

ECtHR: Judicial Reform in Ukraine Seriously Undermined Independence of the Judiciary

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Following judicial reforms in Ukraine, the ECtHR dealt with the independence of the Ukrainian judiciary in a chamber judgment in the case of [Gumenyuk and others v. Ukraine](#) on 22 July 2021. The case concerned eight judges of the former Supreme Court of Ukraine, elected for an indefinite term, who had been prevented from exercising their functions without having ever been formally dismissed. The applicants did not have a right of individual petition to the Constitutional Court, the sole court empowered to repeal a statutory provision, yet the courts of general jurisdiction in Ukraine also did not have the power to set aside laws as being unconstitutional.

Following the change in governmental powers in late 2013 and early 2014, amendments to Ukraine's constitution were adopted with regard to the organisation and functioning of the domestic judiciary. In 2016, the Supreme Court was dissolved and a new law on the judiciary and the status of judges ("the Judiciary Act 2016") simultaneously came into effect in September 2016. According to the new law, the judges of the future Supreme Court were to be appointed on a competitive basis. The judges of the former Supreme Court had the right to participate in the competition for the new Supreme Court appointments.

The plenary of the former Supreme Court challenged the provisions of the Judiciary Act 2016 before the Constitutional Court of Ukraine, which ruled in their favor. It stated that the applicants should be able to continue to work as judges of the new Supreme Court. That said, the applicants were removed from their functions.

In November 2016, a competition for the new Supreme Court was announced. Among the candidates were 17 of the 21 judges of the former Supreme Court. In the case at issue, seven of the eight applicants in the current case participated in the competition, but none of them succeeded. The new Supreme Court began operating on 15 December 2017.

On 18 February 2020, the Constitutional Court of Ukraine declared the relevant legislative measures unconstitutional and ruled that, under the Constitution, only one supreme judicial body existed and that, in view of the principle of irremovability, the judges of the "old" Supreme Court should continue performing their functions as judges of the "new" Supreme Court. Despite this ruling, the issue of the applicants' resumption of their judicial functions was still under examination by Parliament in June 2021.

The ECtHR held that the legislative amendments in 2016 and their subsequent implementation prevented the applicants from exercising their judicial functions while they had not been being formally dismissed, despite the Constitutional Court confirming the validity of their tenure and their right to remain judges of the highest judicial body. The ECtHR called to mind the special role of the judiciary in a democratic society and its duty

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ISSN: 1862-6947

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to provide checks on governmental wrongdoing and abuse of power. Therefore, members of the judiciary need to be protected against any measures affecting their status and professional career that could threaten their judicial independence and autonomy.

The ECtHR found that the right of access to a court (Art. 6 § 1 ECHR) is a fundamental procedural right for the protection of members of the judiciary. Hence, the applicants should, in principle, have been able to go to court with their allegations on an individual level. In addition, the ECtHR considered the fact that they had been prevented from exercising their function as Supreme Court judges since December 2017, despite a Constitutional Court ruling in their favour, constituted an interference with the right to respect for private life (Art. 8 ECHR), as the applicants have been deprived of the opportunity to continue their judicial work and pursue professional and personal development goals. This interference was not lawful within the meaning of the Convention, as it went against the principle of irremovability of judges, which is fundamental for judicial independence and public trust in the judiciary. The ECtHR, therefore, held that there had been a violation of Art. 6 § 1 ECHR.

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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