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**Constitutional and legal provision of the restoration of trust in the
judiciary by the example of Ukraine**

Abstract

The article is devoted to constitutional and legal transformations in Ukraine in terms of restoring trust in the judiciary. Having taken a confident vector to implement European aspirations of citizens, Ukrainian government started reforms in several directions at once, including one of the most problematic - the reform in judiciary. The article presents a critical view of the reform, mentioned above and political and legal processes that accompany it.

Key words: *judiciary, justice, reform.*

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**Odzyskanie zaufania do władzy sądowniczej pod względem
konstytucyjnym i prawnym na przykładzie Ukrainy**

Streszczenie

Artykuł jest dedykowany konstytucyjnym i prawnym reformom na Ukrainie w zakresie przywrócenia zaufania do władzy sądowej. Ukraińskie państwo, mając pewny wektor na realizację eurointegracyjnych pragnień obywateli, rozpoczęło reformy w kilku kierunkach, wśród których najbardziej problematyczną była sfera sądownicza. Artykuł prezentuje krytyczne spojrzenie na reformę sądownictwa oraz procesów politycznych i prawnych, które mu towarzyszą.

Słowa kluczowe: *władza sądowa, sądownictwo, reforma.*

Introductory remarks

The events of late 2013 - early 2014, which are called "Revolution of dignity" set a number of challenging tasks to the new and temporary Ukrainian authorities, as far as systematic, thoughtful and, most importantly, fast reforms, in fact, were needed in the entire state mechanism. While the formation and clarification of the priority tasks, decentralization and restoration of trust in the judiciary were determined as the main lines of action. Both areas are extremely difficult for government as a whole, and for society, in particular. If decentralization (transfer of most of the powers from the state to local governments, including greater dispositiveness in budgetary matters) still continues with relative success, the reform of the judiciary encounters significant obstacles and fierce opposition, which in certain cases borders with an outright sabotage. However, there always were some reasons for that and those reasons still exist.

It should be noted that Verkhovna Rada of Ukraine (hereinafter - the Ukrainian Parliament) has started the reform of the judiciary almost immediately after the tragic events of February 2014. Without going into the details of those events and not giving any political assessments, we may say that the Ukrainian courts were involved into political processes (and it couldn't be otherwise), but they did not pass the exam on objectivity and impartiality in the trials against participants of mass actions. De facto, the decisions of the courts and the prosecution's positions were subjects of bids and political agreements, what is unacceptable in a democratic society, especially in the context of legal proceedings. Given this, it is not surprising that among the first steps made by the unblocked Ukrainian Parliament was the adoption of a number of legislative acts, which we will talk about further. Conventionally, the processes of the restoration of trust in the judiciary can be divided into three stages: the initial phase, characterized by rapid measures (semi measures) to normalize the work of the judicial system; the second stage, which in essence is transient and characterized by the preparation of judicial reform; the third phase, which is still ongoing on the

date of publication of this article and is characterized by constitutional process of making amendments to the Basic Law of Ukraine.

First stage: rapid measures to stabilize the judiciary

02.22.2014 Ukrainian parliament adopted the Resolution "On withdrawal of the President of Ukraine from fulfilment of constitutional powers and appointment of early presidential elections in Ukraine"¹, that marked the beginning of the reform process of the judiciary in Ukraine.

23.02.2014 the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding specific issues of the judicial system and status of judges"² was adopted. The Law passed set an unprecedented control over judge candidates who were elected indefinitely. Thus, it is mandatory for a committee, which deals with preliminary consideration of the election for a lifetime judicial position, to consider the idea of electing a judge candidate indefinitely within one month from the date it was received by the Ukrainian Parliament. The decision of the committee to recommend or refuse to recommend a candidate for election to a lifetime judicial position shall be submitted to the Ukrainian Parliament. In addition, the committee was given the power to verify the compliance of a candidate for a lifetime judicial position with the Constitution of Ukraine and the Law of Ukraine "On the Judicial System and Status of Judges" and to examine the appeals, made by citizens, public organizations, enterprises, institutions and organizations of all forms of ownership, state authorities and local governments on the activities of the candidate. If the consideration of applications needed further verification, the parliamentary committee could decide to refer the appeal to the High Council of Justice, the High Qualification Commission of Judges of Ukraine or the Council of Judges of Ukraine.

¹ Постанова Верховної ради України «Про самоусунення Президента України від виконання конституційних повноважень та призначення позачергових виборів Президента України» від 22.02.2014 Source: <http://zakon1.rada.gov.ua/laws/show/757-VII>

² Закон України «Про внесення змін до деяких законодавчих актів України щодо окремих питань судустрою та статусу суддів» від 23.02.2014 Source: <http://zakon0.rada.gov.ua/laws/show/769-18>

Evaluating the adoption of this Law we should draw attention to the fact that the intention was mainly to prevent the election as judges indefinitely those persons, who, in one way or another, have discredited themselves. The High Qualification Commission of Judges and the High Council of Justice, which are institutions of government, whose powers include checking of complaints and providing recommendations on elections of judges for an unlimited term, for various reasons (lack of trust, lack of quorum, presence of discredited people in their composition) were paralyzed and had no opportunity to perform their duties properly. Assessing this Law, without taking into account the socio-political situation of that time, it can be stated that the legislative branch of government made the judicial branch seriously dependent, and this fact, in turn, questions the independence of the judicial branch of government as such. However, it is evident that at the time of the adoption of this Law, those measures were necessary and justified.

14.03.2014 the Ukrainian Parliament adopted the Law of Ukraine "On Amendments to the Code of Administrative Procedure of Ukraine regarding the jurisdiction of the Supreme Court of Ukraine"³, which provided the opportunity to review decisions of the Supreme Administrative Court of Ukraine on appealing acts, actions or inaction of the Ukrainian Parliament, President of Ukraine, Supreme Council of Justice, Supreme Court of Ukraine in the manner, prescribed by the Code of Administrative Procedure of Ukraine. In the case of an application to the Supreme Court of Ukraine for reviewing a decision of the Supreme Administrative Court of Ukraine, the latter shall enter into force only after the entry into force of the decision of the Supreme Court of Ukraine based on the results of this review.

To provide an assessment of the Law adopted, we should take into account its relation to some historical moments of creation of the Ukrainian judicial system. After the change of power in Ukraine in 2010, then President of Ukraine in

³ Закон України «Про внесення змін до Кодексу адміністративного судочинства України щодо компетенції Верховного Суду України» від 14.03.2014 Source: <http://zakon3.rada.gov.ua/laws/show/887-18>

cooperation with the parliamentary majority made quite a significant impact on the highest court in the system of courts of general jurisdiction in Ukraine - the Supreme Court of Ukraine. The Supreme Court of Ukraine at the time had a wide enough range of powers: from cancellation of decisions - to issuing mandatory instructions for lower courts in different categories of cases and was composed of the most experienced judges. Since 2010 the pressure on the court processes considering the composition of new judges and the election of "controlled" Chief Justice have become noticeable. The Supreme Court had done opposition to such practices that was serious enough, but as a result - had lost most of its major powers. In turn, the appeal proceedings against acts, actions or inaction of the Ukrainian Parliament and the President of Ukraine were transferred to the Supreme Administrative Court of Ukraine, which was actively formed by President and Parliament at that time. In this way, the scope of authority of more independent Supreme Court of Ukraine was artificially narrowed considering the appeals against the acts, actions or inaction of the Ukrainian Parliament and the President of Ukraine.

Final at this stage was the adoption of the Law of Ukraine "On the restoration of trust in the judiciary in Ukraine"⁴ (hereinafter and to the end of the paragraph - the Law) by the Ukrainian Parliament on 08.04.2014. The Law mentioned above was the result of a significant public demand for control over the activities of Ukrainian judges. The Law defines legal and organizational basis of the special inspection of general courts judges as temporary enhanced measure, using the existing review procedures on bringing judges of courts to disciplinary action and their dismissal from office for violating the oath. Among other things, the purpose of verification of the judges was to determine the facts that show violation of oath by the judges and the existence of conditions for bringing judges to disciplinary or criminal liability. The test had to be carried out by specifically

⁴ Закон України «Про відновлення довіри до судової влади в Україні» від 08.04.2014
Source: <http://zakon1.rada.gov.ua/laws/show/1188-18>

designed body - the Interim Commission for verification judges of courts of general jurisdiction.

The subject of verification was the consideration of applications and complaints on decisions of courts in certain categories of cases in specific periods of time. These categories included matters concerning: 1) restrictions of the rights of citizens to hold meetings, rallies, marches, demonstrations in Ukraine in the period from 21 November 2013 until the day this Law has entered into force; 2) choosing preventive measures like custody, leaving them unchanged, extension of detention, conviction, decisions of the courts of appeal and cassation courts on the review of convictions, when the result was not their abolition regarding persons considered political prisoners for actions related to their political and social activity; 3) choosing preventive measures like custody, leaving them unchanged, extension of detention, conviction of those, who were participants of mass protests during the period from 21 November 2013 until the day this Law has entered into force, due to their participation in such actions; 4) imposition of administrative penalties on persons, who were participants of mass protests in the period from 21 November until the day this Law has entered into force, like deprivation of the right to drive vehicles for failure to comply with the requirement of the officers to stop the vehicle, and leaving these decisions without change by the court of appeal in the period from 21 November 2013 until the date this Law has entered into force; 5) the imposition of administrative penalties on persons who were participants of mass protests in the period from 21 November 2013 until the day this Law has entered into force for gross disobedience to lawful order or request of a police officer and leaving these decisions without changes by an appeal court between November 21, 2013 to the date this Law has entered into force; 6) the imposition of administrative penalties on persons who were participants of mass protests in the period from 21 November 2013 to the date the Law has entered into force for violation of the procedure of organizing and holding meetings, rallies, marches and demonstrations and leaving these decisions without change by the court of appeal in the period from 21 November 2013 to the date this Law has

entered into force; 7) the imposition of administrative penalties on persons who were participants in mass protests in the period from 21 November 2013 until the day this Law has entered into force for the creation of conditions for the organization and conduction with violation of the established order gatherings, meetings, street processions or demonstrations and leaving these decisions with no change by the court of appeal in the period from 21 November 2013 to the date this Law has entered into force; 8) cases related to elections of the Verkhovna Rada of Ukraine of the seventh convocation, cancellation of their results or deprivation of the status of people's deputy of Ukraine of the person who was elected as people's deputy of Ukraine to the Verkhovna Rada of Ukraine of the seventh convocation; 9) granting permission for the investigation (search) operations and covert investigative (detective) actions against persons who were participants in mass protests in the period from 21 November 2013 until 21 February 2014, due to their participation in such actions.

Based on the results of activities conducted, a Report of the Interim Commission for verification of judges of courts of general jurisdiction⁵ was published. The Commission has worked quite effectively. For more than a year of work the Commission received 2,192 applications, according to which 331 tests were conducted. As a result of audits, 63 special acts of the Commission regarding the presence of signs of breach of oath in the actions of judges were adopted. The main problem of the Commission was that the latter had no real levers of influence on judges, the actions of which were a breach of oath (removal from office, forwarding a submission on dismissal of a judge for a breach of oath, etc.). According to Art. 7 of the Law of Ukraine "On the restoration of trust in the judiciary in Ukraine", the conclusion of the Interim Commission on violation of oath by the judge with materials of testing is forwarded to the High Council of Justice for consideration and adoption of decisions in a short term - no more than three months after receiving the conclusion, according to the procedure, prescribed

⁵ Звіт Тимчасової спеціальної комісії з перевірки суддів судів загальної юрисдикції (станом на 25.08.2015) Source: <http://www.vru.gov.ua/statistics/47>

by law. In addition, the violation of this term by the High Council of Justice is not a ground for termination of the verification procedure of a judge. If the Interim Commission, according to the results of a testing, has not established facts that show a breach of oath by a judge, but has found grounds for bringing judges to disciplinary liability, the materials of testing are sent to the High Council of Justice or to the High Qualification Commission of Judges of Ukraine. Materials of the Interim Commission for verification of judges, indicating the presence of signs of a criminal offence in the actions of a judge, are sent by the Interim Commission to the Prosecutor General of Ukraine to conduct verification of actions of a judge on the presence of signs of criminal offense in them.

However, the Commission has fulfilled its main function - to investigate quickly the facts that could indicate unjust decisions, made by judges and, as a result - a breach of oath by them.

Thus, the initial phase was characterized by the establishment of a strict control over the appointment of judges and verification of those judges who made decisions considering the participants of the events of late 2013 and early 2014. It gave a rise to the following stages, where the issue of operation of the judicial system concerned the evaluation and reformation of the judiciary at the national level.

Second stage: elaboration of draft constitutional amendments.

After having a break in reforming of the judicial branch, which primarily was related to the holding of presidential and parliamentary elections in Ukraine and the new challenges faced, as a result of the annexation of the Autonomous Republic of Crimea and the outbreak of an aggressive war in the east of Ukraine by the Russian Federation, under the Decree of 27.10.2014⁶, issued by the newly elected President of Ukraine, a Judicial Reform Council was established and one of its main tasks was to prepare and submit to the President of Ukraine proposals on

⁶ Указ Президента України «Питання Ради з питань судової реформи» від 27.10.2014
Source: <http://zakon2.rada.gov.ua/laws/show/826/2014>

procedure and strategy of reformation of the judiciary and other related legal institutions, development of action plans on the implementation of this strategy, to prepare proposals on improving legislation on judicial proceedings and on other related legal institutions, and to review and evaluate proposals and initiatives of state bodies, civil society institutes and international organizations on these issues.

12.26.2014 the President of Ukraine has registered a draft law "On ensuring the right to a fair trial"⁷, which was adopted by parliament 12.02.2015. The Law, mentioned above, was adopted to improve national standards and judicial proceedings and to provide the right to a fair trial. The Law created the legal prerequisites for judicial reform to strengthen the effectiveness of protection of the rights and freedoms of citizens and interests of legal entities in court. This Law laid out a new edition of the Law of Ukraine "On the Judicial System and Status of Judges". In addition, it provided: extension of the powers of the Supreme Court on making decisions in proceeding of cases in order of judicial review("re appeal"); changing of the order of formation of the High Council of Justice; amendments of the legislation on access to court decisions; changing of the order of consideration for the dismissal of judges by the Verkhovna Rada; the initial qualification evaluation, in fact, additional certification of all judges was established; the creation of appeal districts of general courts; the so-called "Attachment of a judge" was provided, if the judge cannot administer justice in the court he worked before.

The Law of Ukraine "On the right to a fair trial" caused mixed reactions in professional legal environment. Professor O. Ryabchenko⁸, who positively assessed the purpose of the law in general, said that the Law of Ukraine "On ensuring the right to a fair trial" actually is aimed at strengthening of legal guarantees of the rule of law and access to justice. However, there are a number of issues which will need a solution as soon as this Law will come into force. Thus, establishing the legal status of the Supreme Court of Ukraine as the highest court

⁷ Закон України «Про забезпечення права на справедливий суд» від 12.02.2015 Source: <http://zakon3.rada.gov.ua/laws/show/192-19>

⁸ Рябченко О. Забезпечення реалізації права на справедливий суд: Окремі законодавчі новели. Source: Юридичний вісник 1 (34) 2015, с. 70-74

in the system of courts of general jurisdiction on revision of cases, determines the need for additional analysis taking into account the legal position of the Constitutional Court of Ukraine set forth in the operative part of the Decision of 11 March 2010 № 8-rp / 2010. There are a number of issues related to free perception of the requirements of legal technique, resulting in not only ambiguously perceived structure of the proposed Law with the appropriate method of statement of legal requirements, but also the presence of technical errors, and certain terms that designate legal entities need to be clarified together with the legal status of such entities. The occurrence of problems during the application of disciplinary responsibility for judges may be predicted, starting with the implementation of legal qualification of certain violations, to establishing limitation periods for bringing to disciplinary responsibility. Specific problem areas accented need a resolution and additional doctrinal elaboration.

There are also other opinions. Thus, E. Zheltuhin notes that the presidential bill is not really very different from the current Law of Ukraine "On the Judicial System and Status of Judges". So it would be fair to accept the idea that it is not a new version or a law with a reformist character. Thus, the author argues that piecemeal and chaotic state policy on justice, which sometimes is held according to interests of a specific political person or other private interest, now poses a real threat of destruction of the judiciary. So liquidation of the institute of repeated cassation and the formation of judiciary that is clear for all people, where the Supreme Court performs a procedural function of the court of cassation, would be quite logical. However, it is necessary to review the position of high specialized courts and turn them into courts of appeal, without elimination of economic of administrative justice. At the same time it is necessary to raise and strongly support the prestige of first instance courts and appellate courts. The society must be sure that a judgment is always reasoned and based solely on the Law. The author points

out the need to ensure financial independence of the judiciary, without which there is no sense to conduct any talk about an independent court at all.⁹

The foregoing leads to the conclusion that the Law of Ukraine "On ensuring the right to a fair trial" only marked the beginning of judicial reform and did not significantly affect the quality of the administration of justice or the restoration of trust in the judiciary, especially in view of the fact that it does not eliminate existing political corruption risks. Basically, we should talk about eliminating of the significant effect made by parliament and president. The President of Ukraine, at the time of publication of this article, has quite extensive powers in the context of ensuring the work of the judiciary that leads to direct presidential influence on judicial appointment and transfer of judges and other.

03.03.2015 the President of Ukraine in order to elaborate agreed amendments to the Constitution of Ukraine, with the involvement of representatives of different political forces, public, domestic and international expert community, and to contribute towards social and political consensus on improving the constitutional regulation of social relations in Ukraine, issued a Decree "On the Constitutional Commission".¹⁰ The Decree approved the Regulations on the Constitutional Commission, in particular. After the formation of its membership, the Constitutional Commission started an active work, which resulted into a draft Law of Ukraine "On Amendments to the Constitution of Ukraine (on justice)"¹¹ and on 25.11.2015 the President of Ukraine submitted the project to the Parliament.

Describing the second phase of measures considering the restoration of trust in the judiciary, it should be noted that this was a transitional stage, which did not directly and significantly influence changes in the judiciary, but, with the assistance of experts and international partners of Ukraine we managed to work out

⁹ Є. Желтухін Судова реформа? – Ні, не чули. Source: Юридична газета. – 20.01.2015. – № 1-2 (447-448)

¹⁰ Указ Президента України «Про Конституційну комісію» від 03.03.2015. Source: <http://zakon0.rada.gov.ua/laws/show/119/2015>

¹¹ Проект Закону України «Про внесення змін до Конституції України (щодо правосуддя)» Source: <http://constitution.gov.ua/work/item/id/18>

a first draft of amendments to the Constitution of Ukraine, which considers justice. Around these changes (in the case of their adoption and approval by Parliament) the relations in the field of administration of justice will line up.

Third stage: constitutional changes and their legal analysis.

Submitted by the President of Ukraine the draft Law of Ukraine "On Amendments to the Constitution of Ukraine (on justice)" contains a number of innovations, which, no doubt, will cause a serious debate in parliament.

One of the innovations is the introduction of a constitutional complaint. Thus, Art. 55 of the current Constitution of Ukraine (hereinafter - the Constitution) is complemented with a new part, which provides that everyone shall be guaranteed the right to apply with a constitutional complaint to the Constitutional Court of Ukraine on grounds defined in the Constitution and under the procedure, prescribed by law. When considering a constitutional complaint, The Constitutional Court of Ukraine shall decide on compliance with the Constitution of Ukraine (constitutionality) of a law of Ukraine on constitutional complaint of a person alleging that the law of Ukraine applied to render a final decision in his or her case contravenes the Constitution of Ukraine. But it should be noted that a constitutional complaint may be logged only after exhaustion of the domestic remedies.

Society and the legal community have generally positively assessed this innovation. Anyone may file a constitutional complaint that gives an additional legal mechanism of the system of national protection on the one hand and enables the state to slightly reduce the growing number of appeals to the European Court of Human Rights regarding violations in Ukraine. The only thing that may cause reservations is whether the Constitutional Court of Ukraine with such number of judges is able to cope with the new massive task.

Draft amendments have also touched the above-mentioned problem of competence of parliament and the president. The following powers like declaring

no confidence in the Prosecutor General of Ukraine leading to his or her resignation from office, the dismissal of one third of the composition of the Constitutional Court of Ukraine and the power to elect judges for unlimited term were excluded from the jurisdiction of parliament. It is proposed to include an amendment that the procedure for enforcement of the court decisions should be established exclusively by laws.

These changes are aimed at limiting the influence of parliament on the appointment of judges, blocking of the Constitutional Court of Ukraine, as well as political pressure on the Prosecutor General of Ukraine.

Regarding the competence of the President of Ukraine, the power of dismissal of one third of the composition of the Constitutional Court of Ukraine, and the power of establishment of courts were excluded from his jurisdiction. In addition, the project provides the abolition of appointment of judges for the first five years, which is clearly positive as it eliminates the pressure on the judge during this "probationary" period. According to the project, judges are to be appointed indefinitely by the President of Ukraine on the proposal of the newly created body - the High Council of Justice, which aims to change the High Council of Justice.

Changes of competence, as already mentioned above, eliminate the risk of direct political pressure of higher echelons of state power on judges, so they should be generally assessed positively.

Changes in the sphere of justice will also affect the Prosecutor's Office of Ukraine. Thus, it is planned to remove a whole section from the Constitution that is dedicated to the Prosecutor's Office and this, in some way, symbolizes the fact that the prosecution holds a special place in the system of state authorities. Under the new idea, Prosecutor's Office, in fact, will be a part of judiciary branch of power. New articles that relate to the prosecution are added to the section of the Constitution of Ukraine named "Justice." The powers of the Prosecutor's Office will include three main aspects: the support of public prosecution in court;

supervision of pre-trial investigation in criminal cases; representation of state interests.

The project involves a change of requirements for judicial appointment and grounds for dismissal and termination of office of a judge. According to the project, to the office of judge may be appointed a citizen of Ukraine, not younger than the age of thirty (in the current version – not younger than twenty five years old) and not older than sixty five (maximum age of public service), who has a higher legal education and has work experience in the sphere of law for no less than five years (in current edition - three years), has resided in Ukraine for no less than ten years and has command of the state language. It is also determined that additional requirements to be appointed to the office of a judge may be provided for in the law.

The most important is that it is planned to increase the minimum age of judges (30 years). There were cruel discussions around this proposal, but it was recognized that 25 years is too young age for a candidate for a judge office in view of professional and, to some extent, life maturity of the candidate.

In turn, the grounds for dismissal of a judge are the following: inability to exercise his or her powers for health reasons; violation by a judge of incompatibility requirements; commission by a judge of a disciplinary offence, flagrant or permanent disregard of his or her duties to be incompatible with the status of judge or apparent nonconformity with being in the office; submission by a judge of statement of resignation or of voluntary dismissal from office; refusal of a judge to be removed from one court to another in case the court in which a judge holds the office is to be dissolved or reorganized.

The project has excluded such a relative basis for dismissal of the judge as a "breach of oath by the judge", that is evaluated positively, since the phrase "breach of oath" creates a great scope for abuse.

As noted above, the draft envisages the establishment of the High Council of Justice instead of the High Council of Justice. It is assumed that the High Council of Justice will consist of twenty-one member: ten of them shall be elected by the

Congress of Judges of Ukraine among judges or retired judges; two of them shall be appointed by the President of Ukraine; two of them shall be elected by the Verkhovna Rada of Ukraine; two of them shall be elected by the Congress of Advocates of Ukraine; two of them shall be elected by the All-Ukrainian Conference of Public Prosecutors; two of them shall be elected by the Congress of Representatives of Law Schools and Law Academic Institutions among law scholars.

The creation of this body is extremely important for the judiciary, since it is endowed with extraordinary powers: to present submission for the appointment of a judge to office; to decide on the violation by a judge or a prosecutor of the incompatibility requirements; to review complaints as regards decisions of the relevant body imposing disciplinary liability on a judge or a prosecutor; to decide on dismissal of a judge from office; to decide on termination the powers of a judge; to grant consent for detention of a judge and taking him or her into custody; to decide on temporal withdrawal the powers of a judge to administer justice.

In fact, this is a grand scope of authority in the judicial branch of power. It should be noted that the majority of the High Council of Justice are judges or retired judges (11 of 21 members of the High Council of Justice shall be appointed from among the judges or retired judges, and the High Council of Justice acquires authority on the condition of election and/or appointment of at least fifteen of its members, most of whom are judges). Of course, such a distribution enables judicial body to affect significantly the operation of the High Council of Justice, taking into account the so-called "Corporate solidarity" practice that is common in Ukraine.

The amendments have also affected the Constitutional Court of Ukraine. The project provides that the selection of candidates for the post of judge of the Constitutional Court of Ukraine shall be conducted on competitive basis under the procedure prescribed by the law. In addition, the requirements for judges of the Constitutional Court of Ukraine became stricter. A citizen of Ukraine who has attained the age of forty five on the day of appointment (in the current version - forty years), has a higher legal education and experience as a legal scholar or

professional experience as a judge or an advocate of not less than fifteen years, has resided in Ukraine for the last twenty years (in the current version - ten years), and has command of the state language, can be a judge of the Constitutional Court of Ukraine. The conditions concerning age and length of service have become more stringent that will most likely affect the professionalism of judges of the Constitutional Court of Ukraine.

It is also important that the project was overall positively assessed by the European Commission for Democracy through Law (Venice Commission), which in its opinion stated that in its view, the latest version of amendments to the Constitution, developed by the working group on justice of the Constitutional Commission of Ukraine is very positive and well prepared, and deserves to be fully supported with some remarks.¹²

There are more amendments to the Constitution of Ukraine, however, considering the purpose of this publication only those of them were analyzed that make an impact on restoring trust in the judiciary in Ukraine, and that will happen only if the draft would be adopted by the Parliament without the chaotic and irresponsible amendments on the stage of adoption.

Conclusions

Ukraine is facing a challenging period of restoration of trust in the judiciary. The process is constantly becoming more complex because of political factors, military actions and high level of corruption. However, the public pressure and demand for reforms give reasons to assess the processes occurring in the Ukrainian judiciary optimistically and hope for their rapid implementation.

The chance for adoption of amendments to the Constitution of Ukraine is quite high. With sufficient level of quality, meeting the requirements of legislative technique the draft law on amendments to the Constitution of Ukraine has been

¹² Висновок Європейської Комісії за демократію через право (Венеціанська комісія) стосовно запропонованих змін до Конституції України, що стосуються судової системи, прийнятий Венеціанською комісією на 104 Пленарній сесії (Венеція, 23-24 жовтня 2015 року) Source: <http://www.venice.coe.int/webforms/events/>

written. If it is adopted, the political component and, partly, the corruption component will be eliminated. However, the refusal to release all judges will cause continuing discussions, although such position, after all, is not supported by the Venice Commission.

At this stage all sufficient measures to gradually restore trust in the judiciary are taken. But in addition, there is a need to establish judicial control to react to the facts of improper administration of justice. However, the fact that the reform will have no immediate effect, and therefore it will be properly evaluated by society only in the future, is obvious.