

The HQCJ decision on anticorruption court competition is in jeopardy as the mandate of three HQCJ members is challenged

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On April 4, 2019, the Ombudsman Lydmila Denysova issued a decree on appointment of a new member of the High Qualification Commission of Judges Mykola Sirosh instead of Tetiana Veselska. The decree was not published even on official web-site, where the only information on results of the [competition](#) for new HQCJ member is available.

According to [information](#) from an attorney of subjects of NABU investigations, the decree says it is issued “due to expiration of the term of office of HQCJ member Tetiana Veselska”.

Such an approach would mean recognition that term of office of Veselska expired in December 2018 (she was appointed in late 2014).

This may be used as a pretext for lawsuit on abolishing HQCJ decision on results of the competition for the **High Anticorruption Court** (HACC), adopted in January 2019, as the one adopted by the illegitimate composition of the HQCJ.

Moreover, terms of office of two more HQCJ members – Sergiy Koziakov, delegated by the Ministry of Justice in October 2014 and Stanislav Shchotka, appointed by State Judicial Administration in December 2014 – are challenged.

Three lawsuits were filed in order to confirm that these three HQCJ members had not right to perform their role since end of 2018. The opponents appeal to the article 94 of the law on the Judiciary and the Status of Judges, which defines that the term of office of the HQCJ members is 4 years from the date of selection/appointment.

With regards to term of office of Shchotka, on April 25, 2019, District administrative court of Kyiv refused to recognize that his mandate expired. The decision has yet to come to effect. However, State Judicial Administration is holding a [competition](#) for position of new HQCJ member (to be appointed instead of Shchotka) and there is no information of this competition being suspended.

Judicial hearings on lawsuits on mandates of Koziakov and Veselska are postponed to mid-April.

ANTAC team analyzed the legislation and came to the conclusion that the current composition of the HQCJ is legitimate and the mandates of the three members are valid.

1. Before March 2015 the provision of the law “On the judiciary and the status of judges” was enacted which defined the 6-year term of office of all members of the HQCJ.

All three HQCJ members who are now under question were selected/appointed before March 2015

(Kozyakov in October 2014, Shchotka in December 2014, and Veselska in December 2014), **meaning that they were appointed for the 6-year term.**

2. The law on the access to justice that came in force on March 28, 2015 amended the law on the Judiciary and cut the HCQJ members terms of office to 4 years. Also, the transitional provisions of the law defined that those HCQJ members who were selected only by the Judicial Assembly will be working for 4 years from the moment of enactment of the law, meaning till March 28, 2019 (these are 6 out of 8 existing members). **The law did not address the terms of office of other standing at the moment HCQJ members as well as did not mention that it had a retroactive application.**

3. In June 2016, the Constitutional amendments regarding judiciary and a new version of the law on the judiciary and the status of justice were adopted. In paragraph 26 of the transitional provision of the law it was defined that “The members of the HCQJ who were appointed before the enactment of this law, **will continue to fulfil their functions for the period they were appointed/selected for**”. All of the three were appointed for the term of 6 years, and the law of 2015 did not specify on their powers.

Moreover, the law on the judiciary states that the HCQJ is considered as plenipotentiary when at least 8 members are appointed (part 25 article 95).

The law on the Judiciary and the Status of Judges (part 1 article 92) defines that the activity of the HCQJ is non-stop, therefore the composition of the HCQJ cannot be considered illegitimate.