

# Anti-corruption experts: Trust in Ukraine's judiciary remains low

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Trust in the judiciary [hit](#) a record low in 2015, bottoming out at 3%. The next year, then-President Petro Poroshenko launched a series of judicial reforms intended to improve the level of trust, including rebuilding the Supreme Court from scratch, implementing qualification assessments to evaluate the professionalism and integrity of judges in lower courts, considering outsiders for judicial posts and even broadcasting job interviews for new judges online.

Still, trust in the judiciary has hardly improved.

A June 2019 [poll](#) from the Democratic Initiatives Fund found that nearly 62% of respondents do not trust the Supreme Court at all. Just 20% said they trust it somewhat, and only 3% have complete trust in the body.

The reasons are obvious. The reforms promised under Poroshenko were barely implemented. The competition for new judges was never properly held, and judges with questionable reputations and integrity not only continued to submit rulings, but also completely took over judicial institutions.

## Flawed assessments

The High Qualification Commission of Judges and the High Council of Justice, the bodies that have the final say in the shortlisting and selection of candidates for the Supreme Court, are neither impartial nor independent. Rather they use vague and inaccurate methods that give them significant discretion in assessing judges, with only 200 of 1000 opaque assessment points distributed objectively.

As a result, the scores for judicial candidates are incomprehensible and often contrary to public opinion. In one example, the whistleblower judge Serhii Bondarenko, who was one of the few judges to [get](#) a positive assessment from civil society, [received](#) a very low score from the commission, specifically for integrity. Meanwhile, tainted judges receive appointments without proper justification.

While the integrity check was outsourced to the Public Integrity Council, an official body that consists of 20 civil society experts, the commission could easily overrule their conclusions with a vote from 2/3 of its members.

As a result, the governing bodies ignored [nearly 60%](#) of negative conclusions regarding judicial candidates.

A glaring example is [Olha Stupak](#). The judge did not declare the big house she lives in, and when asked during an interview to explain who paid for that house, she said it was financed by her mother-in-law, who earned the money selling berries at the market.

The state bodies that should have ensured scrutiny of candidates, primarily the National Agency on Corruption Prevention (NACP), failed to [fulfill their duties](#). Fortunately, the NACP is in the process of a relaunch.

## Tainted judges remain in power

Tainted judges seem to have taken over the courts through a number of key administrative positions and by holding presidencies in three of the Supreme Court's four cassation chambers. It is worth stressing that these presidents were elected by the chambers, so the majority of judges supported these questionable choices.

[Bohdan Lvov](#) was [selected](#) as the head of the Cassation Commercial Court by an overwhelming majority (69 of 89 votes), despite possessing assets he could not afford and proof from the former Supreme Court that he violated the law when he assigned a case for consideration and bypassed the automatic case distribution system.

Lvov also [helped](#) a judge avoid lustration and was subject to several criminal investigations at the time of his appointment. Despite his wrongdoings, the qualification commission recommended Lvov to the Supreme Court and he was confirmed by the High Council of Justice.

In another example, [Mykhailo Smokovych](#), the head of the Cassation Administrative Court, used to work as the deputy head of the High Administrative Court of Ukraine. In that role, he helped judges who persecuted protesters during the Revolution of Dignity escape liability, ruling that the terms for bringing them to disciplinary liability had expired in a bizarre interpretation of the law.

There are [grounds](#) to assume that the High Qualification Commission manipulated the practical skills assessment to help Smokovych secure the position. In particular, after they announced Smokovych's low results, the commission lowered the threshold the next day, bringing Smokovych and other judges back into consideration. While High Council of Justice member Andrii Boiko recommended not to appoint Smokovych, his colleagues ignored him and voted in his favor.

The Cassation Criminal Court is also headed by the dishonest judge [Stanislav Kravchenko](#), who violated human rights according to a European Court of Human Rights decision. He also failed to declare a land plot before 2016, when liability for non-declaration was introduced. And, in 2003, Kravchenko issued a ruling that [helped](#) Oleksii Pukach, later convicted of killing journalist Georgiy Gongadze, flee justice.

## Questionable Supreme Court Rulings

The new Supreme Court has issued a number of questionable decisions and, just this week, the court [refused](#) to consider a case on the suspension of judges in the Kyiv District Administrative Court who were prosecuted for attempting to avoid the qualification assessments and [prohibited](#) the National Anti-Corruption Bureau of Ukraine from disclosing the officials named in the case.

In March 2019, the Supreme Court also [ruled](#) in favor of oligarch Dmytro Firtash, who was [indicted](#) on bribery charges by the United States and is currently [awaiting](#) extradition in Vienna.

In 2013, Firtash entered an agreement with the state, promising to invest at least \$110 million to modernize the Zaporizhia Titanium and Magnesium Combine. Instead, most of the funds were transferred to offshore companies controlled by Firtash, and the Supreme Court canceled decisions in lower courts that would have returned the plant to public ownership, ruling in Firtash's favor.

The case is pending a new round of consideration with the first hearing scheduled for January 2020.

In another instance, the court [decided](#) to restore a judge who persecuted protesters during the Revolution of Dignity and had been dismissed by the High Council of Justice.

Instead of putting an end to three years of litigation, the Court [sent the case](#) back to the Kyiv District Administrative Court to reconsider.

Before the infamous court made their decision for the second time, the new chief military prosecutor, Viktor Chumak, opened declarations from military prosecutors and the Rada adopted a law obliging the SBU leadership to publish asset declarations.

In addition, there is evidence that corruption in the Supreme Court is returning to previous levels, and talk about ways to influence its judges is once again spreading around the legal [community](#) — with some offering various “services,” including a guarantee to open proceedings, the redistribution of the case to “a more pliable panel of judges” and speeding up court decisions.

Despite the level of corruption in the Supreme Court, proving it remains complicated. Corrupt judges are now much more creative and careful, and most deals are done by their assistants and staff. However, we are still expecting that a whistleblower will appear in the judiciary to detail the current situation.

While not all reforms succeed on the first attempt, this does not mean Ukraine should stop trying. It should be acknowledged that the current composition of the Supreme Court is not a result of a transparent, trusted selection process. Moreover, once tainted judges make it to the Supreme Court, it is almost impossible to investigate them or bring liability to alleged misdeeds revealed during their selection.

The High Council of Justice is responsible for conducting disciplinary cases against judges, and the body has already turned a blind eye to violations by greenlighting corrupt candidates for the Supreme Court.

As for criminal prosecution, it is possible to bring a judge to liability if he or she is caught taking a bribe. As for illicit enrichment, liability for that crime was only restored recently and does not cover the periods in which assets were obtained.

Vetting must be applied to clean up the Supreme Court, and the recent law on the judiciary authored by Zelensky proposes to cut the number of the Supreme Court judges. Though it is an extreme measure, and it is still not clear what the procedures will be, it does create grounds to remove untrustworthy judges from the court.

However, to ensure that Supreme Court selection is not manipulated and the court is cleaned of tainted judges, there must be proper safeguards.

These are to be established by the new High Qualification Commission of Judges, which will be selected in the next three months with participation from international experts.

While properly drafted procedures are essential, the new commission will be approved by the High Council of Justice, and reforming that body is another crucial step that must be carried out by the Ethics Commission with the participation of international experts.

*Halyna Chyzhyk is the Anti-Corruption Action Center’s lead expert on judicial reform and Public Integrity Council member.*

*Mykhailo Zhernakov is co-founder and chairman of the Board of DEJURE foundation. He is also a Public Integrity Council coordinator.*

*Roman Maselko is an Automaidan Board member and a Public Integrity Council member.*

*Olena Halushka is an Anti-Corruption Action Center board member.*