

Jurisdiction of the High Anticorruption Court: problems and possible solutions

19.07.2019

If the jurisdiction of the High Anticorruption Court (HACC) is not clarified, the court with 38 judges in both chambers might be overburdened with thousands of cases not related to high profile corruption.

The jurisdiction of HACC as defined by the subject law covers:

- *cases investigated by the National Anticorruption Bureau of Ukraine (NABU) and the Specialized Anticorruption Prosecutor's Office (SAPO);*
- *other corruption-related cases, such as following crimes if they include the abuse of office: taking possession of arms (Art. 262 of the Criminal Code) and drugs (Art. 308) with an aim of selling the above-mentioned commodities (Art. 312); violation of legislation on circulation of drugs (Art.320); taking possession of stamps or documents (Art. 357); abuse of office, conducted by official of private legal entity (Art.364-1); abuse of power by those who provide public services (Art. 365-2); bribing official who provides public services (Art. 368-4); bribing official of a private legal entity (Art. 368-3). These cases are investigated by the National Police, the State Bureau of Investigations, the Security Service of Ukraine and prosecuted by the Prosecutor General's Office, the Military prosecutor's office as well as by local prosecutor's offices.*

However, not all of these cases shall automatically go to HACC. HACC shall only be responsible for non-NABU corruption-related cases, listed above if they meet two additional criteria:

- were conducted by high officials
- or were conducted by lower-level official and the amount of illicit profit or financial damage it caused to the state exceeds UAH 960,000 (approximately EUR 30,000).

In practice, this means that if the court starts operations on September 5, 2019, around 3,600 cases should be transferred to it. These are:

- 169 cases of NABU/SAPO;
- around 2,300 cases which started after 2015 and where NABU/SAPO jurisdiction was violated. They were investigated by other law enforcement bodies and therefore might be problematic in the court;
- around 1,000 corruption cases related to drug and weapon trafficking etc.

To resolve this problem, on July 8, the President of Ukraine Volodymyr Zelenskyi submitted to the Parliament draft law No10426 "On amending certain laws to eliminate obstacles for the launch of the High Anticorruption Court of Ukraine". It suggested transferring to the HACC only those cases which: a) were fully investigated by NABU/SAPO; or b) fall under HACC jurisdiction and were registered at the State registry of pretrial investigations *after* the moment of HACC launch.

However, this draft law was not considered by the Rada during the last plenary week July 8-12. President Zelenskyi requested Rada to gather on July 18 for the extraordinary session, but it was neither done.

Possible solutions are:

1) *Delay in launching HACC until the respective legislation is adopted.* Such a decision should be made by the HACC judges. The Parliament of the next convocation is expected to start operations in mid-September.

2) *Explanation from the State Judicial Administration and the Supreme Court on the procedure of the transfer of cases which foresees that NABU/SAPO cases come first at HACC.* This would give the necessary time for the Parliament to adopt the President's legislative proposals. However, this approach is still risky. Depending on its content, the explanation may even worsen the situation. It may also be ignored by courts which could anyway start transferring all the cases of HACC jurisdiction, not only of NABU/SAPO. Simultaneously, if HACC decides not to accept such cases and return them back to ordinary courts, they will be restarted there once again from scratch.