

UKRAINE: Your Dishonour as title for many judges in failed Ukraine Supreme Court reform?

By Halya Coynash

KHPG (31.05.2016) – <http://bit.ly/2sqc4gL> – Ukraine's first-ever 'open competition' for vacant Supreme Court judge posts is in danger of turning into farce. The Commission which chooses successful candidates has ignored 80% of the negative assessments issued by the Public Integrity Council and is rejecting calls for vitally needed transparency. At this rate, lawyer Roman Maselko warns, the term 'Your Dishonour' would be the more appropriate form of address for a considerable percentage of the new judges. He is not alone in sounding the alarm as the selection process reaches its final stage on June 6.

Legislation was adopted in 2016 to both strengthen the role of the Supreme Court and to ensure a renewal process of its judges through competition. Applications were invited for the first 120 vacancies in November 2016.

As with similar test procedure for prosecutor's office vacancies, the apparent openness to candidates from outside the system proved on paper alone. The selection committee removed 45% of such candidates (defence lawyers, legal specialists, etc.) before any tests were taken meaning that only 189 of the 467 judges could possibly come from outside the system.

There have been ongoing problems with lack of transparency. The High Qualification Commission of Judges was supposed to publish information about the candidates on its site. Since

the details about some of the candidates who have sailed through all parts of the competition are damning, it was worrying that the Commission's task was instead carried out by the NGO CHESNO.

There was further scandal when 43 candidates who had not passed the test and should have been knocked out of the running, were slipped back in.

The Public Integrity Council, an overseeing body made up of representatives of NGOs, lawyers, scholars and journalists, demanded an explanation of the method of evaluation and of each Commission member's assessment given. Such calls for transparency have gone unanswered.

The Public Integrity Council also issued a negative assessment regarding 140 candidates (37%). These were based on intensive study of previous court rulings, including those involving Euromaidan, information from the National Anti-Corruption Bureau, as well as on over three thousand reports received from members of the public. Information was also provided that needed to be checked concerning a further 128 candidates.

Close attention was paid to cases where judges and their families had wealth and property in no way commensurate with their declared income.

Only 25 of the candidates who received a negative assessment were knocked out. CHESNO reports that 150 of the 308 candidates now in the running have a questionable reputation, with 114 of them having been considered unsuitable by the Public Integrity Council.

The High Qualification Commission is allowed to override the Council's advice, but only if the candidate receives a two-thirds majority of the votes (11 out of 16 of the Commission members). The problem, however, is that the vote is secret.

At a press conference on May 29, the head of the Commission

Serhiy Kozyakov asserted that the Council's assessment had not immediately led to a candidate being rejected because further checks needed to be made. Maselko's scepticism is shared by many, given the lack of any doubt about damning pages in some candidates' background.

Candidates still in the running include Yaroslav Romanyuk, who was appointed president of the Supreme Court shortly before Euromaidan. He gained particular notoriety for his defence of Viktor Yanukovich's 2014 'dictatorship laws'. These were draconian anti-protest laws, often cribbed from Russian legislation and clearly aimed at crushing the Maidan protests and arresting and imprisoning large numbers of activists.

At a briefing a day after the laws were passed, Romanyuk claimed that they complied with European standards. He asserted, for example, that the European Court of Human Rights envisaged the right to impose restrictions and sanctions if "the human right to freedom of expression undermines public interests and public confidence in the court"

Romanyuk is also known for a ruling which stripped a 97-year-old pensioner of her flat, a ruling that was later found by the European Court of Human Rights to have violated the elderly lady's rights.

CHESNO reports that Romanyuk's interview with the Commission and members of the Public Integration Council attracted attention not only from Ukrainian civic activists and the media, but from members of international NGOs and embassies.

Most disturbing was the clear difference in the attitude of members of the Commission to Romanyuk. Instead of questions about his assets, trips and mistakes, he was asked philosophical questions like whether, if he could return in time, he would still choose to be a judge.

The real discussion of his professional life, etc., began only after the representative of the Public Integrity Council read

aloud their negative assessment, and he was still allowed to continue.

Mykhailo Zhernakov, senior legal analyst for the Rehabilitation Package of Reform civic platform, notes that Pavlo Vovk, Head of the Kyiv District Administrative Court, managed to somehow assure the members of the Commission that he did not live in a luxurious building he has failed to declare. It was precisely that building which he was found in when officers from the National Anti-Corruption Bureau arrived at to carry out a search on May 26.

Zhernakov notes that during this same interview with Vovk, at crucial moments – like when he was answering questions about his property and his disturbing political connections – there was a sudden noise which prevented the members of the Public Integrity Council to catch his answers.

CHESNO reports that there were various other forms of behaviour suggesting bias from the Commission during 43 interviews.

According to Taras Shevchenko, the Director of the Centre for Democracy and Rule of Law, the monitoring carried out by civic organizations suggests that the final decision about the most scandalous candidates will be taken behind closed doors during the Commission's plenary session.

Zhernakov also warns that everything is heading towards the new Supreme Court not differing in any fundamental way from the old one.

It is not too late, he believes, to prevent such a result. He proposes obliging the Qualification Commission to introduce personal voting on the conclusions of the Public Integration Council and to thus make public where each member stood. The marks received by every candidate and general rating of the candidates should be made public before the plenary session.

Faith in Ukraine's justice system was never high, and under the presidency of Viktor Yanukovich, any vestiges of independence were destroyed. A supposedly new Supreme Court, with the same compromised judges, will undermine this supposed 'competition' and discredit judicial reform altogether.

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