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## UKRAINE

# OVERVIEW OF THE JUDICIAL SYSTEM

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**UKRAINE**  
**OVERVIEW OF THE JUDICIAL SYSTEM**

*Executive Summary*

*The Ukrainian Constitution provides for an independent and transparent judiciary. Two laws—the Law on the Organization of Courts and the Law on the Status of Judges—define the structure of the country’s court system, which includes the Constitutional Court, courts of general jurisdiction, and courts of arbitration. These laws also establish procedures for the appointment of judges, a process that appears to be influenced by government officials and political interests.*

**I. General Overview of the Ukrainian Judicial System**

The role of the Ukrainian judiciary and the major principles by which it operates are defined by the country’s Constitution, which provides that justice is to be administered exclusively by the courts and that the courts are to function independently of other bodies or officials.<sup>1</sup> Article 124 of the Constitution states that the jurisdiction of the courts extends to all relations that arise in the State. Major principles, such as the administration of justice by professional judges, independence and immunity of judges, equality of all persons before the law, openness of trials, proof of guilt, and entitlement to an adversarial process, are defined by Section VIII of the Constitution (arts. 124–131).<sup>2</sup> These Constitutional provisions are implemented by the Law on Court Organization of 2002 and on the Law on the Status of Judges of 1992.<sup>3</sup> In 2010, these laws were consolidated, with some amendments, into a joint Act on Court Organization and the Status of Judges.<sup>4</sup>

This Act defines the process for the nomination and appointment of judges, establishes rules for the activities of professional organizations of judges, and regulates the activities of the

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<sup>1</sup> CONSTITUTION OF UKRAINE, adopted at the Fifth Session of the Verkhovna Rada of Ukraine (legislature) on June 28, 1996, official English translation available at <http://www.rada.gov.ua/const/conengl.htm>.

<sup>2</sup> For a detailed analysis of the Ukrainian legal system and constitutional principles, see Alexander Biryukov & Myroslava Kryvonos, *Update: A Research Guide to Ukrainian Law*, GLOBALLEX, [http://www.nyulaw.global.org/globalex/Ukraine1.htm#\\_ednref12](http://www.nyulaw.global.org/globalex/Ukraine1.htm#_ednref12) (last visited June 8, 2011).

<sup>3</sup> Law on the Organization of Courts, HOLOS UKRAINE (daily newspaper, official publication), Mar. 10, 2002; Law on the Status of Judges, HOLOS UKRAINE (daily newspaper, official publication), Feb. 10, 1993 (copies in English translation provided as *Attachments 1 & 2*). See also BOHDAN FUTEY, COMMENTS: LAW ON THE JUDICIARY AND THE STATUS OF JUDGES OF UKRAINE (Oct. 14, 2010), available at <http://www.usukraine.org/pdf/Comments-on-2010-Ukraine-Law-on-Judiciary.pdf>.

<sup>4</sup> VIDOMOSTI VERKHOVNOI RADY UKRAINY (official gazette) 2010, No. 41-42, 43, 44-45, Item 529 (in Ukrainian).

Judicial Certification and Disciplinary Commission, which certifies and evaluates judges and conducts disciplinary proceedings.

Also, the Act establishes that the Ukrainian judiciary consists of a three-tiered system of courts that includes the Constitutional Court of Ukraine, courts of general jurisdiction, and courts for the resolution of commercial disputes (courts of arbitration). The creation of extraordinary and special courts is prohibited by the Constitution.<sup>5</sup>

The Constitutional Court of Ukraine, which is composed of eighteen justices, is the sole body with constitutional jurisdiction in Ukraine. It decides on issues of conformity of the laws and other legal acts with the Constitution and provides the official interpretation of the Constitution and laws of Ukraine.<sup>6</sup>

The court system is organized in accordance with the territorial principle and the principle of specialization.<sup>7</sup> Courts of general jurisdiction specialize in civil and criminal, commercial, or administrative cases,<sup>8</sup> and are divided into local courts, courts of appeal, “high specialized courts,” and the Supreme Court of Ukraine.<sup>9</sup>

The jurisdiction of the Supreme Court relates to issues of a very exceptional nature. Although the Supreme Court continues to be the highest judicial body, its general competence to supervise the interpretation and application of the law by the lower courts is transferred to three high specialized courts,<sup>10</sup> which function as courts of cassation, including the High Specialized Court for Criminal and Civil Cases, the High Administrative Court, and the High Economic Court.

According to the Law on Access to Court Decisions,<sup>11</sup> all court decisions must be posted on the Internet; however, this requirement is rarely met by local courts.<sup>12</sup>

While the Constitution provides that people should participate in the administration of justice as people’s assessors or jurors in specific criminal cases as defined by law, the exact role of the juries is to be determined by procedural laws. Thus far, no attempts have been made to

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<sup>5</sup> Law on the Organization of Courts art. 125 (2002).

<sup>6</sup> II AMERICAN BAR ASSOCIATION (ABA), JUDICIAL REFORM INDEX FOR UKRAINE (Dec. 2005), <http://apps.americanbar.org/rol/publications/ukraine-jri-2006-eng.pdf>.

<sup>7</sup> Biryukov & Kryvonos, *supra* note 2.

<sup>8</sup> FUTEY, *supra* note 3, at 6.

<sup>9</sup> Joint Opinion of the European Commission for Democracy through Law (Venice Commission) on the Law on the Judicial System and the Status of Judges of Ukraine, Op. No. 588/2010, Oct. 18, 2010, at 5, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)026-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)026-e.pdf).

<sup>10</sup> *Id.* at 7.

<sup>11</sup> Law No. 3262-IV of December 22, 2005, officially published on the website of the President of Ukraine, at <http://www.president.gov.ua/ru/documents/3831.html>.

<sup>12</sup> Biryukov & Kryvonos, *supra* note 2.

introduce juries, although the Soviet-style people's assessors are still utilized in certain criminal trials before the appellate courts.<sup>13</sup>

## II. Current Relationship Between the Judiciary and Government

The Ukrainian judiciary appears to be plagued by a low level of public trust in the judicial system, violations of the right to adequate judicial defense, corruption, ineffective procedures of judicial examination, and a lack of professionalism. Insufficient financing and the politicization of courts are viewed as the root of these problems.<sup>14</sup>

According to observers, one of the most serious problems facing the Ukrainian judiciary, however, is the improper influence of judicial decision making from a variety of sources. Despite the fact that the independence and immunity of judges are declared by the Constitution and influencing judges in any manner is prohibited, Ukrainian legislation does not provide for sufficient guarantees for judicial independence. In this regard, Ukrainian law was "rated negatively by the overwhelming majority of judges" in a Centre for Judicial Studies survey.<sup>15</sup>

According to a report prepared by the American Bar Association,

Government officials employ an array of means in their attempts to influence the judicial decisions, ranging from letters, telephone calls or personal visits to judges or court chairmen to open criticism of specific judicial decisions that diverge from their view of the correct outcome. Ex parte communications, which are not directly prohibited by any legislation, are commonplace.<sup>16</sup>

A report by the Organization for Economic Co-operation and Development (OECD) found that the independence of the judiciary is also affected by the significant role of the Parliament and President in the appointment and dismissal of judges, and is further undermined by the existence of a provision for the initial appointment of a judge for a five-year term by the President of Ukraine and insufficient protections for life tenure appointments of judges.<sup>17</sup>

Decisions related to judicial appointments and the discipline and removal of judges are ultimately dependent on the High Council of Justice (HCJ), a quasi-judicial constitutional body of twenty members, whose "decisions are not guided by any legally specified criteria or procedures and are often inefficient, nontransparent, highly politicized, and lacking in

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<sup>13</sup> ABA, *supra* note 6, at 9.

<sup>14</sup> Oleksandr Sushko & Olena Prystayko, *Ukraine*, in *NATIONS IN TRANSIT 2010* at 449 (Freedom House, 14th ed. 2010), <http://www.freedomhouse.eu/images/Reports/NIT-2010-Ukraine-final.pdf> (Attachment 3).

<sup>15</sup> *Monitoring of Judicial Independence in Ukraine: 2008*, UKRAINIAN HELSINKI HUMAN RIGHTS UNION (Dec. 3, 2008), <http://helsinki.org.ua/en/index.php?id=1228330337> (announcing publication of report by Centre for Judicial Studies and summarizing report's findings).

<sup>16</sup> ABA, *supra* note 6, at 1.

<sup>17</sup> OECD ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA, *ISTANBUL ANTI-CORRUPTION ACTION PLAN SECOND ROUND OF MONITORING: UKRAINE MONITORING REPORT 66* (Dec. 8, 2010), <http://www.oecd.org/dataoecd/31/55/46832397.pdf>.

objectivity.”<sup>18</sup> Presently, the HCJ consists of delegates appointed by the Parliament of Ukraine, President of Ukraine, Congress of Judges of Ukraine, Congress of Attorneys of Ukraine, Congress of Law Schools and Academic Institutions, and National Conference of Prosecutors. The Chief Justice, Minister of Justice, and Prosecutor General are members of the HCJ. According to the OECD report, such an arrangement is not in line with the European standards requiring the majority of members of the Council to be judges elected by their peers,<sup>19</sup> and it has turned the Council into “the main instrument of political pressure on judges.”<sup>20</sup>

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<sup>18</sup> ABA, *supra* note 6, at 2.

<sup>19</sup> OECD, *supra* note 18, at 66.

<sup>20</sup> Ardadiy Buschchenko et al., *Right to Fair Trial*, in UKRAINIAN HELSINKI HUMAN RIGHTS UNION, HUMAN RIGHTS IN UKRAINE 2009–2010 (Feb. 22, 2011), <http://www.helsinki.org.ua/en/index.php?id=1298384920>.