Report by the Qualification and Disciplinary Commission of Public Prosecutors and its Secretariat

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The Report was translated in the framework of the Council of Europe Project “Continued support to the criminal justice reform in Ukraine”, funded by the Danish Government.
The Qualification and Disciplinary Commission of Public Prosecutors is a collegial body that, according to the powers provided for by the Law of Ukraine ‘On the Public Prosecutor’s Office’, determines the level of professional training of those individuals who have expressed their intention to hold the position of a prosecutor and addresses matters of disciplinary liability, reassignment and dismissal of prosecutors.

On April 15, 2017, those provisions of the Law of Ukraine ‘On the Public Prosecutor’s Office’ became effective which concern the operation of prosecutorial self-governance bodies and of the Qualification and Disciplinary Commission of Public Prosecutors (the ‘Commission’).

Prior to these provisions becoming effective, the matters associated with appointment, reassignment, disciplinary liability and dismissal of prosecutors were addressed solely by the Prosecutor General or by the heads of regional prosecutor’s offices.

Currently, the selection of candidates for vacant or temporarily vacant positions of prosecutors at local prosecutor’s offices and positions of prosecutors at higher public prosecutor’s offices is carried out by the Commission on a competitive basis.

These innovations in the Law of Ukraine ‘On the Public Prosecutor’s Office’ have increased objectivity and transparency and introduced the principle of collegiality in the settlement of personnel issues.

Furthermore, in order to establish an objective and independent disciplinary liability mechanism, a clear and adversarial procedure for handling of complaints about prosecutors’ actions has been introduced, which guarantees an unbiased examination of anyone’s complaints and the ability for a prosecutor to defend efficiently his/her position on an adversarial basis.
### The Commission consists of eleven members

<table>
<thead>
<tr>
<th>Number</th>
<th>Position and Appointment</th>
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</thead>
<tbody>
<tr>
<td>5</td>
<td>Prosecutors are appointed by the All-Ukrainian Conference of Public Prosecutors</td>
</tr>
<tr>
<td>2</td>
<td>Academics are appointed by the Congress of Representatives of Higher Education and Research Institutions in the Area of Law</td>
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<tr>
<td>1</td>
<td>Lawyer is appointed by the Bar Congress of Ukraine</td>
</tr>
<tr>
<td>3</td>
<td>Persons are appointed by the Ukrainian Parliament Commissioner for Human Rights with the consent of the Verkhovna Rada Committee tasked with managing the operation of prosecutor’s offices</td>
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### Powers of the Commission:

- keeps record of the number of prosecutors’ positions, including vacant and temporarily vacant positions;
- selects candidates for prosecutors’ positions in the manner prescribed by the Law of Ukraine ‘On the Public Prosecutor’s Office’;
- participates in reassignment of prosecutors;
- examines disciplinary complaints about disciplinary offences committed by prosecutors and conducts disciplinary proceedings;
- following disciplinary proceedings and subject to the grounds provided for by the Law of Ukraine ‘On the Public Prosecutor’s Office’, resolves on the imposition of a disciplinary sanction on a prosecutor of the Prosecutor General’s Office of Ukraine, of a regional or local prosecutor’s office, or resolves on the prosecutor’s ineligibility for his/her office;
- exercises other powers provided by law.

## Members of the Commission

### Prosecutors appointed by the All-Ukrainian Conference of Public Prosecutors

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Position and Department</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Hrushkovskiy, Vitaliy Yuzefovych (Chairman of the Commission)</td>
<td>prosecutor, Department for Overseeing the Observance of Laws by Territorial Police Authorities in the Conduct of Pre-Trial Investigation and for Public Prosecution, Directorate for Supervision in Criminal Proceedings, Vinnytsia Oblast Prosecutor’s Office</td>
</tr>
<tr>
<td>2.</td>
<td>Kostenko, Serhiy Kostyantynovych</td>
<td>prosecutor, Department for Maintaining the Unified Register of Pre-Trial Investigations and for Information and Analytical Work, Odesa Oblast Prosecutor’s Office</td>
</tr>
<tr>
<td>3.</td>
<td>Necheporenko, Serhiy Oleksandrovych</td>
<td>prosecutor, Department for Maintaining the Unified Register of Pre-Trial Investigations and for Information and Analytical Work, Kharkiv Oblast Prosecutor’s Office</td>
</tr>
<tr>
<td>4.</td>
<td>Serhiychuk, Serhiy Oleksandrovych</td>
<td>prosecutor, Department for Human Resources Management, Directorate for Support of Military Prosecutor’s Offices, Office of the Chief Military Prosecutor, Prosecutor General’s Office of Ukraine</td>
</tr>
<tr>
<td>5.</td>
<td>Yusyp, Vasyl Vasylyovych</td>
<td>investigator for particularly important cases, Investigative Department, Investigative Directorate, Zakarpattya Oblast Prosecutor’s Office</td>
</tr>
</tbody>
</table>

### Academics appointed by the Congress of Representatives of Higher Education and Research Institutions in the Area of Law

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>Kovalchuk, Oleksandr</td>
<td>assistant professor, Department of Theory of Law and State, Taras Shevchenko National University</td>
</tr>
</tbody>
</table>
Mykhaylovych of Kyiv

7. Pohrebnyak, Stanislav Petrovych

Lawyer appointed by the Bar Congress of Ukraine

8. Kovalenko, Anatoliy Anatoliyovych

Individuals appointed by the Ukrainian Parliament Commissioner for Human Rights

9. Arkhipov, Valeriy Ivanovych

head of the Department of Political Science and Law, Luhansk Taras Shevchenko National University

10. Pitsyk, Yuriy Mykolayovych

(Secretary of the Commission)

11. Shemchuk, Viktor Viktorovych

(Deputy Chairman of the Commission)

expert of the OSCE project in Ukraine
Powers of the Chairman, Deputy Chairman and Secretary of the Commission

The Chairman of the Commission manages the operation of the Commission and chairs its meetings, defines the duties of his/her Deputy, presides at the Commission meetings, represents it in relations with government authorities, local self-government authorities, entities, institutions and organisations, authorities of other States, international organisations.

In the absence of the Chairman of the Commission, his/her duties are performed by the Deputy Chairman.

The Commission Secretary makes arrangements for the Commission meetings and is responsible for the paperwork.

On May 25, 2017, the Commission completed state registration as a legal entity.

Consideration of materials at the Commission meetings

25 meetings of the Commission

503 items on the agenda considered at the Commission meetings in 2017

672 decisions approved by the Commission
Structure of the Commission's decisions

- Selection and reassignment of prosecutors
- General matters
- Disciplinary liability and dismissal of prosecutors
In order to manage properly and to streamline handling of documents, the Commission adopted the Decision No. 16zp-17 on July 12, 2017, approving the **Provisional Paperwork Guide of the Qualification and Disciplinary Commission**.

The Provisional Guide was drawn up according to the standards of the State record-keeping system. It establishes **general rules for documenting the Commission’s activities**, regulates the **procedure for handling documents** from the moment of their creation, forwarding or delivery to the Commission’s archive.

Furthermore, the Decision No. 16zp-17 of July 12, 2017, approved the Provisional Case File Classification of the Qualification and Disciplinary Commission.
836 appeals considered.

28 appeals by people’s deputies satisfied.

70 requests for information considered.

9 orders by the Chairman of the Commission adopted.
Keeping record and processing of data on the number of prosecutors’ positions, including vacant and temporarily vacant positions, is conducted on the basis of notices from the Prosecutor General, Deputy Prosecutor General — Head of the Specialised Anti-Corruption Prosecutor’s Office, heads of regional and local prosecutor’s offices.

The Commission’s Decision No. 3pp-17 of August 9, 2017, approved the forms for submitting information on vacant and temporary vacant positions.

In 2017, the Commission Secretariat processed 536 of these messages.
The information on vacant and temporarily vacant prosecutors’ positions is promptly **posted on the Commission’s official website.**

These records are **regularly** updated. Last year, **23 positions were excluded** from the list of prosecutors’ competitive vacancies (due to the reductions in the structure and staffing table, return of employees from parental leave, etc.).
Selection of candidates for the position of prosecutor is performed on a competitive basis from among persons who meet the requirements established by Article 27 of the Law of Ukraine ‘On the Public Prosecutor’s Office’, following a qualification exam conducted in accordance with the requirements set by this Law.

Anyone eligible for the position of prosecutor may file an application with the Commission to participate in the selection.

On July 26, 2017, the Commission approved a decision to announce the selection of candidates, totalling 300 persons, for positions of prosecutors at the local prosecutor’s offices.

With the purpose of holding the selection of candidates for positions of prosecutors at the local prosecutor’s offices, the Commission adopted on June 7, 2017, the Decision No. 6zp-17 approving the Regulations on the procedure for consideration of issues and preparation of materials on the selection of candidates for (temporarily) vacant positions of prosecutors at the local prosecutor’s offices.

These Regulations define the procedure for consideration of issues and preparation of materials concerning the selection of candidates for positions of prosecutors at the local prosecutor’s offices, namely:
approval of a decision to conduct selection;

submission of documents by the persons who have expressed their desire to become prosecutors, including verification of their compliance with the requirements established by the Law;

conduct of a qualification exam;

arrangements for a special inspection;

rating of candidates and establishing a candidate pool;

holding a competition, etc.

The Commission also resolved to approve the following:

Regulations on the procedure for qualification exam to be passed by candidates for positions of prosecutors and the methodology for its assessment (Decision No. 22zp-17 of August 2, 2017);

Testing and practical exercise programmes for candidates for positions of prosecutors at the local prosecutor’s offices (Decision No. 23dk-17 of September 13, 2017);

Practical exercises for candidates for positions of prosecutors at the local prosecutor’s offices (Decision No. 229dk-17 of December 6, 2017);

In connection with the selection of candidates for the position of prosecutor at a local prosecutor’s office, the following was posted in a timely fashion on the Commission’s official website:

information on the procedure for selecting candidates;

requirements to candidates for positions;

the list of documents to be submitted by candidates;

requirements on the documents to be submitted by candidates in order to participate in the selection for a (temporary) vacant position of prosecutor.
Documents from 727 candidates were accepted.

593 candidates were admitted to qualification exam.

Results of consideration of complaints on the Commission’s decision to deny admittance to qualification exam

- Complaints remedied and decisions to deny admittance to qualification exam cancelled
- Complaints rejected and the Commission’s decision to deny admittance to qualification exam upheld
492 candidates participated in the anonymous testing held on November 6–11 and December 4, 2017.

438 candidates took part in the practical exercises conducted on December 18–20, 2017.

The Commission’s Decision No. 263dk-17 of December 22, 2017, recognised 309 candidates as having passed the qualification exam successfully. The Commission arranged for the conduct of a special inspection concerning these candidates.
TRANSFER OF PROSECUTORS TO PUBLIC PROSECUTOR’S OFFICE OF THE HIGHER LEVEL

Transfer of prosecutors to public prosecutor’s office of the higher level is performed following a competition to be conducted under the procedure established by the Commission.

The competition consists of the assessment of the prosecutor’s professional skills, experience, moral and business qualities, along with verification of his/her readiness to exercise authority at another prosecutor’s office, including a higher one.

The Decision No. 7zp-17 of June 7, 2017, approved the Procedure for conducting a competition for the vacant or temporarily vacant position of a prosecutor by way of transfer to prosecutor’s office of the higher level.

On July 26 and August 16, 2017, the Commission announced competitions for the (temporarily) vacant position of a prosecutor by way of transfer to prosecutor’s office of the higher level, involving 18 positions at the Prosecutor General’s Office of Ukraine and 83 positions at the regional prosecutor’s offices.

1st Competition

- Persons applied for competition: 438
- Applications filed by them: 186
- Candidates admitted to testing: 164
On October 10 and December 4, 2017, 48 and 17 candidates, respectively, took tests to assess the knowledge of law. Test results for 216 candidates were taken from the previous competitions held in 2015–2016.

Interviews with 118 candidates were held.

Following the competition, 29 submissions were made to appoint prosecutors to positions at prosecutor’s offices of higher level, including 10 submissions to the Prosecutor General and 19 — to the heads of regional prosecutor’s offices.
Disciplinary proceedings are a procedure for consideration by the Commission of a disciplinary complaint that contains information about a disciplinary offence committed by a prosecutor.

Any person aware of such facts is entitled to file a disciplinary complaint with the Commission, citing a disciplinary offence by a prosecutor.

The Commission’s Decision No. 5zp-17 of June 7, 2017, approved a suggested sample disciplinary complaint.
An automated disciplinary complaint allocation system operates at the Commission to address the issue of initiation of disciplinary proceedings.

The Commission’s Decision No. 18zp-17 of July 12, 2017, approved the Regulations on the automated disciplinary complaint allocation system, which determines the procedure for operation of this system.

Registered disciplinary complaints

Resolving on the issue of initiating disciplinary proceedings

- Proceedings initiated
- Proceedings denied
- Decision pending
Opinions prepared on the instance (lack) of a disciplinary offence by the prosecutor following verification of the information on the existence of grounds for bringing the prosecutor to disciplinary liability:

- Decisions approved to extend the term for the conduct of verification: 85
- Decisions approved to merge disciplinary proceedings: 42
- Decisions approved to suspend prosecutors from office: 5

Disciplinary penalty imposed in the form of:

- Reprimand: 22
- Ban, for a term of up to one year, on transfer to the prosecutor office of a higher level or on appointment to a higher positions in the public prosecutor's office where the prosecutor holds his/her position: 31
- Dismissal: 75
The 2017 Report

DISMISSAL OF PROSECUTORS
(BEYOND DISCIPLINARY PROCEEDINGS)

The Commission, in the instances stipulated by the Law of Ukraine ‘On the Public Prosecutor’s Office’, makes submissions to the President of Ukraine, Prosecutor General, Head of the Specialised Anti-Corruption Prosecutor’s Office, head of a regional prosecutor’s office, military prosecutor in the region for dismissal of prosecutors.

During 2017:

Letters received by the Commission concerning submissions for dismissal of prosecutors, including in connection with the liquidation or reorganisation of the prosecutor’s office in which the prosecutor held his/her position or the reduction of the number of prosecutors at the prosecutor’s office (13), acquisition of another citizenship (1), holding a temporarily vacant position pending the return to work of the prosecutor holding the relevant position on a permanent basis (2):

Decisions approved by the Commission to make submissions for dismissal of prosecutors (in connection with the liquidation or reorganisation of the prosecutor’s office in which the prosecutor held his/her position or the reduction of the number of prosecutors at the prosecutor’s office):

Decisions approved to reject the letters (in connection with the failure to comply with the prosecutors’ rights, failure to verify arguments cited in the letter):

Letters, concerning submissions for dismissal, rejected without consideration in connection with the prosecutors’ appointment to other positions, etc.:
Organisational support for the Commission’s operation, in order to exercise appropriately the powers stipulated by the Law of Ukraine ‘On the Public Prosecutor’s Office’, is provided by its Secretariat established within the Prosecutor General’s Office of Ukraine as its structural unit.

Unit of Organisational Support for the Commission’s Operation (Secretariat) of the Qualification and Disciplinary Commission of Public Prosecutors was set up within the structure and the staffing table of the Department of Human Resources Management and Public Service, Prosecutor General’s Office of Ukraine, by the Order No. 31-shts of the Prosecutor General’s Office of Ukraine issued on May 26, 2017.

The manning level of the Commission Secretariat is 40 persons.

**Structure of the Commission Secretariat**
Regulations on the Unit of Organisational Support for the Commission’s Operation (Secretariat) of the Qualification and Disciplinary Commission of Public Prosecutors was adopted by the Order No. 311 of the Prosecutor General’s Office of Ukraine issued on November 2, 2017, upon submission by the Chairman of the Commission.

**The principal tasks of the Commission Secretariat include:**

1) organisational, including information and analytical, as well as documentary support for the Commission’s operation;

2) preparations for the Commission meetings, their technical support, drafting minutes of the Commission meetings;

3) preparation of information, reference and other materials on the matters considered by the Commission;

4) processing of correspondence received by the Commission, preparation, following its review, of draft instructions from the Chairman (Deputy Chairman) and Secretary of the Commission;

5) acceptance of documents from candidates for position of prosecutors at the local prosecutor’s offices and from prosecutors pending reassignment to higher prosecutor’s offices;

6) registration of disciplinary complaints and designation, using the automated disciplinary complaint allocation system, of a Commission member to address the matter of initiation of disciplinary proceedings;

7) preparation of draft documents and materials for the cases in which the Commission or Commission members have been engaged as a defendant or a third party, as well as under pending suits brought by the Commission as a legal entity;

8) monitoring and analysis of the results of proceedings in the cases in which the Commission or a Commission member are a party or a third party;
9) preparation for press conferences, presentations, briefings, international meetings, sessions, deliberations on the Commission’s operation, etc., to be conducted by the Commission or its members.

The Commission Secretariat supported:

- acceptance, registration and processing of **10,330 documents** concerning the Commission’s activities;
- consideration of **836 appeals** and **70 requests for information**;
- conduct of **25 Commission meetings**, processing of **503 files** for inclusion in the agenda, drawing up the **minutes of the 25 Commission meetings**;
- processing of **536 notices** of vacant and temporarily vacant prosecutors’ positions;
- acceptance and examination of **sets of documents** from **727 persons**, as part of the selection procedure for the positions of prosecutors at the local prosecutor’s offices;
- conduct of **anonymous testing** for **492** candidates for the positions of prosecutors at the local prosecutor’s offices and holding of **practical exercise** for **438** candidates;
- acceptance and examination of **sets of documents** from **280 persons** concerning participation in **competitions** pending reassignment to higher prosecutor’s offices;
- **entry of 1,137 disciplinary complaints** into the automated disciplinary complaint allocation system, **provision of assistance to the Commission members in preparation of opinions following verification** of information on the existence of grounds for bringing prosecutors to disciplinary liability, **files in legal proceedings** where the Commission or a Commission member were defendants and following the complaints made to the High Council of Justice (a total of **43 cases**), as well as **decisions** to initiate (decline initiation of) disciplinary proceedings, **inquiries, notices, draft decisions of the Commission**;
- preparation of **23 draft documents** of organisational, statistical and analytical nature, such as the Review of the case-law of the European Court of Human Rights, legal propositions of the Constitutional and Supreme Courts of
Ukraine, the case-law of the Supreme Administrative Court of Ukraine, the Plan of institutional arrangements for selection of candidates for positions of prosecutors at the local prosecutor’s offices, the Plan of preparation for the Commission meeting, the Schedule of reception hours by the Commission members, etc.

INTERNATIONAL COOPERATION

The Commission is engaged in international cooperation in order to review and implement the best international and European experience and practices relevant to its competence.

In 2017:

June 21 — meeting between the Commission members, heads of the European Union Advisory Mission Ukraine office and the Council of Europe Office in Ukraine;
July 14 — participation in the round table on the topic of ‘Implementation of constitutional changes to the status of prosecutor’s office: risks and prospects of institutional support for appropriate standards of prosecutors’ training and independence’;

October 9 — review and joint discussion, initiated with the OSCE Project Co-ordinator, Council of Europe Office in Ukraine, European Union Advisory Mission Ukraine, of the Draft Law ‘On Amendments to Certain Legislative Acts of Ukraine Following the Adoption of the Law of Ukraine “On Amendments to the Constitution of Ukraine (Regarding Justice)” (as Regards Improved Activities by the Qualification and Disciplinary Commission of Public Prosecutors)’ developed and approved by the Commission;

November 16–17 — participation in a budgeting workshop (as part of the Council of Europe Project ‘Continued Support to the Criminal Justice Reform in Ukraine’);
November 27–28 — a visit to the Republic of Moldova, meeting the representatives from the Superior Council of Prosecutors of the Republic of Moldova, Boards for selection and reassignment of prosecutors, for assessment of prosecutors’ performance, for discipline and ethics, and from the Office of the Prosecutor General of the Republic of Moldova. Visit was organised by the Council of Europe Project ‘Continued Support to the Criminal Justice Reform in Ukraine’.
Openness and transparency are among the fundamental principles in the Commission’s operation.

The transparency of the Commission’s operation is ensured through open discussion of issues within its scope of competence. The Commission deliberates at open sessions attended by its participants and media representatives.

The Commission’s official website (www.kdkp.gov.ua) contains information about its structure and the structure of its Secretariat, contact telephone numbers, regulatory framework of its operation.

Publication of the Commission’s items of agenda, approved decisions, news and notices related to the records of vacant or temporarily vacant positions of prosecutors, selection and reassignment of prosecutors, disciplinary liability, international cooperation, etc., is provided on a regular basis.
Furthermore, members of the Commission continuously inform about the Commission’s activities in the media.

- 24 agendas of the meetings posted on the Commission’s official website.
- 36 news items posted in the ‘News and Announcements’ section on the Commission’s official website.
- 31 presentations made before the media.

Updated data, following consideration of the items on the agenda of the Commission’s meetings, promptly appear on the Commission’s webpage and on the Facebook.