



Conference

Selecting Justices for the New Supreme Court: Good Practices, Lessons Learned and the Way Forward

Kyiv, October 24 and 25, 2017

Recommendations

1. Application and Admission of Candidates

The High Qualifications Commission of Judges (HQC) should:

- Ensure that applicants receive clear information on competitive selection and evaluation procedures posted on the HQC website, including all required documents prior to the opening call for applications.
- The HQC should allow for the electronic submission of applications.

2. Qualifications Evaluation and Test Procedures

The High Qualifications Commission of Judges should:

- Publish clear, detailed, and unambiguous judicial selection procedures at the start of the selection process. For example, the passing scores for exams should be established at the start of the selection process, not after the exams have been administered and scored.
- Strengthen the objectivity, validity, and fairness of the qualifications evaluation process through improved standardization of procedures for test item and case study development, including basing case studies on hypothetical fact patterns rather than actual cases, and ensuring that the methodology for evaluating tests and case studies is absolutely clear.
- Clearly describe the knowledge, skills, or other attributes to be measured by each test.
- Increase the weight for objective evaluation criteria, such as exams, from 20% of the total score to a more fair and reasonable number, such as 50%;
- Reduce the score for subjective evaluation criteria, such as interviews with judicial candidates, from 80% to 50% to limit the discretion of the HQC members in selecting candidates.
- Change the focus of anonymous testing and case studies from rote knowledge of written law to assessing skills and competencies related to the application of law.
- Not only publish anonymous test and case study scores, but all qualifications evaluation results online, including scores from interviews, dossier reviews, and psychological tests.
- Introduce regular internal and external auditing of tests and testing procedures to improve the overall quality of tests. The HQC should prepare and publish the results of all audits.

- Work with the National School of Judges (NSJ) to build the capacity of the NSJ Testing Center to prepare quality test items and case studies for the HQC.
- Introduce together with the NSJ transparent and standardized criteria and procedures for selecting test item and reviewers and provide selected test developers and reviewers with quality training programs.
- Require that the NSJ implement a standardized process for test item writing and reviewing with strict deadlines and introduce test item assessment and management procedures.
- Ensure confidentiality in the process of test item development, including providing different access levels to ensure the proper security of test items.
- Provide public access to depersonalized data of test results for psychometric analysis by independent experts to ensure that test items measure what they should be measuring and a normal distribution of test scores to guarantee fairness.
- Make the entire qualifications evaluation and competitive selection process electronic -- including computer based testing and automating the database of test items -- to ensure more efficient processing by the HQC, Public Integrity Council (PIC), and High Council of Justice (HCJ), as well as to provide greater transparency to the public.
- Consider introducing foreign language skills testing into judicial selection and evaluation procedures, similar to the nationally required admissions test for master's degree programs in law and new requirements for high level civil servants.
- Establish together with NSJ good working relations with the Ukrainian Center for Education Quality Assessment to exchange best practices and lessons learned, particularly related to printing and securing tests and test item database development and management.

3. Test Administration

The High Qualifications Commission should:

- Ensure random assigned seating of candidates through electronic registration to prevent possible unfair advantage and cheating.
- Maintain strict control and security over answer sheets, including storing answers and test copybooks in safe containers with limited access.
- Promote greater test security by, among other things, holding candidates mobile devices (including phones, tablets, watches, pagers, laptops) during testing, blocking mobile services during testing, and preventing test takers from communicating with each other in restrooms.
- Keep records of the transfer and acceptance of test materials by authorized HQC staff.
- Conduct post-test participant surveys on the quality of procedures and test administration.
- Promote greater civil society engagement in the independent monitoring of the qualifications evaluation process.
- Provide for better automation of judicial dossiers promoting greater public access to information about candidates.

4. Public Integrity Council

- The HQC and the Parliament should strengthen the role and legal status of the PIC, including providing the PIC with the necessary funding and resources to execute its statutory mandate.
- The PIC and HQC should develop a professional and constructive relationship.
- The HQC and the PIC should jointly develop, approve and publish objective evaluation criteria applied by the PIC.
- The HQC and the PIC should jointly develop and approve unified standards for drafting PIC opinions and related documents with a model structure for such documents.
- The HQC and the PIC should work together to double-check and verify information on candidates using reliable sources.
- The PIC's evaluation of candidates should focus on professional ethics and integrity – not professional skills, which should remain the purview of the HQC.
- The PIC's mandate should include analysis of court decisions delivered by candidates only as they are related to ethics and integrity issues.
- The PIC should provide candidates with the opportunity to review and respond to draft PIC negative opinions prior to publication to ensure that opinions are well grounded and based on accurate information.
- The HQC should prepare and publish reasoned decisions on accepting or rejecting negative PIC opinions on candidates.

5. Psychological Testing

The High Qualifications Commission should:

- Review the appropriateness of applied psychological testing methodologies for judicial qualifications evaluation and selection, including the Minnesota Multiphasic Personality Inventory (MMPI) tests, which are designed for psychiatric purposes.
- Link psychological tests with competencies required to be an effective judge as outlined in the judge's profессиogram.
- Develop a clearer mechanism for incorporating objective psychological skills-based test scores into qualifications evaluation scores.

6. Evaluation and Decision-Making by the HQC and HCJ

- HQC should use standardized scoring sheets in reviewing judicial dossiers and conducting interviews.
- The HQC and High Council of Justice (HCJ) should issue detailed, motivated opinions substantiating each decision to nominate or reject a candidate.
- The HQC and HCJ should vote openly and publicly; alternatively, if voting in-camera, then the HQC and HCJ should publish the voting record of each HQC and HCJ member immediately following the vote.

7. Institutional Establishment of the Supreme Court

- The Supreme Court should ensure the competitive selection of its administrative support staff within the next three months guaranteeing that they are of a high level professionalism and integrity with experience in judicial administration.

- The NSJ should conduct a training needs assessment of Supreme Court justices and organize a series of training programs, including courses on judicial opinion writing and the application of the case law of the European Court and Human Rights.

8. Required Legislative Changes

The Parliament should:

- Amend the Law on the Judiciary and Status of Judges to:
 - Clearly define what is meant by “years of professional experience” and “professional activity of a lawyer” to provide a clear understanding of qualifications requirements by candidates;
 - Include general aptitude tests on logical, analytical and critical thinking skills for initial judicial selection processes.
 - Ensure full funding and resources for the PIC.
 - Enhance qualifications requirements for PIC membership and the rotation of PIC members to ensure the greatest diversity in its ranks.
 - Engage the PIC in the process of selecting candidates for judgeships at local (district) courts;
 - Increase transparency in the process of HQC decision-making, including:
 - (i) Require the HQC to publish well-reasoned decisions if overriding negative PIC opinions regarding candidates;
 - (ii) Publish results of HQC voting by member and allow for concurring or dissenting opinions;
 - (iii) Provide for additional mechanisms for candidates to appeal HQC decisions related to judicial selection and qualifications evaluation, including the HQC establishing internal procedures for the review of panel decisions during plenary sessions.
- Amend the Law on the Judiciary and Status of Judges and the Law on the High Council of Justice to:
 - Review membership requirements for the HQC and HCJ to ensure that only individuals of the highest integrity, independence, and professionalism hold such high positions of public trust by requiring thorough background and integrity checks for all candidates;
 - Develop common rules on conflicts of interests for HCJ, HQC and PIC members to protect the integrity of the qualifications evaluation and judicial selection processes;
 - Ensure public voting or immediate publication of voting records by HQC and HCJ members for judicial candidates to increase accountability to the public, judges, the bar, and other stakeholders whom HQC and HCJ members represent;
 - Require HQC and HCJ issue written opinions supporting each decision to nominate or reject a judicial candidate to increase accountability to the public, judges, the bar, and other stakeholders whom HQC and HCJ members represent.