

International involvement in the selection of anticorruption judges does not threaten state sovereignty

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On January 19 the parliament failed to include presidential draft law No7440 on anticorruption court (as well as four alternative draft laws) in the agenda of the parliamentary session. MPs from the Opposition Block, Radical Party and Vidrozdennia group did not vote for these draft laws.

According to the rules of procedure of the Parliament, the President preserves the right to withdraw his draft law and submit an amended bill for consideration on the next plenary session, that starts on February 6.

In the meantime, the International Monetary Fund and the World Bank, as well as the European Union, issued negative assessments of the Presidential draft law, requesting the authorities to bring the bill in compliance with the Venice Commission recommendations.

The Venice Commission in its opinion of October 6, 2017 recommended Ukraine to provide temporarily a crucial role of international donors in the body, responsible for selection of anticorruption judges as well as to bring jurisdiction of future anticorruption court in compliance with jurisdiction of NABU.

Ukrainian politicians claim that foreign participation in selection of judges endangers Ukrainian sovereignty and contradicts the Constitution of Ukraine. However, international participation in the selection of judges as recommended by the Venice Commission is the subject to approval by competent national bodies at all stages. The Venice Commission recommended internationally nominated experts to be involved only as a part of members of the selection panel on initial stage of anticorruption judges selection; nominees are to be appointed by the national authorities; it also emphasised that the decision of such a “first filter” commission must be adopted by competent national judicial self-government bodies (the High Qualification Commission of Judges and the High Council of Justice), who should preserve the authority to select from the list of recommended candidates on their own accord. Under these conditions the Venice Commission saw no limitation of Ukrainian sovereignty in international involvement in the selection of judges.

The Venice Commission made the following comment: *“While this is ultimately a matter of internal constitutional law, the Venice Commission notes that the issue concerns only three out of nine members of one of a number of institutions involved in the appointment process. Furthermore, foreign involvement in anti-corruption institutions – with the agreement of the authorities – is not a new phenomenon in Ukraine; it has been practiced, in particular, during the selection of the NABU Director and of the Head of the Special Anti-Corruption Prosecutor’s Office (SAPO).”*

As for the Constitution of Ukraine, article 128 requires judges to be appointed on a competitive basis by the President following recommendations of the High Council of Judges. The Constitution does not establish competitive procedure for selection of judges and does not define which body should organize such a competition.

Neither Constitution, not the Constitutional Court opinion give any details on the principle of sovereignty of Ukraine.

Therefore, references to the principle of sovereignty to reject international involvement in the selection of anticorruption judges are of political, not legal nature.