

INFOBRIEF:

Decisions of Selection Commissions with the Participation of International Experts in Judicial Authorities and the Constitutional Court of Ukraine

2026



The Core of the Problem

Involving international (foreign) experts in selection commissions within judicial authorities and the Constitutional Court of Ukraine (CCU) is an important element of advancing Ukraine's European integration interests. It helps to bring national legislation closer to European standards and increases the confidence of European institutions and partners in the reforms. Such involvement stems from Ukraine's international commitments, as well as from the Rule of Law Roadmap.

The Ukraine Facility Plan provides that 'further improvement of the selection of new Supreme Court (SC) judges is important, through enhancing the integrity vetting procedure and the meaningful involvement of independent experts'.¹ It also states that the 'High Anti-Corruption Court (HACC) is steadily improving its overall operational effectiveness; however, additional judges are needed, selected transparently and on the basis of integrity vetting, with the involvement of the Public Council of International Experts (PCIE)'.

The Rule of Law Roadmap sets out a commitment to fill all 25 vacant positions at the HACC, specifically with the involvement of the PCIE, by the end of the first quarter of 2026.²

The European Commission has noted the need to continue involving international experts in the selection of new members of the High Qualification Commission of Judges of Ukraine (HQCJ).³ The Commission has also recommended improving the selection of SC judges and the verification of the integrity declarations of SC judges and judges of other higher courts, with the temporary but meaningful involvement of independent experts nominated by international partners.

The problem is that, in fulfilling these international commitments, selection commissions involving international (foreign) experts **apply different approaches to adopting and publishing their decisions.**

This concerns the selection of candidates for the positions of members of:

- > the HQCJ;
- > the High Council of Justice (HCJ);

¹ '[On Approval of the Ukraine Plan](#)': Order of the Cabinet of Ministers of Ukraine of 18 March 2024 No. 244, pp. 76, 90.

² '[Certain Matters of Ensuring the Negotiation Process on Ukraine's Accession to the European Union under Cluster 1 "Fundamentals of the EU Accession Process"](#)': Order of the Cabinet of Ministers of Ukraine of 14 May 2025 No. 475, p. 35.

³ European Commission. [Ukraine 2025 Report](#): Commission Staff Working Document accompanying the Communication on EU Enlargement Policy. Brussels, 4 November 2025, SWD(2025) 759 final, pp. 5–6.

- › the head of the Service of Disciplinary Inspectors (SDI), their deputy, and disciplinary inspectors;
- › judges of the CCU;
- › judges of the HACC;
- › judges of the Specialised District Administrative Court (SDAC);
- › judges of the Specialised Administrative Court of Appeal (SACA).

The differing approaches relate both to the structure and reasoning of selection commissions' decisions **and to the issuing of so-called 'negative conclusions'** (that is, decisions concerning candidates who have ceased to take part in the competition). For example, the Selection Commission for the positions of HCCJ members (the HCCJ Selection Commission) issues no such conclusions at all; instead, it produces only a final list of candidates recommended for the post of HCCJ member. By contrast, the Ethics Council (which assists in establishing whether a candidate for the post of HCCJ member meets the criteria of professional ethics and integrity) actively uses 'negative conclusions'.

Another problem is **the adoption of unreasoned decisions**. Proper reasoning of decisions following the assessment of candidates against the established criteria should give a clear understanding of what guided the selection commissions when assessing those candidates: what was taken into account and what was not, and the grounds for a particular decision. Proper reasoning would not only resolve many questions for candidates (in particular those who did not pass the competition), but would also help to increase confidence in selection commissions' decisions. While some selection commissions' decisions are fairly well structured and properly reasoned (for example, those of the HCCJ and the PCIE), others contain only general wording and boilerplate phrasing and lack proper justification. Such problems⁴ are present, for instance, in the Ethics Council's decisions on candidates' compliance with the criteria of professional ethics and integrity.⁵

The application of inconsistent practice in formulating decisions may create risks for understanding selection commissions' approaches to assessing candidates, and does nothing to promote the transparency of their work.

Different selection commissions use different decision-making models. The votes of international (foreign) experts are always decisive; however, the specific models differ. For instance, a joint decision of the HCCJ and the PCIE in selecting HACC judges requires a majority of the total number of participants in the joint sitting, but no fewer than three votes of

⁴ Agency for Legislative Initiatives. '[Selection Commissions with the Participation of International \(Foreign\) Experts \(Judicial Authorities and the Constitutional Court of Ukraine\)](#)': Analytical Report. 2026.

⁵ At the same time, the Ethics Council's decisions finding candidates non-compliant with the criteria of professional ethics and integrity are, by contrast, well reasoned.

PCIE members. For commissions such as the Ethics Council or the SDI Selection Commission, four votes are required, two of which belong to international (foreign) experts. This makes the system of selection commissions confusing and difficult to understand, reducing its transparency and coherence.

A separate issue requiring attention is the right to a casting vote, where approaches likewise differ. For example, international experts hold the right to a casting vote (the Ethics Council, the HJC Selection Commission, the Selection Commission for the positions of the head of the SDI, their deputy, and disciplinary inspectors (the SDI Selection Commission), the Advisory Group of Experts (AGE), and the Expert Council); the PCIE has the right to veto any candidate for the post of HACC judge on the grounds of non-compliance with the established criteria.⁶

Numerous cases have also been recorded in which the same person may apply for different competitions for posts, both within a single body and across different bodies under different quotas allocated by different appointing/electing entities.⁷ As a result, **the absence of a single database of candidates taking part in competitive procedures gives rise to divergent practice in deciding whether one and the same candidate complies with the established criteria.**

Certain differences are also observed in the publication of selection commissions' decisions. For example, the Ethics Council adopts and publishes a reasoned conclusion on whether each candidate for the post of HCJ member meets the criteria of professional ethics and integrity; the SDI Selection Commission publishes reasoned decisions concerning candidates whose participation was terminated owing to a reasonable doubt as to their compliance with the integrity criterion or the ethical standards established for a judge, but only at the candidate's written request; for candidates assessed as 'non-compliant' against the criteria of high moral qualities or a recognised level of competence in the field of law, the AGE publishes only the operative part of the decision, without setting out the reasons underlying it. The full, reasoned text of the decision is published by the AGE at the written request of such a candidate.

The decisions of some selection commissions (all except the AGE) **cannot be challenged in court because they are not regarded as 'final'**. The SC has developed a systematic position on selection commissions, according to which they do not adopt final decisions but merely assist the appointing/electing entity by carrying out a discrete stage of the competitive

⁶ Agency for Legislative Initiatives. '[Selection Commissions with the Participation of International \(Foreign\) Experts \(Judicial Authorities and the Constitutional Court of Ukraine\)](#)': Analytical Report. 2026.

⁷ Ibid.

procedure. Judicial review is instead possible only in respect of the final decision of the appointing/electing entity.⁸

The question of defining the ‘finality of decisions’ is particularly contentious for those candidates who, as a result of selection commissions’ decisions finding them non-compliant with the established criteria, effectively cease to take part in the competition. For them, such decisions are in essence final (leaving the appointing/electing entity no choice), and the impossibility of challenging them deprives the person of the right to judicial protection. Legislation provides only for the possibility of challenging AGE decisions — specifying which of its decisions may be challenged in court and on which exceptional grounds — whereas no such legislative provision exists for the decisions of other selection commissions.

A further obstacle to the judicial challenge of selection commissions’ decisions in administrative courts is **their lack of public-authority powers**. The SC’s case law has established an approach according to which selection commissions are not entities vested with public-authority powers in disputed legal relations. Accordingly, in some cases the SC’s case law indicates that disputes against selection commissions are not subject to consideration under the rules of administrative justice (the Ethics Council, the HQCJ Selection Commission, the SDI Selection Commission). Selection commissions are neither bodies of authority nor entities vested with public-authority powers; they do not have the status of legal entities. Representing such commissions, even in administrative proceedings, is hampered by the absence of rules for designating a representative to sign procedural documents on behalf of selection commissions (their heads do not hold such powers) and to take part in court hearings.

The exception is the AGE, which the Administrative Cassation Court within the Supreme Court recognises as a body ‘vested by the state with authoritative and managerial functions in the legal relations arising in the process of forming the judicial corps of the CCU’.⁹

Why Does a Unified Practice in Formulating, Adopting and Publishing Selection Commissions’ Decisions Matter?

Where such practice is absent:

- › the risk of breeding distrust in the functioning of selection commissions and in the competitive procedure as a whole increases;
- › risks arise in the understanding — by candidates, outside observers, and the public — of these selection commissions’ approaches to assessing candidates.

⁸ Agency for Legislative Initiatives. [‘Selection Commissions with the Participation of International \(Foreign\) Experts \(Judicial Authorities and the Constitutional Court of Ukraine\)’](#): Analytical Report. 2026.

⁹ Ruling of the Administrative Cassation Court within the Supreme Court of 20 February 2025 (case No. 990/407/24, proceedings No. П/990/407/24).

The Current Solution

At present, there are no draft laws addressing the problem described.

Key Risks

1. Applying different approaches to voting and decision-making by selection commissions — in particular regarding the structure and reasoning of decisions and the approach to determining voting results and so-called negative conclusions — breeds distrust in the functioning of these commissions and in the competitive procedure as a whole.
2. The absence of public voting results and insufficient reasoning and justification of such decisions breeds distrust in the functioning of these commissions and in the competitive procedure as a whole.
3. The absence of a single database of candidates taking part in competitive procedures gives rise to divergent practice in deciding whether one and the same candidate complies with the established criteria.
4. The absence of unified approaches to determining the finality of decisions for those candidates who, as a result of selection commissions' decisions finding them non-compliant with the established criteria, effectively cease to take part in the competition. For such candidates these decisions are in fact final — and the impossibility of challenging them, at the level of both regulatory acts and SC case law, deprives them of the right to judicial protection.

Conclusion

The adoption and publication of decisions by selection commissions involving international (foreign) experts in judicial authorities and the CCU require further regulation.

Recommendations

1. Avoid a formalistic approach to justifying decisions following the assessment of candidates' compliance with the established criteria.
2. Develop a uniform approach to the structure, justification, and adoption of decisions following the assessment of candidates' compliance with the established criteria within a single commission.

3. Develop and approve a template/model decision for the assessment of candidates' compliance with the established criteria, together with accompanying guidance enshrining the requirement that such decisions be properly reasoned.
4. Provide that negative decisions of selection commissions be published in anonymised form, and positive decisions be published with the personal data that were public during the candidate's public interview. If a person who received a positive decision was not appointed to the post, they may apply to the selection commission to have their data anonymised.
5. Develop and introduce a single database of candidate profiles, with a uniform CV format, for those taking part in competitions for posts in judicial authorities and the CCJ. Grant access to these profiles to members of the relevant selection commissions and of the relevant bodies to which candidates are appointed/elected.
6. In future, review the approach to granting international (foreign) experts a casting vote.
7. Hold a broad discussion on the question of defining the final nature of decisions adopted by selection commissions.
8. Enshrine in legislation clear grounds for the judicial challenge of selection commissions' decisions solely on the basis of procedural non-compliance, in particular for candidates for whom such commissions' decisions on non-compliance with the established criteria effectively mean the termination of their participation in the competition and are therefore final. The legislation should provide for the period over which a selection commission assesses a candidate's compliance with the integrity criterion.
9. Enshrine in legislation rules governing which selection commissions' decisions may be challenged and on what grounds, which may not be challenged, and the rules for representing selection commissions in court.
10. Continue consolidating the SC's case law and developing standard approaches to resolving disputed situations on the issues identified.

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