

Rada Committee preserves state monopoly and appointment of forensics in corruption investigations by courts

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The Rada Committee on Legislative Support of Law Enforcement, while preparing draft law No. 8336 for the second reading, preserved the state monopoly to conduct forensics in top corruption cases. The appointment of such forensics will be held exclusively through the court.

However, members of the Committee removed from the draft law a provision regarding the creation of the Unified Register of State Forensics. This is a positive decision, as such a register would only create additional opportunities for disclosure of forensics information and exertion of pressure on experts.

Draft Law No.8336 is supposed to eliminate scandalous amendments made by MP Lozovyi, due to which all forensics in criminal investigations are appointed exclusively through the court. This creates inconveniences both for investigators, for already overloaded courts, and for average Ukrainians, who are forced to wait for weeks for simple forensics to be completed.

However, MPs decided not only to make life easier for Ukrainian citizens, but also to leave few aces in the hole regarding subjects of top-corruption cases. What remains in the draft law?

THE APPOINTMENT OF FORENSICS THROUGH THE COURT

If the draft law is adopted in current wording, Lozovyi's amendments regarding appointment of forensics exclusively through the court will continue to be in force for top-corruption cases. The Committee did not support relevant amendment submitted by MP Mustafa Nayyem. The MP suggests to cancel judicial control for all kinds of forensics, including those that are usually conducted during investigation of corruption cases. These are economic, handwriting and linguistic forensics, video and audio forensics, and commodity evaluation.

Why is this amendment important? With the help of courts, subjects of cases will be able to learn detectives' plans regarding forensics, get to know about specific questions to the expert, identify the institution in which the forensics will be conducted, "facilitate" the appointment of loyal experts.

STATE MONOPOLY ON FORENSICS

Members of Parliament also did not support the idea of abolishing the state monopoly on conducting forensics regarding top-corruption cases and economic crimes. Despite the fact that representatives of the European Union Advisory Mission emphasized that no country in Europe has the state monopoly on forensics. Experts also emphasized that the approach is blocking the use of Europol's technical capabilities to conduct forensics regarding the investigation of criminal proceedings.

Why do we need it? Empowerment exclusively the state experts to conduct forensics leads to violation of terms of the investigation: due to the overload of state institutions of forensics, some cases are forced to

wait for more than a year for the forensics, which may lead to closure of cases without actually conducting qualitative investigation. Moreover, the state monopoly creates additional opportunities for pressure on experts through vertical power structures.

FAILURE TO QUESTION EXPERTS

MPs suggest to prohibit questioning experts as witnesses regarding their findings in the case. Instead they suggest to establish the Institute of written explanations of conclusion.

Why is it dangerous? The prohibition to question the expert regarding the content of conclusion will actually create opportunities for evade responsibility for fraudulent forensics. After all, nobody will forbid the expert to provide inadequate explanations and in future to avoid appearances to the court. Moreover, written explanations may actually become the repeated forensics and create the corrupt field for the expert to “rethink” or “clarify” their own conclusions.

The draft law can be put to a vote in the second reading in coming weeks.

Still, it is important to note separately that Parliament’s rules of procedure allow the amendments which were rejected by the Committee to be put to the vote at the plenary. This means there is still a risk that the amendment on the register might be returned.