

CSOs: Credibility of the anticorruption court is impossible without transparency of the competition

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The Anti-Corruption Action Center, All-Ukrainian Association AutoMaydan, DEJURE Foundation, Transparency International Ukraine welcome the selection of members of the Public Council of International Experts (PCIE). CSOs demand the High Qualification Commission of Judges to immediately provide appropriate working conditions for international experts and to adopt rules regarding transparency of the competition to the High Anti-Corruption Court.

Failure to comply with these requirements is a threat of depriving international experts of real impact on the competition and repeating mistakes during the selection of judges to the Supreme Court.

According to the schedule announced by the High Qualification Commission of Judges of Ukraine, the appointment of six members of the PCIE should have taken place by the end of October. Despite the fact that the candidates to the PCIE were nominated in mid-September, the HQCJ delayed the process of PCIE formation for one and a half month. It deprived international experts of significant amount of time for the analysis of candidates.

At the same time, conditions for full and proper participation of international experts in the competition are not provided. The procedure for obtaining access by international experts and their translators to the full candidates' dossier is absent. Neither it is known whether international experts will have access to the results of candidates' practical assignment.

Transparency of the competition to the High Anti-Corruption Court is also not provided. Today, the High Qualification Commission of Judges has not introduced clear criteria for assessing the integrity of candidates. Instead, available assessment methodology allowed to green-light candidates to the Supreme Court who could not properly explain the origin of their own funds, as well as candidates in whose actions the European Court of Human Rights found violations of fundamental rights regarding access to justice. Following this methodology during the competition to the High Anti-Corruption Court will deprive the final stage of competition of transparency and its results may be the result of manipulations.

According to such conditions, international experts will not be able to play the key role in the selection of anti-corruption judges. Instead, the corrupt elites will keep the opportunity to have their "own" candidates at the High Anti-Corruption Court.

We demand the High Qualification Commission of Judges of Ukraine to make following steps in order to ensure independent competition to the High Anti-Corruption Court:

- 1. Provide full access for members of the PCIE and its secretariat to candidates' materials, including personal data from candidates' dossiers and data from state registers.**

The status of the auxiliary body of the HQCJ, which the PCIE has according to the Law on the High Anti-

Corruption Court, provides access to the same amount of information as the Commission has. Thus, the PCIE should have full access to candidate's personal data.

It is unacceptable to grant the right for candidates to disclose or not to disclose their personal data for the PCIE at their own discretion. This will give candidates the opportunity to avoid the PCIE's analysis.

The PCIE's access to open state registries is directly prescribed by the Law. Since obtaining the separate access may take a long time, the HQCJ should provide the opportunity to use access to registers which is available for the Commission to members of the PCIE. Such access should also be provided to the secretariat of the PCIE, which is essential for translation and, consequently, the PCIE's performance.

2. Provide access for the PCIE and its secretariat to the results of practical assignments performed by candidates during the exam.

According to requirements of the Law, the PCIE should evaluate not only the integrity but also the professionalism of candidates. At the same time, the PCIE should assess candidates' professional skills independently, without relying on the HQCJ's assessments.

However, performance of this function will not be possible if the PCIE does not have access to practical assignments texts made by candidates during the exam. We should emphasize that the Law does not put limits for the Commission regarding disclosure of exam components and results. Thus, the HQCJ has full right to independently provide access to practical assignments performed by candidates for the PCIE.

Similarly, the PCIE's access to practical assignments performed by candidates cannot depend on the will of candidates, since the analysis by the PCIE is a mandatory stage of the competition.

3. Determine clear criteria regarding candidates' integrity and establish standards for proving candidates' compliance or non-compliance with these criteria.

Today, the HQCJ promotes the subjective approach to determining the integrity of candidates for positions of the judges, which opens up a large field for manipulations. Unfortunately, as a result of this approach, candidates with negative conclusions from the Public Integrity Council have received high scores for integrity from the HQCJ, and whistle-blowers judges, on the contrary, have received low scores.

The HQCJ should develop and publish the criteria of integrity, based on the [Bangalore](#) Principles of Judicial Conduct approved by the UN Economic and Social Council Resolution.

At the same time, the HQCJ believes that assessment of the candidate as dishonest is possible only in case of proof of candidate's guilt, that means, according to standards of the criminal process, where the person uses the presumption of innocence. However, such approach is inappropriate for selection to positions that should have public trust.

Instead, it must be established that reasonable doubt in candidate's integrity should lead to refusal of his recommendation to the judge's position at the Anti-Corruption Court. And the candidate himself must refute these doubts or assumptions.

4. Modify the methodology for evaluating candidates in favor of objective indicators.

The current methodology for evaluating candidates allows the HQCJ to determine at its discretion winners of the competition among candidates who will remain in the competition after the PCIE's "filter".

The HQCJ makes final candidates' ratings. It will depend on them whether the best candidates will be winners.

However, at present members of the Commission set 79% of the candidates' maximum score at their own

discretion. Only 210 out of the maximum amount of 1000 points correspond to results of judges' examination. The HQCJ methodology, which had to make these 790 points clear to society, only accumulates blurred criteria and creates the field for manipulation.

The HQCJ should change the methodology for evaluating candidates and foresee that defining score points should be put according to results of judges' examination and assessment of candidate's integrity.

5. Provide disclosure of points submitted to candidates by each member of the HQCJ for each evaluation indicator, as well as disclosure of the justification of scores for each candidate.

Today, the HQCJ explains its decision on results of candidates' rating only according to the total number of points and total score for candidates' professionalism, integrity and professional ethics. The HQCJ does not explain their scores and does not show individual scores given by members of the Commission. Moreover, the Supreme Court of Ukraine recently [recognized](#) the decision of the HQCJ regarding the qualification assessment of one of the judges to be illegal, since such decision did not contain sufficient justification. The practice of unreasonable decisions must be stopped.

Ignoring these demands by the High Qualification Commission of Judges will mean that the Commission deliberately leaves room for maneuvering with results of the competition to the Anti-Corruption Court.

As a result, doubts about independence of the Anti-Corruption Court from political influences may arise even before its creation. We demand the HQCJ to provide independence of the Anti-Corruption Court and proper working conditions for international experts and total transparency of the selection of anti-corruption judges.