

SUMMARY

of the Monitoring report on administration of justice by the High Anticorruption Court

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The monitoring was conducted during September 2019 – February 2020 by the Centre of Policy and Legal Reform in partnership with the Secretariat of the NABU Civil Oversight Council in order to: 1) identify the problems and typical deficiencies in the Court's activities regarding administration of justice; 2) uncover the causes of the small number of verdicts and other final decisions in the criminal cases within the Court's jurisdiction; 3) identify the reasons and preconditions for delaying the trials in respective criminal proceedings; and 4) inform the expert community and the public of the administration of justice by the High Anticorruption Court (hereinafter – the HACC). The monitoring was conducted by experienced monitors in 45 out of 173 criminal proceedings that are pending before the Court as of February 28, 2020 (26%), which allows the monitoring results to be deemed representative.

The report includes the following sections: I. Statistical data on the cases that have been considered by the HACC. II. Publicity and completeness of information on cases selected for monitoring and access to court hearings. III. Number and timing of court hearings and the regularity of proceedings. IV. Progress of cases. V. Conclusions and recommendations.

Main finding: No radical changes have yet occurred to address the delays in hearings of corruption cases within the NABU's jurisdiction, although the launch of the HACC activity inspires some hope that such changes could arise soon.

These expectations can be explained, in particular by the following: preliminary hearings at the HACC are three times shorter than those previously conducted by the courts; the completion of the vast majority of all preliminary hearings, whereas previously, such hearings sometimes lasted for years; active conduct of court hearings after the preliminary proceedings are completed by the HACC; most of the reasons for delaying the trials (lengthy establishment of panels of judges, problems with determining jurisdiction over cases, etc.) have become irrelevant since the HACC began its activity; the scale of HACC's activity (as of March 3, 2020, the Court considered 173 criminal cases on the merits, involving 441 defendants and 812 defense lawyers); preliminary results (the Court, still being at the stage of organizational and institutional development, has already completed review of 97% applications, 95% petitions, 81% complaints, and 27%

of criminal cases, including delivering verdicts in three cases, whereas before the HACC's launch, the final court decisions have been delivered in only 20% of all criminal cases, following many months and years of consideration).

The vital issues of administration of justice by the HACC are as follows:

- high caseloads of the HACC judges due to their involvement in the examination of many cases and materials
- inability to extend the one-year term of office of investigative judges;
- problems with automated case distribution, resulting from inconsistency between the automated case management system and the provisions of the Criminal Procedure Code (hereinafter - the CPC), which contain requirements for the composition of the court;
- lack of an independent Anticorruption Chamber within the Supreme Court established under the same rules that apply for the selection of HACC judges, which would be the cassation-level court for the HACC;
- lack of legislatively established rules for determining the priority for considering criminal proceedings;
- possibility of multiple adjournment of preliminary hearings;
- possibility of inadequate documentation and lengthy failure to transfer the cases or materials per jurisdictional requirements;
- legislative uncertainty of the procedure for transfer of criminal proceedings to the HACC;
- significant number of cases of non-attendance by the defense lawyer or the defendant, as well as lawyers' unmotivated motions;
- lack of provisions in the CPC aimed at preventing abuse of procedural rights;
- technical difficulties during the conduct of hearings in video-conferencing mode.

KEY RECOMMENDATIONS:
to the Parliament of Ukraine:

- amend the CPC to establish a panel hearings in criminal proceedings by the HACC only for crimes punishable by imprisonment for a term exceeding ten years, as well as for crimes punish-

- able by imprisonment for more than five years, if two or more persons are charged with the crime;
- amend the CPC to provide for inadmissibility of abuse of procedural rights as one of the principles of criminal proceedings, as well as to set forth the types and content of abuse of procedural rights, the grounds and the procedure for imposing monetary penalties on criminal proceedings participants for failure to attend court hearing without good reasons or to report on the reasons for failure to appear pursuant to the summons of an investigative judge or court;
- amend the CPC to provide for specific time-frames for the completion of pretrial hearings in the case, as well as to set forth the procedure for transfer of criminal proceedings to the HACC;
- amend the Law of Ukraine “On the High Anti-corruption Court” to provide for the possibility of multiple re-election of investigative judges;
- amend the Law of Ukraine “On Judiciary and Status of Judges”, providing for the possibility of bringing a judge to disciplinary responsibility for unreasonably delaying the hearing of a case in violation of the statutory terms for conducting of preliminary hearings or court hearings, or through lengthy failure to transfer the case or materials to proper jurisdiction.

to the High Anticorruption Court:

- taking into account the CPC provisions, set forth the priority of criminal proceedings, paying particular attention to those in which the statute of limitation will expire soon;
- analyze all cases of postponed court hearings and the reasons behind this and, if necessary, take response measures available under law toward trial participants.
- conduct monthly analytical coverage of activities of the HACC and the HACC Appeal Chamber;
- ensure tracking chronology of case hearings on the HACC official website to reflect all circum-

stances of the proceedings;

- conduct periodic trainings for relevant court staff and court security staff on the procedure for admission of court visitors into the courtrooms, in order to avoid unjustified delays.

to the Council of Judges of Ukraine:

- amend the Regulations on the automated system of case management, which would prevent the establishment the composition within the HACC that does not meet the requirements of the CPC, causing reassignment of criminal cases that results leads additional trial delays.

to the State Court Administration:

- conduct verification of technical equipment needed to provide for video-conference meetings, update them and relevant software as appropriate, etc., in order to ensure that such meetings are conducted as easily as possible;
- set forth the procedure for documenting the transfer of cases and materials by courts in line with jurisdictional requirement, identify court officials in charge, as well as analyze the reasons for lengthy transfer of certain cases to the HACC.

to civil society organizations and representatives of international technical assistance projects:

- continue conducting the monitoring and/or supporting the monitoring of criminal proceedings involving corruption and corruption-related criminal offenses before the HACC.

to the National Council on Anticorruption Policy, National Agency for Prevention of Corruption, and Parliament’s Committee on Anticorruption Policy:

- take into account the results of the monitoring of judicial proceedings involving corruption and corruption-related criminal offenses during the analysis of the state of implementation of anti-corruption policy and its further development.



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