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Vetting Judges in Ukraine: Causes, Purpose, and Procedures in the Age of Polycrisis

Vetting judges: Does polycrisis relate to this?

Recently, Dr. Julinda Beqiraj published an exciting blog post titled "The High Stakes of Albania's Judicial Vetting Process," which described the impressive experience of reformers in Albania regarding the vetting process of judges and prosecutors.

In my text, I will address Ukraine's experience in vetting judges, starting in 2014 after the Revolution of Dignity amid socio-political turbulence, the occupation of part of the territory by the Russian Federation, the COVID-19 pandemic, and the full-scale war of 2022-2025. Alongside other similar crisis factors, this constituted an ongoing polycrisis. I want to emphasise that experts on polycrisis identify two of the most serious geopolitical crisis phenomena, primarily called Russia's war in Ukraine (as “top of stack”) and the COVID-19 pandemic.

Several regional and national crises resulting from the Russian war that began in 2014 should be considered. Specifically, this includes a large-scale, multi-million migration from the east and south of Ukraine to the central and western regions, as well as to European countries and other countries worldwide. Additionally, there is an energy crisis and the collapse of other public infrastructure due to constant missile attacks.

Consequently, all key aspects of the procedures for vetting judges in Ukraine should be assessed, taking into account the polycrisis, which encompasses various geopolitical, regional, and national crises that have influenced the outcomes.

A short backstory

In 2010, Viktor Yanukovych was elected President of Ukraine on his second attempt. He is notable for being Ukraine's first and only President with a criminal record from his youth. Yanukovych can be described as a president whose policies were marked by authoritarianism, an unusually high level of corruption,

the curtailment of democratic freedoms, and the reorientation of the political vector of Ukraine from Europe to Russia, which led to a national political crisis. One of the essential geopolitical decisions of Viktor Yanukovych was the refusal to sign the Association Agreement between Ukraine and the EU in the autumn of 2013. This decision led to protests in Kyiv called Euromaidan; the protests quickly grew into a large-scale Revolution of Dignity. In the end, Viktor Yanukovych fled the country.

There is little information about Yanukovych's 2010-2013 judicial reform results outside of Ukraine. As a result of this reform, the concentration of power through control of the courts reached its peak. At the same time, the powers of the Supreme Court of Ukraine were radically diminished. Complete control over the judicial system allowed the court to be used as an instrument of political influence on business. The courts were used to repress the opposition and protesters. More about the results of Yanukovych's judicial reform can be found here.

Vetting judges. First experience: Temporary special commission.

Legislative framework

Only a few weeks after the completion of the "hot phase" of the Revolution of Dignity, the annexation of Crimea by the Russian Federation and the occupation of part of the territory in the east of Ukraine, on the post-revolutionary wave under the pressure of the radical public and in the conditions of turbulence of state institutions, the Ukrainian Parliament on April 8, 2014, adopted the Law "On Restoration of Trust in the Judicial Power in Ukraine."

This Law, for the first time, introduced "a special vetting" of judges of courts of general jurisdiction "as a temporary reinforced measure to consider issues of bringing judges of courts of general jurisdiction to disciplinary responsibility and dismissal from office in connection with the violation of the oath to increase the authority of the judiciary of Ukraine and the confidence of citizens in the judicial branch of government, restoration of legality and justice."

Content of the vetting

Judges of general jurisdiction were subject to special vetting only for actions taken against participants in mass protests from November 21, 2013, to April 11, 2014. This vetting applied to judges who have considered cases or made decisions that violate the Convention for the Protection of Human Rights and Fundamental Freedoms, as stated in the European Court of Human Rights decision.

It is important to emphasise that the law did not provide for verifying integrity or corruption.

The vetting of judges should have been completed within one year from the date of the formation of the Temporary Special Commission for the Vetting of Judges of Courts of General Jurisdiction (TSC). The law provided for the establishment of the TSC, which would consist of 15 members elected by the Plenum of the Supreme Court of Ukraine - five members from among retired judges, the Government Commissioner for Anti-Corruption Policy - five members, and the Verkhovna Rada of Ukraine - representatives of civil society (also five members).

Results of vetting

Between June 12 and November 10, 2014, the TSC received 1280 applications concerning the activities of individual judges. The PIC conducted 88 inspections, reviewed eight results, and adopted various conclusions.

In total, during the period of activity, the TSC adopted 41 conclusions on 46 judges about the presence of signs of violation of the oath in their actions and, under the law, sent them to the High Council of Justice (HCJ) for further consideration and decision-making. The HCJ agreed with the validity of the opening of disciplinary cases on the conclusions of the TSK concerning 28 judges.

But it was at this stage that the procedure determined by law stopped. The problem was that from the day the law "On Restoration of Trust in Judicial Power in Ukraine" came into force, namely on April 11, 2014, the powers of members of the High Council of Justice (HCJ), except for those who were ex officio in this body, and the High Qualification Commission of Judges of Ukraine (HQCJ) were terminated. The new composition of the HQCJ received powers on December 9, 2014. Only on June 9, 2015, the new composition of the HCJ gathered for the first organisational meeting in a new composition.

The activities of the Temporary Special Commission were suspended at a meeting of the HCJ (in the new composition) on June 9, 2016, in connection with the completion of the period for which the TSC was created.

In April 2016, the High Council of Justice received from the TSC 234 unsolved applications against 305 judges. Based on reviewing these applications in 2016, the HCJ opened 43 disciplinary cases against 45 judges, of whom only two chose to submit an application for their dismissal for violating the oath.

As a result, according to statements received from TSC, in 2017-2019, the HCJ adopted 23 decisions on the dismissal of judges based on Article 126 of the Constitution of Ukraine – a significant disciplinary offence, gross or systematic neglect of duties that are incompatible with the status of a judge.

Is lustration a vetting procedure?

Legislative basis of lustration

The law "On Government Cleansing (Lustration Law)" was adopted on September 16, 2014, due to pressure from civil society.

The Law defines the lustration procedure as prohibiting specific individuals from holding certain positions in state authorities and local self-government bodies established by this Law or a court decision, except for elected positions.

The Law also stipulated that lustration was to be carried out to prevent individuals who, through their decisions, actions, or omissions, took measures (and/or facilitated their implementation) aimed at usurping President Viktor Yanukovych's power, undermining the foundations of national security and defence of Ukraine, or unlawfully violating human rights and freedoms from participating in the management of public affairs.

Content of the lustration check of judges

The heads of the State Judicial Administration, judges who are members of the High Qualification Commission of Judges and the High Council of Justice (except for the Chairman of the Supreme Court of Ukraine), and judges who were members of the High Council of Justice after its creation were required to undergo lustration in the judicial authorities. Additionally, this law applied to judges who handled cases against participants in the Euromaidan and the Revolution of Dignity.

The prohibition was applied in two cases:

(1) if the person held a total of at least one year of the position specified by this law in the period from November 25, 2010, to February 22, 2014; and

(2) if the person held a specific position from November 21, 2013, to February 22, 2014, and was not dismissed from this position at will.

Two criteria were assessed during the lustration check procedure:

The reliability of the information specified in the statement regarding the non-use of prohibitions established by the law "On Government Cleansing (Lustration Law)" must be verified. Such a statement needs to be drafted directly by the individual undergoing verification.

The reliability of information regarding the available property (property rights) and the compliance of its value with the income received from legitimate sources during the individual's tenure in the positions outlined by law.

Professional judges had to undergo lustration checks from December 2014 to December 2015.

The lustration results

As of February 1, 2016, 6,539 judges, accounting for 91.2% of the total number of judges serving at that time, submitted applications for consent to undergo the audit and received favourable conclusions regarding the results of the lustration audit.

The lustration check against 1,192 judges continued even after their terms expired. Forty-two judges did not apply for verification. The audit results revealed that only 41 judges were subject to the prohibitions outlined in the Law.

The first institutional experience of vetting judges. Initial qualification assessment

Legislative framework

Following ineffective political decisions regarding the vetting of judges under the 2014 laws, Ukraine began implementing measures that embodied the principles

of good governance highlighted in the work of the Parliament and Government at the end of that year.

On October 27, 2014, the newly elected President Petro Poroshenko established the Judicial Reform Council, which included prominent legal scholars, judges, lawyers, and civil society representatives. This commission's work marked the beginning of institutional reform in Ukraine's judicial system. The first result of this Commission's work was drafting the Law "On ensuring the right to a fair trial," which came into force on March 28, 2015, and introduced essential novelties regarding the procedure for vetting judges.

It should be noted that the same Commission also developed a draft Strategy for reforming the judiciary, legal proceedings, and related legal institutions for 2015-2020, which Presidential Decree approved on May 20, 2015. This Strategy, in particular, introduced a system for the qualification evaluation and regular evaluation of judges.

Among the main novels of the Law, "On ensuring the right to a fair trial," was the introduction of a mandatory procedure for the "initial qualification assessment" of all judges regarding their ability to administer justice in the relevant courts.

The procedure for the initial qualification evaluation of judges was provided by the High Qualification Commission of Judges of Ukraine (HQCJ), which was elected according to the new rules under the Law "On Restoring Confidence in the Judiciary," and began its activities on December 9, 2014. The HQCJ initially included judges and retired judges. The head of the HQCJ was elected as a university professor and practising attorney, which some media called "unexpected." Subsequently, legal scholars and practising attorneys were integrated into the HQCJ.

The qualification assessment procedure required candidates to pass an exam and undergo compliance checks related to anti-corruption legislation. Additionally, the Law introduced significant legal consequences for failing to pass such an assessment, including the unprecedented measure of dismissing a judge from office for violating the oath.

First of all, the procedure should have been applied to:

> (1) Judges of the Supreme Court of Ukraine and higher specialised courts must act within six months of the law's entry into force;

(2) judges of appellate courts - for two years;
(3) Judges who applied indefinitely for the election of a judge when the Law came into force, under the schedule established by the High Qualification Commission of Judges of Ukraine.

At the next stage, an initial qualification evaluation of judges of local courts who took the oath of a judge before the Law came into force and have already administered justice should be carried out within the timeframe determined by the High Qualification Commission of Judges of Ukraine.

The HQCJ first developed a document entitled "Procedure and Methodology of Qualification Evaluation of a Judge" (Procedure), which outlined how the qualification evaluation procedure would be carried out.

The HQCJ developed the draft procedure after considering several international recommendations. In particular, Recommendation CM/Rec (2010) 12 of the Committee of Ministers of the Council of Europe to member states regarding judges: independence, effectiveness and responsibilities of November 17, 2010, the OSCE Kyiv Recommendations on the Independence of Justice in Eastern Europe, the South Caucasus and Central Asia (2010), Opinion No. 17 (2014) on the evaluation of judges, the quality of justice and respect for the independence of the judiciary of the Consultative Council of European Judges, among others.

The law allowed the Council of Judges of Ukraine to approve the draft Procedure. The Council of Judges ratified the Document on December 11, 2015, six months after the consultations began and only after its composition, which took place at the Congress of Judges. This resulted in the expiration of the deadlines set by the Law for the primary qualification evaluation of judges of the Supreme Court of Ukraine and the higher cassation courts.

Content of the initial qualification evaluation

The criteria for evaluating judges' qualifications include: professional, personal, and social competence; the ability to enhance their professional skills; the capacity to administer justice effectively; adherence to ethical standards; and compliance with anti-corruption criteria.

The HQCJ compiled a dossier of all judges to prepare for the qualification evaluation procedures, which were subsequently first published on the Commission's website.

The Commission also introduced an Information Protection System to prevent unauthorised interference in the HQCJ's work.

(1) The primary assessment procedure comprised the following steps:
(2) Passing the exam by the judge (candidate). Applying the practice of European Court of Human Rights was a prerequisite for this stage.
(3) (2) Study of the judicial file and interview.

One stage of the evaluation involved a public interview with judges, during which the Commission members asked questions about the judges' property and financial status based on files received from the National Anti-Corruption Bureau of Ukraine.

All procedures occurred without the participation of civil society.

From February to June 2016, the newly elected HQCJU, operating under new rules, conducted an initial qualification evaluation of 381 judges.

In 2016, following a break, by 2017, 310 judges confirmed the possibility of justice in the relevant court. They did not affirm the possibility of administering justice in their positions and sent 20 judges to the National School of Judges of Ukraine for retraining, while 101 judges resigned before the assessment was completed. A break was announced and extended to other judges, with decisions made about them in subsequent years. Five judges appealed the HQCJ's decision to the court, and only one claim was satisfied.

These seemingly insignificant results have yielded impressive, if not shocking, outcomes. From June to September 2016, 1,449 judges voluntarily left the system, mainly because they did not want to explain their financial situation.

Qualification evaluation for compliance with the position. Constitutional dimension (2016-2019)

Legislative framework

The systemic legislative changes envisioned by the Strategy came into force on September 30, 2016. This included adopting the Constitution of Ukraine to comprehensively build the institutional capacities of relevant legal institutions

regarding justice. A new version of the Law "On the Judicial System and the Status of Judges" was adopted.

Among the many changes introduced by the Constitutional Reform, which received high praise from the Council of Europe, was the legislative strengthening of the qualification evaluation procedure for judges. From now on, all judges in Ukraine had to "confirm compliance with their position."

The constitutional reform stipulated that all judges who did not pass the initial qualification evaluation in 2016 must undergo this procedure. Approximately 5,000 judges were involved.

For the first time in European practices concerning the evaluation of judges, the Public Integrity Council has been established. It consists of 20 representatives from well-known non-governmental organisations, and the law grants it extraordinary powers in the qualification evaluation process.

Ukraine has emerged as a leading nation in engaging civil society in the human rights processes within other nations' judicial systems.

Additionally, it is essential to note that the 16 members of the HQCJ included six legal scholars and attorneys, along with 10 judges and retired judges.

The judicial system has encountered a complex personnel situation. Since June 2015, when the High Council of Justice began operating with a new composition, 2837 judges have left the system as of September 2018, of which 2609 were voluntarily dismissed and 228 were removed for oath violations or due to judicial incompatibility.

For the updated qualification assessment procedure, the following items were provided:

Free access to judges' dossiers on the HQCJ website, which contain comprehensive information about their professional activities (excluding personal data).

submission by judges of a declaration of integrity and a declaration of family relationship;

The National Agency for the Prevention of Corruption oversees the submission of declarations to the open Unified State Register of individuals authorised to perform state or local self-government functions.

Additionally, the National Anti-Corruption Bureau continued to provide vital information regarding the finances and properties of each judge and their close associates.

Qualification assessment consists of two stages: an exam and an interview, based on the dossier review results.

During the first stage, judges conduct anonymous written tests and a case study to assess law knowledge and proficiency.

Those who have successfully passed anonymous testing perform a practical task: preparing a draft court decision. The exam procedure is streamed live on YouTube.

During the qualification assessment, judges who successfully passed the exam from 2017 to 2019 completed the following tests of personal, moral and psychological qualities, as well as general abilities:

«General skills test» — research the level of logical, abstract and verbal thinking of judges;

«HCS Integrity Check» — verification of the judge's integrity, and stability of working motivation;

«BFQ-2» – determining the emotional stability of the judge, his or her resolve, and the concept of nothingness;

«MMPI-2» — assessing a judge's stress resistance and tenure-related psychological risks.

At the second stage, the members of the HQCJ studied the judges' dossiers. Based on their examination of the dossiers, the HQCJ panel, consisting of five groups of three members each, conducted interviews to discuss the findings and evaluate the judges' adherence to their positions. All interviews were streamed on YouTube.

The judge had the right to obtainall information about him and provide explanations and comments.

The HQCJ established minimum scores for each stage and for the entire "exam" based on competence, professional ethics, and integrity. The maximum score

was 1000 points: 300 for professional competence, 100 for personal and social competence, and 250 for professional ethics and integrity.

If the judge scored below the minimum, he did not advance to the next stage. If the judge did not achieve the minimum number of points across all stages, the Commission decided not to affirm the judge's compliance with his position. Such a decision serves as the basis for the Commission's submission to the High Council of Justice (hereinafter - HCJ) regarding the judge's dismissal from office.

Under the law, the Public Integrity Council (PIC) assisted the HQCJ in the assessment process by preparing information (positive or negative) regarding the judge or a negative opinion. If the PIC submitted a negative opinion, the HQCJ could override it with a vote of at least 11 out of 16. Due to the varied professional experiences of the HQCJ and PIC members, their working relationship quickly became quite tense. The PIC members demanded that the HQCJ members concur with all their conclusions. Meanwhile, experts from the Council of Europe identified shortcomings in the work of the PIC and provided essential recommendations to the PIC, including the following:

The importance of clear and objective criteria for determining a judge's (or judicial candidate's) eligibility concerning the standards of professional ethics and integrity for qualification evaluation.

striking a balance between the confidentiality of judges' qualification assessments and the transparency of the procedures for their selection following Council of Europe standards;

the importance of early development and publication of the methodology for gathering and processing information by the Public Integrity Council and other matters.

In total, during two qualification procedures- the initial qualification assessment (2016-2017) and the compliance assessment for the position held, which occured during the active phase in 2018-2019, the High Qualification Commission of Judges of Ukraine evaluated 2834 judges.

Several hundred judges participated in two competitions for the new Supreme Court and the High Anti-Corruption Court and underwent qualification evaluations.

The final interview with the judge during the active phase of the qualification evaluation occurred on November 05, 2019.

Halt the active phase of qualification evaluation

In the first half of 2019, presidential elections occurred in Ukraine, resulting in Volodymyr Zelenskyy's victory. Immediately afterwards, early parliamentary elections took place, in which the Servant of the People party, composed of Volodymyr Zelenskyy's supporters, received an overwhelming majority of the votes.

At the same time, during the first half of 2019, external forces were actively observed impeding the work of the HQCJ on qualification assessments. A group of judges from the District Administrative Court of Kyiv emerged as some of the most vocal opponents. The National Anti-Corruption Bureau established its illegal role in inhibiting the qualification assessment, which is currently under investigation by the High Anti-Corruption Court.

On November 7, 2019, Parliament dismissed the existing members of the HQCJ, putting the qualification evaluation process on hold for four years. The new HQCJ members began their work on June 1, 2023. The qualification evaluation of judges resumed on November 13, 2023, requiring 1884 judges from local and appellate courts across Ukraine to undergo evaluation.

The new HQCJ completed the qualification evaluation of 173 judges over the next 17 months, from November 2023 to March 2025. However, approximately 1,700 judges in Ukraine's judicial system have yet to undergo the qualification evaluation procedure.

Conclusions and future perspective

The first version of “special vetting” judges was introduced in 2014 as part of the initial post-revolutionary attempt to vet judges, and it is difficult to deem it a success. This vetting concerned a small number of judges from courts of general jurisdiction. It was conducted using individual judges' rulings against participants in mass protests during the Revolution of Dignity. The vetting occurred without an institutional framework or any methodology. The audit results did not have a significant impact on the judiciary in Ukraine.

Thus, it can be argued that the lustration procedure, also conducted in parallel with "special vetting" in 2014 as another means of vetting judges, was unsuccessful due to a lack of a holistic approach to reforming the judiciary, an imperfect law, and an underdeveloped institutional vertical responsible for the results. International organisations criticised the lustration procedure, notably the Council of Europe, which cited an inadequate legislative basis, and Ukrainian society, which initially raised concerns over the lack of promised results. It yielded no significant outcomes, including verifying the accuracy of information regarding the property rights of judges and the correspondence of their value to the income received during their tenure.

The initial qualification assessment was provided mainly in 2016 by the High Qualification Commission of Judges of Ukraine, which is composed of judges, retired judges, attorneys, and academicians. It represented the first stage in identifying judges who fail to meet the integrity criterion. The procedure was open to the media and civil society. Three hundred seventeen judges have completed the vetting process, representing 80% of the judges required to undergo it.

However, despite the relatively small number of judges to whom the initial qualification evaluation procedure was applied, the judicial system faced an unexpected outcome of 1449 judges who left the system voluntarily. As of today, a substantial number of vacant positions remain. At the beginning of May 2025, the Ukrainian judicial system had 4,434 active judges, with 2,138 vacancies reported.

Another unexpected result of the initial evaluation was a rapid increase in cases in which Ukrainian judges applied European Court of Human Rights' (ECHR) case law. In 2013, the last year before the Revolution of Dignity, the total number of mentions of ECHR case law by all Ukrainian judges was 690. By 2017, the year following the initial qualification assessment, this number had surged to 35,036. In 2019, just before the COVID-19 pandemic, it reached 123,597.

The development of the institutional capacity of judicial governance bodies within the framework of the 2016 judicial reform enabled an initial qualification assessment of the ability to administer justice in court, followed by a qualification assessment of compliance with the position. This led to statistically significant results in evaluating dishonest judges. Simultaneously, legal

mechanisms for preventing and combating corruption in the judicial system were introduced and applied, proving effective in many cases.

To date, attempts to provide reliable statistics on the outcomes of cleansing the judiciary of dishonest judges have been unsuccessful. After all, verifying that over 30% of current judges are stuck in several stages remains incomplete for different groups of judges. The institutional capacity of the HQCJ, which simultaneously conducts the qualification evaluation process for judges and large-scale competitions involving nearly 9,000 judges and candidates for the position of judge at the first instance, as well as the competition for the 550 vacancies in appeal courts, is limited. This situation was mainly due to the aggressive opposition of a group of judges in administrative jurisdiction who did not want to undergo the qualification evaluation procedure in the first half of 2019. Even greater problems arose with adopting legislation in the fall of 2019 that led to the dismissal of the HQCJ, which did not operate for more than 3.5 years.

This restricts the ability to update and cleanse the judiciary swiftly. Consequently, it indicates that Ukraine may experience delays in fulfilling certain conditions for advancing toward membership in the European Union.

The decrease in the number of active judges from 9,000 in 2014 to less than 5,000 in 2025, coupled with the inability to achieve any significant results in filling vacancies amid the ongoing polycrisis and the absence of an approved national strategy for judicial reform, has led to serious issues regarding citizens' access to justice. This situation necessitates new systemic measures within the crisis management framework that will facilitate the swift vetting of current judges and expedite the qualitative renewal of the judiciary.