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## **Deep concerns in Brussels about the fight against corruption in Ukraine**



By Willy Fautré, *Human Rights Without Frontiers*

EU Political Report (08.09.2020) – <https://bit.ly/32fsKMJ> – Brussels observers of the fight against corruption in Ukraine have expressed deep concerns about the efficiency of policies put in place in the last five years, during an online dialogue organised by the Brussels Press Club on 2 September, writes Willy Fautré.

On 28 August 2020, the Constitutional Court declared a decree by President Petro Poroshenko in April 2015 appointing Artem Sytnyk as the director of the National Anti-Corruption Bureau of Ukraine (NABU) unconstitutional.

In May 2020, the Constitutional Court received a motion from 51 MPs challenging the constitutionality of the presidential appointment of Sytnyk as NABU director five years earlier. Some anti-corruption watchdogs consider Sytnyk to be the victim of a cabal organized behind the scenes by billionaire businessmen such as Igor Kolomoisky and Oleg Bakhmatyuk, along

with Minister of Interior Arsen Avakov. NABU has investigated controversial activities of their companies as well as of Avakov's family.

This latest incident on the bumpy road of reform for the judiciary demonstrates that anti-corruption policies are still undermined by very powerful stakeholders in Ukraine. There are also too many anti-corruption institutions that can be manipulated by prosecutors, judges and MPs who are on the payroll of extremely rich businessmen.

### ***National Anti-Corruption Bureau of Ukraine (NABU)***

NABU was created in 2015. It currently has 653 employees, including 245 detectives, who are paid high salaries to mitigate the temptations of corruption.

NABU boasts of having opened 406 criminal proceedings and served 125 individuals with charges during the first half of 2020. However, only 33 cases have been sent to court and, in total, only five convictions have been handed down against six people.

One of the reproaches of Ukrainian human rights organizations is that since 2015, no prominent corrupt official has been convicted. In its issue published on 21 February 2020, Kyiv Post reported that as of 1 January 2020, only 32 guilty verdicts had been issued in five years and that of these only lower level bureaucrats had been sentenced and smaller schemes had been dismantled. Two emblematic cases, among many others, remain unresolved as of today.

The first case concerns the Privatbank owned by Igor Kolomoisky and Gennadiy Bogolyubov. It was subject to large scale coordinated fraud which resulted in losses amounting to at least USD 5.5 billion before nationalisation in 2016. As a last resort, Ukrainian tax-payers had to bail this bank out.

In the case of the Rotterdam+ scheme, the fraudulent overpricing of energy is estimated at over USD 710 million. The main beneficiary is said to be businessman Rinat Akhmetov, who controls 90% of the coal in Ukraine.

### ***The High Council of Justice***

One highly controversial institution is the High Council of Justice, which is tasked with determining the outcome of the new judicial reform bill that was submitted by President Volodymyr Zelensky to the Ukrainian Parliament on 22 June 2020. Many of its members have a toxic reputation and have been accused of corruption and ethics violations, which they deny.

One of the International Monetary Fund's (IMF) criteria for the payment of USD 5 billion for a reform program was that Ukraine must create a commission tasked with monitoring and firing tainted members of the High Council of Justice. This commission was to include foreign experts to provide impartiality. However, the new bill does not envisage the creation of such a commission and the firing of controversial members of the High Council of Justice would exclusively be decided by a majority of its own members without any involvement of foreign experts.

Furthermore, according to Ukraine's agreement with the IMF, Kyiv was obliged to create a High Commission of Qualification of Judges by 7 February. This would be the competent body for hiring and firing judges, and would also include foreign experts. These foreign experts should have been appointed by the High Council before mid-January, but they weren't.

Instead, in December 2019, the High Council of Justice swiftly published rules depriving international experts of any major role in decision making processes, which was in direct contradiction of the IMF deal.

Now, Zelensky's new bill stipulates that a selection panel comprised of three members of the Ukrainian Council of Judges and three foreign experts would choose new members of the High Commission of Qualification of Judges. It also states that the international experts may be nominated by foreign organizations, but that the High Council of Justice will have the final say regarding the hiring of nominees. This opens the door to manipulation of this process and will likely prevent any real reform, according to some anti-corruption watchdogs.

In conclusion, the June draft law fails to respect the judicial reform criteria of the IMF memorandum which Ukraine must comply with by October 2020 to receive the next tranche of USD 5 billion. The bill even goes in the opposite direction as it strengthens the High Council, which is actively sabotaging the IMF's reform program.

It is thus unsurprising that 76% of the general public

distrust the judiciary according to a Razumkov Centre poll published in February, as it is apparent that even the reform process is fraught with corruption.

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