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**Bohdan Kryklyvenko: «We have the chance to bring the election process of the Ombudsman in full compliance with international standards»**

**In his comment for legal information portal JURLIGA the Head of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights Bohdan Kryklyvenko gave a detailed explanation of the election process of the Ukrainian Parliament Commissioner for Human Rights (hereinafter – the Commissioner).**

As is known, in connection with the expiration of a five-year term of the Commissioner, the procedure for nomination of the candidates to the post of the Commissioner was initiated in April 2017.

In the national legislation the appointment process of the Ombudsman is defined in Laws of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” and “On the Regulations of the Verkhovna Rada of Ukraine”. Relevant standards and criteria for the election process of the ombudspersons of national human rights institutions are also envisaged by the Paris Principles (Principles relating to the Status of National Institutions, adopted by General Assembly resolution 48/134 of 20 December 1993).

According to Article 6 of the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” proposals for candidate(s) to the post of the Commissioner shall be made by the Chairman of the Verkhovna Rada of Ukraine or by no less than one-fourth of People’s Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine. Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine by secret ballot vote but no earlier than ten days and no later than twenty days after deadline for nomination of candidates for participation in election.

As of March 24, 2017 there were nominated three candidates to the post of the Commissioner: Andriy Mamalyga (Fraction “Radical Party” of Oleg Lyashko), Lyudmyla Denisova (“Narodnyi Front”) and Serhii Alieksiev (“Block of Petro Poroshenko”).

Within a fixed time frame stipulated for voting for the candidates to the post of the Commissioner, as well as taking into account the calendar plan of the plenary sessions of the Verkhovna Rada, the only possible day for voting was June 6, 2017.

However, on June 6, 2017 the Verkhovna Rada of Ukraine did not consider the issue of the election of the Commissioner referring to the absence of results of a special check of the candidates in accordance with the Law of Ukraine “On the principles of prevention and combating corruption”. As a result, the time frame for voting envisaged by the law was violated.

On June 7, 2017 a group of MPs registered a draft law on the Constitutional Court of Ukraine (registration No. 6427-d). In final provisions of this draft law authors initiated amendments to the Regulations of the Verkhovna Rada of Ukraine concerning the appointment process and dismissal of the Commissioner. By these amendments the voting procedure changes from a secret ballot vote to an open vote through the “Rada” system.

On June 22, 2017 the above mentioned draft law was adopted in the first reading.

Disseminating of the information on mentioned initiative has caused a resonance in human rights protection environment and led to a wave of statements and appeals of international and non-governmental civil society organizations. In particular, there were criticized the way and time for proposed changes, because the appointment process of the Commissioner is being changed in the middle of the election process of the Commissioner. The fact that the changes in the appointment process of the Commissioner were included in the draft law on the Constitutional Court of Ukraine was also considered as an attempt to avoid their consideration by

relevant committee, namely the Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and Interethnic Relations, whose jurisdiction covers issues of the Commissioner's activities.

On July 13, 2017 during the consideration of the draft law on the Constitutional Court of Ukraine in the second reading the MP Olga Chervakova proposed to leave the secret voting for the Commissioner without changes. It was voted and supported by 227 MPs.

However, she confused the number of the amendment during her speech. This situation created the possibility for some politicians to argue that the key (!) thing in voting is the number of the amendment, not the proclaimed content of it. Thus, the Chairman of the Verkhovna Rada of Ukraine signed the text of the Law which stipulates changes to the Regulations of the Verkhovna Rada, establishes a procedure of open voting for the appointment of the Commissioner and neglects the results of voting by 227 MPs.

On July 14, 2017 the Law on the Constitutional Court of Ukraine was submitted to the President of Ukraine for signing.

On July 17, 2017 the Reanimation Package of Reforms (RPR) called the President on to veto the Law on the Constitutional Court of Ukraine in part of changing the election process of the Commissioner. Also, in the RPR's statement it was stated that the change of procedure is aimed at controlling discipline and effectiveness of voting which is unacceptable and leads to politicization of the appointment process of the Commissioner.

On July 20, 2017 in a joint statement of the Ukrainian Helsinki Human Rights Union and the Kharkiv Human Rights Protection Group to the President of Ukraine it was said the following: "The signing of the draft Law of Ukraine "On the Constitutional Court of Ukraine» threatens to significantly limit the functioning of the institutions of a modern democratic society – the Ombudsman. In addition, such manipulations in the Verkhovna Rada delegitimize not only the institution of the Commissioner for Human Rights but the Parliament. We urge you not to sign the draft Law of Ukraine "On the Constitutional Court of Ukraine".

On July 31, 2017 the President of Ukraine signed the Law of Ukraine "On the Constitutional Court of Ukraine". However, after receiving the official text of the document in the final edition it became clear that the situation had got out of control. Taking into account that the adopted Law makes changes only to the Regulations of the Parliament and the version of respective provisions of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" remains unchanged, at the moment there are two legal acts with equal force, one of which stipulates the procedure of a secret ballot vote (Article 5 and 6 of the Law on the Ombudsman) and another one (Article 208 of the Law on the Regulations of the Parliament) – open voting. This situation makes a legal collision and impossibility to vote at all.

On August 1, 2017 the President of Ukraine announced that he plans to submit to the Parliament proposals on changes to the Ombudsman legislation for its consideration.

Analyzing the mentioned events, the Head of the Secretariat of Ukrainian Parliament Commissioner for Human Rights Bohdan Kryklyvenko explained how the appointment process of the Commissioner should be implemented by changing legislation on this issue. "First of all, events over the last months have showed us that the issue of the appointment of the Commissioner is not only being under the precise attention of Ukrainian human rights organizations, but also closely monitored in Geneva, Brussels and Warsaw. Secondly, the appointment process of the head of the non-political institution by its nature has been politicized too much. All these desires to satisfy someone's political interest have led to gross violations of all procedures", - convinced Bohdan Kryklyvenko.

In his opinion, it is expected that the presidential initiative will be aimed at unification of the appointment process of the Commissioner and shall stipulate:

- additional legislative guarantees to avoid politicization of the Ombudsman institution;
- involvement of representatives of the social forces (of civil society) in the appointment process of the Commissioner;
- extension of the composition of representatives who can nominate candidates to the post of the Commissioner;
- saving the secret voting procedure as a guarantee of personal voting by MPs and preventing the demonstration of political support for one or another candidate.

Also the future draft law shall be examined by experts of international organizations such as the UN, ODIHR/OSCE and the Council of Europe, whose expert assessment will simplify further passage of the draft law in the Verkhovna Rada of Ukraine.

“A fierce political struggle, in fact, has opened a “window of opportunities” to bring the election process of the Ombudsman in full compliance with the UN standards and we do not have the right to lose this chance” – summing up the Head of the Office of the Ombudsman of Ukraine.