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High stakes for Ukraine as clampdown on corruption comes under scrutiny

Україна через боротьбу з корупцією перебуває під пильною увагою

Як зазначає британський журналіст та дипломатичний редактор The Guardian П. Вінтур, під виглядом боротьби з корупцією в Україні можливі випадки "неправдивого звинувачення" колишніх реформаторів, які прийшли на державну службу з бізнесу. Це викликає стурбованість у західних союзників у здатності України ефективно використати мільярди європейських фондів для відновлення після війни. Занепокоєння було виражено Державному департаменту США та Міністерству закордонних справ Великобританії, і його частково поділяють українські активісти боротьби з корупцією. К. Риженко з Transparency International (Україна) заявила про серйозні проблеми у роботі антикорупційних органів України та закликала провести перевірку НАБУ.

<https://www.theguardian.com/world/2023/apr/18/high-stakes-for-ukraine-as-clampdown-on-corruption-comes-under-scrutiny>

Critics argue some cases have highlighted serious issues with the way officials are targeting people

A fierce debate has broken out in Ukraine over allegations that a clampdown on corruption is being used to frame high profile business advocates of state reform, raising wider doubts about Ukraine's internal political trajectory – and its ability to absorb billions in European reconstruction funds once the war ends.

The concerns have been expressed to the US Department of State and UK Foreign Office, and are shared in part by Ukrainian anti-corruption campaigners.

The issue is diplomatically sensitive since critics are wary of playing into a Russian narrative that Ukraine is endemically corrupt, or suggesting that anti-corruption institutions, which western allies and Ukrainian civil society played a large part in establishing, have gone off the rails.

Corruption has long been Ukraine's achilles heel, but the country has made fitful progress, rising slowly up Transparency International's corruption perceptions index from 142nd in the world in 2014 to 122nd in 2021. But the critics argue that some investigations have not targeted the genuinely corrupt and instead focused on businesspeople who joined the government to help revive Ukraine's economy

after the 2014 revolution. At stake is what kind of economy Ukraine will become after the war – and whether talented people will risk working for the state again.

Katya Ryzhenko, from Transparency International Ukraine, called for a review of the anti-corruption authority of Ukraine (known by its Ukrainian acronym Nabu).

“It is a good sign that despite being in the middle of a war, Ukraine’s anti-corruption ecosystem is not afraid to go after the big names and to have these cases transparently adjudicated by independent judges.” But, she added “the cases have highlighted serious problems in how Ukraine’s anti-corruption bodies operate”.

A former Ukrainian official who was instrumental in campaigning for the establishment of Ukraine’s anti-corruption bodies said that officials appeared to be targeting people for corporate governance breaches, rather than overt corruption . “This is a tragedy in which there will be no winners,” the former official said.

Nabu did not respond to comment, but has said it is simply following evidence provided by the state audit bodies. It points to successful investigations including the recent exposure of irregularities in a privatisation scheme worth 500m Ukrainian hryvnia (£11m) that was allegedly orchestrated by a former official.

Some critics blame an excessive zeal by a country eager to impress the EU ahead of probable accession talks next year. Others blame ineptness or a punitive mindset still shaped by a Soviet-era distrust of profit.

Others are more conspiratorial. The most senior businessman facing charges, Andriy Kóboleyev, the former chief executive of the state gas company Naftogaz, said: “There is an attempt by some to discredit Ukraine’s reformers – and by extension the anti-corruption bodies themselves.”

In the face of Russia’s invasion, most Ukrainians may show little interest in prosecutions of wealthy businessmen. Volodymyr Zelenskiy, who was elected on a reform ticket and remains hugely popular, has been instrumental in responding to allegations of war-time corruption.

In January, 15 government officials resigned or were dismissed after a string of high-profile anti-corruption raids, as Zelenskiy pledged a zero-tolerance policy.

Andriy Kóboleyev

Andriy Kóboleyev faces 12 years in jail. Photograph: Ukrinform/Rex/Shutterstock

But little is more likely to reduce Ukraine's appeal to international investors – and bodies such as the IMF – than if it appears the fight against corruption is being manipulated.

Kóboleyev, who headed Naftogaz between 2014 and 2021, faces 12 years in jail if he is convicted of allegedly misleading Naftogaz board members into paying him a huge bonus in 2018.

He is currently on bail, wearing an electronic ankle tag. But he says his case is part of a developing pattern involving former reformist state executives.

After a five-year investigation, Nabu on 18 January accused Kóboleyev of effectively embezzling over 229m Ukrainian hryvnia in 2018 after winning a high stakes arbitration ruling against the Russian state-owned energy firm Gazprom. The arbitration case, heard in Stockholm in 2018, netted Naftogaz a Russian payment of \$4.6bn (£2.7bn).

As a result of the victory, the Naftogaz supervisory board agreed to award 1% of the sum (\$46.3m) as bonuses to around 40 employees. Kóboleyev received about half \$10m in 2018 and a further \$12m in 2021.

The prosecutors allege the payout breached a regulation capping executive bonuses at state-owned enterprises, and accuse Kóboleyev of misleading the Naftogaz board. Kóboleyev denies any wrongdoing, saying that he alerted the board to the regulation, but independent legal counsel advised that the board had the exclusive authority to decide on bonuses.

“The size of my bonus was not decided by me, but by the supervisory board. It would be against all rules of corporate governance for the head of a company to decide their own compensation,” he said.

Clare Spottiswoode, a former British gas regulator and former chair of the Naftogaz supervisory board said that the board approved the bonus unanimously after taking legal advice.

In a statement she signed with two other former supervisory board members, Spottiswoode said “it was a brave leadership act by Kóboleyev to take the astonishingly successful case” that many had said was unwinnable.

She said she has never been interviewed by Nabu. Nabu did not respond a request for comment on her claim.

Mark Savchuk, the head of the civilian body that oversees the corruption agency, has also criticised Nabu, telling the Kyiv Post: “The Ukrainian company netted \$4.6bn so no harm was done. Those additional funds were then invested in Naftogaz infrastructure or paid out to the state via dividends. To say that the person who achieved this did so corruptly is weird. In my opinion, law enforcement agencies are making a mistake”.

But Nabu’s investigative team have persisted, arguing that Kóboleyev should be denied bail because he might abscond, tamper with witnesses or hide documentation.

The high anti-corruption court set his bail at 229m Ukrainian hryvnia, but has twice rejected Nabu requests for more time. On Wednesday, it must either drop the case or take it to trial.

Kobolyev’s bonus may be morally questionable, but during his time at Naftogaz, he turned the firm from a failing company into one that supplied 15% of Ukraine’s total state revenue.

Since the war broke out he has used his knowledge of the Russian gas industry to push for tighter sanctions on Moscow, a point acknowledged in a letter written in his defence by John Herbst, a former US ambassador to Ukraine.

Kóboleyev is not the only businessman caught up in the row. In March the high anti-corruption court sentenced Yevheniy Dykhne to five years in jail for letting premises at Boryspil airport to private businesses, such as shops and cafés, without using the state competitive tendering process which would have taken two years to complete.

He made no personal gain, but the court ruled that only the state had the power to let property and calculated that Dykhne’s actions had resulted in a loss of 15.7m Ukrainian hryvnia to the state.

Dykhne describes the verdict as worthy of Kafka, and in an attempt to show the absurdity of the charge, has posted the court papers online.

A third case involves the former minister of infrastructure Andrei Pivovarsky, who is accused of depriving the state of \$30m by deciding in 2015 that only half of the harbour dues in the Pivdennyi seaport on the Black Sea should go to the Ukrainian sea ports authority.

Pivovarsky said that the other half should go to private companies on the condition that they reinvested the proceeds in maintenance . He argued that his aim was to make the port more efficient.

At the time, Pivovarsky was in charge of deregulating the Ukrainian economy, and he says he notified the justice ministry of the reforms. He is not accused of making any private gains, but Nabu insists only a state enterprise has the right to charge harbour dues.

Pivovarsky is out on bail, and recently wrote on Facebook: “Only now have I realised at what a price my sincere desire to change the country for the better has come. I apologise to my wife and kids for what they have to go through with me.”

One of Kóboleyev’s supporters active in Washington argued: “Regardless of the motivation, the prosecution, conviction, and incarceration of Ukraine’s prominent and tested reformers is a disaster for Ukraine. Put aside the morality of Kóboleyev’s bonus, if this carries on, it will grossly hamper Ukraine’s ability to attract smart people with integrity to lead the reconstruction, raise funds, and to administer those funds honestly and transparently.”

Kóboleyev blames the new anti-corruption body:

“Nabu was created to hunt top-level corruption, meaning top-level people taking bribes. Instead, they hunt reformers who never took a single bribe. Meanwhile the big fish are not touched. That destroys the trust in the rule of law. And if there is no rule of law, that’s a red flag for [investors].

“The US embassy spent so much effort and time creating these anti-corruption bodies. They now understand that their favourite baby appears to be intellectually incapacitated. That’s a very sad finding for any parent”.

Spottiswoode said: ‘I am aghast that Nabu is taking legal action against some of the best and finest Ukrainian current or recent CEO’s of some of the largest Ukrainian owned companies.

‘They are leaders formed in the heat of the Maidan revolution. If talent and incorruptibility was important they should form the core of any future administration.

Ryzhenko said each of the cases was different, but that collectively they underscored the need for changes to Ukraine’s corporate governance laws, pre-trial detention protocols, and the statute of limitations.

Nabu did not respond to a request for comment for this article.

Critics recognise that some businesspeople walk a fine line between showing initiative and abuse of office. But they warn that Ukraine’s prosecutors are distorting what represents a financial crime. And they say that unless someone sorts this all out, Ukraine may find it has gloriously won a war, only to discover it lost the peace.