertise by Prof. Dr. Lorena Bachmaier and Mr. James Hamilton*

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## I. INTRODUCTION

1. With the adoption of Law on the Public Prosecution Service (hereinafter – Law on PPS or PPL) in October 2014, the required reform of the public prosecution service (hereinafter - PPS) was finally launched, seeking to align the PPS with European standards, and limiting its functions to the criminal justice system, leaving thus the existing functions of general oversight of the former PPS aside. The new Law on PPS provided for a new model based on the autonomy and professionalism of the PPS. In 2017 the All Ukrainian Conference of Prosecutors established the Council of Prosecutors and the Qualification and Disciplinary Commission of Prosecutors (QDCP) to implement the new model of PPS envisaged in the Law on PPS.

2. Further, by Law of 19 September 2019 (Law No. 113-IX) the system for selecting Public Prosecutors (PPs) was restructured to undertake a complete vetting and cleansing procedure, with the dismissal of all PPs and a attestation and re-accreditation process for all serving PPs. The powers of the QDCP were suspended, transferring its powers to a newly established body – Commission (Personnel Commission and Human Resources Commission). This was justified on the basis of its "unsatisfactory practice" and lack of safeguards as to its ability to act independently.

3. In sum, the Law of 19 September 2019 dismantled the existing system for selection of PPs and provided for the suspension of the QDCP and the Council of Prosecutors. Such reform was pursued with the absence of public discussion, lack of clear explanation of its need and aims, lack of legal certainty and also by creating a personnel Commission, whose composition and working procedure were not clearly defined and appeared to yield broad discretionary powers to the General Public Prosecutor (GPP). In fact, the overall frame of the functioning of the personnel commissions was introduced in the final provisions of the Law of 19.9.2019.

4. The vetting (attestation) and re-appointment procedure introduced by the amendments in 2019, was conceived as a temporary system, which should be in place only until September 2021. The law however did not determine what would be the rules to apply and which would be the system that would run from September 2021 onwards. The current draft laws ref. no. 5157 and 5158 are aimed at providing for such rules, once this "temporary phase" introduced by Law 19 September 2021 has come to an end.

5. The aim of the current assessment is to support the process of the drafting of the amendments to the PPL with a view to ensuring that the proposed amendments are in line with Council of Europe standards. This assessment will analyse two draft laws: the "Draft Law On amending certain laws of Ukraine on improving the selection and training of prosecutors" ref no 5158 (hereinafter Draft Law on Selection or DL on ST) and the "Draft Law On amendments to section II Final and transitional provisions, of the Law of Ukraine On amendments to certain legislative acts of Ukraine concerning

priority measures to reform the bodies of the Prosecutor's Office" with regard to certain aspects of the transitional provisions" ref. no. 5157 (hereinafter Draft Law on Final provisions or DL on FTP).

6. To that end the international standards on the role and functions of the PPS will be taken into account and the draft law will be assessed vis à vis those standards, in particular the CoE standards. As is known, these standards are to be found mainly in: the European Convention on Human Rights ('the European Convention') and the related case law of the European Court of Human Rights ('the European Court');[1] the United Nations Guidelines on the Role of Prosecutors;[2] Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system;[3] Recommendation 1604 (2003) on the Role of the Public Prosecutor's Office in a Democratic Society Governed by the Rule of Law of the Parliamentary Assembly of the Council of Europe;[4] the Report on European Standards as regards the Independence of the Judicial System: Part II The Prosecution Service by the European Commission for Democracy through Law ('the Venice Commission');[5] "Judges and prosecutors in a democratic society" ('the Bordeaux Declaration');[6] the International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors;[7] and the Opinions of the Consultative Council of European Prosecutors (CCPE)[8].

7. Best practices on the safeguards of the criminal procedure as identified in national systems shall also be taken into account to the extent that they could be applicable to the Ukrainian context and the proposed legislative amendments.

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[1] In the Ukrainian context the judgments of the European Court of Human Rights in the cases *Tymoshenko v. Ukraine,* Appl. No. 49872/11, of 30 April 2013 and *Lutsenko v. Ukraine* (2), Appl. No. 29334/11, of 11 June 2015 are of particular interest because, even if they deal with violations of Articles 3 and 5 ECHR, they both highlight problems related to the position of the Ukrainian Public Prosecution.

[2] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

[3] Adopted on 6 October 2000.

[4] Adopted on 27 May 2003.

[5] CDL-AD(2010)040, 3 January 2011.

[6] Opinion No.12 of the Consultative Council of European Judges ('CCJE') and Opinion No.4 (2009) of the Consultative Council of European Prosecutors ('CCPE').

[7] Adopted on 23 April 1999 and subsequently endorsed by the United Nations Commission on Crime Prevention and Criminal Justice (Resolution 17/2, 14-18 April 2008. Also of relevance by analogy are certain standards specifically concerned with judges, namely, the Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) and OSCE 2010 Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (adopted by the OSCE Office for Democratic Institutions and Human Rights and the Max Planck Minerva Research Group on Judicial Independence, 23-25 June 2010).

[8] All the CCPE Opinions are accessible at https://www.coe.int/en/web/ccpe/opinions/adopted-opinions.

8. These comments are focused on the amendments these draft laws introduce to the current text of the PPL, as was reformed by Law 113-IX in September 2019. When assessing the novelties introduced, it will not be discussed again whether the system introduced in 2019 was adequate or could be improved. Such assessment is not requested at this stage, but considering some amendments proposed now as correct or positive, should not be interpreted as approving all the changes that were introduced to the selection procedure back in 2019.

9. Following the preliminary assessment, the draft expert comments were discussed with the Ukrainian authorities on 11 May 2021. These consultants have carried out the necessary desk research and have taken into consideration the additional information and clarifications provided by the Ukrainian stakeholders, namely, the Parliamentary Law-Enforcement Committee, the Office of the Prosecutor General and the Prosecutors Training Centre. As to the scope of the analysis carried out by the consultants, it is focused exclusively on the provisions to be amended by the two Draft Laws, but as far as possible, this analysis will take into account the broader context of the PPL.

10. The present expert comments have been written by Prof. Dr. Lorena Bachmaier[9] with further comments of Mr. James Hamilton[10] within the framework of the Council of Europe project "Human rights compliant criminal justice system in Ukraine – Phase II" (the CoE Project), following the request of the Parliamentary committee of the Verkhovna Rada of Ukraine. The experts were provided with an English translation of the two draft laws, delivered under the CoE Project and presented in a comparative table, showing the present text and the provisions which are affected by the proposed amendments as well as explanatory notes to the draft laws.

## II. GENERAL STANDARDS ON SELECTION, TRAINING AND DISCIPLINARY LIABILITY OF PUBLIC PROSECUTORS

11. Council of Europe standards provide for extensive soft law on the public prosecution fostering the autonomy and independence of the prosecution service. The CCPE Opinion No. 13(2018) on the status of independence of the prosecutors[11] is crucial for ensuring the proper functioning of the justice system and ensuring the rule of law. It is also recognised that there is "a widespread tendency to allow for a more independent prosecutor's office, rather than one subordinated or linked to the executive".[12]

[9] Full Professor of Law, Complutense University of Madrid (Spain).

[10] Former Director of Public Prosecutions of Ireland, Former President of the International Association of Prosecutors and ex-member of the Venice Commission on behalf of Ireland.

[11] Opinion No. 13(2018) of the Consultative Council of European Prosecutors, accessible at: https://rm.coe.int/opinion-13-ccpe-2018-2e-independence-accountability-and-ethics-of-pros/1680907e9d

[12] See Report on the European Standards as regards the Independence of the Judicial System: Part II: Prosecution Service, CDL-AD(2010)040, para. 26.

12. Moreover, the CCPE Opinion No. 13(2018) states that the mission of a PP requires "professionalism, character, courage, balance and determination" (para. 23). The possession of these qualities must be a determining criterion in the recruitment of prosecutors and throughout their career. The process of legal education, selecting candidates and in-training should seek to ensure respect for such criteria (para.23), and "it is particularly desirable that, while ensuring respect for gender balance, the process of appointment, transfer, promotion and discipline of prosecutors be clearly set out in written form and be as close as possible to that of judges" (para. 24).[13]

13. In a similar way, Opinion 9(2014) CCPE of 17 December 2014 (the Rome Charter) sets out following principles: "XII. The **recruitment** and career of prosecutors, including promotion, mobility, disciplinary action and dismissal, should be regulated by law and governed by **transparent and objective criteria**, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial review."[14] The appointment of public prosecutors should be carried out by a body made of experts and not merely elected members,[15] as it "is questionable whether the use of elected representatives is appropriate for such a task."[16] The Venice Commission has also assessed a mixed composition of the selection and appointment body as being positive.[17]

[13] In similar terms, para. 37 of the CCPE Opinion No. 4(2009), Explanatory Note to the Bordeaux declaration: "Respect for the above principles implies that the status of prosecutors be guaranteed by law at the highest possible level in a manner analogous to that of judges. The proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, discipline, transfer (which shall be effected only according to the law or by their consent), remuneration, termination of functions and freedom to create professional associations (Declaration, paragraph 8)."

[14] Accessible at: https://rm.coe.int/168074738b. See also CDL-AD(2013)006, Opinion on the Draft amendments to the Law on the Public Prosecution of Serbia, para. 34: "[...] [I]t is mandatory to ensure that appointments of prosecutors and deputy prosecutors are made on the basis of objective criteria. These criteria in turn must be established in advance by law or in conformity with the procedure provided by law, on the basis of a transparent procedure and that decisions must be reasoned."

[15] CDL-AD(2007)011, Opinion on the Draft Law on the Public Prosecutors Office and the Draft Law on the Council of Public Prosecutors of "the former Yugoslav Republic of Macedonia", para. 47: "in relation to appointments an expert body, not an elected body, which would assess candidates' performance at examinations and interviews is a necessary part of any system in which appointments based on merit are made. [...]."

[16] CDL-AD(2014)042, Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, para. 78

[17] CDL-AD(2012)008, Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, para. 48: "The advantage of establishing a body with a mixed composition would be that it allows prosecutors to receive regular feedback from society about their work."

14. As to the requirements for being appointed as public prosecutor "the profession of prosecutor should be open to all those who have followed law studies satisfactorily, have passed the necessary prosecutor examinations and had the necessary training."[18]

15. No specific requirement as to traineeships before holding office are to be found in the international standards of the CoE. Regarding requirements to become a public prosecutor upon a competitive and objective examination, usually previous experience as prosecutors or in the legal field is not required. There are systems of side-entry to the prosecution service, similar to the judiciary, where accredited experience in the legal profession is usually foreseen as a qualification requirement. However, for the regular entry examination, the practice in most countries does not require having previous experience. Such a requirement might have been taken over from the German system, where to enter into any of the legal professions, a two-year traineeship, plus passing two exams (*erstes und zweites Staatsexam*) is the rule. Such system to entry into the judiciary, prosecution or advocacy is not the usual one in most European countries, and it is even questioned now within the European Union, for it does not ensure the full appearance of independence that requires a "judicial authority", as the appointments are done by the Ministry of Justice.

16. Other European countries, including France, Italy or Spain, follow a recruitment system where the candidates, only after having passed the exam to become a public prosecutor, enter into the Prosecutor's Academy to undergo specific training, which is completed with traineeship working in courts and public prosecutor's offices. During such period of traineeship, they are not on probation, as they already enjoy guarantees against dismissal, despite being trained in practical issues.

17. As to other requirements, CCPE Opinion No. 13(2018) continues by stating that "the respect for the rule of law requires the highest ethical and professional standards in behaviour of prosecutors, as for judges, both on duty and off, which allows confidence in justice by society (para. 51), and they must demonstrate "absolute integrity" (para. 55).

18. As to the training, para. 10 of the Bordeaux Declaration[19] specifically states that "Training, including management training, is a right as well as a duty for judges and public prosecutors. Such training should be organized on an impartial basis and regularly and objectively evaluated for its effectiveness. Where appropriate, joint training for judges, public prosecutors and lawyers on themes of common interest can

[18] CDL-AD(2011)007, Opinion on the Draft Organic Law of the Public Prosecutor's Office of Bolivia, para. 26.

[19] Bordeaux Declaration "Judges and Prosecutors in a democratic Society", jointly drafted by the Working Groups of the CCJE and the CCPE in Bordeaux (France) and was officially adopted by the CCJE and the CCPE in Brdo (Slovenia) on 18 November 2009, as Opinion No.4 (2009) of the Consultative Council of European Prosecutors (CCPE) and Opinion No. 12(2009) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe "On the Relations between Judges and Prosecutors in a Democratic Society", published Strasbourg 8 December 2009.

contribute to the achievement of a justice of the highest quality." And in its Explanatory Note, para. 44 can be read: "Training for judges and prosecutors involves not only the acquisition of the professional capabilities necessary for access to the profession but equally permanent training throughout their career. It addresses the most diverse aspects of their professional life, including the administrative management of courts and prosecution departments, and must also respond to the necessities of specialisation. In the interests of the proper administration of justice, the permanent training required to maintain a high level of professional qualification and to make it more complete is not only a right but also a duty for judges and public prosecutors (Declaration, paragraph 10).

19. General principles on disciplinary liability and proceedings of PPs, are set out in the Rome Charter: Para. "85. Standards and principles of human rights establish that prosecutors are responsible in the performance of their duties and may be subject to disciplinary procedures;" Para. "86. In a democratic system under the rule of law, an acquittal of an individual should not result in disciplinary proceedings against the prosecutor responsible for the case."; Para. "87. States should take measures to ensure that disciplinary proceedings against prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review.

## III. COMMENTS ON DL ON SELECTION AND TRAINING OF PROSECUTORS (DL NO. 5158)

20. It is to be welcomed that there is a legislative initiative to overcome the provisional situation which is to be ended by 1 September 2021 and also to correct shortcomings detected during the last years of application of the respective rules on the public prosecution service. From a formal point of view, it is also positive that these two Draft Laws include an Explanatory Note: as any legislative reform has to explain the reasons that justify undertaking legal reforms, and also explain the scope and aims, the inclusion of a well-structured Explanatory Note, is to be positively assessed. It not only contains a description of the actual situation –albeit very brief– that triggers the present reform, but also explains adequately in a summarised way the aim of the reform, the precise areas addressed, and the measures envisaged to overcome the current flaws. The Explanatory Note is well structured, in a brief but clear manner the Explanatory Note describes the aims, need and content of the proposed reforms.

21. Many of the amendments proposed in this DL (no. 5158) have only a terminological character, in the vast majority of cases adapting the text to the new position of a trainee PPs or introducing more precision in definitions or updating some references. As these formal or terminological amendments do not have an impact upon CoE standards, they will be addressed only in a brief way. However, as it is important for every piece of legislation to ensure also formal and stylistic correctness to facilitate its understanding, interpretation and application, such matters will be mentioned where necessary.

22. The consultants assume that the necessary open debate and discussions with the stakeholders have or are planned to be held in order to comply with the requirements of transparency and inclusiveness that every legislative process should adhere to in a democratic society.

23. Before assessing the particular provisions of this DL on ST, it is appropriate to describe its main features and aims. Three aspects are the main ones that are proposed to be amended:

> *– to eliminate the requirement of a two-year previous work to apply for the candidates to the selection procedure to become a public prosecutor and change it for an internship during which the junior prosecutor is a trainee.*
>
> *– to reduce the time and complexity of the selection and special training procedure: special training will be carried out while already occupying the position of a trainee prosecutor.*
>
> *– to determine the QDCP to be the body conducting disciplinary proceedings, as was envisaged in the PPL before the amendments introduced by Law 113-IX in September 2019.*

24. As described in the Explanatory Note, the DL on ST, seeks first to overcome the problems caused by requiring a previous two-year work experience. This requirement, as stated under para.1.1 of the Explanatory Note, restricts the opportunity for graduates who cannot comply this requirement to apply to become public prosecutors.

25. As the previous system of recruitment was eliminated in the PPL of 2015, in order to avoid a structure that fostered a hierarchical and subservient system, the requirement of two-years previous work to be able to take the exam for becoming PP, does not seem to be appropriate anymore.

26. In addition, as it is explained in the Explanatory Note, the lack of possibility to recruit in the PPS without a two-year work experience, is an obstacle for the recruitment of the best law graduates. All these reasons, as put in the Explanatory Note, seem to be justified in the Ukrainian context.

27. In addition, the DL on ST also seeks to reduce the period of one-year special training to a two-month training at the Prosecutor's Training Centre, plus an internship of six months. It also seeks to simplify the selection stages, so that the candidates can take office in a shorter time after they file their application to take part in the selection process (which the Explanatory Note states takes more than one year). So, instead of undertaking a period of special training at the Prosecutor's Training Centre of Ukraine, and only after its completion, apply for a vacancy as district prosecutors, the DL establishes, that the special training is to be done while already serving as trainees at a district PP office.

28. While this might be appropriate in the Ukrainian context to ensure a better status for the trainees (same status as PPs, and not only a scholarship amounting to 2/3 of the salary of a PP), and at the same time, allowing them already to gain practical experience while being trained, this proposal might, however, need further clarification, as the powers of a trainee lacking any previous experience and the already trained PP should not be exactly the same, and thus the rules on the status, as will be pointed out below, should take into account this different condition of a PP undergoing training.

29. As to the aim of shortening the whole selection and recruitment process, the reforms proposed will not necessarily end up by reducing the time that elapses from when the application to take part in the recruitment process is filed, until the selection process is completed, and the subsequent training carried out. In general, in other countries this procedure takes usually not less than one year, and often it is even longer. If it is to be shortened, reducing the training period is only one factor.

30. A legislative reform with the objective to speed up the process has advantages as well as disadvantages, which will require to be assessed in practice during its implementation. It should be evaluated whether shortening the theoretical special training and introducing the training during internship while serving as trainee district PPs, will result in a better preparation or not. While it is positive to combine theoretical and practical training for the newly appointed PPs, the resulting quality of work may suffer if the trainees are already dealing with cases without a proper initial training. It remains to be seen if despite limiting the time attending the Training Centre for the special training to two months, a high-quality level of education and performance can be achieved.

31. The third part of the reform, as mentioned earlier, is to establish the QDCP as the "body for conducting disciplinary proceedings", which is the body at the end deciding and carrying out also the whole selection procedure. The reasons for this amendment, apart from stating that the said commission already exists, that it has resources, staff and regulations for taking over these proceedings, is not explained in the Explanatory Note. The justification for undertaking such proceedings on the grounds that this body has "significant experience of operation and interaction with the bodies of the prosecutor's office and other government authorities", is reasonable.

32. However, it seems that the principal reason is to reinstate the powers initially accorded to the QDCP, after having dismissed all its members as of Final and Transitional Provisions of Law 113-IX of 19 September 2019. By doing so, the self-governing bodies of the public prosecution (All-Ukrainian Conference of PPs and the Council), who appoints the members of the Council as well as the members of the QDCP who are PPs, would exercise again its powers as provided in the PPL before September 2019. This would contribute to strengthening the independence of the PPS.

**Articles 11, 13, 14 and 15 (Powers, Headcount, Status)**

33. The amendments introduced in these Articles include reference to the "trainee prosecutors of the district prosecutor's office". These amendments are consequent adjustments to the amendments in the rules on requirements for being candidate to a PP position (Article 27 DL on ST) and the selection procedure providing for the position of the trainee prosecutor (Article 29 DL on ST).

34. Under Article 15.2 PPL a new paragraph has been added to clarify that trainee prosecutors will have the same status as PPs of district prosecutor's offices, including the same "rights, responsibilities and social security guarantees". The equalization of the trainees with the district prosecutors in order to give them full coverage as employee and social security benefits, seem to be appropriate, as this should allow them not only to make a proper living during the trainee period, and thus make more attractive the position of public prosecutor, but should also reinforce their own perception of full autonomy in their status.

35. However, the revised Article 15 DL on ST goes much further than merely to extend employee rights and social security benefits. The amendment to Article 15 1.19) DL on ST extends the definition of "prosecutor of district prosecutor's office" to include trainee prosecutors in this office. This in turn extends the definition of prosecutors in the PPL to include these trainee prosecutors. The draft law will amend Article 15 of the Law On the Public Prosecutor's Office (PPL), an Article entitled "The Status of Public Prosecutor", by adding to the definition of "public prosecutors" the "trainee prosecutors of the district prosecutor's office". This will have the effect that all of Section 3 of the PPL, also and somewhat confusingly entitled "The Status of Public Prosecutors", will apply to trainee prosecutors, as well as all other references to public prosecutors in the PPL unless the references are clearly inapplicable.

36. It may be wondered if this is really intended by the legislator. It is, of course, a perfectly legitimate drafting technique to extend the definition of "public prosecutor" to include trainee prosecutors if it was intended to confer all the powers, functions, rights and duties of public prosecutors on them. But it may well lead to some unintended consequences. A more limited option would be simply to deem them to be included in the class of public prosecutors for certain specified purposes.

37. It seems to us that there must be some distinctions between trainee prosecutors and trained prosecutors which the law needs to recognise and respect. The differences between trainee prosecutors and trained prosecutors do not appear to be established or explained anywhere in the draft legislation. Presumably it is intended that trainees will be subject to some form of supervision or control by the trainer, to be subject to certain instructions, and perhaps to a mentoring process; and also that they will not be expected to handle complex cases in court while on training. However, the provisions of Article 17 PPL on Subordination of Public Prosecutors and Execution of Orders and Instructions are very clear- at least on paper.

38. Public prosecutors are to be subordinated to their superiors only in respect to implementation of written administrative orders; under Article 17.3 PPL they are to be independent and to make decisions independently. It might be appropriate to insert a provision into Article 17 PPL clarifying the extent to which trainees may be bound by instructions and by whom and in what circumstances these may be given. It would seem normal that a trainee would have the powers to take decisions independently gradually extended in accordance with the trainee's capabilities and experience. However, it might be wise not to open up a means to mount unreasonable challenges to the exercise by trainees of prosecutorial powers. It might therefore be appropriate to state that the trainee had the full powers of a prosecutor in the absence of a lawful instruction to the contrary.

39. It is impossible in the short time available for the international consultants to check whether there are other provisions in the extensive legislation of Ukraine relating to prosecutors which might be affected by the extension of the definition of public prosecutors to include trainee prosecutors. If the Ukrainian legislator decides to stick with the current approach this will require to be checked very carefully.

**Article 27. Requirements for Candidates for the Position of a Prosecutor**

40. **Para. 1**: As explained in the Explanatory Note (para.1.1) "due to the lack of opportunity to obtain the required two years of experience in the field of law, graduates of higher institutions (…), chose to be employed in other areas". Eliminating the requirement of two-year previous experience should make the choosing of the public prosecution more open and give also better chances to enroll the best law graduates into this public service.

41. In order to make an accurate assessment of this amendment, these consultants should check the statistics and real numbers, as well as carry out interviews with candidates, to confirm if this is the case in reality, and to what extent does this requirement prevent good potential candidates to be recruited to the prosecutor's service. Albeit lacking such empirical data, in the light of the assessment of the main authorities and stakeholders interviewed (GPPO, PP Training Centre, and MPs of the Law Enforcement Committee) it can be assumed that the problem described in the Explanatory Note matches with the present circumstances in Ukraine, and that consequently the amendment merits a positive assessment. Seeking to fill in the currently existing vacancies in the PPS with young, motivated excellent law students, might be seen as adequate to move towards new practices by motivated candidates of the younger generations. Of course, this amendment alone might not be enough to make the service in the prosecution office attractive but can remove one obstacle that appears to affect negatively the decision to opt to run for the professional development in the PPS.

42. From the point of view of compliance with international standards, this reform does not pose any problems, because as has been mentioned earlier, European standards do not

impose nor even recommend prior legal experience as a requirement to become a public prosecutor.

43. **Para 1.1):** The amendment to this paragraph does not seem to pose any problematic issues. This paragraph defines what should be understood under the requirement of "higher legal education". The new text includes also in addition to the Masters' degree (it is assumed that it should be in Law), "or higher education according to the educational and qualification level of a specialist equated to it".

44. If this amendment only seeks to adjust to the different degrees in the educational laws, it does not seem to present any problems. It is unclear why in this paragraph, when mentioning the degree obtained abroad the new text has eliminated the reference to "degree in the field of law" and the English version uses now the expression "the respective degree", which is to be assumed is the degree in law.

45. **Para. 1.2):** As with the previous paragraph, this paragraph defines what shall be considered "work experience in the field of law". This amendment is the logical consequence of deleting the requirement of the two-year work experience in the legal field as a requirement to become candidate and seems to be correct. According to the new text the previous work experience should be considered any "professional activity" in the legal field, after graduating.

46. As to the amendment introduced to paragraph 7 of this Article, it seems it is only a change of number of the paragraph.

**Article 29. Selection Procedures for the Candidates and Their Appointment**

47. The amendments introduced to this Article respond to the objective that the special training is carried out, while the candidates are already serving at the district PP's office as trainees. While the current Article 27.8) PPL provides for a first stage at the Prosecutor's Training Centre, and only afterwards the filling of vacant positions as district prosecutors, the DL on ST changes the order: first the candidates will fill vacant positions as trainee district prosecutors, and once they take the oath as serving PPs (trainee PPs), they will undergo the special training at the Training Centre.

48. While the status of the trainee PP is improved by equalizing it to the status of a district PP –with the need to clarify the scope of powers and responsibilities, as mentioned earlier–, and the theoretical and practical training is carried out simultaneously, it does seem to be a positive amendment. There is a potential risk that reducing the overall training time might affect the quality or performance of the training period, although this should not necessarily be the case if the training programmes are well developed and the engagement of the candidates is active. This is an issue that will need to be checked during the implementation stage.

49. In any event, it is considered positive to introduce amendments like this in the design of the training period, because as it was pointed out in the past, the candidates were not sufficiently motivated during the training. This was reflected in the Assessment carried out on the Justice Sector Reform Strategy Implementation in 2019:[20]

> *"the appointment to the positions, in accordance with the Law on PPS is based on the ranking, taking into account only the results of the Qualification Exam. The results of the initial training has no impact on the candidate's place in the ranking. While the idea behind this scheme was to ensure that the QDC as an independent body has sole responsibility for the ranking, in practice it is widely reported to decrease the candidates' motivation to learn actively during the training."*

50. On the basis of these findings, it was recommended already to amend the selection scheme, albeit putting some "**weight in the ranking to the results of the final testing upon the initial training. There should be a possibility to appeal against the results."**[21] This was partly reformed by Law 113-IX, as the candidates that did not pass the test in the Training Centre would be excluded from the succession pool (Article 33 PPL), and the possibility to review such decision was also introduced.

51. The DL on ST does not take that path and explores other ways to improve the effectiveness of the special training. However, it is still unclear what is the impact the scores or performance during the two-month training period in the Prosecutor's Training Centre is going to have. It appears that the training curricula will focus on development of skills, and not on theoretical lecturing. This might explain why the draft law has chosen not to give any score to the performance of the trainees during their time at the Prosecution Training Centre. It seems, that only attendance shall be required and whatever the involvement of the trainees, this will not affect their positions or ranking in their career. In order to be able to make a proper assessment of the new recruitment-training entry system envisaged in the draft law on ST, the curricula and training methods should be assessed. Nevertheless, while there might be justified reasons for not evaluating or examining the performance of the trainees during the two-month special training at the academy, it should be re-considered if such system is the best option for ensuring the best training for the future PPs. Experience shows that without any incentive in striving for a high performance in the training activities at the Training Centre, the trainees might not be as attentive as they should or even take this training period as seriously as they should.

52. In any event, it will be necessary to assess whether this change in the training system, finally results in a better preparation and more engagement in the training activities of

[20] Mid-term evaluation report of the Justice Sector Reform Strategy and Action Plan of Ukraine for 2015-2020, carried out by PRAVO-Justice and the Council of Europe project under the "Human rights compliant criminal justice system in Ukraine -Phase I", September 2019.

[21] See PRAVO-Justice Evaluation report, pág. 46

the candidates, or not. Evaluation of the training programmes shall provide information on the adequate implementation of them. At this stage, the legal reform envisaged appears to be adequately justified but its actual operation will need to be kept under review and adjusted when necessary.

53. Para. 1.11): The current provision states that the submission of the recommendation to fill a vacancy, once the candidate has completed the special training, will be done to the "head of the district prosecutor", while according to the DL on ST it will be done to the "head of the oblast prosecutor's office". The reason for this change is apparently that the appointment power shifts from heads of district offices to the heads of regional offices. This does not seem to be problematic.

**Article 30. Submitting Documents for the Position of a Prosecutor by the Candidate**

54. The amendments to this Article are merely formal, to improve verification that the requirements for candidates to PPs positions are correctly fulfilled. In that regard the text is more precise as to what are the documents required regarding the proving of the legal education, the command of the Ukrainian language and the health certificate. Regarding the command of the Ukrainian language, requiring the certificate can allow to exclude further examining on the language skills. This seem to be the objective, because reference to the language has been deleted under Article 31 when describing the content of the qualifying examination.

55. Regarding the health certificate the novelty is that it shall also include whether the candidate has been registered in "psychoneurological or narcological health care institutions." As long as this last requirement does not entail discrimination (being excluded despite being completely rehabilitated and cured), the reforms to this Article 30, being purely formal, do not pose problems.

**Article 31. Qualifying Examination**

56. **Para 1.:** This paragraph is only slightly amended, minor changes as to certain terms, for example, "analytical abilities", shall be substituted by "general abilities". It is also underlined that the exam on practical skills shall also be anonymously tested. In general, the amendments proposed do not seem to be problematic. As far as the anonymous testing seeks to improve the objectivity of the whole examination and increase the merit-based approach, it should be considered positive.

57. **Para 4.:** It contains a rewording which does not seem to change the meaning, but only clarifies that "the body conducting disciplinary proceedings" shall ensure the assessment of the exams and tests passed (currently "shall ensure the work's assessment"). The amendment is not significant.

58. **Para. 6.:** An addition is introduced to this paragraph, namely the express reference to the powers of the "body conducting disciplinary proceedings" to approve the

regulations not only on the qualification procedure (current text), but also on the "minimum passing score" to be admitted to the next exam. By according powers to the disciplinary body to approve such regulations, it seems that the DL on ST seeks to impose that the procedure for the qualifying examination includes necessarily filters or "minimum scores" to pass to the next examination stage (although currently Article 31.5 PPL already provides for minimum passing scores). Such minimum scores and the organization of the testing procedure in stages is usual in these type of selection procedures and exams in European countries, and such a procedure improves the efficiency and reduces unnecessary workload. In that sense, it merits a positive assessment. The selection and examination procedure by stages is again mentioned under the proposed Article 32.2 DL on ST.

**Article 32. Special Inspection of a Candidate for the Position of a Prosecutor**

59. Most paragraphs of this provision have been amended, but mainly formally, the majority of them changing the numbering (e.g. current para. 5, is para. 3 under DL on ST; or current para. 6 is para. 5 under DL on ST; in new para.5 a new sentence has been added, which is currently under para. 2, etc.).

60. The only relevant change that deserves to be commented here is the possibility for the body conducting disciplinary proceedings to decide how to undertake the integrity tests or special inspection procedure. While the current provision contains a reference to the procedure established in the law "On prevention of Corruption", the proposed amendment leaves more leeway to the disciplinary body to decide what information to request and to which authorities they shall send request for information to carry out the "inspection" of a relevant candidate. It is this body which shall regulate what is the information to be provided and to which authorities requests can be sent.

61. No other salient modifications in this Article have been identified, and making the integrity check more flexible, by allowing the disciplinary body to decide the procedure for doing it, does not seem to be problematic.

**Article 32-1. Holding a Competition for the Position of a Trainee Prosecutor**

62. This new provision describes how the vacant positions of trainee district PPs will be announced, criteria for taking the decision, how they will be filled, and how the trainees will be appointed. Logically, as currently the position of trainee PP is not contemplated, this procedure has to be regulated. The system envisaged consists in 1) an announcement to fill the vacant position of trainee PPs (5 days before the competition, which is a very short time); 2) content of the announcement; 3) application by candidates who wish to participate in the competition to such vacancy and undergo special training; 4) decision upon ranking of the qualifying examination among those who have applied to the position; 5) submission for appointment to the head of the

oblast, and 6) appointment by the head of the oblast, within 3 days after receiving the submission.

63. This regulation seeks to speed up the process for filling vacancies and allow the candidates who have passed the exam to start as soon as there is a vacancy to work as trainees. These consultants are not aware of the number of vacancies there are available after the qualifying examinations have finished, nor whether the number of candidates are equal to the vacant position, or whether there is a certain ratio of candidates that pass the exam and can be registered in the succession pool. Depending on those figures, the system will allow the successful candidates to start straight away working as trainees and receiving special training, or they will have to wait until future vacancies are announced.

64. In any event, the system provided in Article 32 -1 DL on ST seems cumbersome, because even if there is already a ranking among the candidates who are in the succession pool (waiting list), the system requires for them to file an application every time there is a vacancy announced. It would be more efficient that, upon publishing the vacancies, the next one in the list is called to fill it, and if this candidate refuses, then the next one would be called, and so successively. In reality this is not a competition, as the candidates are already ranked.

65. On the other hand, there should be only one to three yearly calls to cover vacancies, so that the procedure is simplified, and the best ranked can really choose the PP's district office which suits them better. It should be considered whether to introduce a more centralised system for the assignment of vacancies, as a centralised system is as a rule more efficient than publishing every single vacancy and having candidates to send their applications separately for each of the vacancies that is published. While this does not necessarily need to be included in the law, and can be deferred to the rulebook provisions, it is recommended to ensure a simplified procedure for filling in vacancies once the training period has ended, and the trained PPs are "ranked" in the pool.

66. Finally, taking into account that the results of the qualifying examination are valid only for three years (Article 31.7 PPL), it may turn out, that after having performed adequately, for lack of sufficient vacancies for trainee PPs in district PPs offices, the candidates who have passed the exams do not get a chance to fulfil the special training and lose the validity of their exam. The system does not seem to be –in abstract– efficient, and as a rule only so many candidates as vacancies (plus a certain additional percentage), should pass the qualifying examination. Having a pool of candidates, just waiting for a trainee vacancy to carry out the special training, and who are not even sure that after completing it, they will be appointed to a permanent position, is uncertain and at the same time, seems to be inefficient. If the system seeks to encourage the best students to choose a career in the PPS, it should create more efficient and clear prospects of employment in the PPS for the successful candidates in the pool.

**Article 33. Special Training of the Trainee Prosecutor**

67. The main amendment to this Article is that the special training at the Training Centre for Prosecutors lasts currently one year, while under DL on ST it shall consist of a two-month training at the Centre and 6 months internship at the district PPs office (provided there are vacancies for trainees PPs).

68. Another difference is that there will be no testing on the initial training, as the proposed Article 33 only provides for an interview conducted by a commission organized by the head of the oblast prosecutor's office where the trainee is serving. Upon such interview and the information on the completion of the training, the body conducting disciplinary proceedings (QDCP) will take a decision on successful or unsuccessful special training. Failing the special training, the candidate will be excluded from the pool, which appears to be the same outcome as having failed the qualifying exam, because the candidate would need to undergo the whole procedure again in case, he would like to pursue the prosecutor's position.

69. In case of successful completion of the initial training, the DL on ST states that the body deciding (which shall be the QDCP), shall propose the candidate for permanent position to the relevant oblast.

70. However, in all these proceedings, the criteria are not clear, because at the end, they depend on the evaluation the relevant commission of the oblast makes about the performance of the trainee during his/her internship. There is no testing of knowledge, the role of the Training Centre is reduced significantly, not only because the duration of the initial special training is limited to two months, but also because no testing is foreseen to check the performance during those months.

71. This system leaves a lot of discretionary powers both to the relevant district office in assessing the skills, knowledge and abilities of the trainee and also to the disciplinary body. Criteria on the standards to be achieved by the trainee and the skills that have to be evaluated are not set out in this Article. All these issues might be deferred to the provisions to be regulated in the rulebook, although the consultants consider that for improving the objectivity of the selection system and for preventing arbitrariness, clear criteria as to what are the standards to be reached by the trainee PP at the end of his/her traineeship period should be defined. This could give guidance on the elements that should they be evaluated against by the head of the oblast PPS and the relevant commission.

72. A good point is that these decisions can be challenged first before the disciplinary body (QDCP), and later before the courts. In theory the trainee can challenge the decision of the oblast PP on the performance of the training by the trainee, and would be reviewed by the QDCP, which can reverse the decision of the oblast PP if not justified, arbitrary or lacking motivation. However, since the criteria are not set out, it might be difficult to reverse the decision taken upon the performance of the trainee.

73. The idea of the PPL of 2015 was to strengthen the autonomy and individual independence of each PP. The form of selection envisaged in the DL on ST, where the internship of six months and the evaluation of the head of the district office and the commission within the oblast prosecution office on the performance of the trainee play an important –and logically justified– role, would foster the feeling of autonomy and independence of the candidates more if the shortcomings identified above are addressed.

**Articles 34. Holding a Competition to Fill a Vacant Position and Article 37. Procedure for Appointment to Temporarily vacant position**

74. These two Articles are being deleted as a consequence of filling the vacancies for initial positions with trainee PPs, and thus they are mainly substituted by the provisions envisaged in the new Article 32-1 DL on ST.

**Article 35. Appointment to the Position of a Prosecutor**

75. As explained in the Explanatory Note, unnecessary steps should be deleted to reduce the complexity of the whole procedure for selection and appointment of public prosecutors to their initial positions. In this vein, the special checks carried out within the integrity checks, which as for now are taken twice during the whole selection process, shall be reduced to only one. This seems to be appropriate. In consequences the current content of Article 35 PPL is unnecessary and shall be deleted. The DL on ST proposes to fill the content of this Article with the regulation on the formal appointment of the trainee prosecutor to the position of PP, following the recommendation of the body for conducting disciplinary proceedings (Article 34 DL on ST). The proposed Article 35 only provides that the appointment shall be done within three days since the recommendation has been received.

76. This provision does not pose any specific issues.

**Article 51. General Conditions for Dismissal of a Prosecutor from Office, Termination of His/her Powers in the Office**

77. The amendment to this Article consists in adding a new situation where a prosecutor is dismissed, under para. 10): “termination or failure to undergo special training”. This ground corresponds to the provision introduced in Article 33.5 and 7 PPL as amended by DL on ST. Proposed Article 33.5 provides for the termination of the special training procedure in the event of a “gross or systematic violation of the procedure for special training by a trainee prosecutor”. Such decision is to be taken by the body conducting disciplinary proceedings.

78. Indirectly, the candidate who has not successfully completed the special training, will not be included in the succession pool, which in practice amounts to a dismissal.

79. These grounds for dismissal run counter the general statement that trainee PPs have the same status as district PPs, while it is clear that as trainees they can be dismissed on other grounds. On the other hand, it is unclear how this procedure for dismissal is to be carried out, because it appears to be just upon the decision of the body conducting disciplinary proceedings, but as long as it is not considered as disciplinary infringement, the procedural safeguards of the disciplinary proceedings do not seem to apply. Only the appeal before the court against such dismissal decision might provide some safeguard. However, as pointed out earlier, since the assessment of the performance of the trainee PP during his/her internship is not based on objective pre-established criteria, it will be difficult for a revising court to find abuse or lack of motivation.

80. In sum, the new system appears to reduce the relevance of the qualifying examination in the recruitment procedure, because such examination is only a preliminary step, but not the decisive one to become a PP. The Training Centre also loses importance in the whole selection process, its role only being to provide a two-month initial course, but with no decision capacity in the selection process. At the end, the PPs already in office and the head of the relevant oblasts, will have a much more determinant role in the whole process. This does seem create a risk of going back to the old system, where the PPs were trained by their superiors, who were eager to ensure that the new PPs would accept their role as subordinate and willing to follow the instructions/ methodology of the older ones. This passing over existing practices and educating in obedience might be a risk at present, and is even increased in the envisaged amendments by DL on ST.

**Article 73. Status of the Body Conducting Disciplinary Proceedings**

81. As happens often in legal reforms, relevant amendments are taken by just changing a word in one Article. This is the case also with regard to the amendment introduce in Article 73 DL on ST: the term "collegial body" is changed by "qualification and disciplinary commission." This seems to be very important, as it would mean that the QDCP regains powers that were suspended by Law 113-IX.

82. As set out in Article 74 PPL, which was suspended in September 2019, this body is composed of 11 members, 5 of which are public prosecutors, appointed by the All-Ukrainian Conference of PPs; 2 scholars; 1 advocate and 3 persons appointed by the parliamentary HR Commission. Such a structure was welcomed as it represented a step

towards a more independent prosecution service.[22] Nevertheless, the GRECO report[23] considered that there was still space for improvement regarding the composition of the QDCP, such as to ensure the absolute majority of the members of the PPS, increasing the number of public prosecutors ('PPs') and reducing the number of members appointed by Parliament.[24] The QDCP should work upon the procedure adopted by the All-Ukrainian Conference of Prosecutors (art. 73.3 PPL).

83. This amendment of Article 73 DL on ST by changing one word could have gone unnoticed, despite its important relevance. However, the way the reforms are drafted makes it really difficult to understand what the real scope of this amendment is. On the one side the DL on FT provisions in its Explanatory Note states that it will "restore the provisions regarding the composition of the relevant body conducting disciplinary proceedings", but at the same time the amendments introduced into the Final and transitional provisions, provision 2, adds to the list of Articles that are to be declared invalid, precisely Article 73.1 and 2; Article 74.3, 4, 6 and 7; Article 75.1; and Article 76. However, the DL on FT doesn't substantially change of what was introduced by the Law 113-IX. The latter suspended, in transitional provisions, Articles 73-76; while the DL on FT changes that by specifying the same range of Articles **but not all paragraphs of it** (Article 73.1 and 2; Article 74.3, 4, 6 and 7; Article 75.1; and Article 76). If having a closer look which paragraphs escapes suspension in this way, we would see, for instance, art. 73.3 "The procedure of work of the relevant body… is defined by the All-Ukrainian conference of prosecutors". In any way, the provisions of art. 73-76 will be restored in full as of September 2021.

84. Once this rather complex set of provisions –ending of suspension but continuing of some competences of some temporary bodies etc.– it seems that the aim of the amendments is that once the temporary suspension of the QDCP comes to an end in September 2021, it will be again the recruitment and disciplinary body, and the reforms proposed in the DL on FT would allow the personnel commission to continue working until it finalises the pending attestation procedures. While these objectives were clear after explanations provided by the PPS, the Explanatory Note on the DL amending the FT provisions could provide more clarity and shed light on this. Nevertheless, it may also be a problem of translation.

[22] Para. 222 of the Greco report: "The recent reform of the appointment procedure is to be welcomed. Notably, the selection of prosecutors on a competitive basis and involving a specific vetting procedure, carried out by a collegial body – the newly established QDC – is clearly a step in the right direction."

[23] See GRECO Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Adoption: 23 June 2017 Public Publication: 8 August 2017 GrecoEval4Rep(2016)9, accessible at https://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-/1680737207

[24] See paragraph 216 GRECO report.

## IV. COMMENTS ON DL ON FINAL AND TRANSITIONAL PROVISIONS OF LAW 113-IX (DL NO. 5157)

85. The second DL to be commented proposes amendments on the Final and Transitional Provisions" of the Law 113-IX. In fact, the poor legislative quality of the Law of 19 September 2019 left many questions open, as to how to proceed once the date fixed for the end of the suspension on many rules, would arrive. As correctly put in the Explanatory Note, transitional provisions to organize the transition towards the scenario after September 2021, once the suspension period has come to an end, were lacking. This gap is said to be addressed through this DL on FT provisions, which in principle is something positive. Otherwise there would be a legal and institutional vacuum, which creates problematic legal uncertainty and undesired institutional deadlocks.

86. In general, transitional provisions should provide for the transition to take place as quickly as possible, without violating rights or expectations of rights. Usually transitional rules provide for an entering into force of the new provisions based on a system "by stages", so that once a stage has been ended –and thus the rules of the game do not change in the middle of it–, the next stage of any process should try to adjust already to the new rules.

87. The law provides that, for ensuring uniformity and preserving the principle of equality, all serving PPs should have gone through the same attestation procedure, and this is the reason why the DL on FT has opted to keep the present commission active, until all pending attestation proceedings have finalised. These proceedings should take place only with regard to those pending attestation proceedings of those PPs that could not undergo the attestation for valid excuses or that are pending to undergo again the attestation procedure that was invalidated by a court decision. Since many of the decisions taken at the beginning by the personnel commissions where not adequately motivated and substantiated, they were challenged before the courts, and reversed upon procedural reasons. This has caused to repeat or resume several of those proceedings to comply with procedural safeguards by the same personnel commissions.

88. In sum, the DL on FT seeks to ensure that the ongoing procedures of attestation, recruitment and filling of vacancies that have commenced under the current law, continue under those rules until its completion (see provision 22). Once they finish this task, the personnel commissions shall automatically be dissolved. This solution seems to be adequate, although the law could precisely provide for the dissolution once there are no more attestation procedures pending.

89. Indeed, it can be seen as an acceptable transitional provision in order not to violate legal expectations and breach acquired rights and create uncertainty. While from a strict legal point of view such transitional provision is not to be criticised, more information would be necessary in order to assess its real impact in the Ukrainian context and the potential risks in its implementation.

**Provision 2**

90. The Explanatory Note of the DL on FT under point 3.4) says that this law shall "restore the provisions regarding the composition of the relevant body conducting disciplinary proceedings", and under the reforms proposed to provision 2 precisely Article 73.1 and 2; Article 74.3, 4, 6 and 7; Article 75.1; and Article 76 are to be declared invalid. Being at first sight difficult to grasp the meaning of this, once it has been clarified by the relevant authorities, this provision seems to be adequate. The idea is to allow that the QDCP and the Council of PPs can start working on September 2021.

**Provision 7**

91. As explained in the Explanatory Note, the intention of the DL on FT provisions is to ensure that every PP undergoes the attestation procedure. The objective would be: everyone shall undergo the attestation procedure, and unless it has been successfully passed, the current investigators and PPs are to be dismissed. This was the aim of Law 113-IX, but for various reasons, a number of the PPs and investigators either have not undergone attestation proceedings (sick leave, maternity leave, etc.), have refused to pass them, or have failed to pass them.

92. The situation at present is quite uncertain, because there are more than 1800 claims pending before the courts against the attestation proceedings results. Around 400 judgments have been issued, but the rulings are not uniform, as facing the same situation some courts have decide in favour of reinstatement of the dismissed PP and other courts have validated the attestation procedures. The diverging judgments only add more uncertainty to the whole situation.

93. These consultants have not checked the reasons given by the courts for such rulings; therefore, it is difficult to assess the present legislative proposal. As a rule, the legislature should not enact laws that seek not to enforce valid court decisions, as this would run counter the obligation to comply with the judicial judgments and even constitute a criminal offence.

94. However, if the dismissed PPs and investigators were reinstated in their positions because their legal proceedings were determined in their favour due to breach of procedural issues rather than decisions on the merits of the case, it is acceptable that the proposed law seeks to subject them to the mandatory attestation procedure. In those circumstances, provision 7 viewed in the general context of ensuring integrity and adequate capabilities of the new prosecution service, and also providing for a uniform standard applied to all attestation procedures, would be adequate.[25]

[25] For a complete assessment on this provision it would be necessary to know the exact number and grounds of the court decisions ordering the repetition of the attestation proceedings and the reinstatement of the PPs in their previous positions.

**Provisions 9, 10, 17 and 19**

95. The amendments to these provisions are only a formality, as they adjust the text to the changes introduced under provision 7, changing the reference to the relevant applicable provision or to the relevant applicable investigators and PPs.

**Provision 11**

96. This provision clarifies that the powers to decide on the establishment, composition, duration and functioning procedure of the personnel commissions will be carried out by the Prosecutor General. This addition is a minor one, as it continues the same line as provided by the reform of Law 113-IX, which concentrated many powers in the hands of the GPP. It should be underlined again that the duration of the personnel commissions should finish once their role in finalising the pending attestation proceedings has come to an end.

**Provision 23**

97. In order for many of the prosecutorial bodies to be able to start operating once the suspension period has lapsed in September 2021, it is necessary to undertake first measure to convene the All-Ukrainian Conference of Prosecutors. In order to fill the time gap, provision 23 allows the Prosecutor General to take the decision to convene this self-governance body, so that it can start the proceedings of adopting regulations and bylaws and also appointing members of the bodies that shall start functioning again in September 2021. This seems to be appropriate.

98. In the same vein, the GPP is also granted powers to convene the Congress of Representatives of Higher Schools and Scientific Institutions, for the same reasons.

**CONCLUSIONS**

99. In general, the Draft Laws 5158 and 5157 merit a positive assessment, as trying to address shortcomings detected in the implementation of the system of recruitment of PPs, and seeking to avoid the problematic situation of a legal and institutional gap, once the temporary application of Law113-IX comes to an end in September 2021.

100. The new provisions seek to change the training of one-year special training by a two-month training at the Prosecutor's Training Centre, plus an internship of six months as trainee PP. In general, this might be assessed as a good system for the Ukrainian PPS. In any event, it does not present problems from the view of the European standards.

101. The powers of a trainee lacking any previous experience and the already trained PP should not be exactly the same. The revised Article 15 DL on ST goes much further than merely to extend employee rights and social security benefits and thus the rules on the status should take into account this diverse condition of a PP under training.

102. It should be reconsidered whether the two-month training period at the PP Training Centre could have some impact upon the ranking/scores of the newly appointed PPs, if it is considered that another examination is not necessary. Eliminating all incentives for active involvement and high performance might not be the best for ensuring high standard training results.

103. For improving the objectivity of the selection system and for preventing arbitrariness, clear criteria as to what are the standards to be reached by the trainee PP at the end of his/her trainee period should be defined. The elements that should be evaluated by the head of the oblast PPS and the relevant commission are to be determined.

104. The system of calling for applications for every vacancy as trainee PP seems to be cumbersome. Although there is already a system for calls where several vacancies are announced, a more simplified centralised system for the assignment of vacancies at the recruitment - training entry system should be considered

105. The system of setting up a pool of PPs, waiting for a vacancy as trainee, that has a validity only of three years, does not seem to be sufficient to encourage the best students to choose for a career at the PPS. Uncertain expectations with regard to the future vacancies might have a negative impact in choosing to undergo the test for becoming a PP.

106. In general, transitional provisions should provide for the transition to take place as quickly as possible, without violating rights or expectations of rights, once the institutional setting allows for the new legal system to be working. Providing for the present rules on attestation of PPs to continue until all the currently pending proceedings are finalised, opens the doors for a too lengthy transitional period. However, this might be the most adequate solution, taking into account that the duration of these proceedings depends on the judicial decisions of pending judicial proceedings. The law adequately opts to keep the present bodies working on attestation to ensure that uniform criteria are applied to all serving PPs.

107. With regard to the objective of having all PPs to undergo the attestation procedure, even those that have been reinstated in their positions by way of court judgments, it should be paid attention that the draft law does not run counter the obligation under the rule of law to enforce valid court decisions. As long as decisions are annulled by courts on the basis of procedural flaws, it is correct that those proceedings are repeated or the decisions are corrected.

108. While the proposal to give powers to the GPP to overcome the institutional gap and prevent that the ending of the temporary system does not lead to a vacuum, is understandable, concentrating powers in the GPP in general may entail risks. It should in any event prevented, that such concentration of powers continues beyond what is strictly necessary.