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## **A GENERAL OVERVIEW OF THE LAW OF UKRAINE «ON AMENDMENTS TO THE LAW OF UKRAINE ON JUDICIARY AND STATUS OF JUDGES AND CERTAIN LAWS OF UKRAINE ON THE FUNCTIONING OF JUDICIAL AUTHORITIES»**

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**Summary.** This article is devoted to the analysis of the Law of Ukraine On Amendments to the Law of Ukraine “On Judiciary and Status of Judges” and Some Laws of Ukraine on the Activity of Judicial Governments. During the work, the most important legal issues of this normative act were explored. We have answered the following questions: what changes have been made to the judges, the High Qualification Commission of Judges of Ukraine and the High Council of Justice?

**Key words:** activity of judicial governments; amendments; judiciary and status of judges; purification of power; the High Council of Justice; High Qualification Commission of Judges of Ukraine.

The problem statement and analysis of recent research. President Volodymyr Zelensky has signed the Law of Ukraine “On Amendments to the Law of Ukraine on Judiciary and Status of Judges and Certain Laws of Ukraine on the Functioning of Judicial Authorities”. The relevant information is published on the bill card on the Verkhovna Rada website. It is noted that the law was returned on November 4, 2019, with the President’s signature. As Ukrinform reported, on September 12, the Verkhovna Rada supported at first reading the presidential draft law No. 1008 “On Amendments to Certain Laws of Ukraine regarding the Functioning of Judicial Governance.” On October 1, Secretary-General of the Council of Europe Marija Pejcinovic Buric in a letter to Ukrainian Foreign Minister Vadym Prystaiko expressed concern about legislative proposals on judicial reform in Ukraine that could limit the independence of the judiciary. She noted that draft law No. 1008 puts forward wide-ranging changes that “could have significant implications for the independence of the judicial system,” in particular “the status and competencies of judges, as well as relating procedures.” [1].

The adopted law provides for changes to the laws “On the Judiciary and Status of Judges”, “On the Purification of Power” and “On the High Council of Justice”. The law introduces a new procedure for the formation of the High Qualifications Commission of Judges. The High Council of Justice will form a competition commission, which will consist of: three persons elected by the Council of Judges of Ukraine from among its members; three persons from among international experts proposed by international organizations with which Ukraine cooperates in the field of preventing and combating corruption in accordance with international treaties of Ukraine, to the Public Council of International Experts established under the Law “On Supreme Anti-Corruption Court”. Also, significant changes are made to the Laws on the Judiciary and the Status of Judges and the Supreme Judicial Council regarding judicial remuneration. The law contains several significant changes that are appropriate to review and analyze for further effective study and application. A considerable amount of such questions concerning this issue arise immediately [2].

The purpose. This review highlights the key changes that have taken place in the area of justice. It explains the basics and describes

the new requirements in this area. In the course of writing this article, we tried to answer the following questions: how will the court's remuneration change? in what quantitative composition will the Supreme Court continue to work? what changes are awaiting the High Judicial Qualifications Commission? do such changes pose a potential threat to the rule of law as an integral part of the rule of law? So what is happening with the High Qualification Commission of Judges (HQCJ) and the High Council of Justice (HCJ)?

Presentation of the main material. The Verkhovna Rada of Ukraine has approved the Law of Ukraine "On Amendments to the Law of Ukraine on Judiciary and Status of Judges and Certain Laws of Ukraine on the Functioning of Judicial Authorities" (No.1008). The law shall enter into force on the day following its publication, except for subparagraph 16 of paragraph 1 of section I of this Law, which shall enter into force on January 1, 2020 [3]. The adopted law provides for amendments to the laws "On the Judiciary and Status of Judges", "On the Clearance of the Power" and "On the High Council of Justice". Thus, analyzing the Law, we see that new rules are being established for the formation of the High Qualifications Commission of Judges of Ukraine. Twelve members of the High Judicial Qualifications Commission are now being appointed by the High Judicial Council following the competition. The selection board is formed by the High Council of Justice. Such a committee shall comprise: three persons elected by the Council of Judges of Ukraine from among its members; three persons from among international experts nominated by international organizations with which Ukraine cooperates in the field of preventing and combating corruption under international agreements signed between Ukraine and the Public Council of International Experts, established in accordance with the Law on the Supreme Anti-Corruption Court. There is a proposal to set up a committee on integrity and ethics in the High Council of Justice. In the future, this could ensure that the high standards of integrity and professional ethics of the members of the High Judicial Council and the High Qualifications Commission of Judges are met in the future. Another long-awaited issue that is reflected in the Law is the decision on the amount of judges' remuneration under uniform rules for all judges, regardless of their qualification conditions, since

all judges of the judicial system have a single legal status and levels before the law [3].

The composition of the High Qualification Commission of Judges is reduced from 16 to 12 members, to be appointed by the High Council of Justice on the results of the competition. The High Qualifications Commission of Judges will be a collegial body and approves, in agreement with the High Council of Justice, the form and content of the application for participation in the selection of candidates for the position of judge, the questionnaires of the candidate for the position of judge, the procedure for special training of candidates for the position of judge. Pursuant to the provisions of the new law, the High Qualifications Commission develops and submits for approval to the High Council of Justice drafts of the procedure for the selection examination and the method of evaluation of its results, the procedure for the preparation of the qualifying examination and the method of evaluation of candidates, the provisions on the competition for the vacancy and the judicial procedure qualification evaluation, procedure of formation and maintenance of the judge's file (candidate's file for the position of judge). Title of Article 94 of the Law "The composition of the High Qualification Commission of Judges of Ukraine has been changed to" Members of the High Qualification Commission of Judges of Ukraine ". The procedure and appointment criteria have been changed. Thus, unlike the provisions of the old Law, the new rules now include the High Qualification Commission of Judges of Ukraine members appointed by the High Council for Justice for four years. The same person may not exercise the authority of a member of the High Qualification Commission of Judges of Ukraine for two consecutive terms. A member of the High Qualification Commission of Judges of Ukraine may be appointed as a citizen of Ukraine, who has a state language, has a law degree and professional experience of at least fifteen years belongs to the legal profession and meets the criterion of political neutrality. The law states that a Member of the High Qualification Commission of Judges of Ukraine may not belong to political parties, trade unions, or participate in any political activity [3].

According to a member of the High Qualifications Commission of Judges of Ukraine, who is a judge or a civil servant, the position,

status, and place of work remain for the duration of his / her powers. However, the new law complements that such members of the High Qualifications Commission of Judges of Ukraine shall be seconded to the Commission during the exercise of their powers.

The name, structure, and content of Article 95 of the Law have been changed too. “The order of formation of the High Qualification Commission of Judges of Ukraine” is now transformed into “The order of appointment of members of the High Qualification Commission of Judges of Ukraine”. Appointment of members of the High Qualification Commission of Judges of Ukraine is carried out by the High Council of Justice based on the results of the competition in the manner prescribed by this Law. Recall that per the provisions of the previous Law, the High Qualifications Commission of Judges of Ukraine independently formed their own based on the rule of law, publicity, and political neutrality [4].

As regards the competition for the position of a member of the High Qualification Commission of Judges of Ukraine, it is conducted by the High Council of Justice under the new rules based on the above principles of the rule of law, publicity, and political neutrality. A person who meets the requirements of this Law to a member of the High Qualification Commission of Judges of Ukraine, and intends to be appointed a member of the High Qualification Commission of Judges of Ukraine, applies to the Secretariat of the High Council of Justice with a statement. The form of the statement is now approved by the High Council of Justice and not by the High Qualifications Commission of Judges of Ukraine. Further amendments to this article are concerning the work of the Secretariat. It should be noted that under the new law, the Secretariat of the High Council of Justice is replacing its predecessor, the Secretariat of the High Qualifications Commission of Judges of Ukraine.

Further, Article 95 is supplemented by Article 95–1, which contains provisions on the selection committee for holding a competition for the position of a member of the High Qualification Commission of Judges of Ukraine. Such a commission shall be established and approved by the High Council of Justice. The composition of the competition commission shall include: three persons elected by the Council of Judges of Ukraine from among its members; three persons

from among the international experts proposed by international and foreign organizations with which Ukraine cooperates in the field of prevention and counteraction of corruption in accordance with the international treaties of Ukraine, to the Public Council of International Experts established in accordance with the Law of Ukraine “On the Supreme Anti-Corruption Court”. The Contest Regulations are approved by the High Council of Justice. The Competition Commission shall have the right: to collect, verify and analyze information regarding candidates for the post of member of the High Qualification Commission of Judges of Ukraine; provide justice to the High Council of Justice and request information on candidates for the post of member of the High Qualification Commission of Judges of Ukraine; take measures to protect personal data, information with restricted access, made known to the members of the competition commission in connection with the exercise of their powers. The article contains certain obligations regarding the members of the competition commission, which in particular include: to participate in its work personally, without the right to delegate its powers to other persons; became known in connection with participation in the work of the competition commission; to refuse to participate in the collection of information about the candidate, to consider the candidate’s suitability for the position if the member of the selection board is in or has personal or business relations with the candidate and / or in the event of any other conflict of interests or circumstances that may affect the objectivity or impartiality when a member of the commission makes the decision to take the post of a member of the High Qualification Commission of Judges of Ukraine. The law states that the financing of the Tender Commission activities may be provided with the involvement of international technical assistance [4].

The conditions under which the dismissal of a member of the High Qualification Commission of Judges of Ukraine from office are being strengthened. Thus, the new wording of Article 96 of the Law does not contain a sign of “substantial” violation of the requirements established by the legislation in the field of corruption prevention, and also added several conditions under which a member is dismissed. Such conditions include: gross or systematic neglect of duties that are incompatible with the status of a member of the High Qualification

Commission of Judges of Ukraine or have found him / her incompatible with his / her position, admitting other conduct that undermines authority and public trust in justice and the judiciary, including failure to observe the ethical standards of a judge as part of the professional ethics of a member of the High Qualifications Commission of Judges of Ukraine. There is no such a position as the fact that the procedure for consideration and decision of the High Qualifications Commission of Judges of Ukraine on the dismissal of its member is initiated by the Chairman and Deputy Chairman of the High Qualification Commission of Judges of Ukraine per the requirements of the Regulation. In the new wording, it is sufficient that the decision on the dismissal of a member of the High Qualification Commission of Judges of Ukraine is adopted by the High Judicial Council at its session by a majority vote of its composition [4].

Section 107 of the Law on the issue of a Disciplinary Complaint Against a Judge, is revised in the following wording: Citizens exercise this right in person or through a lawyer, legal persons through a lawyer, public authorities and local self-government bodies through their leaders or representatives, the Commission on Integrity and Ethics through its chairman or members of the Commission. "It should also be noted that part, which provides a warning against those who repeatedly make unsubstantiated disciplinary complaints, namely: The High Council of Justice has the right to decide to leave without consideration for one year in the next this person's complaints are excluded from the new version of the Law.

The new version of the Law eliminates Article 129, paragraph 6, which states that the Congress of Judges shall elect the members of the High Qualifications Commission of Judges of Ukraine and decide on their dismissal under this Law. It also noted Article 135 of the Law on the Amount of Judicial Remuneration. Now, the basic salary of a Supreme Court judge is 55 subsistence wages for able-bodied persons, which is set for January 1 of the calendar year. Also, the new version of the Law excludes paragraphs 22 and 23 of the final transitional provisions that were mentioned. that the right to receive judges' remuneration in the amounts determined by this Law is vested in judges who, by the results of a qualification assessment, have confirmed the suitability of their position (ability to administer justice in

the relevant court) or are appointed to the position by the results of a competition held after the entry into force of this Law. Judges who, on the day this Law enters into force, have undergone a qualification assessment and have confirmed their ability to administer justice in the relevant court, shall receive, by 1 January 2017, a judicial remuneration determined in accordance with the provisions of the Law of Ukraine "On Judiciary and Status of Judges". Before qualifying, the judge receives a judge's remuneration determined following the provisions of the Law of Ukraine "On Judicial System and Status of Judges". Under the new law, such an order is not in force [3].

The Law of Ukraine "On the High Council of Justice" also undergoes certain changes, according to which the High Council of Justice has new powers, which include: approval of the procedure of passing the qualifying examination and methods of assessing its results, the procedure of passing the qualifying examination and methods of assessing candidates, the competition for the vacant position of a judge, the procedure and methodology of qualification evaluation, the procedure for the formation and maintenance of the judge's file (the candidate's file for the position of judge); appointment and dismissal of members of the High Qualifications Commission of Judges of Ukraine; decision-making on dismissal of members of the High Council of Justice. Members of the High Council of Justice, in their activities and beyond, must adhere to ethical standards established for the judge as part of the professional ethics of a member of the High Council of Justice. The remuneration of a member of the High Council of Justice is changing; now, in the new order, this amount is set at the salary of a judge of the Supreme Court, without specifying a factor of 1.5, as in the previous version.

Supplement the new Article 28–1, which defines and establishes the order of business of the Integrity and Ethics Commission. The article contains provisions defining the Commission as a collegial body, acting in the High Council of Justice and created to ensure the transparency and accountability of members of the High Council of Justice and members of the High Qualifications Commission of Judges of Ukraine. Such a Commission shall comprise: three members of the High Council of Justice; three persons from among the international experts proposed by international and foreign organizations with



which Ukraine cooperates in the field of prevention and counteraction of corruption in accordance with the international treaties of Ukraine, to the Public Council of International Experts established in accordance with the Law of Ukraine “On the Supreme Anti-Corruption Court”.

The main tasks of the Commission are: to assess the compliance of a member or candidate (during a special examination) with the High Judicial Council and the High Qualification Commission of Judges of Ukraine to the principles of integrity and ethics of a judge, which are an integral part of the professional ethics of a member of the High Judicial Council, the High Qualification Commission judges of Ukraine and control over the transparency of the activities of the High Council of Justice and the High Qualifications Commission of Judges of Ukraine; approving the findings on non-compliance with the requirements of the law for the candidates for the position of a member of the Supreme Council of Justice before the election (appointment) of them to a position that prevents their appointment to the respective position; filing a motion to dismiss a member of the High Council of Justice from the position on the grounds specified in clauses 3–6 of part one of Article 24 of this Law; submission of a motion for dismissal of a member of the High Qualification Commission of Judges of Ukraine on the grounds specified in clauses 3–6 of part one of Article 96 of the Law of Ukraine “On Judiciary and Status of Judges”; promoting the consideration by members of the High Council of Justice, the High Qualifications Commission of Judges of Ukraine of public opinion in the performance of their tasks; monitoring information about judges of the Supreme Court in order to identify disciplinary violations, gross or systematic neglect of a judge by his / her duties, incompatibility with the status of a judge or his / her non-compliance with the position, violation of the duty to confirm the lawfulness of the source of property.

It would be advisable to note changes in the disciplinary proceedings. Thus, under the new version of the Law, disciplinary proceedings begin after receiving, in accordance with the Law of Ukraine “On Judiciary and Status of Judges,” complaints about disciplinary misconduct by a judge, notification of committing a disciplinary offense by a judge, or upon independent detection by members of the High

Council of Justice of any source. may testify of disciplinary misconduct by a judge, or at the initiative of the Disciplinary Chamber, the Integrity or Ethics Committee or the High Judicial Qualification Commission in Ukraine in cases specified by law (disciplinary complaint). Disciplinary proceedings against judges are carried out by the Disciplinary Chambers of the High Council of Justice. Disciplinary proceedings include a preliminary examination of materials that are indicative of a judge's disciplinary misconduct and the decision to open a disciplinary case or refuse to open one; consideration of a disciplinary complaint and decision on bringing or refusing to bring a judge to disciplinary responsibility.

The disciplinary proceedings have been adjusted, and now they are implemented within a reasonable time. The term disciplinary proceedings shall not exceed sixty days from the date of receipt of the disciplinary complaint.

Conclusion: In this article, we summarize the main changes that the Law of Ukraine "On Amendments to the Law of Ukraine "On Judiciary and Status of Judges" and some of the laws of Ukraine" regarding the activity of judicial administration bodies give us.

The Ukrainian people are full of hope because where the judiciary shows signs of inefficiency, constantly influencing judges and pressure to make one or the other decision, it is impossible to do business, raise the economy of the country, and keep citizens calm about protecting their rights and freedom.

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**Костенко И. В.**

***О внесении изменений в Закон Украины «О судоустройстве и статусе судей» и некоторых законов Украины относительно деятельности органов судейского управления: обзор новаций Закона***

**Аннотация :** статья содержит анализ Закона Украины «О внесении изменений в Закон Украины «О судопроизводстве и статусе судей» и некоторых Законов Украины о деятельности органов судебной власти. В ходе работы были рассмотрены наиболее важные положения этого нормативного акта. Мы ответили на следующие вопросы: какие изменения ожидают судей и каковы могут быть последствия этих изменений, какими новыми обязанностями и полномочиями наделяют Высшую квалификационную комиссию судей Украины и Высшую Раду Правосудия.

**Ключевые слова :** судебная реформа, судебная власть, судебная система и статус судей, очищение власти, Высшая Рада Правосудия, Высшая квалификационная комиссия судей Украины.

**Костенко І. В.**

***Про внесення змін до Закону України «Про судоустрій і статус суддів» та деяких законів України щодо діяльності органів суддівського вреядування: огляд новацій Закону***

**Анотація.** Президент України Володимир Зеленський підписав Закон України «Про внесення змін до Закону України про судоустрій і статус

суддів та деякі закони України про функціонування судових органів». Відповідна інформація опублікована на вебсайті Верховної Ради, де зазначено, що закон було повернуто 4 листопада 2019 року з підписом Президента. Як повідомляв Укрінформ, 12 вересня Верховна Рада підтримала на першому читанні проєкт закону Президента № 1008 «Про внесення змін до деяких законів України щодо функціонування судового управління», проте наразі нема стабільної позиції щодо підтримання такого Закону з боку більшості суддів, адже, на їх думку така реформа вносить масштабні зміни, які можуть мати суттєвий вплив на незалежність судової системи, отже неминучими стануть такі наслідки, як обмеження незалежності судової влади.

Стаття містить в собі детальний аналіз Закону України «Про внесення змін до Закону України «Про судоустрій і статус суддів» та деяких законів України про діяльність судових урядів. В ході роботи було досліджено найважливіші правові питання цього нормативного акта. Ми відповіли на наступні запитання: які зміни були внесені до діяльності судової гілки влади, якими новими повноваженнями та обов'язками будуть наділені Вища кваліфікаційна комісія суддів України та Вища Рада Правосуддя?

На думку прибічників Закону нова реформа передбачає внесення необхідних змін до законів «Про судоустрій і статус суддів» та «Про Вищу Раду Правосуддя». Закон запроваджує новий порядок формування Вищої кваліфікаційної комісії суддів. Тепер Вища Рада Правосуддя формує конкурсну комісію, до складу якої, за новими правилами, входять: три особи, обрані Радою суддів України з-поміж її членів; три особи з-поміж міжнародних експертів, запропонованих міжнародними організаціями, з якими Україна співпрацює у сфері запобігання та протидії корупції відповідно до міжнародних договорів України, до Громадської ради міжнародних експертів, створеної згідно із Законом «Про Вищий антикорупційний суд». На думку вітчизняних та міжнародних експертів зміни такого плану мають неабияку доцільність, проте деякі кардинальні зміни можуть призвести до непередбачуваних результатів та очікувань. Дуже суперечливими постають наразі питання щодо судової винагороди.

Стаття висвітлює ключові зміни, які відбуваються у сфері правосуддя. Ми намагалися відповісти на найбільш гучні питання сьогодення: як буде змінюватися винагорода суддів, членів Вищої Ради Правосуддя та членів Вищої Кваліфікаційної Комісії Суддів України? В якому кількісному

*та структурному складі продовжить працювати Верховний Суд? Які зміни чекають на Вищу Кваліфікаційну Комісію Суддів та Вищу Раду Правосуддя в аспекті нових повноважень та обов'язків? Чи можемо ми вважати такі зміни потенційною загрозою верховенству права?*

Аналізуючи Закон, ми бачимо, що встановлюються нові правила для формування Вищої Кваліфікаційної Комісії Суддів України. Тепер дванадцять членів Вищої Кваліфікаційної Комісії Суддів призначаються Вищою Радою Правосуддя після проведення конкурсу. Відбіркова комісія формується Вищою Радою Правосуддя. Надана пропозиція щодо створення комітету з питань доброчесності та етики у Вищій Раді Правосуддя. Надалі це може забезпечити дотримання високих стандартів доброчесності та професійної етики членів Вищої Ради Правосуддя та Вищої Кваліфікаційної Комісії Суддів. Ще одне довгоочікуване питання, яке зазначається в Законі, — це рішення щодо розміру винагороди суддів за єдиними правилами для всіх суддів, незалежно від їх кваліфікаційних умов, оскільки всі судді судової системи мають єдиний правовий статус. Проте, незрозумілим лишається питання щодо засобів такого урівняння: чи шляхом підвищення рівня винагороди суддів, посада яких мала спірний характер відповідності посадам тих суддів, що проходили кваліфікаційне оцінювання, чи шляхом пониження рівня винагороди тих суддів, котрі проходили кваліфікаційне оцінювання.

Наразі український народ сповнений надії, що реформа матиме добрий результат. Необхідно розуміти, що в ході реалізації такої реформи будуть повставати багато суперечливостей та розбіжностей, проте зміни вкрай необхідні, оскільки там, де судова влада виявляє ознаки неефективності, там, де постійно здійснюється вплив на суддів і цілком нормальним є здійснення тиску на прийняття того чи іншого рішення, стає неможливо підтримувати стабільну економіку країни та зберігати спокій громадян стосовно захисту їх прав та свобод.

**Ключові слова :** *судова реформа, судова влада та правосуддя, судоупорядкування та статус суддів, очищення влади, Вища Рада Правосуддя, Вища кваліфікаційна комісія суддів України.*