



Seriously flawed proceedings against high-level anti-corruption official, amid conflict with prosecuting authorities

In today's Chamber judgment¹ in the case of [Sytnyk v. Ukraine](#) (application no. 16497/20) the European Court of Human Rights held, unanimously, that there had been:

violations of Article 6 § 1 (right to a fair trial), Article 8 (right to respect for private and family life), and Article 18 (limitation on use of restriction of rights) of the European Convention on Human Rights.

The case concerned proceedings brought against a high-level public official in the field of anti-corruption for accepting gifts – specifically holidays – in breach of the Code of Administrative Offences. He was found guilty in 2019 and his name was included, indefinitely, in a public register of corrupt officials.

The proceedings took place against the background of conflict between the anti-corruption and prosecuting authorities, with mutual accusations of unlawful actions being played out in the media. The Prosecutor General had notably stated that Mr Sytnyk had apparently “forgotten to pay quite considerable bills for the holidays of his family and friends”.

The Court found in particular that there had been serious shortcomings in the judicial proceedings. In particular the courts had relied exclusively on one person's inconsistent statements about the holidays and related expenses to convict Mr Sytnyk, without assessing the key arguments in his defence or taking into account witness evidence. Nor had his concerns over the impartiality of the trial-court judge deciding on the case been addressed.

Mr Sytnyk's inclusion in the register of corrupt officials had had a disproportionate impact on his private life as it continued and would continue to cast a shadow over his reputation and undermine his professional credibility.

Moreover, it found that there had been a hidden agenda behind the proceedings. The focus in the case had not been to prevent corruption in the public service, but had been more of a personal attack on Mr Sytnyk's integrity.

Principal facts

The applicant, Artem Sergiyovych Sytnyk, is a Ukrainian national who was born in 1979 and lives in Brovary (Kyiv region, Ukraine).

He was Director of the National Anti-Corruption Bureau of Ukraine (“the NABU”) from 2015 to 2022. NABU is the central executive agency which investigates allegations of corruption against top-level State officials.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 2019 Mr Sytnyk himself was investigated on allegations of corruption. Proceedings were brought against him for accepting gifts – holidays on a fishing and hunting reserve – in breach of the Code of Administrative offences (“the CAO”).

The main witness was one of Mr Sytnyk’s friends, N., who stated that he had been involved in organising holidays for him. In his first deposition he stated that he had made the arrangements on five occasions in 2017-19 costing more than 16,000 euros (EUR), but later, before the courts, he mentioned two short holidays in 2018 and 2019 amounting to EUR 250. He said that he had borne all related expenses and had never been reimbursed.

Mr Sytnyk denied any misconduct. He stated that N. had rented a holiday house for him on two occasions, but that he had reimbursed his friend in full. He also argued that he had shared the rented holiday house and related expenses with friends. This was confirmed by these friends in their witness statements.

Mr Sytnyk also argued that N.’s statements to the police and prosecution could have been made under pressure as his friend had an ongoing application to have an old criminal conviction removed from the official records.

Overall, he claimed that the proceedings against him were in retaliation for NABU investigations into allegations of corruption involving the Prosecutor General’s family and of large-scale embezzlement of public funds by a Ministry of the Interior official.

In September 2019 Mr Sytnyk was found guilty as charged at first instance and the appeal court subsequently endorsed this decision.

The courts based their findings on N.’s statements. They found that Mr Sytnyk had not provided any evidence to prove that he had reimbursed N., and that his friends’ witness statements were of little evidential value. They rejected his argument that the holiday house had been rented by several families, who had shared all expenses. It was considered that the other families were his guests and that he alone was therefore to bear all the costs.

Throughout the proceedings Mr Sytnyk expressed doubts as to the impartiality of the judge who had examined his case at first instance. He feared that the prosecuting authorities had leverage over the judge because he was a witness – who could potentially become a suspect – in ongoing criminal proceedings. However, the trial-court judge rejected as unsubstantiated Mr Sytnyk’s request that he withdraw, while the appeal court did not comment on Mr Sytnyk’s misgivings.

Shortly after, Mr Sytnyk’s surname, name, patronymic, place of work and post, with a description of the offence, were included in the publicly accessible online Corrupt Officials Register.

The proceedings against Mr Sytnyk have received extensive media coverage in Ukraine. At the beginning of the affair, information was leaked to the media, which highlighted Mr Sytnyk’s “luxurious” holidays paid for by N. In the subsequent years articles reporting on the developments in Mr Sytnyk’s career (he was appointed deputy head of the National Agency on Corruption Prevention in 2022) recurrently questioned the legitimacy of NABU investigations because the director himself was on the register of corrupt officials.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Mr Sytnyk alleged that the administrative-offence proceedings against him had been unfair and that the trial-court judge had not been impartial. He also complained, under Article 8 (right to respect for private and family life), that it was humiliating and stigmatising to be labelled “corrupt”, especially given the many years he had spent combatting corruption. Lastly, he alleged that the real reason for the proceedings against him and his inclusion in the Corrupt Officials Register had been to discredit him and to take revenge for his investigations

against the Prosecutor General and Minister of the Interior, in breach of Article 18 (limitation on use of restriction of rights) in conjunction with Articles 6 and 8.

The application was lodged with the European Court of Human Rights on 7 April 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

Mattias **Guyomar** (France), *President*,
 María **Elósegui** (Spain),
 Gilberto **Felici** (San Marino),
 Andreas **Zünd** (Switzerland),
 Diana **Sârcu** (the Republic of Moldova),
 Kateřina **Šimáčková** (the Czech Republic),
 Mykola **Gnatovskyy** (Ukraine),

and also Martina **Keller**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1 (right to a fair trial)

The Court found that the judicial proceedings in Mr Sytnyk's case had been undermined by serious shortcomings.

Firstly, the national courts had based Mr Sytnyk's conviction on N.'s statements, despite inconsistencies in his depositions as to the number of times he had organised holidays and not being able to clarify exactly what expenses he had paid. Furthermore, Mr Sytnyk had referred to certain circumstances implying that undue pressure might have been put on N. which could cast doubts on the reliability of his evidence. Given the decisive role of N.'s evidence in convicting Mr Sytnyk, he could reasonably have expected the courts to address his key arguments, which neither the trial court nor the appellate court had done. Nor had they taken into account the witness evidence from the defence. In particular, they had concluded that it had been for Mr Sytnyk to pay for his guests, even though he and his friends had consistently stated that they had shared all the expenses among themselves. The courts had therefore distributed the burden of proof arbitrarily and Mr Sytnyk had been deprived of the opportunity to effectively challenge the charges against him.

Secondly, the Court found that Mr Sytnyk had had justified fears as to the lack of objective impartiality of the trial-court judge, which had not been addressed. Indeed, it had been the judge himself, sitting in a single-judge formation, who had refused the recusal request without giving reasons. The appellate court had not even mentioned Mr Sytnyk's misgivings in its ruling.

Overall, the Court concluded that the decision-making process leading to Mr Sytnyk's conviction had been seriously flawed, in violation of Article 6 § 1.

Article 8 (right to respect for private life)

The Court noted that being labelled "corrupt" had not only cast a shadow on Mr Sytnyk's good name, but it had also undermined the credibility of his long-standing career in the field of anti-corruption. That interference with his rights, as such, had been based in law, section 59 of the Corruption Prevention Act, and aimed to prevent corruption in the public service.

It found, however, that that interference had been disproportionate. Under the current legal regulations in Ukraine, Mr Sytnyk's name will remain indefinitely on the Corrupt Officials Register. There is no possibility of having it removed. That situation was difficult to reconcile with the stipulation under the CAO that an administrative offence was considered spent after one year. Moreover, five

years after the final decision against Mr Sytnyk, he continued to be deprived of any means to defend himself from attacks on his moral and professional integrity.

The Court concluded that there had been a violation of Mr Sytnyk's right to respect for his private life under Article 8.

Article 18 (limitation on use of restriction of rights)

The Court considered that the prosecuting authorities had had a hidden agenda, namely to discredit Mr Sytnyk personally. It bore in mind, cumulatively, the following: the Minister of the Interior's hostile attitude towards Mr Sytnyk and the investigation being carried out by the National Police under that Minister's authority; reported antagonism between the NABU and the Prosecutor General's Office; the vulnerability of N. to pressure from the prosecution authorities; the striking difference between the initial amount allegedly paid for Mr Sytnyk's holidays, which had been leaked to the media, and the amount later given (namely EUR 16,000 versus EUR 250); the very fact that there had been that leak to the media; and the Prosecutor General's public statement.

Bearing in mind also the serious shortcomings in the judicial proceedings, the Court found that the overriding focus in the case had not been to prevent corruption in the public service, but had been more of a personal attack on Mr Sytnyk's integrity.

There had therefore been a violation of Article 18 taken in conjunction with Articles 6 and 8.

Article 41 (just satisfaction)

The Court held that the finding of a violation was sufficient just satisfaction for any non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.