



## **SUMMARY OF THE REPORT**

### **on the results of monitoring the High Anti-Corruption Court's Work**

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## INTRODUCTION

Nowadays, the HACC is a unique judicial institution in the court system of Ukraine. One of the main goals of the HACC is to administer justice as a court of first and appellate instances in criminal proceedings for crimes assigned to its jurisdiction by procedural law, as well as the exercise of judicial control over the observance of rights and freedoms in accordance with procedural law. The goals also include judicial control over respect for individual's rights, freedoms, and interests in such criminal proceedings, the administration of justice as a court of first and appellate instances in cases of recognition of unfounded assets, and their recovery into state revenue in civil proceedings.

The High Anti-Corruption Court is constantly in the spotlight of the public, law enforcement agencies, and the country's political leadership. On the one hand, such attention performs controlling and preventive functions, and on the other hand, quite often creates obstacles in the work of the court. Considering that the court decides on criminal prosecution, there is an urgent need for a comprehensive and thorough study of the various aspects of the HACC's work.

Moreover, the relevance and expediency of monitoring the HACC are that the court is, in fact, a platform where the opposing procedural interests of the defense and the prosecution collide. The analysis of the court's work allows assessing the effectiveness of the pre-trial investigation and procedural support bodies.

*The aim and objectives of the study.* According to the current legislation, the High Anti-Corruption Court is a permanent higher specialized court in the judicial system of Ukraine, which fully began its work on September 5, 2019. According to its functional workload, the court is responsible for administering justice in criminal proceedings regarding corruption offenses.

This study was aimed to monitor the proceedings and procedural work of the HACC, analyze judicial practice to determine the compliance of the High Anti-Corruption Court with the standards of criminal procedure in accordance with the current code.

The immediate objectives of the study were: monitoring of court hearings and the progress of the judicial investigation, the study of the HACC's judicial practice, the study of the external evaluation of the court by the National Anti-Corruption Bureau of Ukraine (NABU), the Specialized Anti-Corruption Prosecutor's Office (SAPO), the bar, and analysis of the Judicial Protection Service's work (hereinafter - JPS).

*Resources involved and the monitoring period.* From July 6, 2020, to December 6, 2020, the active phase of conducting a study to monitor the work of the High Anti-Corruption Court began. During the monitoring, 5 monitors were involved, who directly monitored the meetings, analyzed the judicial practice, and interviewed the HACC, NABU, SAPO, JPS staff, and filed information requests to the authorities.

*Methodological principles of the study.* The High Anti-Corruption Court's work methodology provides for the separation of the trial and pre-trial investigation into specific sub-processes, which were selected based on the criterion of influencing the outcomes of the HACC's work. Besides, monitoring covers procedural aspects (those that make up the "form" of the process).

Additionally, the methodology will study the procedural and organizational part of the HACC's work in the following areas:

- Monitoring the implementation of procedural rights at the stage of proceedings.
- Monitoring the organization of the proceedings.
- Monitoring the information on the activities of the court.
- Monitoring of judicial protection.

One of the main ways of monitoring is the participation of monitors as free observers in court hearings and filling out pre-designed questionnaires. The questionnaire is filled in personally by the monitor during the court hearing. The questionnaire consists of a descriptive and analytical part. The descriptive part is filled in by answering the questions. Monitors (observers), by using the recommended sources, contribute to the table of indicators of the HACC's work (each indicator according to the table - 1 point).

## **SECTION I Analytical part**

As part of the monitoring, several information blocks of data were collected, which characterize the court's procedural activities. Considering the study's methodological principles, these blocks were divided into the results of the study in the first appellate instance and the results of the hearings, which concerned the choosing/change/cancellation of the interim measures. A separate information block is analytical information on postponed hearings (analysis of reasons, number, etc.).

Also, during the final report preparation, regularities were recorded, according to which certain issues of the court's work were outlined in the interim report. During the preparation of the final report, the monitoring indicators only confirmed the evident problematic issues, so we note that the arguments and theses of the interim report are reinforced and emphasized in the final report.

### **2.1. General monitoring indicators:**

- During the monitoring period, 311 court hearings were attended, of which 224 were relevant for monitoring purposes (among those, **159 hearings took place**, while **65 hearings were postponed**). That is, among all the hearings attended, 71% took place, the remaining 29% were postponed.

- ❑ Among the 159 hearings that took place — 68% (or 108 hearings) — were first instance hearings; 11% (or 17) were hearings of an appellate instance, and 21% (or 34) were the hearings on choosing/change/cancellation of the interim measures.
- ❑ 68 proceedings were monitored (**first and appellate instances**). **Within which**, 126 people had the status of accused persons.
- ❑ **In the first instance, the average percentage of violations is 7%**. The most frequent violations concerned the following indicators: court materials and documents were not forwarded through the court administrator (31%), procedural rights memoranda were not issued (19%), and abuse of procedural rights was not counteracted (13%).
- ❑ **In the appellate instance, the average percentage of violations is 3%**.
- ❑ As regards the generalized results of the **hearings** during the choice of **interim measures, the average percentage (17%) of violations is higher** (compared to the average performance of court proceedings). The most frequent violations concerned the indicators on the validity of the SAPO / HACC's position in the petition / court decision, as well as the indicators of the category on such type of the interim measure as detention: *there was no justification for the risk of a person hiding from the pre-trial investigation authorities (70%), the risk of destruction of evidence was not substantiated (61%), no justification was provided for the risk of committing another criminal offense (58%), the investigating judge set a disproportionate bail (54%)*.

## 1. Postponed court hearings.

Of **65 postponed hearings**, 53 were of first instance, 10 were appellate and 2 were related to the interim measures.

The most common reasons for postponed meetings were the absence of the suspect / accused and the absence of the defense (in 9 cases, the hearings were postponed for these two reasons at the same time). Also, in 6 cases, the accused did not appear due to the incidence of coronavirus.

The significant number of postponed hearings is an important indicator and correlates with the guarantee of state protection of human and civil rights and freedoms by the court. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law to resolve a dispute over their civil rights and duties or to establish the validity of any criminal charges against them.

Ukrainian law stipulates that every procedural action or procedural decision must be executed or taken within a reasonable time during criminal proceedings. A reasonable time is a time that is objectively necessary to perform procedural actions and make procedural decisions. Reasonable time cannot exceed the time limits for specific procedural actions or procedural decisions provided by the CPC of Ukraine.

That is, international and national experience assumes that the status of a suspect and accused is burdensome for a person who may directly (in the form of interim measures) or indirectly (in the form of social condemnation, personal experiences, etc.) suffer negative consequences. That is, the defense is interested (has a procedural interest) in removing the status of the suspect/accused from the defendant as soon as possible through all legal actions and procedural tools. Thus, a prompt and complete hearing of the case is assumed to be a procedural priority of the defense.

In this context, the procedural interest is interpreted as a legitimate desire of a party to criminal proceedings to exercise the rights and freedoms provided by the laws and the Constitution of Ukraine. Thus, everyone has the right to have the charges against them become the subject of judicial proceedings as soon as possible or have the relevant criminal proceedings closed. These provisions are regulated in Art. 28 of the Criminal Procedural Code of Ukraine.

That is, the defense must first and foremost be interested in a prompt, complete, and comprehensive hearing of the case. Besides, given that cases that fall within the jurisdiction of the HACC are often serious criminal offenses, this interest should be based on the maximum participation of the defense in the trial. However, there is a tendency in which the defense party quite often neglects its interests, which are related to a full, prompt, and comprehensive trial of their case. In this case, the above actions of some representatives of the defense indicate a lack of interest and deliberate opposition to the process.

## **2. Transfer of materials and documents to the court through a court administrator**

This indicator falls into the category of procedural indicators, that is, it does not directly affect the course of the process; however, it creates a procedural form, compliance with which is necessary for criminal proceedings.

During the monitoring of this indicator, the level of violations reached 31% in the court hearings of the first instance, 0% in the hearings of the appellate instance, and 25% in the court hearings, where the issue of the interim measure was addressed.

Under the current CPC standard, a court administrator may be involved, i.e., their participation is not an imperative norm. However, by analyzing the court administrator's functions, we can conclude that they have special competence and powers connected with maintaining courtroom order. A separate power is ensuring individuals present in the courtroom observe the order. Thus, a court administrator is a tool for ensuring order. Through them, the presiding judge fulfills their duty provided by Article 321, part 2 of the Criminal Procedural Code of Ukraine. 321 of the Criminal Procedure Code of Ukraine.

The Recommendation of the Committee of Ministers of the Council of Europe № R (86) 12 of 16.09.1986 states that the duties of judges and other court staff should be divided to ensure that judges perform mostly judicial duties, while another staff performs non-judicial functions

to facilitate the judge's judicial work. This approach is reflected in the national legislation of Ukraine.

Given the importance of the court administrator to ensure security, order, and compliance with the form of trial, it is urgent to expand the staff of court administrators and ensure their participation in all court hearings of the HACC. This recommendation has already been mentioned in the interim project report.

### **3. Deviations from the standards of procedural and professional ethics**

One of the components of monitoring was conducting interviews and surveys with the parties to criminal proceedings. Based on the information received from NABU and SAPO staff and the monitoring findings, the deviation from procedural standards manifests itself in the following ways:

- failure to attend court hearings for reasons that may be considered invalid;
- submission of an unreasonable number of applications and petitions;
- statement of a significant number of court objections;
- provocative behavior of defense attorneys in court.

The Ukrainian National Bar Association's professional publication identifies the following standards of defense attorney conduct and activity: **ethics and culture of behavior (cultural development of lawyers); disciplinary liability of lawyers. Such standards are supported by the Bar, represented by the UNBA, and individual scholars and experts.**

In the process of monitoring, a number of possible violations of defense attorney professional conduct were recorded.

This list is not exhaustive but only provided for the purpose of illustrating the abuses by the defense. This begs the question of the effectiveness of the mechanism for bringing lawyers to disciplinary liability. And one of the mechanisms to counteract the abuse of procedural rights by lawyers is the court's appeal to the Bar's qualification and disciplinary chambers. Superficially, this method of protection looks effective. However, on the part of the Bar, the process looks non-public and non-transparent because, for instance, the latest news on the review of complaints against lawyers on the website of the Qualification and Disciplinary Bar Commission of Kyiv oblast dates back to February 2018.

Given that one of the principles of advocacy is publicity, by Article 43 of the Law of Ukraine "On the Bar and Legal Practice," the lack of a clear and balanced response of the Bar to the facts of possible violations of professional ethics by lawyers, further emphasizes the poor state of openness and transparency of disciplinary proceedings and the general ineffectiveness of this procedure.

It should be noted that the abuse of its rights and status by the defense party harms the observance of the principle of legality and the rule of law, complicates the administration of justice by the court, and damages the authority of the Bar in Ukraine.

Given the numerous media reports and information on professional communities' resources about the existence of the HACC's "accusatory bias in its activities, a study of this issue was conducted. In order to clarify the position of the National Bar Association of Ukraine, 2 inquiries were sent with requests to provide comments and clarifications on the interaction between the Bar and the HACC. However, in its official response, the NBAU did not provide any examples or facts of "accusatory bias" in the court's activities.

During the monitoring period, no cases of non-compliance, violation, or deviation from the requirements of professional ethics and abuse of rights by representatives of the SAPO and NABU were identified.

The solution to the problem of failure to attend court hearings of defense attorneys for reasons that may be considered invalid is complex. It lies in the plane of interaction between the bar, the judiciary, and the legislature. The complex nature of the problem is evidenced by the fact that the current CPC (Chapter 12) provides for liability for the investigating judge, including penalties, for failure to appear at the court's summons. However, the list of subjects to which such measures apply does not include defense attorneys.

#### **4. Problems of justification of the petition for choosing an interim measure**

In accordance with Part 3 of Art. 176 of the Criminal Procedure Code of Ukraine the investigating judge, the court refuses to apply an interim measure, if the investigator, the prosecutor does not prove that the circumstances established during the consideration of the petition for application of interim measures are sufficient to convince that none of the more lenient interim measures provided for in the [part one](#) of this article, cannot prevent proven risk or risks during the trial. At the same time, the mildest interim measure is a personal commitment, and the most severe is detention.

By their legal nature, interim measures should prevent attempts to counter the process. Taking into account the provisions of the CPC of Ukraine, the prosecution is obliged to fully and comprehensively prove the existent risks.

The question that arises is, whether it is possible to assess and draw conclusions about the compliance or non-compliance of the suspicion with the criteria of validity within the independent monitoring. The answer to this question is in the practice of the European Court of Human Rights.

Thus, paragraph 175 of the Judgment of the European Court of Human Rights in the case of *Nechiporuk and Yonkalo v. Ukraine* (Application No. 42310/04) of 21 July 2011 states that the term "reasonable suspicion" presupposes the existence of facts or information **which would satisfy an objective observer** that the person concerned may have committed the



offense (see Fox, Campbell and Hartley v. the United Kingdom), 30 August 1990, § 32 Series A, N 182).

In this case, it is considered appropriate for the free observers who carried out the monitoring to provide their own assessment of the validity and persuasiveness of the prosecution's arguments.

During the monitoring, the degree of proof of the above risks in most cases proved to not meet the criteria of reasonable suspicion. The prosecutor at the hearing simply noted the rules of the CPC without further substantiation of the circumstances of the case, the urgency of a risk that should directly affect the choice of interim measures.

The solution to this problem lies in the plane of changing approaches to the justification of petitions for interim measures. The development and implementation of guidelines for SAPO prosecutors, which will clearly define the sources and methods of proving the risks involved in choosing interim measures, can significantly help address this issue. The purpose of such guidelines should be, first of all, the unification of approaches in proving the existence of risks. It will also be useful to involve the HACC investigative judges in this process to develop common approaches to the evaluation and interpretation of evidence.

### **SECTION III External evaluation of the court's work**

In order to study the external evaluation of the court's effectiveness, special questionnaires were developed and completed by the NABU, SAPO, and HACC staff. It was suggested that the NBAU should comment on the external evaluation of the court. A number of personal interviews were also conducted with representatives of the NABU, SAPO, and HACC.

The purpose of this section is to evaluate the work of anti-corruption infrastructure bodies from the point of view of employees of other bodies and compare it with the information and conclusions obtained during the study.

Generalized position of the HACC judges

Among the main problems of organizational, legal, or methodological nature in the work of the HACC, the judges singled out the following:

***Proper notification of the parties.*** According to the court, all communications are made exclusively by mail. According to the court, such a system of notifications is unreasonably expensive, compared to other possible ways e.g. by phone, e-mail.

According to p.1 Art. Article 135 of the Criminal Procedure Code of Ukraine, a person may be summoned to an investigator, prosecutor, investigating judge, or court by handing a summons sent by mail, e-mail or facsimile, a phone call, or telegram. Thus, despite the possibility to report the call not only by mail but also by modern means of communication,

we draw attention to the need to regulate such a mechanism for implementing the procedure at the level of the CPC.

It is necessary to form such a legal mechanism that will regulate the implementation of the notification. That is, providing legal answers to the following questions:

- ❑ The procedure for direct notification by electronic means of communication (from which to what time such notification is possible, which persons are authorized to make the notification, which person is responsible for receiving the notification).
- ❑ Obligation to provide contact information for such a notification.
- ❑ Notification confirmation mechanism.

Also, the HACC expressed the opinion on the need to amend the CCP for *ensuring that lawyers appear in court and receive summonses*.

The results of failure to appear in court are the impossibility of the case trial within a reasonable time, which creates negative consequences for the effective and prompt trial of the case in court.

This problem correlates with the theses on the trends observed during the monitoring of the HACC's work. According to the received data, the absence of the defense counsel is one of the main reasons for postponing the court hearings. However, the regulation of this issue should be comprehensive in the interaction of the legislative, judicial branches of government, and the Bar. In our opinion, it is necessary to improve the procedure for bringing lawyers to disciplinary responsibility, as well as to amend the CPC of Ukraine and provide for penalties for failure of lawyers to appear in court without a valid reason or failure to notify the reasons for their absence.

### **Generalized position of NABU and SAPO**

It should be noted that on a par with the defense, the prosecution is the main “user” of the court's resources.

Representatives of NABU and SAPO highly appreciate the efficiency and speed of interaction with the HACC. This view is explained by the fact that the NABU and SAPO employees have the opportunity to actually compare the work of the HACC with other courts that held criminal proceedings prior to the establishment of the HACC.

Representatives of the prosecution criticized the practice of registering petitions for covert investigative actions before 11:30 a.m. The idea was expressed that the time frame could be extended to at least 1 p.m. This position of the NABU is explained by the specifics of office work and organization of document circulation by the NABU-SAPO. It was noted that detectives, given the need to coordinate a significant part of procedural documents with the SAPO (i.e., the time for issuance of such documents increases, given the objective logistical time), do not have time to process and submit documents on time, which leads to delays in criminal proceedings.

There was also an opinion on the need to increase the number of investigating judges. The justification was that the current investigating judges are currently overloaded with cases.

The detective and prosecutors also stressed the need to transform paper documents into digital and the transition to electronic documents. Such a transformation would speed up the process of reviewing documents, reduce the burden on detectives, prosecutors, and the court staff, which frees up working time and saves limited resources of law enforcement agencies.

However, in the case of the introduction of electronic document management, it is necessary to provide the defense party access to the system to the extent that ensures the exercise of the defense party's rights, in cases where the CPC directly provides for such access to materials.

Given the above, it should be noted that the problematic issues in the work of the HACC, in general, were confirmed during the monitoring of the court. NABU detectives and SAPO prosecutors expressed a number of recommendations. First of all, to improve the operational work of the court, which is on the organizational and business level and is described above.

## **CONCLUSIONS**

The High Anti-Corruption Court is one of the latest bodies of anti-corruption infrastructure. The establishment of this court was dictated by the need for a single judicial body to deal with corruption offenses. The single judicial institution ensures the centralization of criminal offenses related to the NABU's jurisdiction, the unification of practice, and the unity of law enforcement.

At the time of the establishment of the court, NABU and SAPO were already actively working, but the effectiveness of consideration of high-profile corruption cases by local courts only raised issues. But it was also a strong argument for creating a separate specialized judicial institution. Besides, the court was necessary for centralized judicial control, when investigating judges ensure the uniformity of judicial control within a single judicial institution. Similarly, the issue is the unification of judicial practice in terms of decision-making, in which the court decides the merits of the charges, that is, the sentences.

At present, the HACC is an integrated body of the judiciary that provides for the trial of criminal proceedings concerning corruption offenses, both the court of first instance and the appeal.

However, summarizing the study, the following conclusions and recommendations should be emphasized:

1. *Regarding failure to appear at the court hearing* Failure to attend court hearings for reasons that may be considered invalid is a procedurally harmful practice that creates obstacles to the effective conduct of court proceedings. And such a problem needs a

comprehensive solution, which lies in the interaction between the Bar, the HACC, and the legislative branch.

Lawyers represent and provide legal assistance on a professional basis. As actors, they are key in the criminal process. However, the general ineffectiveness and lack of transparency in the procedure of bringing a lawyer to disciplinary responsibility undermines the importance of this institution, which leads to a bias between the independence of the bar and the obligation to be responsible for violations of procedural rules and rules of ethics.

Thus, there is an issue of reforming the mechanism of bringing lawyers to disciplinary responsibility, starting with changes in the procedure of staffing, functioning, and rotation of qualification and disciplinary chambers of the bar, ending with changes in the mechanism of bringing a lawyer to disciplinary responsibility.

***Recommendation:* NBAU should improve the procedure for bringing lawyers to disciplinary responsibility.**

Given the importance of the lawyer in the trial and the consequences of their absence in the courtroom, it is appropriate to put them in a separate category and set separate penalties for failure to attend the courtroom without good reason or failure to notify the reasons for their absence.

***Recommendation:* The Verkhovna Rada of Ukraine should amend Art. 139 of the Criminal Procedural Code of Ukraine, and to introduce lawyers in the circle of subjects subject to penalties for failure to appear at a courtroom without good reason or failure to notify the reasons for their absence.**

*2. Deviations from the standards of procedural and professional ethics.* The issue of defense attorneys' compliance with the requirements of procedural and professional (legal) ethics is quite acute in the court's activities. The provocative and unprofessional behavior of some defense attorneys often leads to obstacles in the efficient and expeditious course of court proceedings. Such actions of certain representatives of the legal community, first of all, damage the authority and image of the bar, which negatively affects the perception of the bar by Ukrainian society.

It is also considered appropriate to put lawyers in a separate category and impose separate penalties on them for failing to appear in court without good reason, or for failure to notify the reasons for their absence.

In contrast, no violations of procedural and professional ethics were recorded during the monitoring of the work of the HACC by the SAPO and NABU staff.

The above recommendations are relevant to address this issue.

*3. Ensuring the appropriate number of court administrators.* The legislator has imposed a substantial list of responsibilities on the court administrator, which gives him or her an

important procedural role. According to Art. 152 of the Law of Ukraine "On the Judiciary and the Status of Judges" the powers of the SJA include, inter alia, ensuring proper conditions for the activity of courts, within the powers defined by this Law, studying personnel issues of the court staff, forecasting the needs for specialists, carrying out orders for the training of relevant specialists, etc.

That is, the competence of the SJA includes the issue of staffing of the HACC and full staffing of court administrators.

**Recommendation: The SJA should, under its powers, consider the issue and increase the number of the HACC court administrators to cover all court needs.**

*4. Regarding the substantiation of risks in petitions for choosing the interim measures.* Proper, complete, and comprehensive justification of the risks provided for in the CPC when choosing/changing interim measures is a cornerstone of the successful work of the prosecution. The evidence submitted to prove such risks must comply with the principle of "reasonable suspicion" in the case law of the ECtHR. That is, the evidence must form objective confidence in the existence of procedural risks in an outside observer.

**Recommendation: SAPO should develop a unified approach to proving the risks provided for by the CPC of Ukraine when choosing/changing an interim measure.**

Moreover, the court should also develop the criteria for assessing the validity of the proven risks provided for in the CPC of Ukraine.

**Recommendation: In the exercise of its powers provided for in paragraph 2 of Part 1 of Art. 32 of the Law of Ukraine "On the Judiciary and the Status of Judges" the HACC should generalize the practice of considering petitions for choosing/changing interim measures.**

*5. Unification of the HACC's judicial practice in terms of the plea agreement.* The analysis of this issue showed the heterogeneity of the HACC's judicial practice in terms of approval and refusal in a plea bargain in criminal proceedings. And one of the main points that need to be prioritized is the formation of common criteria for determining the public interest.

**Recommendation: In the exercise of its powers provided for in paragraph 2 of Part 1 of Art. 32 of the Law of Ukraine "On the Judiciary and the Status of Judges", the HACC should generalize the practice of reviewing plea bargains in criminal proceedings.**

6. Besides, the study's subject was the trends in the quantitative prevalence of some types of criminal offenses over others, which are pending in the HACC. The most common types of criminal offenses are those related to illegal actions with state and municipal assets.

This trend is complex and national in nature, due primarily to the lack of an effective mechanism for controlling the use of state and municipal assets, low level of accountability, and legal awareness of those responsible for dealing with the above assets.

7. The main bodies that enter into legal relations with the court (SAPO and NABU) in general, express their opinion on the high level of trust in the court, noting the high level of professionalism and competence of both judges and staff. However, it was noted that there are several problematic organizational issues.

A common approach to resolving organizational issues in the field of record-keeping will allow, taking into account the interests of all three bodies as effectively as possible, to create a system that provides a greater level of interaction, which will positively affect the operational capacity of anti-corruption infrastructure.

***Recommendation: The HACC, SAPO, and NABU should jointly develop a procedure for organizing office work in terms of receiving incoming correspondence (in particular, requests for covert investigative activities), to strengthen the interaction and efficiency of anti-corruption infrastructure.***

Although the HACC has been operating only since September 2019, this judicial institution fully performs its function of administering justice in compliance with the requirements of national and international law.

## Annex No 1

### Judicial protection services

1. Legislative regulation of the JPS
2. Practical aspects of JPS's work in the HACC
3. Protection of housing and property of the HACC judges
4. Conclusions

This part of the report is devoted to the Judicial Protection Service's specificity of work. JPS is currently protecting the HACC. Three main components are the legal basis of the service, the study of practical aspects of the service, and the study of the most problematic issues related to the protection of housing and property of the HACC judges.

From 2003 to 2015, the protection of courts, ensuring order in judicial institutions, etc. was carried out by a special unit of the judicial police of the Ministry of Internal Affairs of Ukraine "Griffon". The main task of the unit was to ensure security measures in court proceedings in all instances, law enforcement officers, to secure other law enforcement agencies, members of their families and close relatives, the safety of judges and members of their families, and more. Besides, this unit was entrusted with the functions of conducting operational and investigative activities to obtain operational and other information about the threat to life, health, housing, and property of these persons.

As part of reforming the internal affairs system and the establishment of the National Police of Ukraine, it was decided to transfer the protection of judicial institutions to a separate body that would not be part of the law enforcement system.

In April 2019, the High Council of Justice adopted the regulations, regulating the principles of service in the Judicial Protection Service (hereinafter — JPS). Pursuant to that provision, the JPS is a state body in the justice system to ensure the protection and maintenance of public order in court.

#### 1. Legislative regulation of the JPS

***Powers and rights of JPS employees.*** The functions and status of the JPS are regulated at the level of legislation. Pursuant to Art. 160 of the Law of Ukraine "On the Judiciary and the Status of Judges" Judicial Protection Service provides:

- ❑ maintaining public order in court,

- ❑ preventing contempt for the court,
- ❑ protection of court premises, bodies, and institutions of the justice system,
- ❑ performing functions related to the state personal security of judges and their family members, court employees,
- ❑ ensuring the safety of participants in the court proceedings.

Article 161 of the above law stipulates that the Judicial Protection Service is a state body in the justice system to ensure the protection and maintenance of public order in the courts.

The Judicial Protection Service is accountable to the High Council of Justice and is under the control of the State Judicial Administration of Ukraine. The Judicial Protection Service is managed by the Chairman, appointed by open competition, and dismissed by the High Council of Justice. The Judicial Protection Service is financed from the State Budget of Ukraine.

The existence of such an institution within the judicial system provides additional guarantees of the independence of the judiciary and makes it impossible for a body providing protection and is subordinate to other branches of government to terminate protection services.

Article 162 of the Law of Ukraine “On the Judiciary and the Status of Judges” regulates the powers of the Judicial Protection Service.

The powers of the JPS can therefore be divided into two main security categories:

- ❑ access control (for example, admission of persons)
- ❑ security powers (which provide active counteraction to illegal encroachment).

It should be noted that at the legislative level, much attention is paid to crime prevention. Such activities of the JPS stipulate that the service must constantly collect, analyze, and compile information on possible security risks for judges, members of their families, etc.

To perform their duties, JPS employees have a number of statutory rights to ensure that the JPS staff fulfills their responsibilities.

***Organizational aspects of the JPS’ work.*** The Judicial Protection Service is accountable to the High Council of Justice and is under the control of the State Judicial Administration of Ukraine, and consists of a central governing body (Central Office) and 24 territorial subdivisions (territorial administrations) of the Service.

The legislation stipulates that the central governing body of the Service is a legal entity, has a seal with the image of the Coat of Arms of Ukraine and its name, its own forms, independent balance, and accounts in the bodies of the State Treasury Service of Ukraine. Territorial departments of the Service are formed as legal entities, have a seal with the image of the Coat of Arms of Ukraine and its name, own forms, independent balance, and accounts in the bodies of the State Treasury Service of Ukraine.



Currently, the maximum number of employees of the Judicial Protection Service has been approved to be 8,830 people. Selection of employees is provided on a competitive basis. According to information from the official website of the JPS, 796 objects are managed by the JPS. That is, taking into account the staff, this is an average of 11 JPS employees per 1 judicial institution.

According to the answer to the information request received from the JPS, currently, the service has a staff of 4,973 staff units, of which 3,309 are junior staff (2,762 men and 547 women).

## **2. Practical aspects of JPS's work in the HACC**

*Structure and organization of JPS in the HACC.* According to interviews with representatives of the JPS and the High Anti-Corruption Court (HACC), it was established that from the beginning of the HACC's work the first few months it was protected by units of the National Guard of Ukraine (hereinafter — NGU). On November 25, 2019, the staff of the territorial department of the JPS in Kyiv and Kyiv oblast took under protection the HACC premises. In turn, the NGU provided an internship for JPS staff for 2 weeks before the JPS began guarding the HACC.

The organization of security in a judicial institution is built on the principle of division into security posts. The location of security posts ensures compliance with the access and security regime in court. It should be noted that given the infringement of the judges' security and pressure on the court, the HACC and JPS considered the expansion of security posts.

During the period of protecting the HACC, there were organizational changes of the JPS units that provide court protection. During the first period of time, there was a separate unit consisting of 3 platoons, which took care only of the HACC. At the time of writing (December 2020), the above-mentioned unit is in charge of security and other courts, not just the HACC, which has a negative impact on the potential effectiveness of security units.

Regarding the response to various security challenges, it should be noted that the JPS has developed staff instructions for each security risk (for example, an attempt to seize a building). It is difficult to agree that this is an effective solution to the problem of actions of employees in emergency situations that require a rapid response. In crisis security situations, the effectiveness of detailed instructions as a guiding material is insignificant, given that it is advisable to develop the most concise and clear templates-algorithms of actions of the JPS employee, which ensure maximum response efficiency.

The most appropriate in this case will be the development of standard operating procedures. Standard Operating Procedure (SOP) is a quality management document, a set of instructions on a specific aspect of work that helps to standardize the procedure to reduce the likelihood of error. Depending on the design of SOPs are divided into instructions, algorithms, flowcharts, and checklists.

*Provision of JPS. Rights and powers.* According to the interviews with the representatives of the JPS and HACC, it was established that the scope of rights and powers provided by law is sufficient to perform the tasks assigned to the JPS.

JPS officers who provide security in the court building have the appropriate equipment, uniform, and ammunition.

It is worth noting that some JPS employees have video recorders. According to the JPS, such kits are available in limited quantities, so they are mostly issued to junior management. The availability of wearable video recorders is a positive practice, but only if all the JPS representatives in the HACC are provided with video recorders, this tool will be regarded as effective. However, there is an issue of providing access to video recordings in case of appeal against the actions of JPS employees. It is considered necessary to develop a separate procedure that would regulate such access.

The JPS staff is provided with the means and devices to perform their duties.

An important condition for the effective work of the JPS is to provide employees with a special room to accommodate the personnel of the next shift. Such premises in the HACC buildings were provided, appropriate living conditions were provided for the most effective performance of their duties by the JPS staff.

It should also be noted that the HACC fully ensured the availability and operation of engineering and technical means of protection, namely a special frame metal detector at the entrance to the building, the JPS staff equipped with portable metal detectors, a special device for scanning personal bags, and visitor items. During the interview, the JPS staff emphasized the high level of such technical equipment, especially in the building at 41 Prospekt Peremohy.

It is worth noting the level of financial security of the JPS employees. Thus, according to the body as of December 14, 2020, the average level of material support of the JPS employees (including allowances, surcharges, etc.) is UAH 15,773, which exceeds the average monthly salary in Ukraine according to the State Statistics Service of Ukraine (as of the 3rd quarter of 2020).

The courthouse and adjacent areas are under video surveillance, provided by current and constant monitoring of information coming from video cameras. In view of this, the interviewed employees expressed their opinion on the adequacy of the personnel providing security.

During the interview, one of the JPS officers mentioned the need to implement a separate Disciplinary Statute, given that currently, the JPS staff is subject to the Disciplinary Statute of the National Police of Ukraine, which does not take into account the specifics of the JPS's work. Given that the functions of the judicial protection have been separated and fully transferred to the judiciary, we see the need to create a separate disciplinary statute for the JPS.

It should be borne in mind that security risks may arise outside the court building or territory. Given that the main function of the JPS is security and preventive activities, it is necessary to expand the rights of the JPS in terms of providing the possibility of detention, followed by immediate transfer to the NPU, both in the courthouse and in the external and adjacent territories. Such a right should ensure the proactive activity of the JPS in counteracting possible offenses against the HACC. In order to limit the discretion of the JPS, such detention should take place only if the grounds for interference with the administration of justice related to a particular judicial institution under the protection of the JPS are established.

**Interaction.** In general, the interviewed staff, the response to the information request by the court, and the staff of the JPS noted a high level of interaction. In particular, the JPS conducts work on monitoring open information sources on news about mass actions planned under the courthouse, in order to promptly respond to changes in the security situation. Also, based on the information obtained during the interview, the JPS is assumed to be constantly cooperating with the NPU to obtain operational data in order to respond to changes in the security situation. JPS units regularly conduct training based on the HACC, which simulates the interaction with the National Guard of Ukraine and the National Police of Ukraine in terms of combating possible offenses.

However, it was noted that the level of involvement of the HACC staff and judges in conducting such training was rather low. Given that the security stability of the HACC primarily depends on the established interaction of court staff, judges, and the JPS, and not the JPS only. Active involvement of court staff and judges in the JPS exercises could increase the effectiveness of such training activities. It is also assumed possible to voluntarily involve the SAPO prosecutors, the NABU detectives, and lawyers.

The poor level of communication of the JPS with representatives of the public deserves special attention. As part of the study, a number of inquiries and suggestions were sent to the JPS leadership to conduct a direct survey of senior management of the service, which remained unanswered. At the same time, the representatives of the SSO protecting the HACC provided sufficient and meaningful information for the study.

**Staff.** Staffing is one of the most pressing issues of the service.

According to the JPS official website, in most vacancies that are directly related to security, experience in law enforcement or military formations is required. Such requirements, on the one hand, ensure the staffing of the service with personnel who have experience in operational, security, and guard service. It is assumed that the candidates will have appropriate moral and psychological training.

Such requirements for potential candidates lead to the fact that persons who have not been certified by the National Police of Ukraine can significantly form the JPS, as they are often the only choice. Focusing on the selection of candidates with such mandatory law enforcement experience can negatively affect the quality of service.

Thus, the possibility of replenishing the service with personnel who meet all professional requirements, but do not have the relevant experience, is extremely limited. It is also important to emphasize that the experience in law enforcement in investigative and operational positions and positions related to patrol work does not establish any unique skills that would not be possible to develop in person during the internship and introduction to work. Accordingly, the expediency of the requirements of law enforcement experience is questionable. For the same reasons, it is difficult not to question the requirements for the military experience of persons applying for positions (related to the security function of the service).

Namely, the need for training and internships for new employees in order to develop special skills that would allow them to effectively carry out their work should be a priority to adapt new employees to the specifics of work in the security service.

### **3. Protection of housing and property of the HACC judges**

Parts 2-4 of Art. 10 of the Law of Ukraine “On the High Anti-Corruption Court” stipulate that a judge of the High Anti-Corruption Court, and if necessary, at his request, also members of his family, is provided with round-the-clock security. At the request of the HACC judge, round-the-clock protection of the judge's personal or official home is provided. The home of a judge of the High Anti-Corruption Court is equipped with a security alarm system and alarm buttons. The protection of the HACC judge, members of his family, as well as the protection of a judge's home is provided by the Judicial Protection Service.

Part 1 of Art. 140 of the Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that judges, members of their families, and their property are under the special protection of the state. The Judicial Protection Service and law enforcement agencies shall take all the necessary measures to ensure the safety of the judge, their family members, and the preservation of their property if a relevant request is received from the judge.

The position of the JPS is that such protection (including the equipping of personal and official housing of judges with alarms and alarm buttons) is beyond the powers of the service. In this case, the JPS and the SJA refer to the fact that pursuant to Part 3 of Art. 155 of the Law of Ukraine “On the Judiciary and the Status of Judges” the chief of staff is personally responsible for the proper organizational support of the court, judges, and the trial, as well as the functioning of the Unified Judicial Information (automated) system and informing the assembly of judges about their activities. That is, the protection of the housing and property of the HACC judges, in the opinion of the JPS and the SJA, is the responsibility of the court staff.

In our opinion, the position of the JPS and SJA is flawed, because given the powers provided for in Part 3 of Art. 155 of the Law of Ukraine “On the Judiciary and the Status of Judges” the concept of “organizational support” is interpreted in the context of a set of administrative, financial, informational, organizational, and logistical measures implemented by the Chief of

Staff, have extra-procedural nature of influence and aimed at the effective functioning of the HACC.

That is, taking into account the rules of legal interpretation of the norms, the articles of the Law of Ukraine “On the Judiciary and the Status of Judges” that regulate the activities and powers of the JPS are special rules in relation to the rules governing the activities and powers of the Chief of Staff. It is also worth paying attention to the prescription of paragraph 4 of Part 1 of Art. 162 of the Law of Ukraine “On the Judiciary and the Status of Judges”, which stipulates that one of the powers of the JPS is to take measures to prevent threats to the personal security of judges, their families, court staff, as well as participants in the trial, detection, and neutralization of such threats in court. JPS takes the necessary measures to ensure the safety of the judge and their family members in the event of a relevant request from the judge.

The implementation of measures to prevent threats to the personal safety of judges and their families involves a set of active (direct aversion of danger) and passive measures (creating conditions that minimize security risks). Passive measures include the provision of physical protection and equipment of official or personal housing of judges with appropriate engineering and safety equipment (alarms, “alarm buttons”, etc.). Engineering and technical equipment is an important safety factor that creates comfortable working conditions for judges in terms of personal safety.

In addition, according to the HACC, at the time of writing, the offices of the judges of the HACC Appeals Chamber are not equipped with service alarms and “alarm buttons”. However, the court's response stated that the current work on equipping such offices with service alarms was being carried out. It should be noted that such a problem in the first instance and the corps of investigating judges was not outlined by the HACC.

## **Conclusions**

According to the HACC, the JPS provides a satisfactory level of security. The court, as one of the main subjects of legal relations on protection, reports that the work of the service as a whole creates a sense of security for court staff and judges.

There are a number of problematic issues related to the organizational activities of the JPS in terms of ensuring the sustainability of security units, protection of judges' housing, and development of standardized protocols for responding to security calls. Also, there is a need to change the emphasis on staffing the service specialists.

At the same time, the overall material support of the JPS seems to be sufficient for the protection of the court building. JPS employees receive cash benefits that exceed the level of the average salary in Ukraine. They are provided with technical controls and appropriate personal equipment.

A particular problem is the unresolved issue of protection of housing and property of judges, given that the legislative obligation for such protection is imposed on the JPS, we consider it necessary to focus on this problem.

**Suggestions for improving the security situation:**

<b>Recommendations</b>	<b>To</b>	<b>Priority</b>
Conducting exercises and training to respond to emergency security situations with the full involvement of judges and the HACC staff.	JPS	High
Establishment of a coordination commission to regulate the protection of judges' housing and ensure such protection (and engineering and technical equipment)	JPS, HACC, SJA, HCJ	High
Ensuring the sustainability of the personnel guarding the HACC. And ensuring the protection of the court by one structural unit of the service, without scattering the staff to other judicial institutions.	JPS	High
Development of standard operating procedures (SOPs), which provide algorithms for rapid response to security risks.	JPS	High

<p>Remove the requirement that law enforcement or military experience be required for positions in the service that directly provide security, replacing this requirement with appropriate training and internships.</p>	<p>JPS</p>	<p>Medium</p>
<p>Expansion of the JPS powers in terms of granting powers to detain persons who pose a danger to judges and the court outside the court with the subsequent transfer of the National Police of Ukraine.</p>	<p>VRU</p>	<p>Medium</p>
<p>Development of policies and instructions on proactive activities of the service in the prevention of security risks.</p>	<p>JPS</p>	<p>Medium</p>
<p>Formation of a single JPS unit for the HACC</p>	<p>JPS, HACC, SJA, HCJ</p>	<p>Medium</p>