

Giovanni Kessler: if NABU stops working, it would be a failure for Ukraine

09.12.2017

Giovanni Kessler is a well-known Italian lawyer specializing in combating financial crimes, organized crimes and corruption. He worked as a prosecutor in the criminal courts of Trento and Bolzano, as well as in Sicily department of fighting against mafia.

He prosecuted for corruption businessmen and senior officials from different countries, including former Italian Prime Minister Silvio Berlusconi. He also worked as a public prosecutor of the Supreme Court of Spain.

In 2014-2015 he was a member of the selection panel for the Director of the National Anticorruption Bureau of Ukraine. Since 2011 he has served as the Director General of the European Anti-Fraud Office (OLAF).

In an interview for the Ukrayinska Pravda he talks about the problems he faced during the investigations and gives advice to the Ukrainian anti-corruption agencies.

- I know that you were prosecutor in Italy and you were investigating the high - profile corruption cases. Tell us about your experience.

- Prosecutors or investigators who deal with the so-called sensitive cases, the cases where powerful people might be involved, are exposed by the nature of their work to possible pressures or threats or even to the danger of being killed. Sadly, in Italy we had colleagues - prosecutors and judges who were killed because of their investigative work.

- Who pressured you and in what case?

- When I was investigating on the local governors in my hometown I got the message from those under investigation saying, "If you go on with the investigation we will disclose something wrong that your father did." My father was a politician and by that time he had already passed away. But my answer was that I will go my way and you do whatever you feel like to do. After my refusal to negotiate with those under investigation who tried to threaten me, few months later there were some interviews of some politicians saying that I cannot do investigation because my father was doing corruption. Those interviews did not have any effect on the investigation.

But it's just an episode. Such situations often happen and must be taken into account.

- But you do your anticorruption investigations. How do you work this?

- In order to investigate effectively on corruption, you need to be independent. You need not to belong to

the company and not to be influenceable from a company or from a power group. Otherwise you just do kind of partial anti-corruption or you just pretend to do anti-corruption.

In Ukraine, you need independent investigators, prosecutors and judges doing this work. This is precondition. Without this condition you do not have any results, you do not have effectiveness.

- In your opinion, if there is no anticorruption court, will NABU be able to fight corruption in this case?

- You have anti-corruption bureau - the investigative office has been set up with the brand-new law which ensures the independence of the office. And this is the key to the effectiveness. But of course, anticorruption requires to have investigation, prosecution and then judgment in place. If only one of the three does not work properly - none of them works properly. So, you have half of these three elements. The prosecution to a certain extent is not independent because prosecutor general belongs to the company. He is a political figure, a political appointee and is by definition not independent. So, this poses a threat to the effectiveness of possible prosecutorial actions. And then you have judges who mostly do not have concept of independence in their culture - because they are being selected, they are being trained in an old system. That's why you need to set up brand new anti-corruption court which will guarantee that its judges do not belong to the political apparatus.

- In Ukraine we have not many honest judges and our president is not very interested in making the anti-corruption court soon. What should we do? And why is the president so reluctant?

- I remember when I was in the selection committee for the head of the NABU, at the beginning many people told me, and sometimes even members of the committee, that we will not find an independent honest person for this job because we do not have them. Then we found one (Artem Sytnyk, Nabu's head) - and he is not influenced by any political power.

You have 40 mln people living in Ukraine and I am 100% sure that you will find a sufficient number of judges without any influence of the political power. And it has to be done in a reasonable time because it's a priority for the country. Of course, the way the selection panel is chosen and composed is essential. Independence from any political influence starts there.

- Have you ever faced the problem of conflict of interest? Is it common that when you start investigating top officials the issue is that someone who is investigating being in a conflict of interest?

- It might happen that you stumble in a conflict of interest when you are investigating. I was accused of conflict of interests when I was investigating on the colleagues of my father but in fact there was no any conflict of interest because I was not investigating on someone from my family or on anybody with whom I shared any financial interest.

When you are investigating on powerful people they check everything they can about you - tax declarations, bank accounts, your family, your private life in order to try to find something they might use to discredit you.

- Speaking about the situation that is happening at the moment in Ukraine do you think that

there is a war between different anti-corruption agencies and law enforcement bodies? do you see it as a war everybody against everybody or there is something else?

- First of all I don't see it's the times of war. What you have here in Ukraine is an unfinished anti-corruption system. You have part of the chain: NABU - which is independent. You have the prosecution that is not fully independent. And you have judge component that is not guaranteed to be independent. You might find randomly independent judges or independent judgment but there is no a structural independent system. And this might explain the differences of opinions between the different anti-corruption agencies and the conflict among them..

You have to bring all the three components on the same level of independence, and then you will have just differences of opinions among prosecutors, judges and investigators, and not fight.

- You are saying that some of the agencies are not independent and that's the issue that they have the conflict among themselves?

- This might influence definitely the relations among them. If some of them are subject or potentially subject to political influence and some of them are not, they will definitely sooner or later take different positions on some issues, because they might serve different interests.

- Who do you think influences these anticorruption agencies and who is trying to fight anticorruption reform or prevent the implementation of the anticorruption?

- It's not a matter of a person, it's a matter of system. If people are appointed by political authorities there is a high risk that they are influenced by those who have power - by corruption, by threats, by promising gains. If they were appointed by politicians then they might want to be grateful to them and they might be very well exposed to some requests.

- Have you ever faced any smear campaigns against you?

- Yes.

- Can you please tell about it in details?

- When I was the head of the investigative body of the EU we investigated and we accused one Maltese Commissioner to have been involved in a corruption scheme and in an international financial fraud. And since then and I am being continuously smeared by him in all the possible ways - on TV, newspapers etc. He has several times accused me to have fabricated the evidence together with the Maltese investigative journalist Daphne Caruana. Daphne Caruana who is the great example of an investigative journalist, was tragically killed several weeks ago in Malta.

- What would be your advice on how to oppose these media attacks? If you are being under this smear campaign what should be done?

- It's not an easy question because I often wandered what to do. Sometimes you are a little bit defenseless.

It's a kind of price we have to pay for our work. The results of my work - how my investigative work is validated, if it is solid and confirmed in a court - this is the most important thing. But on the other hand, you might bring people who spread lies on you to a court and make them responsible for the lies that they have spread about you.

- If Ukraine keeps moving in the same direction that we are at the moment how much time do you think we need to see the first people go to jail?

- The aim is not necessarily to put people in jail. The aim is to eliminate corruption. It might be a lengthy process but you have to send a signal that the culture has changed, the system has changed and that nobody is immune from possible investigation or immune from the responsibility of his or her possible corruption acts. The message has also a preventing effect meaning that you have started your way and you will not go back.

- What should the anti-corruption bodies do so that there is no revenge back? So that corruption system cannot take revenge back?

- There are several tools you can use even though none of them can guarantee this 100%. Very important tool is the support of public opinion and common people. For example, after judge Giovanni Falcone was assassinated by mafia, common people gathered near the court buildings and reacted very strongly against the government representatives who failed to protect Falcone.

And this public spontaneous demonstration of support to the judges and prosecutors triggered making new laws that brought effective support to the mafia investigators and prosecutors.

- What we see in Ukraine is the system is striking back. So, basically in the first two years after the Euromaidan it was easier to fight corruption but now we see the corruption is back, it is everywhere since the Yanukovich times. What we, the anti-corruption bodies, need to do to prevent the system's striking back

- All you need now is the independence of all investigative, prosecutorial and judicial system. This is the key condition to have an effective anticorruption system in place. And you need it rather soon. Otherwise, if you leave alone one body that is independent and effective, like NABU without all the chain being put in place, then it is targeted more and more by all the possible attacks and smearing campaigns. And, in the end, it might possibly fail. Then, it would be a failure of all Ukraine.

Ukrayinska Pravda: <http://www.pravda.com.ua/articles/2017/12/8/7164644/>