

# Illegal attempt to dismiss NABU director (update)

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On February 5, 2020, MPs started collecting signatures to dismiss NABU director Artem Sytnyk from office. As of February 7, 2020, they gathered already 216 signatures. However, **this is a sham process because the procedure of the dismissal of the director of the NABU and exclusive grounds for its application are clearly defined by the Law of Ukraine “On the National Anti-corruption Bureau of Ukraine” as a separate guarantee of independence both for the Bureau and its director.**

**None of the grounds upon which Sytnyk can be dismissed exist today.**

Verkhovna Rada published the text of the petition No. 3039 only after almost a week from the moment of its registration. Most of the MPs admitted that they did not see the text of the petition when signing and did not know the grounds for it and whether they were legal. The draft petition does not give the justification for the dismissal, it just cites the norm of the law. The norm concerns the qualification criteria for the position of the director: person fined for administrative corruption offence during the previous two years cannot be selected for the position of director. **However, this norm applies only to the selection procedure and cannot be applied to the procedure of dismissal as the law specifically envisages different selection and dismissal criteria for the director.**

Article 6 of the NABU Law envisages that the director cannot be dismissed according to the labour law procedure, and the President’s decree on his appointment cannot be revoked except for the reasons stated in the NABU Law. The NABU Law prescribes that there are only 13 legal grounds for dismissal of the director. The Parliament of Ukraine can dismiss the director after the appeal of not less than 150 MPs exclusively upon 7 out of 13 grounds, which are:

- enacted guilty verdict in the criminal proceeding;
- holding citizenship of another country;
- termination of Ukrainian citizenship or permanent residence outside of Ukraine;
- court decision on illegal dual office holding;
- negative audit report on ineffective work on the position of the director;
- failure to submit annual asset declaration;
- debt on alimony payments for more than 12 months.

**Some MPs additionally justified the ongoing attempts to illegally dismiss the director upon the following grounds: inclusion in the Registry of corrupt officials for an administrative offence, disciplinary proceedings, violation of labour law or legislation on civil service. The application of these grounds will violate the law because:**

1. the decision to include NABU director in the Registry of corrupt officials for an administrative offence was based on the ruling of the Rivne Appeal Court as of 17 December 2019. The court brought Sytnyk to administrative liability only. This was not a guilty verdict in a criminal proceeding against Sytnyk;
2. the Code of Labor Laws and the Law of Ukraine “On Civil Service” apply to NABU employees (including the director) only in the part that does not contradict the NABU Law;
3. article 65 of the Law “On Corruption Prevention” prescribes that the disciplinary proceeding is applied

under the procedure “defined by law”. Article 28 of the NABU Law prescribes that disciplinary proceedings against NABU employees (including the director) are exclusively regulated by the NABU Law. However, the director cannot be dismissed for the disciplinary offence as the exclusive list of grounds and procedure for the dismissal are prescribed by Article 6 of the NABU Law, cited above.

**This means that all current attempts to dismiss the director upon any legal ground or procedure which differs from the ones defined in the NABU Law will grossly violate the legislation and threaten the independence of the Bureau.**

*According to the Rules of Procedure of the Verkhovna Rada, the petition is adopted by minimum 226 votes during the plenary hearing. In order to be considered, the petition should be included in the agenda of the plenary hearing by the Conciliatory Council of factions or at the plenary ‘by ear’, and then pass the Committee. Once approved by the Parliament, the petition is signed and enacted by the Speaker of the Rada. It doesn’t need the signature of the President. The adopted petition can be appealed to the Supreme Court, however the appellate procedure does not infringe the enactment of petition.*