



Delegation of Ukraine

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INDEPENDENCE OF THE JUDICIARY

Dear colleagues,

Judicial power in Ukraine belongs to one of the three state power branches. According to Article 6 of the Constitution of Ukraine state power in Ukraine is exercised on the principles of its division into legislative, executive and judicial power. Bodies of legislative, executive and judicial power exercise their authority within the limits established by this Constitution and in accordance with the laws of Ukraine.

The *independence* of the judiciary is guaranteed by the Constitution and the laws of Ukraine. According to Article 124 of the Constitution justice in Ukraine is administered exclusively by the courts. The delegation of the functions of the courts, and also the appropriation of these functions by other bodies or officials, shall not be permitted.

The independence of the judiciary in general and its institutions – the courts – in particular would be incomplete, if not impossible, without legally bound independence of those who represent it – the judges. Hence, the independence and immunity of judges is guaranteed by the Constitution of Ukraine (Article 126, paragraph one) and the laws of Ukraine, in particular the Law of Ukraine “On Status of Judges”.

According to Paragraph 1 of Article 126 of the Constitution the independence and the immunity of judges are guaranteed by the Constitution and the laws of Ukraine

The Constitutional Court of Ukraine in its Ruling of 1 December, 2004 (case No. 1-1/2004), gave the following interpretation of the provisions of

Paragraph 1 of Article 126 of the Constitution concerning independence and immunity of judges:

Judicial independence is an integral part of the judicial status. It is a constitutional principle behind the way in which the courts are organized and function and the way judges serve their professional duties under the sole governance of law. Judicial independence is provided by the special practices that define the way they are elected or recruited and dismissed; by prohibiting any kind of influence imposed upon them; by protecting their professional interests; by special provisions that regulate the way they are held disciplinarily liable; by ensuring state protection of their personal safety and the safety of their families; by ensuring the availability of financing and the necessary operational conditions and legal and social protection required for both judges and courts to function properly; by prohibiting them from becoming members of political parties and trade unions, taking part in any political activity, becoming deputies or being simultaneously involved in other activity of certain kinds; by bringing to legal liability those who are guilty in disrespect for judges and court; and by judicial self-governance.

Judicial immunity is an element of the judicial status. It does not constitute a special benefit but rather has a public and legal purpose of ensuring that justice is rendered by courts that are impartial, unbiased and independent.

Judicial reform remains high on the agenda in Ukraine. Its successful fulfillment will secure the state's resolve to ensure the citizens' right to independent and just court.

In carrying out the judicial reform Ukraine takes into account the existing international instruments in the field of ensuring judiciary independence, in particular the Basic Principles on the Independence of the Judiciary¹ approved by UN General Assembly Resolutions 40/32 and 40/146 of 29 November and 13 December, 1985.

Among the problems facing the judicial system of Ukraine are:

- a lower than expected professional level of judges;

¹ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

- a far-from-perfect judge recruitment and that of bringing judges to disciplinary liability (amenability to law);
- insufficient (and as a result, inadequate) level of practical guarantee for judges' independence, etc.

The abovementioned issues are inseparably linked to existing flaws in the Ukrainian legislation. In turn, their successful settlement requires adequate legislative measures.

In order to reform the system of institutions responsible for forming high professional judiciary, we need to *delimit the functions* of the present board of experts (qualification commissions) concerning the admittance of judges, the qualifying certification of judges-in-office and examining of disciplinary cases. The issues concerning judge's career and disciplinary responsibility should fall within the authority of different bodies.

In order to introduce an effective instrument of shaping top-class judiciary we need to *improve the qualification procedure*. In particular, the staffing of the judiciary with high-skilled professionals should be carried out on a competitive and fully transparent basis.

Another important step towards augmenting judges' independence would be the improving of their social status in order to bring down corruption.

In addressing these and other challenging issues in December, 2006, the President of Ukraine submitted to the Verkhovna Rada (the Parliament) of Ukraine two draft laws – “On Judicial System of Ukraine” and “On Amendments to the Law of Ukraine “On Status of Judges”. These draft laws had been elaborated in compliance with a Concept of improving judiciary and establishing a fair trial in Ukraine according to the European standards. The said draft laws were approved by the Parliament on 3 April, 2007 at first hearing.