

Opposition Platform For Life wants to destroy the HACC with the help of the Constitutional Court

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“Two courts already belong to us. Namely: the Constitutional Court and District Administrative Court”

Pavlo Vovk, head of KDAC, May 29, 2019

This week the Grand Chamber of the CCU [will consider](#) the appeal of 49 Members of Parliament regarding the unconstitutionality of the High Anti-Corruption Court.

The vast majority of signatories are MPs from Opposition Platform For Life. Among them are Medvedchuk, Boyko, Levochkin, Novynskyi, Rabinovych, Shufrych, Korolevska, and Kyva.

At the same time, during recent years the Constitutional Court has repeatedly made doubtful or unmotivated decisions.

They include, for instance, deprivation of the NABU the right to cancel [illegal agreements](#) through the court or declaring the article on illicit enrichment unconstitutional, as the result head of KDAC Pavlo Vovk, his deputy Yevhen Ablov, former MP Oleg Lyashko, Odessa Mayor Gennadiy Trukhanov, and first deputy head of the SBU Pavlo Demchyna and other subjects of investigations avoided potential responsibility.

By the way, according to the latest [“KDAC tape-recordings”](#), Pavlo Vovk “works side by side” with the Constitutional Court. When discussing the recognition of the article on illicit enrichment as unconstitutional, Vovk [says](#): “By our combined efforts in the struggle for common justice, the decision came on on illicit enrichment, on recognition as unconstitutional. Therefore, you have opportunity to buy whatever you want”.

So let’s take closer look at the [appeal](#) regarding the High Anti-Corruption Court.

The position of Members of Parliament comes down to the fact that the HACC is extraordinary court, the establishment of which is prohibited by the Constitution. The text refers to separate status and jurisdiction of the HACC, the separate composition of persons who are subjects to the HACC, the special procedure for selecting judges, broad powers of the Public Council of International Experts in establishing the court, and allegedly unconstitutional restrictions for candidates.

These “arguments” have been already investigated by [members](#) of the public. Statement of Members of Parliament is banal manipulation and can be easily refuted.

The legal status, powers and tasks of the Anti-Corruption Court fully comply with the Constitution, and the HACC is not the exception if compare with other courts. Namely:

- the High Anti-Corruption Court is high specialized court, the formation of which is directly foreseen by article 125 of the Constitution of Ukraine;
- the Law of Ukraine “On the Judiciary and the Status of Judges” clearly stipulates that high specialized courts may operate in the judicial system as courts of first and appellate instance that consider certain categories of cases;
- the main task of the HACC is administration of justice in clearly defined list of cases. The reason for allocation of separate category of cases was their ineffective consideration in courts of general jurisdiction and violation of reasonable period of limitations for consideration;
- when considering cases, HACC judges are guided by provisions of the Criminal Procedure Code, and not by any special “anti-corruption codes”, and the procedure of consideration is the same as in other courts;
- the cassation instance for reviewing decisions of the HACC is the Criminal Cassation Court within the Supreme Court, and not some separate “anti-corruption court of cassation”, namely, the HACC is component of the judicial system of Ukraine;
- the Law of Ukraine “On the Judiciary and the Status of Judges” applies to the HACC and its judges, they make the same oath and adhere to the same Code of Judicial Ethics as other judges;
- the remuneration of HACC judges is equal to the remuneration of judges of Courts of Appeals, and recent [quarantine restrictions](#) on remuneration applied to HACC judges as well as to all other judges;
- the procedure for bringing HACC judges to disciplinary responsibility is the same as for all other judges;
- HACC judges submit the same declarations of integrity and family ties as all other judges;
- the Chamber of Appeal and the judicial chambers of the HACC as the court of first instance are located in different buildings, and expenses for the maintenance of the Chamber of Appeal are outlined in the budget on separate line;
- the last word during selection of candidates to positions of HACC judges belonged to the judicial authorities (HQCJ and HCJ), and international experts performed only auxiliary and advisory function, and do not admit obviously dishonest candidates to the court;
- restrictions in requirements for judges were created in order to prevent biased or dishonest candidates.

For instance, persons who have held political positions during last 10 years or persons who have been members of the High Qualification Commission of Judges or the High Council of Justice before entry into force of the Law of Ukraine “On Restoring Confidence in the Judiciary in Ukraine” (for instance Portnov, Kivalov, Tatkov) cannot be HACC judges;

- additional requirements regarding work experience and qualification of HACC judges are determined by the specialization of cases within the jurisdiction of the court, and do not indicate its “peculiarity”;
- even [official website](#) of the HACC is hosted on the same “Judicial Power of Ukraine” portal as website of all other courts in Ukraine.

What can happen if the Anti-Corruption Court is declared unconstitutional?

There are just some potential consequences:

- consideration of anti-corruption cases will be suspended for several months until they will be heard again from the beginning by local courts;
- period of limitations will expire in many proceedings and the accused will “come out with clean hands”;
- such decision will open the way for judicial appeals against verdicts and other decisions of the HACC adopted during last year;
- hundreds of millions of hryvnias spent on the launch of the HACC will turn into waste of money;
- public confidence in legislature and judiciary, as well as any anti-corruption reforms in Ukraine, will fall even lower;
- support of international partners and faith in the ability of our government to fight corruption will be finally undermined;
- external borrowings for Ukraine, in particular under the program of the International Monetary Fund, will become unrealistic.