

First 100 days of work of the new composition of the High Qualification Commission of Judges of Ukraine

By the decisions of the High Council of Justice of June 01, 2023, 16 members of the High Qualification Commission of Judges of Ukraine were appointed, thus resuming the work of the High Qualification Commission of Judges of Ukraine as a collegial body.

During the first 100 days of its work, the new composition of the High Qualification Commission of Judges of Ukraine took the following measures.

I. ORGANISATION OF THE COMMISSION'S WORK

1. On June 06, 2023, at the organizational meeting of the High Qualification Commission of Judges of Ukraine:

1) the leadership of the Commission was elected:

- Roman Ihnatov – as the Chairman of the Commission;
- Ruslan Sydorovych – as the Deputy Chairman of the Commission;
- Ruslan Melnyk and Serhii Chumak – as secretaries of the Commission's Chambers;

2) the personal composition of the Commission's Chambers was approved.

2. Panels of the Commission are approved.

3. Four decisions were adopted on amendments to the Rules of Procedure of the High Qualification Commission of Judges of Ukraine regarding, including:

- the powers of the Chairman of the Commission;
- the composition and powers of the Commission's Chambers;
- the procedure for the work of the Commission's Panels;
- the possibility of remote participation in the Commission's meetings;
- consideration of reports on unreliability (incompleteness) of information and statements in the declarations of integrity of judges and family relations of judges;
- reviewing reports of the State Judicial Administration of Ukraine on judges' secondment.

4. Suggestions have been prepared to improve the Procedure for the secondment of a judge to another court of the same level and specialization (as a temporary transfer) in terms of:

- the procedure for notification by the State Judicial Administration of Ukraine of the grounds for a secondment and early termination of secondment of a judge;
- consideration by the Commission of the issue of secondment and early termination of a judge's secondment;
- types of decisions that may be taken by the Commission following consideration of the issue of a judge's secondment and early termination of a secondment.

5. In addition, the High Qualification Commission of Judges of Ukraine:

- established the working group to assess corruption risks in the Commission's activities;
- took measures to implement the State Anti-Corruption Programme for years 2023–2025;
- prepared suggestions to determine the number of judges in local and appellate courts;
- provided participation of the representatives of the Commission in the working group of the Verkhovna Rada of Ukraine (Parliament) to improve the Law of Ukraine “On the Judiciary and the Status of Judges”;
- prepared suggestions to determine the number of employees of the Commission, which were considered by the High Council of Justice and approved the maximum number of the Commission's employees in the amount of 275;
- appointed representatives to the Commission on the Senior Civil Service in the Judiciary;

- improved the Regulation on the Automated System for Determining the Members of the Commission to Prepare for Consideration and Reporting of Cases;
- improved the Regulation on Taking Qualification Exam and Methodology for Evaluating Judicial Candidates;
- established the working group to develop suggestions for the Procedure for Special Training of Judicial Candidates;
- established the working group to develop a new version of the Rules of Procedure of the High Qualification Commission of Judges of Ukraine;
- agreed on the schedule of interviews for the qualification evaluation of the judge's suitability for the position;
- ensured participation in the working group of the High Council of Justice on the Unified Judicial Information and Telecommunication System (UJITS).

II. FORMATION OF THE PUBLIC INTEGRITY COUNCIL

For the purposes of establishing the Public Integrity Council, the Chairman of the High Qualification Commission of Judges of Ukraine convened a meeting of representatives of civic associations that have been engaged in activities aimed at fighting corruption, protecting human rights, supporting institutional reforms, including implementing projects in these areas for at least the last two years.

The Commission received applications from 21 civic organizations to participate in the meeting. 16 organizations were found to meet the requirements for participation in the meeting of representatives of civic associations to establish the Public Integrity Council.

Following the results of the relevant meeting on August 14, 2023, 20 members of the Public Integrity Council were elected.

On 31 August 2023, a joint meeting of the members of the High Qualification Commission of Judges of Ukraine and the Public Integrity Council was held to discuss topical issues of cooperation.

III. TEMPORARY TRANSFER (SECONDMENT) OF JUDGES

Since June 01, 2023, the Commission has received 50 reports from the State Judicial Administration of Ukraine to resolve the issues of judges' secondment:

- 1) on secondment to other courts – 44;
- 2) on the early termination of secondment of judges – 6.

As part of the review of notifications from the State Judicial Administration of Ukraine on the need to consider the issue of judges' secondment, the Commission received 91 judges' consents to secondment.

Based on the results of the Commission's review of the notifications:

- 2 notifications of the State Judicial Administration of Ukraine were returned due to the impossibility of their consideration;
- 21 notifications of the State Judicial Administration of Ukraine were left without consideration;
- 16 judges are recommended for secondment to 6 courts;
- 57 judges were denied in recommendation for secondment;
- the issue of secondment of 3 judges was left without consideration;
- 17 judges were recommended to complete their secondments ahead of schedule;
- 3 judges were denied in the recommendation to complete their secondments ahead of schedule.

IV. SELECTION OF CANDIDATES FOR THE POSITION OF A JUDGE

By the decision of the Commission of June 15, 2023, it was decided to verify and evaluate practical assignments performed by candidates for the position of a judge during the qualification exam scheduled for June 24, 2019.

From July 25 to August 29, 2019, 368 candidates for the position of local court judge passed the qualification exam.

The total number of practical tasks completed was 1,028:

- administrative specialization – 342;
- commercial specialization – 321;
- general specialization – 365.

The Commission's Decision № 45/zp-23 of August 01, 2023, approved the ratings of candidates for the position of a judge and reserves for filling vacant positions of local court judges.

This decision effectively completed the selection of candidates for the position of judge announced on April 03, 2017.

As of today, 585 candidates are in the reserves for filling vacant positions of local court judges, including:

1. By reserves:

- in the reserve for administrative court judges – 434;
- in the reserve for the positions of commercial court judges – 380;
- in the reserve for the positions of judges of general courts – 523.

2. By the number of reserves the candidate has:

- in one reserve – 142;
- in two reserves – 134;
- in three reserves – 309.

The announcement of the competition for local court judges is going to be held in September 2023.

V. CONSIDERATION OF REPORTS ON INFORMATION THAT MAY INDICATE UNRELIABILITY (INCLUDING INCOMPLETENESS) OF INFORMATION OR STATEMENTS IN THE JUDGE'S DECLARATION OF FAMILY RELATIONS OR INTEGRITY DECLARATION

Since June 01, 2023, the Commission has reviewed:

1) 5 reports on information that may indicate the unreliability (including incompleteness) of the information provided by the judge in the declaration of family relations, of which:

- 3 reports were left without consideration;
- the information contained in 2 reports was found to be confirmed, and it was decided to apply to the High Council of Justice to bring the judges concerned to disciplinary responsibility;

2) 30 reports on information that may indicate unreliability (including incompleteness) of the judge's statements in the declaration of integrity, of which:

- 15 reports were left without consideration;
- the information contained in 12 reports was found to be unconfirmed;
- the information contained in 3 reports was found to be confirmed, and it was decided to apply to the High Council of Justice to bring the relevant judges to disciplinary responsibility.

VI. COMPETITIONS FOR THE POSITION OF A JUDGE

The Commission's decision of July 20, 2023, № 31/zp-23 extended the competition for 7 vacant positions of local court judges announced by the Commission's decision of August 05, 2019,

№ 146/zp-19 was extended from the stage of determining the results of the special examination and admission candidates to the competition.

By the Commission's decision of July 20, 2023, № 32/zp-23, the competition for 35 vacant positions of local court judges announced by the Commission's decision of 05 August 2019, № 145/zp-19 was extended from the stage of determining the results of the special examination and admission candidates to the competition.

VII. QUALIFICATION EVALUATION OF JUDGES

Since July 2023, the members of the Commission have been preparing for consideration and reporting on cases based on the results of the qualification evaluation for the position of judge.

Interviews for this evaluation are scheduled to resume in October 2023.

Also, one judge whose powers were terminated due to the expiration of the five-year term of appointment was recommended by the Commission for appointment to the position of a judge.

VIII. INTERNATIONAL COOPERATION

As part of its cooperation with international technical assistance projects, the Commission held the following events:

1. Cooperation with ambassadors and heads of diplomatic missions of the G7 countries.

On June 27, 2023, the Commission held its first meeting with ambassadors and heads of diplomatic missions of the G7 countries. The participants discussed the Commission's plans and priorities. Ambassador Extraordinary and Plenipotentiary of Japan to Ukraine Mr Matsuda Kuninori noted that the election and formation of the new Commission coincided with the time when the G7 countries and the Ukrainian authorities are actively discussing ways to assist Ukraine in post-war reconstruction, which will largely involve private investors. The participants of the meeting thanked each other for the dialogue and agreed to continue their cooperation.

On July 26, 2023, the Chairman of the Commission Roman Ihnatov, the Deputy Chairman of the Commission Ruslan Sydorovych, and the Commission member Vitalii Gatseliuk met with the Ambassador Extraordinary and Plenipotentiary of the United Kingdom of Great Britain and Northern Ireland to Ukraine Melinda Simmons.

During the meeting, the parties signed a Joint Action Plan for the implementation of the International Technical Assistance Project "Support to Judicial Administration Reform in Ukraine" (IDLO).

The document envisages cooperation to implement measures to ensure the Commission's institutional capacity, independence, and transparency with the support of the UK government and the British Embassy in Ukraine.

In particular, the Project's joint activities with the Commission cover the following issues:

- Adaptation of the Commission's secretariat to the crisis conditions in order to perform effectively the powers provided for by the Law of Ukraine "On the Judiciary and the Status of Judges";
- improving the knowledge of the Commission members about international standards of judicial governance;
- raising awareness of the Commission members on gender equality and inclusion;
- institutionalization of transparent appointment of judges;
- optimizing the terms of appointment of judges in accordance with ethical and meritocratic standards;
- support for the digital transformation of the Ukrainian judicial system.

2. Cooperation with the Council of Europe.

On August 31, 2023, the Chairman of the Commission Roman Ihnatov, and the Deputy Chairman of the Commission Ruslan Sydorovych held a consultation meeting with the Head of the Department for the Execution of Judgments of the European Court of Human Rights (ECHR) at the Directorate General for Human Rights and Rule of Law of the Council of Europe Pavlo Pushkar, and the Manager of the Council of Europe Project “Support to the functioning of justice in the war and post-war context in Ukraine” Iryna Kushnir.

The discussion was focused on the issues of compliance with the requirements of reasonable duration of court proceedings in the context of implementation of the judgments of the European Court of Human Rights in *Svitlana Naumenko v. Ukraine*, *Merit v. Ukraine* and supervision by the Committee of Ministers of the Council of Europe in areas of particular importance – pilot decisions, as well as those that raise systemic, structural or complex problems.

The Commission will cooperate with the International Technical Assistance Project “Support to the functioning of justice in the war and post-war context in Ukraine”, which is being implemented by the Division of Cooperation Programs of the Department for the Implementation of Human Rights, Justice, and Legal Cooperation Standards, Directorate General Human Rights and Rule of Law of the Council of Europe. The main areas of the Project implementation are:

- supporting the improvement of legislation and court practice in line with the Council of Europe standards;
- support for the activities of judicial self-government bodies;
- support for the development and implementation of a comprehensive system of measures to overcome the problems of prolonged non-enforcement of court decisions, excessive length of court proceedings, and shortcomings that led to violations of the European Convention on Human Rights in the group of cases of *Oleksandr Volkov v. Ukraine*.

On the 4th of September 2023, the Chairman of the Commission Roman Ihnatov met online with representatives of the European Commission’s joint delegation “For Democracy through Law” – the Venice Commission and the Council of Europe Directorate-General for Human Rights and the Rule of Law (DG-I). The topic of the meeting was to discuss the draft law “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” on the introduction of additional procedures to enhance public trust in the judiciary” (draft law № 9454), which provides for the use of a polygraph for judges and candidates for the position of a judge.

The joint delegation of the Venice Commission and DG-I was represented by the Honourable President Hanna Suchocka, Member of the Venice Commission (Netherlands) Martin Kuijer, Council of Europe DG-I expert, former President of the Consultative Council of European Judges Gerhard Reissner, and newly appointed Head of the Council of Europe Office in Ukraine Maciej Janczak.

3. Cooperation with the USAID Justice for All Program.

On June 2023, an orientation session for the Commission members was held in Lviv with the support of the United States Agency for International Development (USAID) Justice for All Program. The event was attended by leading speakers from the United States, Canada, the United Kingdom, Germany, the Netherlands, and Slovakia, and renowned national experts and trainers.

The purpose of the event is to ensure the institutional memory of the Commission, familiarising new HQCJ members with the experience of similar institutions in other countries, in particular with the standards of selection and qualification evaluation of judges; optimizing the HQCJ’s activities in terms of strategic planning, management decisions, communication and outreach, process automation and professional development; and identifying the stages of building the HQCJ’s institutional capacity in the future.

On July 04, 2023, the Chairman of the Commission, Roman Ihnatov, met online with representatives of international Rule of Law assistance projects, organized with the support of the USAID Justice for All Program. The event was devoted to discussing the plans and priorities of the Commission’s activities shortly.

On August 11, 2023, the Commission received expert recommendations to the draft Commission Regulations following its request to the Justice for All Activity Program dated July 07, 2023.

On August 25–26, 2023, the training “Assessment of Financial Integrity of Judges and Candidates for the Position of a Judge” was held in Kyiv for members of the High Qualification Commission of Judges of Ukraine.

During the two-day training, the Commission members were introduced to a number of thematic blocks on the application of methods for calculating questionable assets; the ability to use the resources necessary for future financial verification of judges and judicial candidates; and understanding the role of the National Anti-Corruption Bureau of Ukraine (NABU) and the National Agency for the Prevention of Corruption (NAPC) in identifying questionable assets. The Commission members also gained knowledge of financial analysis methods, performed exercises to calculate assets of questionable origin, solved practical tasks to simulate an investigation and financial audit, and studied the mechanisms of multi-year calculations.

On August 29, 2023, the Chairman of the Commission Roman Ihnatov met with Jay Totte, the Leading Anti-Corruption and Rule of Law Specialist of the Department of Democracy and Governance at the United States Agency for International Development (USAID) Mission to Ukraine. The event was dedicated to discussing the Commission’s plans and priorities for the near future.

On September 08, 2023, the Chairman of the Commission Roman Ihnatov, the Deputy Chairman of the Commission Ruslan Sydorovych, and the Commission member Roman Sabodash met with the Chief of the Party of the USAID Justice for All Program David M. Vaughn.

During the meeting, the parties signed a Protocol of Cooperation on the implementation of the USAID Justice for All Activity International Technical Assistance Program.

The document envisages cooperation to promote the idea of justice for all by strengthening the justice system, justice services, and public engagement to ensure an adequate response to legal problems and the needs of Ukrainians to address them.

In particular, the Program’s joint activities with the Commission will cover the following key areas:

- improving the legal and regulatory framework, policies/methodologies, and development strategies of the justice system to ensure judicial independence, accountability and efficiency;
- strengthening the commitment and capacity of legal institutions to act independently, accountably and effectively;
- strengthening judicial accountability and the role of the judiciary in overcoming corruption in society;
- increasing the efficiency, effectiveness, and integrity of court administration and judicial governance, including through increased transparency and publicity;
- strengthening society’s control over the Commission’s activities.

4. Cooperation with the EU “Pravo-Justice” Project.

On 16 June 2023, an online working meeting was held between the Commission’s leadership and representatives of the European Union's Pravo-Justice Project. To coordinate common goals, objectives, and activities, the participants agreed to conclude a Memorandum of Cooperation that will consolidate joint efforts and facilitate work to achieve strategic goals in strengthening the rule of law.

On July 14–15, 2023, with the support of the European Union “Pravo-Justice” Project, members of the High Qualification Commission of Judges of Ukraine took part in the Strategic Session. Through active interaction, the HQCJ members were able to gain practical experience and skills in identifying effective methods for solving complex management tasks, discussed the development of strategic capacity, and focused on the principles by which the Commission has already begun to work to achieve effective interaction with civil society. The members of the Commission also discussed issues related to the criteria for assessing the quality of the work of the High Qualification Commission of Judges of Ukraine, the stages of development and achievement of strategic management goals, emphasized the importance of information technology in the work of the Commission and searched for ways to optimize internal and external communication.

At its request, the Commission received an opinion from the European Union “Pravo-Justice” Project on the draft Law of Ukraine “On Amendments to Clause 20 of Section XII “Final

and Transitional Provisions” of the Law of Ukraine “On the Judiciary and the Status of Judges” regarding the completion of the evaluation of judges in respect of whom the High Council of Justice has denied the application for dismissal” of July 03, 2023 № 9455.

The Commission also received suggestions for the draft Rules of Procedure.

On August 24, 2023, the Chairman of the Commission Roman Ihnatov met online with the representatives of the EU Delegation to Ukraine and the EU “Pravo-Justice” Project. Roman Ihnatov underlined that the Commission is grateful to see how the European Union and the projects that it implements in Ukraine are positively influencing and supporting justice system reforms to improve the independence, efficiency, quality, integrity, and transparency of the judiciary.

Good Governance and the Rule of Law Section Specialist of the EU Delegation to Ukraine Oleksandra Yanovska stressed the importance of the ongoing dialogue between the Commission and the EU “Pravo-Justice” Project and expressed her hope for further cooperation.

On August 29, 2023, the Commission received an analytical note from the European Union “Pravo-Justice” Project on the draft law № 9454 of July 03, 2023 “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” to introduce additional procedures to enhance public trust in the judiciary”.

On September 07, 2023, the Chairman of the Commission Roman Ihnatov met with Oksana Tsymbrivska, the Country Manager of the EU “Pravo-Justice” Project. During the meeting, a Memorandum of Cooperation was signed.

In particular, the Project’s joint activities with the Commission will cover the following key areas:

- development and improvement of legal acts regulating the procedures for selecting candidates for the position of a judge; qualification evaluation of judges; formation and maintenance of judicial dossiers (dossiers of candidates for the position of a judge); special training of candidates for the position of a judge.
- developing and improving regulations that define the procedure and methodology for judicial evaluation and self-evaluation.
- ensuring the necessary conditions for the launch of the Public Integrity Council.
- exchange of information on best international practices and development of international cooperation of the High Qualification Commission of Judges of Ukraine.

5. Cooperation with the German Foundation for International Legal Cooperation IRZ.

At the invitation of the Coordinating Director for state-funded projects for Eastern Europe of the German Foundation for International Legal Cooperation (IRZ), Commission member Vitalii Gatseliuk took part in the event on judicial independence for representatives from Ukraine, Moldova, and Georgia, which took place from August 28 to September 02, 2023 in Hannover, Braunschweig and Berlin (Federal Republic of Germany).

The purpose of the visit was to provide information on the guarantees of judicial independence in Germany and the European Union, a transnational professional exchange of experience in the field of independence of the judiciary (Ukraine, Moldova, Georgia, and Germany).

6. Cooperation with the OSCE.

At the invitation of the OSCE support Programme for Ukraine, Commission member Vitalii Gatseliuk took part in the XI Summer School on Constitutional Law “Rule of Law and Constitutionalism” from August 06 to 13, 2023. The purpose of the event was to address topical issues of constitutional law, human rights, the Rule of Law, constitutional justice, judicial reform, as well as the European constitutional tradition, and the sustainability of Ukraine’s constitutional legal order in extreme war conditions. The participants had the opportunity to share their experience and information with future lawyers about the work of judicial governance bodies and their important role in protecting constitutional rights and freedoms, which contributes to society’s confidence in the judiciary.