



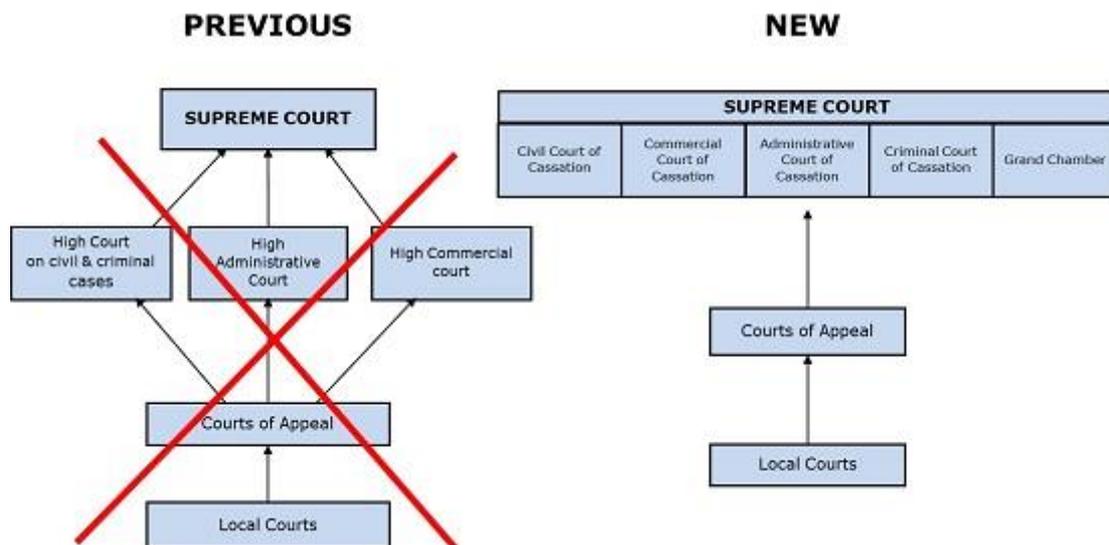
Amendments to the Constitution of Ukraine passed: Ukraine takes a major step towards a European System of Justice

On 2 June 2016, the Verkhovna Rada of Ukraine adopted amendments to the Constitution of Ukraine and a new Law “On the Court System and the Status of Judges”. Once the President of Ukraine signs the changes into law, they will be implemented in several stages beginning this year.

The changes are a key milestone in the reform of the Ukrainian judiciary and should improve justice by enhancing the transparency and efficiency of Ukrainian court proceedings. If properly implemented, they will help reduce corruption in Ukraine’s court system by making judges more accountable for their rulings and behaviour.

I. Ukraine’s new system of courts

The constitutional amendments provide for a three-tier court system, disposing of the current four levels of hearings. This is expected to improve the efficiency of the entire litigation process in terms of time, service and quality.



The amendments create a unified court system under the Supreme Court of Ukraine consisting of one chamber and four courts of cassation (please see the charts above). The new structure does away with essentially three parallel independent superior specialized courts, which will hopefully eliminate the inconsistencies in the application of the law, forum shopping and corruption inherent in the current system. Further, two new courts will be established, designed to consider intellectual property and corruption disputes - the High Specialized Court on Intellectual Property and the High Specialized Anticorruption Court. The place of those in the new system of courts is yet to be clarified.

II. New rules re: independence of judges and anti-corruption measures

The amendments are designed to **strengthen the independence** of judges from political and commercial manipulation. Accordingly:

1. Judges will be henceforth appointed by the President of Ukraine upon nomination by the Supreme Council of Justice (“Вища рада правосуддя”), a new state body to be established to replace the current High Council of Justice (“Вища рада юстиції”). The competence to appoint and to remove judges was transferred to the Supreme Council of Justice from the Parliament of Ukraine.
2. Further, the judicial reform laws revoke the so-called probation period of a judge’s first five years in office in respect of newly appointed judges and provide for substantially increased base salaries.
3. At the same time, sitting judges who have been appointed for the 5-year probation period or permanently prior to the coming into force of the new Law “On the Court System and the Status of Judges” will be tested for their fitness for this office in terms of their professional expertise and ethics. Failure to demonstrate such compliance, or refusal to participate in the review process will constitute grounds for dismissal of the respective judge.

The amendments also introduced **strict anticorruption rules** for judges, whose lifestyles will now be strictly monitored:

1. Each judge will now submit two additional annual declaration forms: (i) on family relations, providing for broad and extensive disclosure of family ties, and (ii) a declaration of integrity, which will be a publicly available document.
2. Furthermore, judges will be now obliged to confirm the legality of the source of their assets. Failure to explain and justify the sources of funds and other assets will be treated as a basis for a judge’s dismissal.
3. Furthermore, the cloak of blanket immunity of judges from any form of prosecution will be lifted; judicial immunity from criminal liability will now be limited to functional immunity only, meaning that a judge is protected from liability resulting from their judicial actions only, while they now can be prosecuted for any other type of offence.

Considering that the new rules also tighten the disciplinary liability of judges, if properly implemented, the new laws should with time significantly improve the quality of the Ukrainian judiciary.

III. Monopoly of Advocates in representation before the courts

The amendments to the Constitution also attempt to regulate representation before the courts. Currently, any duly authorised individual may represent any person in court except for the criminal proceedings. From 1 January 2017 only state-licensed advocates will be allowed to represent clients in cassation matters, from 1 January 2018 in appeal matters and in courts of first instance from 1 January 2019.

Much remains to be done to properly implement this reform, starting with raising the overall quality and accountability of advocates. Ukraine currently does not have a self-governing law society responsible for and dedicated to the training, licensing, disciplining and professional development of lawyers. It is not clear if all of Ukraine’s lawyers will become “advocates” under laws still to be developed. Strict criteria are necessary for entrance into the advokatura, involving oversight and the enforcement of stringent codes of professional conduct. While these mechanisms still remain to be established, the broad outlines of this system have been clear for some time, and it is hoped that the political will finally exists to properly implement them. These changes should then have an overall positive impact on the justice system, providing the citizen with access to high quality legal services and representation.

IV. Changes to the functions of the prosecutor’s office

Founded in 1937 as a repressive body of the state, the state prosecutor’s office, or Prokuratura, in Soviet times was responsible for overseeing the legality of actions of all state bodies, including the courts. Most of these functions carried over into the legal framework of independent Ukraine, where many of the Prokuratura’s functions, in fact, were expanded. Given the lack of accountability connected with its expansive functions of oversight, investigation and prosecution, the Prokuratura has come under widespread criticism for the way these powers were exercised.

Now, for the first time since the collapse of the Soviet Union and Ukraine’s independence, amendments to the Constitution significantly change the competences of the state prosecution office. The amendments

abolish the wide general supervisory authority of the prosecutor's office and limit its functions to the following:

- (1) Organization and leadership of pre-trial investigations;
- (2) Support of public prosecution in the courts; and
- (3) Representation of the state's interest in the courts, according to the law.

While the leading role of procedural supervision envisaged in the amendments is worrisome, overall, the proposed amendments should help decrease the corruption and abuse of powers in criminal cases. They will also hopefully bring Ukrainian legislation and practice with respect to the protection of rights in criminal prosecutions in line with provisions of the Convention on Human Rights and the practice of the European Court on Human Rights.

The amendments also provide that the many of the current functions of the Prokuratura will be transferred to other state authorities, some of which are only in their nascent stages of development. In particular, the function of operational pre-trial investigation is to be vested, inter alia, in the National Anti-corruption Agency and the State Investigation Agency.

V. Access to Constitutional Court significantly broadened

The amended Constitution of Ukraine now provides for access to the Constitutional Court of Ukraine to all individuals and companies where there are grounds to claim that a final court judgment contradicts the Constitution. A complaint may only be filed after all other remedies have been exhausted in the regular Ukrainian courts.

This amendment may significantly improve access to and the quality of justice, hopefully obviating the need for parties to seek their remedies in international tribunals.

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