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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

UKRAINE

EXTRACTS FROM

THE CONSTITUTION OF UKRAINE,

THE LAW OF UKRAINE "ON THE CONSTITUTIONAL COURT OF UKRAINE"

AND

THE RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT OF UKRAINE

(*) Unofficial translation

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I. CONSTITUTION OF UKRAINE

Article 148
The Constitutional Court of Ukraine is composed of eighteen judges of the Constitutional Court of Ukraine.

The President of Ukraine, the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine each appoint six judges to the Constitutional Court of Ukraine.

Selection of candidates for the office of judge of the Constitutional Court of Ukraine is conducted on competitive basis under the procedure prescribed by the law.

A citizen of Ukraine who has command of the state language, attained the age of forty on the day of appointment, has a higher legal education and professional experience in the sphere of law no less than fifteen years, has high moral values and is a lawyer of recognised competence may be a judge of the Constitutional Court of Ukraine.

A judge of the Constitutional Court of Ukraine cannot belong to political parties, trade unions, take part in any political activity, hold a representative mandate, occupy any other paid offices, perform other paid work, except academic, teaching or creative activities.

A judge of the Constitutional Court of Ukraine is appointed for nine years without the right of reappointment.

A judge of the Constitutional Court of Ukraine steps in his or her office as of the date of taking the oath at the special plenary sitting of the Court.

The Constitutional Court of Ukraine elects the Chairman among the judges of the Court at a special plenary sitting of the Court by secret ballot for one three-year term only.

Article 149[1]
The authority of a judge of the Constitutional Court of Ukraine shall be terminated in case of:
1) termination of the term of his or her office;
2) his or her attainment of the age of seventy;
3) termination of Ukraine's citizenship or acquiring by him or her the citizenship of another state;
4) taking effect of a court's decision on recognition him or her missing or declaration him or her dead, or on recognition to be legally incapable or partially legally incapable;
5) taking effect of a guilty verdict against him or her for committing a crime;
6) death of a judge of the Constitutional Court of Ukraine.

The grounds for dismissal of a judge of the Constitutional Court of Ukraine are the following:
1) inability to exercise his or her authority for health reasons;
2) violation by him or her of incompatibility requirements;
3) commission by him or her of a serious disciplinary offence, flagrant or permanent disregard of his or her duties which are incompatible with the status of judge of the Court or has proved non-conformity with being in the office;
4) submission by a judge of statement of resignation or of voluntary dismissal from office.

Dismissal of a judge of the Constitutional Court of Ukraine from his or her office is decided by not less than two-thirds of its constitutional composition.

II. LAW OF UKRAINE "ON THE CONSTITUTIONAL COURT OF UKRAINE"

Article 10. Competence of the Court

1. The Court shall be competent to exercise constitutional proceedings if composed of at least twelve judges of the Constitutional Court empowered under Article 17 of this Law.

Article 20. Termination of Powers of a Constitutional Court Judge

1. The powers of a Constitutional Court Judge shall be terminated:
   1) upon expiry of his or her term of office;
   2) upon attainment of seventy-years age;
   3) upon termination of citizenship of Ukraine or acquisition of citizenship of another state as prescribed in the manner established by the law;
   4) upon entering into force of a court judgment that declares him or her missing or deceased, incapable or partially capable;
   5) upon entering into force of a guilty verdict against him or her for a committed crime;
   6) death.
2. Termination of powers of a Constitutional Court Judge shall provide a basis for termination of employment relationship with him or her under an official order issued by the Chairman of the Court.

Article 32. Organisation Structure of the Court

1. The Court comprises the Grand Chamber, two Senates and six Boards.
2. The Grand Chamber, the Senates and the Boards shall act as the Constitutional Court under the powers determined by this Law in respect of constitutional proceedings.
3. The Chairman of the Court, Deputy Chairman of the Court, Secretaries of the Boards shall act in the representative, managerial and administrative capacity.
4. The Grand Chamber, the Senate, the Board of the Court shall have the status of the Court bodies.

Article 35. The Grand Chamber

1. The Grand Chamber shall consist of all Judges of the Constitutional Court.
2. The Grand Chamber shall consider the issues regarding:
   1) conformity to the Constitution of Ukraine (constitutionality) of laws of Ukraine or other legal acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, acts of Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea;
   2) official interpretation of the Constitution of Ukraine;
   3) conformity to the Constitution of Ukraine of applicable international treaties of Ukraine or of international treaties submitted to the Verkhovna Rada of Ukraine for its consent to a binding nature thereof;
   4) conformity to the Constitution of Ukraine (constitutionality) of the questions to be put to an all-Ukrainian referendum on a popular initiative;
   5) observance of the constitutional procedure for investigation and consideration of a case on removal of the President of Ukraine from office through impeachment within the limits established by Articles 111 and 151 of the Constitution of Ukraine;
   6) conformity of a draft law on amendments to the Constitution of Ukraine to Articles 157 and 158 of the Constitution of Ukraine;
   7) violation by the Verkhovna Rada of the Autonomous Republic of Crimea of the Constitution of Ukraine or laws of Ukraine;
   8) conformity of normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea to the Constitution and laws of Ukraine;
   9) conformity to the Constitution of Ukraine (constitutionality) of laws of Ukraine (specific provisions thereof), upon constitutional complaints, in the event of relinquishment of

jurisdiction by the Senate in favour of the Grand Chamber in the instances determined by this Law.

3. The powers of the Grand Chamber shall also include resolving, under this Law, any procedural issues that may arise during constitutional proceedings.

Article 36. The Senate

1. The Senate shall consist of nine Judges of the Constitutional Court.

If the number of Constitutional Court Judges is less than eighteen, the Senate shall be competent when comprising at least six Constitutional Court Judges.

2. The composition of the Senate shall be formed at a special plenary session of the Constitutional Court by drawing lots. With regard to the Chairman of the Constitutional Court and the Deputy Chairman of the Constitutional Court, no drawing lots shall be held.

The personal composition of the Senates shall be approved by the resolution of the Constitutional Court.

The Senate shall consider cases when at least six judges of the Constitutional Court are present.

The sessions of the Senates shall be presided by the Chairman of the Constitutional Court and the Deputy Chairman of the Constitutional Court accordingly, and in the absence of them,

- by eldest Judge who is a member of the Senate.

3. The Senates shall be set up in the manner prescribed by the Rules of Procedure.

4. The Senate, upon a constitutional complaint, shall consider the issue of conformity to the Constitution of Ukraine (constitutionality) of laws of Ukraine (specific provisions thereof) as well as other issues specified by this Law.

Article 37. The Board

1. The Board shall consist of three Constitutional Court Judges.

The Court, by drawing lots at a special plenary session, shall set up the Boards within the Senates in the manner prescribed by the Rules of Procedure.

The same Judge may not sit on several Boards on a permanent basis.

The Court shall approve the personal composition of the Board by its resolution.

Where the Board is incompetent due to the lack of quorum, a Judge from another Board shall be assigned to it temporarily in the manner prescribed by the Rules of Procedure.

2. The powers of the Board shall include deciding on initiating constitutional proceedings in the case upon constitutional petitions, constitutional appeals, or constitutional complaints.

3. The Board, by the majority of votes of its Constitutional Court Judges, shall deliver a ruling to initiate constitutional proceedings in the case or to reject constitutional proceedings in the case.

4. Where the Board has delivered a ruling to initiate constitutional proceedings in the case upon a constitutional petition or a constitutional appeal, the Secretary of the Board shall submit a proposal to the Chairman of the Court to convene the Grand Chamber in order to consider the issues associated with such constitutional proceedings.

Where the Board has delivered a ruling rejecting constitutional proceedings in the case upon a constitutional petition or a constitutional appeal, the Secretary of the Board shall refer such constitutional petition or constitutional appeal to the Grand Chamber in order to resolve the issue of initiating constitutional proceedings in the case.

5. Where the Board has delivered a ruling to initiate constitutional proceedings in the case upon a constitutional complaint, the Secretary of the Board shall submit a proposal to the Presiding Judge of the respective Senate to convene its session in order to consider the issues associated with such constitutional proceedings.

Where the Board has not been unanimous in delivering a ruling rejecting constitutional proceedings in the case upon a constitutional complaint, the Secretary of the Board shall refer such constitutional complaint to the Senate in order to resolve the issue of initiating constitutional proceedings in the case.

6. A ruling unanimously adopted by the Board to reject constitutional proceedings in the case of constitutional complaint shall be final.

Article 39. Sessions of the Court Associated With Organisational Activities

1. Special plenary sessions of the Court or sessions of the Court shall be convened to address issues associated with organisational activities of the Court.
2. The following activities shall be carried out at special plenary sessions of the Court only:
   1) election of the Chairman of the Court, Deputy Chairman of the Court;
   2) swearing-in newly appointed Judges;
   3) approval of a decision to grant consent to detention, custody or arrest of a Judge;
   4) warning a Judge of the need to remedy the circumstances that evidence the violation of incompatibility requirements;
   5) approval of a decision to dismiss a Judge under Article 21 of this Law;
   6) adoption of the Rules of Procedure;
   7) approval of the personal composition of the Senates;
   8) setting up the Boards, approval of the personal composition of the Boards.
3. Special plenary session shall be competent when attended by at least twelve Constitutional Court Judges empowered under this Law. This requirement shall not apply to a special plenary session at which newly appointed Constitutional Court Judges are to be sworn in.
4. Organisation, financial, personnel or other issues of the Court's internal operations not associated with constitutional proceedings shall be addressed at the Court sessions.
A session of the Court shall be competent when attended by at least ten Constitutional Court Judges.
5. A decision by a special plenary session or by a session shall be approved in the form of a resolution by a majority of the attending Constitutional Court Judges except cases determined by this law.
6. The procedure for holding sessions, special plenary sessions of the Court shall be prescribed by the Rules of Procedure.

Article 66. Sessions and Plenary Sessions of the Grand Chamber

1. The Grand Chamber at its sessions shall consider the issue of initiating or rejecting constitutional proceedings in the cases upon constitutional petition or constitutional appeal, in the event of a ruling delivered by the Board to reject constitutional proceedings in the case.
2. A session of the Grand Chamber shall be competent when attended by at least twelve Constitutional Court Judges.
3. A ruling shall be delivered by the Grand Chamber if voted for by the majority of the Constitutional Court Judges attending its session. Where the votes cast by the Constitutional Court Judges are equally divided, the constitutional proceedings shall be deemed as initiated.
4. In the event that the Grand Chamber delivers a ruling to initiate constitutional proceedings in the case, the Chairman of the Court shall refer such case to a plenary session of the Grand Chamber.
5. A ruling delivered by the Grand Chamber to reject constitutional proceedings in the case shall be final.
6. The Grand Chamber at its plenary sessions shall consider the cases in which proceedings have been initiated upon a constitutional petition, a constitutional appeal, as well as the cases in which proceedings have been initiated upon a constitutional complaint, but where the Senate has relinquished its jurisdiction in favour of the Grand Chamber.
7. The public part of plenary session of the Grand Chamber under an oral procedure shall be recorded by technical means and taking minutes.
8. The Grand Chamber shall adopt its decision and provide its opinion in the in-camera part of a plenary session.
9. Speeches made by Constitutional Court Judges during the in-camera part of a plenary session of the Grand Chamber shall constitute official information and may not be disclosed.
10. Minutes of the in-camera part of a plenary session of the Grand Chamber may not be disclosed and shall be kept separately from the case files.
11. A Court decision shall be adopted by the Grand Chamber, and the opinion shall be provided if voted for by at least ten Constitutional Court Judges.

III. RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT OF UKRAINE

§ 5. Termination of powers of a Judge upon expiry of his or her term of office

1. The powers of the Judge shall be terminated upon expiry of his or her term of office. The last day of a Judge's mandate is the day that marks the ninth anniversary of the Judge's taking the office.
2. The Chairman of the Court, or, in his or her absence, the Deputy Chairman of the Court, or a Judge acting as the Chairman of the Court shall issue an order to terminate the employment relationship with the Judge on the last day of the Judge's authority.
3. The Chairman of the Court, or, in his or her absence, the Deputy Chairman of the Court, or a Judge acting as the Chairman of the Court shall notify the authority which appointed the Judge of the need to conduct a competition to select candidates for the position of the Judge not later than four months before the day of the termination of the term of office of the Judge.

§ 20. The procedure for formation of the composition of the Senates of the Constitutional Court

1. The Court's composition shall include two Senates of the Constitutional Court – the First Senate and the Second Senate.
The composition of the Constitutional Court Senates is formed at a special plenary session of the Court by drawing lots.
2. In order to draw lots at the special plenary session of the Court, eight closed balls are produced, inside which there are indicators with numbers "1" and "2" in accordance with the numbering of the Constitutional Court Senates.
If, on the day of drawing lots, less than eighteen judges of the Constitutional Court form the composition of the Court, the number of balls shall be made in accordance with the number of Constitutional Court Judges who take part in drawing lots.
If an odd number of Judges of the Constitutional Court participates in drawing lots, there shall be produced one ball more than the number of Judges of the Constitutional Court participating in it.
The number of balls with the numbers "1" and "2" must be the same.
3. The Court administrator puts balls with numbers in the box.
Judges of the Constitutional Court select one ball in the alphabetical order. The secretary of the Court session shall record in a protocol the number of the Senate indicated within each of the selected balls. The Chairman of the Court and the Deputy Chairman of the Court do not take part in drawing lots.
4. The Chairman of the Court is a member of the First Senate and presides at its sessions. The Deputy Chairman of the Court is a member of the Second Senate and presides at its sessions.
5. The personal composition of the Senates of the Constitutional Court shall be approved by a Court resolution according to the numbers of the Senates of the Constitutional Court, selected by the Judges of the Constitutional Court by drawing lots.
6. In case of the appointment of new Judges of the Constitutional Court on the next working day after taking the oath, drawing lots shall be held among them in accordance with the procedure specified in clause 3 of this paragraph. Balls shall be produced for drawing lots according to the number of the newly appointed Judges of the Constitutional Court and the number of vacancies in the Senate of the Constitutional Court.
If vacant positions are within one Senate, drawing lots shall not be carried out.
7. In the event of the expiration of the term of office of the Chairman of the Court or the Deputy Chairman of the Court or pre-term dismissal of the Chairman of the Court or the Deputy Chairman of the Court drawing lots between the Judges of the Constitutional Court who held those positions, no draw shall be carried out. The Chairman of the Court, the Deputy Chairman of the Court, whose powers in administrative positions are terminated, remain within the Senate of which they are a member.
If the Judge who was elected as the Chairman of the Court or the Deputy Chairman of the Court, before the election to an administrative position, was not a member of the Senate in

which he is to preside, he shall substitute the Judge who occupied the corresponding administrative position before him in this Senate.

§ 23. The procedure of temporary involvement of a Judge into the composition of the incompetent Board

1. If the Board is incompetent, a Judge from another Board of the same Senate is temporarily involved in its membership.
The secretary of the incompetent Board, and in his absence, the older Judge who is a member of the Board, informs in writing the Chairperson of the relevant Senate about the necessity of temporarily involvement of a Judge from another Board into the composition of the incompetent Board. Not later than the fifth working day from the day of receipt of such notice, the Chairperson of the relevant Senate convenes a Senate meeting to resolve the issue of temporary involvement into the incompetent Board of a Judge from another Board.
2. The Judge who will be temporarily involved in the incompetent Board shall be determined by drawing lots at the meeting of the relevant Senate. The protocol shall be drawn up thereupon.
3. A Judge who has been temporarily involved in the composition of the incompetent Board shall not participate in the subsequent draw when resolving the issue of temporarily involvement of a Judge into the incompetent Board.

§ 24. Introducing changes to the personal composition of the Senate and the Board

1. Changes to the personal composition of the Senate and the Board shall be introduced in the event of the appointment of new Judges of the Constitutional Court.
2. If one of the Boards is incompetent, the Judge appointed to the position shall be included to the personal composition of this Board and in the personal composition of the relevant Senate. For this purpose, the Chairman of the Court, or, in his or her absence, the Deputy Chairman of the Court, or a Judge acting as the Chairman of the Court shall, not later than the fifth working day after the day on which Judge obtained the powers, convene a special plenary session of the Court to amend the resolutions of the Court, which approved the personal composition of the relevant Senate and Board.
3. If there are several incompetent Boards of Judges of the Constitutional Court and they belong to different Senates of the Constitutional Court, the Chairman of the Court, or, in his or her absence, the Deputy Chairman of the Court, or a Judge acting as the Chairman of the Court, not later than on the fifth working day from the day when a Judge (Judges of the Constitutional Court) acquire(s) the powers convenes a special plenary session of the Court to draw lots for the inclusion of the Judge (Judges of the Constitutional Court) into the respective Senate and Board.
If the incompetent Boards of Judges of the Constitutional Court belong to the same Senate, the Chairman of the Court, or, in his or her absence, the Deputy Chairman of the Court, or a Judge acting as the Chairman of the Court, not later than the fifth working day after the day on which the Judge acquires the powers, convenes a special plenary session of the Court for drawing lots for the inclusion of a Judge (judges of the Constitutional Court) into the respective Board.
After drawing lots, the Court amends the Court's resolutions, which have approved the personal composition of the Senates of the Constitutional Court and the Boards of Judges of the Constitutional Court.
4. If necessary, the Court shall, at a special plenary session, decide on the changes in the composition of the Constitutional Court Senates and the Boards of Judges of the Constitutional Court in accordance with the procedure established by the Rules of Procedure.