STATEMENT ON THE CHALLENGES TO JUDICIAL INDEPENDENCE AND THE EFFECTIVE FUNCTIONING OF THE JUDICIARY IN UKRAINE

Request

At its meeting in Lisbon on 16 October 2026 the European Association of Judges (EAJ) was advised by its member the Association of Judges of Ukraine (Асоціація суддів України) of several issues which directly affect safeguards for judicial independence and the effective functioning of the judiciary in Ukraine.

Put briefly, while administering justice under martial law, the Ukrainian judicial system is simultaneously facing :

- a critical shortage of judges,
- excessive workloads,
- the prolonged non-completion of qualification evaluations of judges,
- complex competitive selection procedures,
- disproportionate interference with the private lives of judges and members of their families,
- the practice of extra-procedural assessment of judicial decisions during qualification, competitive selection and disciplinary procedures.

Taken together, these factors create persistent professional, reputational and psychological uncertainty and may adversely affect both the internal independence of judges and the capacity of the judicial system to ensure effective protection of human rights. Given the systemic nature of these problems and their direct impact on safeguards of judicial independence, the Association of Judges of Ukraine considers it necessary to draw the attention of the EAJ, and its parent association the International Association of Judges, to these issues.

Assessment

Having regard to European standards on the administration of justice, the EAJ considers that regard should be had to the following points:

1. In its request to the EAJ the Association of Judges of Ukraine advises that the merits of decisions of judges are increasingly being examined and taken into account in the course of performance assessments of judges, decisions regarding their promotion, or the establishment of disciplinary offences.

When a judge applies for promotion those assessing the application for promotion request the applicant to explain some of the applicant's earlier judicial decisions, the manner in which the applicant weighed the evidence and reached a conclusion. Sometimes in this procedure the correctness of the outcome of a proceeding was considered, judged as in error and used as a ground for refusing promotion even though the judicial decision had not been challenged by either party to the case.

Moreover, the giving of "wrong decisions" is sometimes invoked as a ground for disciplinary measures.

In response to these aspects of the request, the EAJ points out that European standards clearly state that a judge's decision, including the interpretation of the law, assessment of facts or weighing of evidence and/or departing from established case law, must not give rise to disciplinary liability, except in cases of malice, wilful default or serious misconduct.[1] This is also expressed with particular regard to Ukraine in the Common Opinion of the Venice Commission and DG I of the Council of Europe on draft amendments on Disciplinary procedures[2].

In the same way care must be taken that judicial independence is not harmed by allowing the results of any evaluation of a judge to be dependent on the outcome of the judge's cases matching the view which the evaluator would have taken of the case. Neither assessment of a judge's professional competence nor disciplinary procedures should be turned into an extra-procedural review of the judge's decisions. Review of the lawfulness and reasoning of a judicial decision falls solely within the competence of a higher court.

2. The Association of Judges of Ukraine claims that several members of the Private Integrity Council (PIC) are not properly qualified for membership of the Council, which plays an important role in the confirmation of candidates for an appointment of the position of a judge by advising the High Qualification Council on whether a candidate satisfies the criteria for professional ethics and integrity.

The EAJ notes that by law members of the PIC should be "recognised experts in their respective fields, have a high professional reputation and meet the criteria of political neutrality and integrity.[3]" The law does not require that they are legal experts. It is important however that members of the PIC do possess the appropriate qualifications and that the PIC confines itself to its function of advising whether "a judge meets the criteria of professional ethics and integrity[4]". It should not divert from that function by commenting on the professional competence of the judge. That is beyond the mandate as set out in the relevant legislation.

3. The Association of Judges of Ukraine fears that personal information collected during evaluations or applications for appointment, or the special qualification evaluation procedures, is not adequately protected.

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[1] CCJE Opinion 27 (2024) on Disciplinary Liability of Judges, para 28; see also CCJE Opinion 3(2002) on Ethics and Liability of Judges, para 60; Committee of Ministers of the Council of Europe Recommendation CM Rec 2010/12 para 66; Venice Commission Rule of Law Check List CDL 1210/2024 para 107.

[2] Joint Opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DG I) on Draft Amendments on Disciplinary Procedures against Judges, Declarations of integrity, and Other Procedures CDL-AD(2025)044 paras 41 to 43

[3] Law on the Judiciary and the Status of Judges Article 87 para 3

[4] ibid. Article 87 para 1

The Association of Judges of Ukraine accepts, as does the EAJ, the need on such occasions to verify judges' professional competence, ethics and integrity and that in certain cases the process may require examination not only of personal information relating to the judge but also of personal information relating to the family and contacts or acquaintances of the judge.

However, this does not mean that all such information may be widely published to a broad public. Article 8 ECHR also protects the family life of judges and their relatives and friends. Publication of certain information, collected by the diverse mandatory declarations which exist in Ukraine, may even endanger judges and their families. Whilst CCJE considers "that a robust system for declaring assets can … lead towards more transparency inside the judiciary and contribute to the fostering of a climate of judicial integrity"[5], the CCJE also warns that "disclosure to stakeholders outside the judiciary should only be done on demand, and only if a legitimate interest is credibly shown. Confidential information should never be divulged and the privacy of third parties such as family members should be protected even more strongly than that of the judges."[6]

Disclosure of information gathered and analysed in the course of an evaluation may depend on the purpose for which such evaluation takes place. As part of a competition for a post for which the judge has applied, some transparency is necessary in comparing candidates and giving reasons for the decision. The transparency appropriate to other evaluations – such as the special qualification evaluation of all judges set up in Ukraine in 2016 - may be seen differently. The CCJE recommends that the public must be informed about the general principles and procedure of the evaluation process. However, "the process and results of individual evaluations must, in principle, remain confidential and must not be made public. To do so would almost certainly endanger judicial independence, for the obvious reason that publication could discredit the judge in the eyes of the public and possibly make him/her vulnerable to attempts to influence him/her."[7]

4. The Association of Judges of Ukraine also advises that a draft bill[8] aimed at amending the procedure for considering applications from judges for retirement has recently been promulgated. The draft bill provides *inter alia* for the suspension of consideration of an application for retirement not only where the judge is the subject of disciplinary or criminal proceedings but also in cases where the special qualification evaluation procedure relating to the judge has not been completed. The Association considers it unacceptable to place judges who have not been assessed in the same position as judges who are under investigation for a criminal or disciplinary offence.

The EAJ also takes the view that it is unacceptable to deny judges whose special qualification evaluation has not yet been completed their right to retire. The special qualification evaluation procedure was instituted in 2016 to ensure that judges in post at that time were loyal to a democratic state. If the state authorities have not by now completed that exercise for certain judges, those judges should not be penalised on account of the failings of the state. To refuse those judges the right to retire is to discriminate against them unjustifiably.

5. Finally, the EAJ is concerned by the extent of the shortage of judges. According to the annual report of the High Council of Justice, at the end of 2025 from a legally established staffing level of 6,600 positions, only 4,346 judges were actually working in the country, leaving 2,254

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[5] CCJE Opinion 21(2018) on Preventing Corruption among Judges, para 38
[6] Ibid para 40
[7] CCJE Opinion 17(2014) on the Evaluation of Judges' Work, the Quality of Justice and Respect for Judicial Independence para 48
[8] Draft Law No. 15374 registered on 2.7.2026

positions vacant. The situation continues to deteriorate, with the number of applications to the courts increasing. The Association of Judges of Ukraine points out that the problem of unfilled posts is exacerbated by the overly complicated and protracted procedure for appointing judges and by the failure to complete the special qualification evaluation affecting 1,346 judges.

The EAJ naturally appreciates that the wartime situation presents exceptional difficulties and that Russian drone and missile attacks and the need to defend the nation's territory against the invader places stresses on all aspects of society. It also appreciates that judges in Ukraine work under conditions which may entail personal danger and that in addition to performing their judicial duties some judges also assist more directly in the defence of the nation. But the maintenance of a functioning judicial system and the independence of the judiciary is important also in times of war. While the EAJ is not in a position independently to analyse the underlying causes of the shortage of judges it is important that the situation should be improved as rapidly as possible. It is an international obligation for all branches of state power to contribute to this[9]. The EAJ therefore urges the relevant organs of the state including in particular the relevant judicial governance bodies to address as quickly as possible the shortage of judges and the matters identified by the Association of Judges of Ukraine as contributing to that problem.

3. Conclusion

The EAJ takes note of the difficult situation in which Ukraine finds itself, as well as the efforts made to date in the judicial sector. The EAJ calls on the governing bodies of the judiciary, the government and the legislature to resolve the obvious problems raised by the Association of Judges of Ukraine and addressed in this statement, in the common interest of the people of Ukraine. The EAJ will continue to monitor developments and support its Ukrainian colleagues.

[9] UN Basic Principles on the Independence of the judiciary Article 7; Recommendation CM 2010/12 of the Committee of Ministers of the CoE paras 33, 35 and 32