

# Selection of the main anti-corruption prosecutor: why delaying the competition may be beneficial to Zelenskyi?

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*Back in September, the Verkhovna Rada appointed its quota to the Selection Commission for the selection of the head of the Specialized Anti-Corruption Prosecutor's Office. Then the Commission was given the opportunity to begin its work in full composition.*

*This was preceded by the entire saga: the composition was voted for only on the third attempt, which included in the Commission persons recommended by the pro-Russian Opposition Platform For Life and the pro-oligarchic For the Future. Moreover, representatives of the Servant of the People and the parliamentary group Dovira were included to the composition.*

*It turned out that the majority of members of the parliamentary quota did not meet the criteria prescribed by the law, as a result our international partners sounded the alarm: the vote [endangered](#) the visa-free travel and financial assistance to Ukraine.*

*Fair and transparent competition for this position is the main requirement of international partners.*

*I should remind that the Commission itself consists of 11 members: 7 are appointed by the Parliament on proposals of parliamentary factions, and 4 members are appointed by the Council of Prosecutors. It was the latter that had appointed recognized international experts and one Ukrainian expert to the Commission.*

*Despite the fact that these appointments took place a long time ago, the competition itself has not begun yet. And this is about selecting main prosecutor in the country who will manage top corruption cases.*

*We already understand from practice how the anti-corruption prosecutor can "dump" the case worth tens of billions with just one signature, and, on the contrary, can bring it to logical conclusion in the court.*

*As for current destruction regarding unbegun competition: it, among other political players, can definitely be beneficial to the Office of the President, because opportunities to manage anti-corruption cases in their own are opened without independent head of the SAPO.*

## **What the Commission has already decided**

The first key and long-discussed issue is voting and decision-making procedure. The Commission considered this for several days.

Some representatives of the parliamentary quota, which are in the majority according to the law (7 out of 11), insisted that decisions should be made by simple majority. Their goal was simple. Namely, to level down the role of international experts.

In the end, it was decided that all decisions would be made by majority of 7 votes, at least 2 votes of which are the quota of the Council of Prosecutors (namely, international experts) and at least 5 votes are from representatives of the Verkhovna Rada.

Thanks to this principle, it is now possible to balance the work and block any unproductive proposals of some members of the Commission. But in fact, they continue trying to reconsider this principle at every meeting.

For instance, member of the Commission from the Opposition Platform For Life Andriy Gudzhali proposes to vote by simple majority (namely, without international experts). The same proposals came from other members of the Commission, namely from Kateryna Koval.

The second decision is that the Commission has already selected Kateryna Koval to the position of the head of the Commission by 9 votes, and Olena Busol to the position of the secretary. Both members are delegated by the Verkhovna Rada of Ukraine under the quota of the group For the Future.

### **What discussions does the Commission have and who benefits from delaying**

Then, the Commission started to approve the procedure of its work, the procedure of the competition and the method of evaluation of candidates. This process also turned out to be not so easy.

Unfortunately, draft documents themselves are not published by the Commission before their approval and in the process of approval. Therefore, it is impossible to know details and full picture of what they will look like in the end, but it is possible to understand essence of main provisions and goals set by members of the Commission from discussions.

Work on these documents often seems even destructive, as at the meeting the Commission is forced to discuss all proposals of its members, which are sometimes just absurd.

For instance, at one of meetings the above-mentioned Gudzhali from the Opposition Platform For Life proposed to remove integrity from principles of work of the Commission. He argued that by the fact that the principle was not clear at all, and even at the time of his appointment the Parliament had allegedly examined the integrity of people he had appointed.

However, even judging by reaction to the quota of the Parliament of society and international partners, authority and competence of some of these people raises more questions than it has answers.

In general, the issue of integrity during the discussion of provisions of the competition often does not give peace to representative of the Opposition Platform For Life. For his part, he made the number of proposals aimed at leveling this criterion when evaluating potential candidates.

Such proposals are reduced to attempts to determine the assessment of integrity in fact by formula that should be based solely on assessment of documents. This completely undermines used approach, for instance, during the selection of judges of the High Anti-Corruption Court or the head of the NACP.

After all, Commission is not the court or investigation to produce decisions to the highest standard of proof. Instead, reasonable doubts about integrity of the candidate should not be interpreted in favor of appointment to such important position.

Another member of the Commission Bogdan Romanyuk from Dovira suggested assessing the integrity of candidates by focusing only on factual data instead of the principle of reasonable doubt. He said without hesitation that "the commission elects a professional prosecutor, not a virtuous person."

It is sufficient to have specific information, which, taking into account explanations and arguments provided by the candidate (which are not perceived as convincing), does not refute the imagination (perception) of

persons defined by [law](#) regarding his sufficient compliance with these criteria”.

That is why in practice a lot depends on who and how approaches such assessment.

After all, during the interview at any competition, all doubts about the candidate can be thrown away by asking him simple questions and not going into analysis of answers, as, for instance, the High Qualification Commission of Judges often did when evaluating candidates at the competition to the Supreme Court.

And completely different approach was taken, for instance, during the selection of judges to the Anti-Corruption Court, when international experts scrutinized candidates and did not support those whose answers did not make sense. Under these conditions the number of dishonest candidates withdrew from the competition before interviews because they did not want to be subjected to such public X-ray.

It is obvious that in case of the SAPO, members of the Commission under the parliamentary quota, some of whom have problems with their own integrity, are well aware that international experts will not allow doubtful candidates or creatures from interested parties to run for the position of the head of the SAPO.

Representative of the Opposition Platform For Life Andriy Gudzhali, representative of Dovira Bogdan Romanyuk, representatives of For the Future group Olena Busol and Kateryna Koval behave in the most destructive way.

They obviously chose the strategy of maximum delaying and discussing unnecessary trifles. The goal is to exhaust the society and the Commission itself and try to devalue the process as much as possible, in order to accuse international experts of failure in future.

But, in fact, involvement of international experts in the competition process during the competition to the Anti-Corruption Court and the National Agency for Corruption Prevention and indeed their adequate use of the criterion of integrity and became key to the success of these competitions.

For instance, the competition to the NACP was held fairly quickly. Namely, in three months.

At the same time, it should be noted that so far leadership of the Prosecutor General's Office has been quite constructive in the process and has promoted transparency as much as possible. They supported appointment of international experts and assisted the establishment of working group for the Commission, which included representatives of the Prosecutor General's Office and international donors.

At the same time, you should not forget that it is the Servant of the People which supported such destructive composition of the Commission. Including the assistance of the Office of the President. This may mean that delaying the competition and including destructiveness into the process is quite satisfactory for authorities.

After all, while the Commission has been discussing trifles for months, it is Venediktova who, in fact, manages the SAPO and freely interferes in their cases with the NABU. I would like to remind that, according to the law, certain powers can be exercised only by the head of the SAPO or the Prosecutor General in his absence: for instance, to announce the suspicion to the judge or to appoint or change the group of prosecutors in the case.

This destructive is beneficial to the Office of the President, because they can manually manage affairs without independent head of the SAPO. Finally, and to confirm this, I would like to remind you of recent abrupt change of prosecutors in the case of the deputy head of the Office of the President Tatarov and refusal to change the biased prosecutor in the case Rotterdam +.