

The Dynamics of the Judiciary in Ukraine in the Context of the Rule of Law and the EU Accession Aspirations – Dr. Sergii Koziakov. Blog on Five years since the beginning of the work of the High Anti-Corruption Court: secrets of creation and operation, Part 1, 15 December 2024.

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Five years since the beginning of the work of the High Anti-Corruption Court: secrets of creation and operation.

Part 1

Preconditions for the establishment of the High Anti-Corruption Court

Five years ago, on September 5, 2019, the High Anti-Corruption Court of Ukraine (HACC), composed of 27 judges, and the Appeals Chamber of the High Anti-Corruption Court of Ukraine (AC HACC) - 11 judges, officially became operational. The HACC is a court with all-Ukrainian jurisdiction created to consider specific categories of cases involving top corrupt officials.

Short results of the [HACC's activity](#): Since 2019 (till the end of November 2024), the [HACC](#) has passed 228 sentences, considered 295 criminal proceedings, and received more than 53 thousand complaints and petitions. Even when Russia commenced its full-scale invasion, the HACC's work continued.

From September 5 2019 till the end of August 2024, the sentences were passed regarding:

Justice sector representatives: 29 judges, 17 advocates, five prosecutors.

Deputies of the Verkhovna Rada (Parliament) and Government members: 9.

Officials of executive authorities and local self-government: 17.

Civil servants: 16.

Law enforcement officers: 12.

Heads of state and municipal enterprises: 35.

Since the beginning of the HACC's work, many publications have appeared in the information space, often containing opposing value judgments about the role of Ukraine's state bodies, the public, international organisations, and international experts in creating the HACC.

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I will devote several blogs to the prerequisites for creating the HACC and innovations in personnel procedures used in the career of judges in Ukraine. Particular attention will be paid to selecting HACC judges, which differs significantly from the methods used in other countries. Attention will also be paid to the participation of international experts in the procedure for the selection of judges in the HACC, which was the first such example in the world.

Justice reform in Ukraine is a precondition for the creation of the HACC.

Under the influence of the consequences of the Revolution of Dignity in 2014, the first steps to reform the judiciary were taken in Ukraine, which still needed to be systematic. In 2014, under pressure from the public, the Verkhovna Rada of Ukraine adopted two lustration laws: "[On Restoring Trust in the Judiciary in Ukraine](#)" and "[On Purification of Government.](#)" The first concerned only judges, while the second was all-encompassing and extended to judges among all other public officials.

In particular, one of the consequences of adopting the Law "On Restoring Confidence in the Judiciary" was suspending the High Council of Justice (HCJ) activities for a year. Also, the work of the High Qualification Commission of Judges of Ukraine (HQCJ) was almost wholly suspended for nine months. As a result, nearly all personnel procedures regarding judges were suspended during this period.

However, this Law made it possible to radically change the composition of these two crucial collegial bodies so that they were ready for large-scale reform changes. It is essential to add that eight judges and retired judges, who constituted the majority in the HQCJ, a collegial body, elected a university lecturer and lawyer as the Chairman of the Commission for the first time. Later, they were joined by representatives of the Congress of Legal Scholars, the Congress of Advocates, representatives of the Verkhovna Rada Commissioner for Human Rights, and the State Judicial Administration (SJA).

These two bodies of judicial governance have taken on the responsibility of implementing many essential changes to remedy the situation in the judicial system, which arose as a result of the reforms carried out during [President Viktor Yanukovich's term](#) of office in 2010. These reforms led to judges' radical

dependence on the executive and legislative branches and to the growth of corruption among judges.

The next step of the first wave of amendments was the adoption on February 12, 2015, of the [Law "On Ensuring the Right to a Fair Trial"](#), which, among other things, introduced:

Determination of new principles for the formation and operation of the [High Council of Justice](#);

introduction of a mandatory procedure for the [initial qualification assessment](#) of all judges regarding the possibility of administering justice in the relevant courts by passing an exam and checking compliance with the norms of anti-corruption legislation (at the same time, the Law introduced unprecedented legal consequences for failure to pass such an assessment, namely, the dismissal of a judge from office on the grounds of violation of the oath);

introduction of the institution of the judge's dossier;

introduction of a list of specific grounds for disciplinary liability of judges and a scale of disciplinary sanctions, which allows the application of disciplinary sanctions on the principle of proportionality

Due to some resistance in the judicial system, this procedure started in Ukraine only on February 17, 2016. According to [the procedure results](#), from the beginning to June 9, 2016, only 263 out of 381 judges successfully passed it.

The procedure provoked [deep discussions](#) among judges.

After that, events took place that no one could have predicted. From the beginning of June to the end of September 2016, [almost 1,600 judges](#) voluntarily resigned. Among the main reasons were fatigue from constant psychological pressure and accusations from the public and politicians, the Constitutional Court of Ukraine (CCU) decision on the return of benefits, and guarantees for the voluntary dismissal of judges. At the same time, many were frightened by the qualification assessment launched by the HQCJ.

Among those who left were many corrupt judges. and many professional and decent people. In about 200 local courts, less than 50% of judges remain. In some courts, justice was administered by a maximum of two judges. In some districts,

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courts have ceased to operate. The quality of court decisions has deteriorated, and the terms of consideration of cases have been extended.

To this should also be added approximately 400 judges from the Crimean courts, who became judges of the Russian Federation after Russian troops occupied Crimea and were dismissed in [2015-2016](#) by the HQCJ as part of the disciplinary procedure for violating the oath.

At the same time, many important events took place in Ukrainian justice that created a solid foundation for the creation of the High Anti-Corruption Court.

The [Strategy for the Reform of the Judiciary, Judiciary and Related Legal Institutions for 2015-2020](#), adopted by the Decree of the President of Ukraine in May 2015, officially announced the start of judicial reform and determined its directions, measures, and expected results.

For this purpose, the Constitutional Commission prepares [amendments to the Constitution](#) regarding justice.

The Judicial Reform Council prepared a new version of the [Law "On the Judiciary and the Status of Judges"](#), which was adopted on June 2, 2016.

How have HR procedures in Ukraine's judicial system changed due to the 2016-2019 reform?

Information about these changes is crucial because almost all the introduced innovations were applied in their entirety later during the HACC competition.

The 2016 Law introduced a 'qualification assessment' procedure for use in HR procedures in the judicial system for the first time. With its methodological features, this procedure was used as part of the 'cleansing of the judiciary' from dishonest judges. It was called a 'qualification assessment for the suitability for the position held.' Secondly, such a procedure was used during competitions with the courts, demonstrating its thoroughness and effectiveness.

Approximately 5,200 acting judges had to undergo the first type of procedure. In particular [2018](#), such a procedure was applied to 1976 judges. Of these, 17.6% of judges were recognised by the HQCJ as inappropriate for their position or managed to resign voluntarily before the end of the procedure. Then, the HQCJ transferred 618 judges who successfully passed the qualification assessment to 35 newly created courts of appeal. In [2019](#), under significant political pressure,

the HQCJ conducted a qualification assessment of the first type for 933 judges. Of these, 20% were recognised as inappropriate for the position held or resigned voluntarily before the completion of the procedure.

The competition to the new Supreme Court

Let's examine the features of the new procedure using the example of the competition to the new Supreme Court, which the HQCJ held in 2016–2017.

Fundamentally, before the reform of justice in 2015, nepotism was the main principle of acquiring the status of a judge of the Supreme Court of Ukraine (old), higher specialised courts and courts of appeal. It was necessary to have influential acquaintances in the judicial system to become a judge. It does not mean that the professional level of the Supreme Court judges was low. Most of the judges were entirely professional.

Nevertheless, taking into account the requirements of the time and based on the results of a study of the experience of 45 countries, the HQCJ has introduced such procedural tools, many of which have yet to be found in practice in most countries. All of the above has not been previously applied in Ukraine:

Before the start of the procedure, a list of vacancies in four cassation courts within the Supreme Court was published (the name "Supreme Court" appeared instead of "Supreme Court of Ukraine" since, according to the justice reform, the Supreme Court of Ukraine was supposed to cease its activities immediately after the start of the new Supreme Court and subsequently be liquidated).

For the first time in Ukraine's history, an [open competition](#) for the position of 120 Supreme Court judges was publicly announced. It should be added that the second competition to the Supreme Court was held later in 2018–2019.

The rules for selecting the Supreme Court judges were made public before the competition began.

Judges, attorneys, and legal scholars (previously only judges) could apply for the Supreme Court judge position.

Details of the conditions and criteria for assessing candidates' qualifications were published before the Supreme Court judge position competition.

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The methodology and procedure for evaluating candidates for the Supreme Court judge position were developed and published before the competition began.

The dossier of a candidate for the Supreme Court judge position was introduced. All candidates' dossiers were made public before the start of the competition. The average length of a candidate's dossier is 250 pages.

Candidates for the Supreme Court judge position filled out an electronic property declaration, a declaration of integrity, and a declaration of family ties.

The HQCJ received materials regarding the candidates from approximately 20 state bodies, including the [National Anti-Corruption Bureau of Ukraine](#) and the [National Agency of Corruption Prevention](#).

Candidates for the Supreme Court judge position performed tests and practical tasks in a mode open to observers. At the same time, a live broadcast was carried out on the Internet. The exam syllabus and test lists were made public in advance.

Candidates for the position of a judge of the Supreme Court passed psychological tests: HCS Integrity Check, BFQ-2, MMPI-2, MBTI and General skills test

Candidates' interviews were open and [broadcast online](#). During the interviews, representatives of the statutory representative body from the public—the Public Integrity Council (PIC)—were present and also participated in the interviews.

During the competition, the HQCJ [compiled and published](#) a rating of candidates, based on which the winners are determined. The list of winners is open to the public.

Innovative procedures for qualification assessment and competition to the Supreme Court, which were carried out based on the results of the 2016 judicial reform, were positively assessed in the [European Union](#) and the [Council of Europe](#).

This made it possible to optimistically consider the possibility of successfully organising a competition for the position of judge of the High Anti-Corruption Court of Ukraine (HACC) and the Appeals Chamber of the HACC. The competition was held from 2018 to 2019, based on a procedure that considered the best

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practices of 2016 to 2019 (compared to other periods of judiciary reforms) and some new tools, including the participation of international experts.

It will be described in detail in the next blog.