

News Digest No. 2

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This News Digest issue was prepared within the research project [The Dynamics of the Judiciary in Ukraine in the Context of the Rule of Law and the EU Accession Aspirations](#) and covers the period from September 15 to October 15, 2024.

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HUMAN RESOURCES POLICY AND THE JUDICIAL CAREER

The High Qualification Commission of Judges of Ukraine (HQCJ) continues to prepare procedures within the framework of the announced competition for the position of judges in the High Anti-Corruption Court (HACC) and the Appeals Chamber of the High Anti-Corruption Court (HACC Appeals Chamber).

A competition was announced on 23 November 2023 to fill in fifteen positions for judges of the High Anti-Corruption Court (first instance) and ten positions for judges of the Appeals Chamber of the High Anti-Corruption Court – [More details in Ukrainian.](#)

On September 18, 2024, the HQCJ approved and published on the official website the program and taxonomic characteristics of the anonymous written cognitive ability test for candidates for the position of judge in the HACC and its Appeals Chamber. It also released a list of typical questions for the cognitive ability test.

Background: The HQCJ was established in Ukraine under the Law “On the High Anti-Corruption Court” dated 14 June 2018, following an open competition conducted by the High Qualification Commission of Judges in 2018–2019. A total of 342 candidates competed for 39 positions. To assist the HQCJ in the qualification evaluation of candidates, a Public Council of International Experts (PCIE) was formed, consisting of six members: two from the United Kingdom and one each from Canada, Denmark, Lithuania, and North Macedonia.

Watch the interview of the UK member and Chairman of the PCIE Sir Anthony Hooper, about the competition to the High Anti-Corruption Court [here](#).

HACC judges handle criminal proceedings concerning 23 types of crimes that specific subjects commit. The court deals with cases investigated by the National Anti-Corruption Bureau of Ukraine (NABU) under the procedural guidance of prosecutors from the Specialized Anti-Corruption Prosecutor's Office (SAP).

On 23 September 2024, a [round table](#) was held on the topic “The Attractiveness of a Judicial Career: European and Ukrainian Dimensions,” organized by the High Council of Justice in cooperation with the EU Project “Pravo-Justice.”

The Head of the High Council of Justice, Hryhoriy Usyk, in his opening remarks, emphasized that during the war, judges work under excessive pressure, in a state of constant stress, and face daily dangers due to missile strikes and artillery

shelling. In such conditions, some judges are unable to endure the strain and resign.

Mr. Usyk highlighted the particular staffing challenge in the appellate courts, stating: “The Ukrainian judiciary is operating under critical conditions due to a significant shortage of personnel. The situation is challenging in the appellate courts, where over 52% of judicial positions remain vacant.”

He also expressed deep concern over this alarming trend, noting:

“We are losing our most experienced and professionally trained judges aged 45–50, and the prospect of replacing them anytime soon is quite uncertain. From January to August 2024, the High Council of Justice dismissed 186 judges, of whom 162 left either due to retirement or personal reasons. Last year (2023), 325 judges resigned. During the same period this year, the High Council of Justice submitted recommendations to the President of Ukraine to appoint 399 judges to local courts, and the President issued decrees for the appointment of 329 judges. Thus, the number of judges leaving office exceeds the number of those being appointed.”

The text version of the speech in Ukrainian is available [here](#).

On 2 October 2024, testing of legal knowledge and specialization for candidates competing for vacant positions of judges in appellate courts began, following the High Qualification Commission of Judges' decision dated 14 September 2023.

The total number of vacant positions announced for the competition is 532.

- 410 positions in appellate courts dealing with civil, criminal, and administrative offense cases.
- 56 positions in appellate courts for economic cases.
- 66 positions in appellate courts for administrative cases.

According to the High Qualification Commission of Judges, there should be 1,357 judges working in Ukraine's appellate courts. Currently, only 632 judges are in service, leaving 725 positions vacant.

For more details, visit the High Qualification Commission of Judges' website [here](#) and [here](#).

JUDICIAL INDEPENDENCE

In September 2024, the Press Office of the High Council of Justice reported that during the first eight months of 2024, the Council received 158 notifications regarding interference in the professional activities of judges concerning the administration of justice and actions that undermine the guarantees of judicial independence or the authority of the judiciary.

In total, since the beginning of the year, the HCJ has considered 180 notifications from judges – [more details in Ukrainian](#).

Reference: According to the Constitution and the Law on the High Council of Justice, the Council takes measures to ensure the authority of justice and the independence of judges.

Article 376 of the Criminal Code of Ukraine establishes criminal liability for interference in the activities of judicial bodies.

On 18–19 September 2024, the first stage of the 20th [Congress of Judges of Ukraine](#) took place. For the first two days, the delegates appointed a judge to the Constitutional Court of Ukraine and approved an updated draft Code of Judicial Ethics.

CHALLENGES FOR THE JUDICIARY DURING WARTIME

On 20 September 2024, a conference titled “Ensuring Consistency in Judicial Practice in War-Related Cases” was held in Kyiv at the Supreme Court, organized in collaboration with the OSCE Support Program for Ukraine.

In his address, the Head of the Supreme Court, Stanislav Kravchenko, noted that over the past year, the Court had formulated more than 500 legal conclusions across all (four) jurisdictions. He emphasized the challenges in ensuring consistency in the decisions made by investigating judges, particularly regarding the need for proper judicial oversight during the investigation phase of criminal proceedings related to war crimes, of which over 140,000 have been registered to date – [more details in Ukrainian](#).

During the conference, a digest of the Supreme Court's judicial practice in war-related cases was presented, spanning 158 pages. This digest was published with

the support of the OSCE Support Program for Ukraine as part of the project “Supporting the Supreme Court and Higher Courts in Implementing Judicial Reform and Ensuring Access to Justice in Wartime.” The full text of the digest in Ukrainian is available [here](#). The digest includes judgments and decisions recorded in the Unified State Register from February 2022 to September 2024.

On 28 September 2024, Leonid Loboyko, Judge of the Supreme Court, was killed during a Russian army shelling in the village of Kozacha Lopan in the Kharkiv region while delivering humanitarian aid alongside three volunteers – [more details in Ukrainian](#).

Earlier, Deputy Head of the High Council of Justice, Dmytro Lukyanov, [discussed](#) the catastrophic impact of Russia's armed aggression against Ukraine on the functioning of the judicial system. He reported that 142 judicial buildings and institutions had been destroyed or severely damaged due to military actions, including destruction and looting of property. Additionally, 54 judges and 389 court staff members participated directly in defending the country. Since the introduction of martial law in Ukraine due to armed aggression, four judges and 15 court employees have died, and the territorial jurisdiction of 165 courts has changed.

EUROPEAN INTEGRATION AND THE UKRAINIAN JUDICIARY

On 17–19 September 2024, a bilateral session between Ukraine and the EU was held in Brussels, Belgium, as part of the screening process concerning Chapter 23, “Judiciary and Fundamental Rights.” This Chapter addresses matters related to the courts, prosecution, advocacy, legal education, the fight against corruption, and fundamental human rights.

The Ukrainian delegation included the Vice Prime Minister for European and Euro-Atlantic Integration, Olha Stefanishyna, representatives from the High Council of Justice, the High Qualification Commission of Judges of Ukraine, the Supreme Court, the Constitutional Court of Ukraine, the Ministry of Justice, and other state institutions.

In her opening remarks, Vice Prime Minister Olha Stefanishyna stated:

“We start today's meeting with confidence, fully prepared, having not only functioning institutions but also a legislative framework that meets international

standards and norms in the field of the Rule of Law. We are approaching the EU accession process at the most challenging stage of our transformation. At the same time, we must ensure that the legislation enacted is properly implemented, that institutions are functioning, and that they are effective. Along this path, there are many steps we have taken and will continue to take together with you. The main strength of our dialogue lies in the fact that the European Union has supported the Ukrainian people since they went to Independence Square to fight for a European future. This was done for the sake of Europe and European values, and we have gone through this entire transformative journey together. Therefore, we have much to assess and much to improve, but I am convinced that we will navigate this path with your support” – [more details in Ukrainian](#).

INTERNATIONAL JUSTICE AND UKRAINE

On 23 September 2024 the hearing in the arbitration Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait, instituted by Ukraine against the Russian Federation began.

The hearing will address the merits and remaining issues of jurisdiction and admissibility and will be held in the Administrative Council Chamber at the seat of the Permanent Court of Arbitration (PCA), at the Peace Palace, The Hague, The Netherlands.

The arbitral proceedings were instituted on 16 September 2016 when Ukraine served on the Russian Federation a Notification and Statement of Claim under Annex VII to the UNCLOS. The Notification and Statement of Claim referred to a “dispute concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch Strait”. The five-member Arbitral Tribunal is chaired by Judge Jin-Hyun Paik as President (a national of the Republic of Korea). The other members are Judge Boualem Bouguetaia (Algeria), Judge Alonso Gómez-Robledo (Mexico), Professor Alexander Vylegzhanin (Russian Federation), and Professor Vaughan Lowe KC (United Kingdom). Professor Lowe was appointed by Ukraine. Professor Vylegzhanin was appointed by the Russian Federation. Judges Paik, Bouguetaia, and Gómez Robledo were appointed in accordance with the procedure set out in Article 3, paragraph 2, of Annex VII to the UNCLOS. Further information about the proceedings is available on the [PCA Case Repository](#).

ANTI-CORRUPTION MEASURES

On 25 September 2024, the Council of Judges published a new version of the Code of Judicial Ethics, adopted during the XX Congress of Judges of Ukraine.

In terms of extrajudicial relations, the Code stipulates that judges must not allow extrajudicial interactions with parties involved in a case that is under their consideration. Judges are also required to avoid behavior that may raise doubts or create an impression of bias or favoritism towards the parties in the case or their representatives.

Furthermore, Article 12, which concerns judges' public statements and comments, has been expanded. In particular, judges are required to:

- Exercise restraint, prudence, caution, and moderation when expressing their views and opinions under any circumstances.
- Refrain from making public statements and/or comments that compromise the dignity of their position or undermine the authority of the judiciary.
- Avoid public statements and comments regarding cases that are under their and other judges' consideration.

This updated Code aims to enhance the integrity and professionalism of judges, ensuring that they maintain public confidence in the judicial system. The text version of the updated Code in Ukrainian is available [here](#).

ONLINE JUSTICE AND ELECTRONIC COURTS

The updated Code of Judicial Ethics, adopted during the XX Congress of Judges on 18 September 2024, includes Article 16, which states: “The use of artificial intelligence technologies by judges is permissible as long as it does not affect the independence and impartiality of the judge, does not pertain to the assessment of evidence and decision-making processes, and does not violate legal requirements.” This inclusion aims to clarify the boundaries for judges regarding the integration of AI in their work while ensuring adherence to principles of independence and fairness.