

# Zelenskyi's judicial reform: there will be no cleaning of courts

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*The President Zelenskyi announced another judicial reform.*

*On February 13, the press service of the Presidential Office [announced](#) that the head of state was submitting to the Verkhovna Rada the draft law on checking the integrity of members of the High Council of Justice (HCJ).*

*This reform concerns commitments of Ukraine to the International Monetary Fund. Just the day before, the IMF mission [completed](#) its work in Ukraine, but with disappointing result. Namely, more progress in implementing reforms is needed for further support.*

*This result was expected, taking into account the fact that Ukraine has not fulfilled most of conditions for receiving next tranche from the IMF (namely 1.2 billion USD). First of all, this concerns the law on reform of the HCJ, which was defined as structural beacon and was had to be adopted by the end of October last year.*

*The urgency of reform of the HCJ for Ukraine is also emphasized by the EU. This was [stressed](#) by the High Representative of the European Union for Foreign Affairs and Security Policy Josep Borrell during recent meeting of the EU-Ukraine Association Council.*

*During last meeting with Zelenskyi ambassadors of the G7 also reminded him of the lack of progress in judicial reform and expressed concern about recent legislative initiatives on the judiciary.*

*But Zelenskyi once again tries to deceive international partners by suggesting them fake reform of the HCJ. The Anti-Corruption Action Center, the DEJURE Foundation and the Automaydan explain why reform of the HCJ is urgent and how Zelenskyi is trying "to sell" fake judicial update to Ukrainians and international partners.*

## What is wrong with the High Council of Justice

The High Council of Justice is the main body in the judiciary of the country. In hands of members of the HCJ is concentrated virtually full control over appointment and dismissal of judges, their protection from unlawful encroachment and bringing to responsibility for violations. Thus, members of the HCJ are also responsible for the terrible state of the judiciary today.

Thanks to the HCJ almost all judges, who banned peaceful meetings and persecuted activists during the Revolution of Dignity, kept their positions. The HCJ covers [KDAC judges](#) and makes [pressure](#) by disciplinary cases on judges of the High Anti-Corruption Court. The HCJ refuses to dismiss judges who lie in declarations, make arbitrary decisions or drive drunk.

For instance, just two weeks ago the HCJ [refused](#) to open disciplinary case against judge from Chortkiv who

had helped to cover up driver who had killed a woman in a road accident. The victim's body was [torn](#) to pieces. Later, the examination revealed 1.74 ppm of alcohol in driver's blood, which was almost 9 times higher than the norm. The criminal case was quietly closed. Instead, they drew up a report on administrative offense against the driver. It was considered by Vasyl Parfenyuk, judge of Chortkiv court. On January 28, he found the driver guilty but [closed](#) the case due to expiration of statute of limitations in administrative cases. However, the HCJ even refused to open the case in order to find out if the judge had broken the law.

Members of the HCJ also unanimously [stood up](#) for Pavlo Vovk and six other KDAC judges, whom the NABU suspects of creating the criminal organization and trying to seize state power. The HCJ refused to suspend judges, instead they accused the NABU of undermining the authority of justice.

The problem lies in formation of this body: half (10) of members of the HCJ are selected by judges themselves among their fellows, and two more are selected by the congress of lawyers, scientists, prosecutors, the Verkhovna Rada, and the President. The Chairman of the Supreme Court is member of the HCJ ex officio. Thus, the majority of the HCJ are judges selected by judges.

Candidates for positions of members of the HCJ do not pass integrity examinations, and the main selection criterion is, in fact, loyalty of those who are selected to those who select.

Only new procedure for selecting members of the HCJ can break this vicious circle, when future members of the body will be selected not by judges/lawyers/prosecutors with doubtful reputation, but by independent experts from outside the system. So it is not surprising that reform of the HCJ has been at the center of the judicial reform. Do not hold out much hope on honest judges from among dishonest members of the HCJ.

## **There will be no update of the HCJ**

At first glance, new procedure for selecting members of the HCJ is allegedly provided in the presidential [draft law No. 5068](#).

He proposes to establish the Ethics Council composed of three judges or retired judges delegated by the Council of Judges and three international experts nominated by international organizations with which Ukraine cooperates. The task of the Ethics Council is to assess integrity of candidates to the HCJ and to provide the appointing authorities (namely, the congress of judges/lawyers/scientists/prosecutors, the President and the Verkhovna Rada) with the list of recommended candidates.

It would seem to be victory, because finally candidates to the HCJ will be assessed regarding integrity, and participation of international experts in the process guarantees the quality of examination.

But the devil is in the details, and this detail is the way for the Ethics Council to make decisions. The presidential draft law stipulates that decisions are made by majority of votes of the Ethics Council (4 votes), provided that it is supported by three international experts.

This means that judges in the composition of the Ethics Council will be able to block any its decision, and therefore **none of candidates, who have not received support of the judicial corporation, will be able to apply for position in the HCJ.**

Of course, this norm minimizes chances for membership in the HCJ of outright scoundrels like Pavlo Vovk, who will never be voted for by international experts, but creates the green corridor for "dark horses" controlled by the same Vovk or other gray judicial cardinals.

Under these conditions you should not hope that judges, who have public authority and are not afraid to speak openly about problems of the judiciary, will be supported by the Ethics Council. Professional experts from the public also do not have chances to pass the Ethics Council.

So, instead of guaranteeing decisive voice for international experts in the pre-selection of candidates to the HCJ or involving public experts, for instance, the Public Integrity Council, Zelenskyi relies on corrupt and dependent judges, stepping on the rake left for him [by Poroshenko](#).

## Inviolable members of the HCJ

There is norm in pre-final provisions of the draft law that provides for the possibility of dismissal of current members of the High Council of Justice, who are not honest or violated ethical rules.

The Ethics Council must examine integrity of members of the HCJ within three months from the moment of its establishment. Later, it should recommend to appointing authorities to dismiss dishonest member of the HCJ. However, this will unlikely happen, as any decision of the Ethics Council must be supported by at least one judge in its composition.

Members of the Ethics Council will have a lot of work to do.

For instance, they should be interested in member of the HCJ Larysa Ivanova. She owns 5 apartments, 4 land plots and expensive house near Kyiv. And when she was asked about origin of money for the purchase of house, Ivanova [explained](#) that she *“had picked strawberries in Germany and was boiler fireman”*.

Another member of the HCJ Svitlana Shelest was once lucky enough to receive apartment in the center of Kyiv worth more than one million UAH as gift from retired mother with minimum income.

Who can forget member of the HCJ Pavlo Grechkivskyi, who was [subject](#) of high-profile case regarding 500,000 USD bribe and whom former Prosecutor General Yuriy Lutsenko once called the “big fish”. Grechkivskyi [finally](#) received verdict of acquittal, the fairness of which is highly questionable despite the fact that decisions were made by judges who actually [owe](#) their careers to Grechkivskyi.

However, these three will not be dismissed according to Zelenskyi’s reform. The final decision will not be made by the Ethics Council, but by the same appointing authorities, namely, the congress of judges or the congress of lawyers, whose objectivity is hard to believe.

Two years ago, the congress of lawyers re-appointed Pavlo Grechkivskyi and Oleksiy Malovatsky to the HCJ in violation of the Constitution. Accordingly, the congress of lawyers will not vote for dismissal of at least these members of the HCJ.

Or maybe judges, who two years ago obediently [followed instruction](#) from Bankova street and voted for all four pre-agreed candidates to the HCJ, will suddenly change their minds now?

## Other devilish details

According to the text of the draft law, international experts will be nominated to the commission only by international organizations with which Ukraine has been cooperating during last three years in the field of anti-corruption and/or the judicial reform. Such construction throws out of the process, for instance, the United States Agency for International Development (USAID), which has been cooperating with Ukraine in the field of judicial reform for many years.

It was USAID one year ago, during first attempt of Zelenskyi to reform courts, that [nominated](#) experts to the commission which should have dismissed dishonest members of the HCJ. But the HCJ was then afraid to establish this commission and [blocked](#) the process. Now, the participation of Americans is made impossible by the law.

Moreover, the draft law makes establishment of the Ethics Council dependent on the decision of the Chairman of the High Council of Justice. Given how the HCJ has blocked the creation of such body in the

past, there are serious risks that it will not be created at all.

The draft law also obliges the Ethics Council to prepare written opinion on compliance with the criteria of integrity for each candidate. This requirement turns the selection of the best candidates into search for arguments against the worst. This obligation is particularly challenging because the Ethics Council will have only one month to review dozens of candidates and prepare such decisions.

Another threat to decisions of the Ethics Council may be [Kyiv District Administrative Court](#). This court has already cancelled dozens of decisions of the Public Integrity Council, which had assessed integrity of candidates to the Supreme Court and current judges. Absence of norm in the draft law that will determine the jurisdiction of cases on appointment of members of the HCJ by the Supreme Court makes the Ethics Council an easy target for Pavlo Vovk.

## **Congress of wickedness to the fake reform**

The President has identified the draft law on reform of the HCJ as urgent, and this means that it should be considered at this session, probably in shortened terms.

However, even with shortened terms the draft law will not be voted for until March 9, when the Congress of Judges [plans to select](#) four new members of the HCJ at once. Therefore, these elections will be held according to old rules, namely without the Ethics Council and any integrity examinations, but with political influence and [instructions from the top](#).

The last time the Congress selected four members to the HCJ out of several dozen candidates. They were selected by secret ballot, and they [had been agreed](#) in advance in high-ranking cabinets. And under current conditions, there is no reason why it should be different this time.

Four more positions in the HCJ remain vacant. Namely, two under quota of the Parliament and one from prosecutors and one from scientists (the latter, for instance, were headed by infamous [Ilya Kiva](#) when member of the HCJ had been chosen according to their quota), and they will also be in a hurry to fill in these vacancies.

Taking into account the fact that in one month we can get eight new members of the HCJ, and update of this body can not be expected in next four years under any version of the law.

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*Thus, behind bright wrapper of judicial reform lies another attempt to keep corruption and “rigged game” in the judiciary. The Presidential draft law 5068 does not propose to clean the High Council of Justice or to select new members.*

*This means that the rest of judiciary will remain in the same state as it is now. Namely, with all possible consequences in the form of violation of human rights, [undermining national security](#) and hindering economic growth. After all, foreign investors [call](#) distrust in the judiciary the main obstacle to direct investments.*

*Government had promised the judicial reform to society once again. And they proposed its imitation, which will not only help to make progress, but will also throw the situation with courts for several years back.*