

IMPLEMENTATION OF THE ANTI-CORRUPTION POLICY OF UKRAINE IN THE CONDITIONS OF ACCESSION TO THE EUROPEAN UNION: ADMINISTRATIVE AND LEGAL ASPECTS

IMPLEMENTAÇÃO DA POLÍTICA ANTICORRUPÇÃO DA UCRÂNIA NAS CONDIÇÕES DE ADESAO À UNIÃO EUROPEIA: ASPECTOS ADMINISTRATIVOS E LEGAIS

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Abstract: Our country has been experiencing difficult times. In the conditions of war, it is extremely important to spread the issue of combatting corruption in order to preserve the unity of Ukraine as a state and nation, as well as to spread Europeanism and values. Ukraine is facing a big challenge now – joining the European Union. This requires striking reforms to fully integrate into the European system, including strengthening the fight against corruption. Therefore, the purpose of the academic paper is to reveal the development of methods, strategies, bills, measures for the anti-corruption program, which is of particular significance nowadays. The academic paper's writing process included such methods as data analysis, synthesis, generalization, justification, and qualification. The last year was significant for the state anti-corruption policy. After all, the Anti-Corruption Strategy until 2025 was adopted and the State Anti-Corruption Program for 2023-2025 was developed to implement the Strategy. These are strategically important and essential documents for Ukraine. They will reduce the positions of corruption in the state; they are a signpost for implementing important reforms for society and the coordinated work of all government bodies. The most significant achievement in the field of anti-corruption policy is the rejection of the new Anti-Corruption Strategy, which was one of the conditions for granting Ukraine the status of an applicant for the EU class. By the way, colossal work was carried out on developing and approving the State Program for its implementation. This is actually a step-by-step plan for reforming 15 socially important spheres with the highest position of corruption, which is especially important for the European and Euro-

Atlantic integration of Ukraine, accession to the OECD, as well as synchronization with the recovery processes of Ukraine.

Keywords: Ukraine. The EU. State. Corruption. Law. Reforms. Anti-corruption strategy. Authorities. Jurisprudence. Law. Punishment.

Resumo: Nosso país vive tempos difíceis. Em condições de guerra, é extremamente importante divulgar a questão do combate à corrupção, a fim de preservar a unidade da Ucrânia como Estado e nação, bem como difundir o europeísmo e os valores. A Ucrânia está enfrentando um grande desafio agora – ingressar na União Europeia. Isso requer reformas marcantes para se integrar plenamente ao sistema europeu, incluindo o fortalecimento da luta contra a corrupção. Portanto, o objetivo do trabalho acadêmico é revelar o desenvolvimento de métodos, estratégias, projetos de lei, medidas para o programa anticorrupção, que é de particular importância nos dias de hoje. O processo de redação do artigo acadêmico incluiu métodos como análise de dados, síntese, generalização, justificação e qualificação. O último ano foi significativo para a política estadual anticorrupção. Afinal, a Estratégia Anticorrupção até 2025 foi adotada e o Programa Estadual Anticorrupção 2023-2025 foi desenvolvido para implementar a Estratégia. Estes são documentos estrategicamente importantes e essenciais para a Ucrânia. Eles reduzirão os cargos de corrupção no estado; são um marco para a implementação de reformas importantes para a sociedade e para o trabalho coordenado de todos os órgãos governamentais. A conquista mais significativa no campo da política anticorrupção é a rejeição da nova Estratégia Anticorrupção, que foi uma das condições para conceder à Ucrânia o status de candidato à classe da UE. A propósito, um trabalho colossal foi realizado no desenvolvimento e aprovação do Programa Estadual para sua implementação. Este é, na verdade, um plano passo a passo para reformar 15 esferas socialmente importantes com a mais alta posição de corrupção, o que é especialmente importante para a integração europeia e euro-atlântica da Ucrânia, a adesão à OCDE, bem como a sincronização com a recuperação processos da Ucrânia.

Palavras-chave: Ucrânia. A UE. Estado. Corrupção. Lei. Reformas. Estratégia anticorrupção. Autoridades. Jurisprudência. Lei. Punição.

1. Introduction

On June 23, all 27 countries of the European Union proposed to grant Ukraine candidate status. Accession to the EU was a long process, and it is still ongoing.

In 2014, Ukraine did sign the Association Agreement with the EU, which entered into force in 2017. As a result, a visa-free regime was launched, and a free trade zone was opened. Slowly but surely, we implemented reforms; and in 2019, the Ukrainian Constitution formally entrenched Ukraine's path toward European and Euro-Atlantic integration.

Ukraine's commitment to defending public interests and national values during a full-scale war showed that we are truly ready to join the EU family. This uncompromising defense of our development course (Europe - yes; Russia - no) helped the cultural world open its eyes and sped up a number of procedures in our state.

After four days of Russia's invasion of Ukraine, we submitted our application for the EU class. In April, the completed first part of the questionnaire for obtaining the status of an

applicant was handed over, and in May – a spare one. The streamlined procedure gave us a head start in this process, and currently, our country is a former candidate for joining the European Union.

A representative of the European Commission stated that it is expected from Ukraine to strengthen the fight against corruption in senior positions through preventive and effective checks, a reliable list of executions and convictions, accession to the European Union, as well as part of the political conditions for the durability of the macro-financial support of the EU.

According to data of the European Commission, Ukraine has recently made significant progress in the fight against corruption. Anti-corruption structures were created thanks to the support of the EU. “And, of course, now we are talking about reporting and strengthening the treasury allocated to these structures”, - it has been noted in Brussels (Anti-corruption policy <https://nazk.gov.ua/uk>).

“The European Commission promises to continue highlighting data, on the one hand, and supporting Ukraine, on the other. We should remember that Ukraine is facing a brutal, aggressive war. It has to overcome problems that none of us can imagine at the time. We are determined to support this country’s progress towards EU membership”, – the European Commission’s representative summarized at the briefing.

The purpose of the research is to clarify the development of methods, strategies, draft laws, measures of the anti-corruption program.

2. Theoretical framework and literature review

The future of our country, its integrity and European integration as a civilizational choice of Ukraine depend on the principles and non-involvement of state authorities’ representatives.

Implementation of the EU AntiCor project as part of the Summer School became one of the platforms for very serious discussions on the topic of overcoming corruption in Ukraine.

The speakers of the Summer School were leading teachers and experts in the field of EU anti-corruption policy. Relevant issues were considered during the training, namely: “Corruption as a social-legal phenomenon”, “The EU Legislation on the Prevention and Counteraction of Corruption”, “Ukraine’s cooperation with the EU in the field of preventing and countering corruption”, “The impact of corruption on the economic security of the country” (Tatyana Melnyk, an academic coordinator, Doctor of Economics, Professor, State

University of Trade and Economics); “Innovation and Corruption”, “Perspectives of Corruption and Green Economy: Mining and Energy Sectors” (Vitaly Omelianenko, Doctor of Economics, Associate Professor, Institute of Industrial Economics of the National Academy of Sciences of Ukraine, A.S. Makarenko); “Corruption and international capital flows”, “Anti-corruption policy in international business” (Andrii Oliynyk, Candidate of Economics, Senior Lecturer, State University of Trade and Economics); “Corruption as the main reason for developing the shadow economy”, “Formation and implementation of anti-corruption policy in Ukraine” (Lyudmila Serova, Doctor of Economics, Associate Professor, State University of Trade and Economics); “The EU Financial Supervision and Risk Management: The Role of Financial Institutions in Preventing Corruption”, “Corruption and Public Finances” (Lyudmila Gulyaeva, Candidate of Economic Sciences, Associate Professor, Academy of Labor, Social Relations and Tourism).

3. Results

Obtaining candidate status is a legal confirmation of Ukraine’s European integration. We haven’t become members of the EU yet, but we have been confidently moving there. And Europe has recognized it. In the conditions of a full-scale war, this is a clear signal to Putin that Ukraine is not going to exist in the zone of Russian influence.

“The European Union confirmed the civilizational choice of Ukraine. A European family is waiting for us, but the admission process can take a long time. Most of the Balkan countries have been negotiating for more than one year. A full-scale war could also affect the timing of negotiations.

In order for Ukraine to get closer to membership, it is necessary to comply with European standards and principles, not in words. It is already necessary to carry out reforms and change the country, at least at the legislative level. We should live in a state where democracy and the rule of law prevail, and, of course, an effective anti-corruption system.

On the eve of the summit in Brussels, the Ukrainian Parliament adopted the Anti-Corruption Strategy for 2021-2025. This is a positive decision, but many problems in the work of anti-corruption bodies remain unresolved. So it’s too early to relax” (the executive director of TI Ukraine, Andrii Borovyk).

In order to become a full member of the EU, Ukraine still must:

1. comply with 7 requirements of the European Commission;

2. adopt and implement all EU laws, in particular, anti-corruption laws (special conditions and terms will be established for each policy area).

3. meet all the Copenhagen criteria, namely:

- have stable institutions guaranteeing a republic, the rule of law, the rights of mortals and the respect and protection of minors,
- fulfill a thrift request;
- be up to deal with competition and demand forces in the EU;
- undertake and effectively carry out class assessments, including compliance with political, revenue and financial union objects.

As a rule, authorized placements, according to the EU class, begin after entry into operation. However, an exception was made for Ukraine. The European Commission put forward seven conditions that our country must fulfill in order not to lose the status of a seeker. These include: obligations in the field of anti-corruption to complete the appointment of the head of the SAP and the director of NABU, as well as to conduct effective inspections of top corruption; completing the integrity verification by the Ethics Council of campaign participants for membership of the High Council of Justice and selection for the High Qualification Commission of Judges; applying legislation regarding the procedure for selecting judges of the Court of Indigenous Peoples based on an assessment of their integrity and professional abilities in accordance with the recommendations of the Venice Commission.

Unfortunately, the need for manual selection of leaders does not only apply to SAP and NABU. The Agency for Hunting and Exploitation of Means has not had a director more than two times. Along with this, the term of office of the head of the High Anti-Corruption Court has recently expired.

TI Ukraine has repeatedly recommended completing the SAP competition, reforming the local justice and advocacy as part of the Corruption Perceptions Index. We hope the authorities will heed the advices and eventually make the necessary changes.

“The election of the leadership of anti-corruption bodies is only the tip of the iceberg. NABU, SAP, NAZK, ARMA and VAKS must have the institutional capacity for effective work.

SAP needs wider autonomy and expansion of leadership powers. For example, after changes to the institution of parliamentary immunity, all key decisions in criminal proceedings are made by the Prosecutor General, not the head of the SAP or his deputy.

NABU should be able to independently listen to the participants in the proceedings and have access to high-quality and impartial forensic examination.

Proper justice is still hindered by procedural problems, for example, with the terms of the pre-trial investigation prior to the notification of suspicion, the judicial review of the NAZK protocols, the violation of the NABU/SAP jurisdiction and the VAKS jurisdiction.

In order to solve these and other problems, the legislation must be changed to ensure maximum independence of institutions from external influence” (Kateryna Ryzhenko, a deputy executive director of TI Ukraine for legal issues).

The decision of the European Commission does not indicate the mandatory launch of housing after Ukraine fulfills seven conditions. That is, if our country meets them, it will be suitable for promotion to housing; however, it is not guaranteed. After all, other terms of admission may be proposed in the offer to Ukraine.

At the same time, the European Commission did not set a clear deadline for Ukraine; however, it has announced that it will report on the fulfillment or non-fulfillment of 7 conditions earlier at the end of 2022. At the same time, the Deputy Prime Minister for Europe and the Euro - Atlantic Integration, Olha Stefanishyna, believes that Ukraine can meet this deadline.

Along with this, we are moving to the next stage of European integration — reviewing sections of the EU programs to determine the level of Ukraine’s readiness for the class, and whether Ukraine will be able to fulfill all the conditions and obtain the consent of each EU member state. By the way, we have already come close to European standards in many sections thanks to the conclusion of the Association Agreement between Ukraine and the EU. Consequently, placement will begin only after a positive conclusion.

The speed of accession and subsequent accession to the EU will depend on the speed of reforms in spheres and harmonization of Ukrainian legislation with EU legislation. Turkey, for example, applied to join the class in 1987; it gained a seeker status in 1999; however, it only began accession in 2005.

Millions of doors open before us in a moment; some are discoveries, others are dozens, and others are challenges. And we will successfully pass all stages if there is a strong political will for it (“We need to prove that we are fighting corruption”).

The last year was significant for the state’s anti-corruption policy. After all, the Anti-Corruption Strategy until 2025 was adopted, and the State Anti-Corruption Program for 2023-2025 was developed to implement the Strategy. These are strategically important and essential documents for Ukraine. They will reduce the positions of corruption in the state. They are a signpost for implementing important reforms for society and the coordinated work of all government bodies.

There are important achievements in the direction of establishing anti-corruption policy, namely:

1. Anti-corruption strategy until 2025. The new Anti-Corruption Strategy was approved by the Parliament due to the methodical work and support of transnational partners, leading public associations, experts, as well as all interested authorities. The Verkhovna Rada adopted and approved the law on June 20, 2021 “On the fundamentals of state anti-corruption policy for 2021-2025”.

This is the first anti-corruption strategy developed by the NACP (one should mention that the previous document was developed by the Ministry of Justice). It is important that the relevance and implementation of the Strategy were questions of the European Commission Questionnaire for the purpose of forming a conclusion on granting the status of a class seeker in the European Union.

2. Development of the State Anti-Corruption Program for 2023-2025 for implementing the Anti-Corruption Strategy includes the following measures taken:

- the DAP project for 2023-2025 was prepared during four months;
- eleven public discussions of the document were held with the maximum involvement of experts, public organizations and all interested bodies;
- project approval was received from 128 bodies and institutions;
- more than 500 comments on the project were processed, and a protocol for agreement of positions on half a thousand pages was prepared;
- a separate budget program was opened, and the financial and economic substantiation of the measures entrusted to NACP was provided in the amount of more than 150 million UAH.

3. Currently, NACP is developing a special monitoring system that will help citizens monitor the progress of the PDP online.

4. Answers to 36 questions of the first part of the European Commission Questionnaire on anti-corruption policy were prepared, as well as answers to 12 questions of the alternative part of the European Commission Questionnaire. Therefore, NACP made a significant donation for Ukraine to have the status of the European Union’s class seeker.

5. The results of the sociological study “Understanding, perception, prevalence of corruption in Ukraine, 2021” in the conditions of post-war reconstruction of the state were presented.

Effective counteraction and corruption balancing is impossible without all state bodies' coordinated work.

Public authorities work in a disorganized manner without an anti-corruption strategy, and the measures they implement to fight corruption may not be successful since they only cover a limited region.

An anti-corruption strategy brings authorities together as a single platoon and helps them work together to achieve the expected outcomes.

The UN Convention against Corruption, signed by Ukraine, determines cooperation as a necessary condition for effective fight against corruption.

Creating an anti-corruption strategy is the broadest tool for establishing such cooperation. Thus, anti-corruption strategies operate in several countries on continents with varying wealth, such as the UK, Singapore, Vietnam, Jordan, Romania, Egypt, Armenia, etc. (United Nations Convention against Corruption).

Therefore, we call on the central and primary authorities to implement the Anti-Corruption Strategy after its rejection.

The anti-corruption strategy covers the functioning of the general anti-corruption system. It defines anti-corruption priorities in certain areas of public administration and pays great attention to the issue of responsibility for corruption.

Priority sectors of state governance defined by the strategy are as follows:

- court, prosecutor's office, police;
- state regulation of the economy;
- public and private sectors of the economy;
- taxes and customs;
- construction, land, infrastructure;
- the defense sector;
- health care and social protection;
- the system of preventing and countering corruption.

The target audience of the Report is the entire population of Ukraine. However, its heirs are primarily the Verkhovna Rada, the President and the Cabinet of Ministers of Ukraine, the Verkhovna Rada Committee on Anti-corruption Policy, the NACP, National Anti-corruption Bureau of Ukraine (NABU), Specialized Anti-Corruption Prosecutor's Office, State Bureau of Investigation, National Police, The National Agency of Ukraine for detection, search and

investigation of crimes resulting from corruption and other crimes, the High Anti-Corruption Court and other courts.

The Report provides a public assessment of the anti-corruption reform in Ukraine, which is a continuation of the previous three reports for 2013-2018 (the EU anti-corruption policy, lessons for Ukraine within the EU AntiCor summer school).

The document was prepared based on a methodology specially developed by TI Ukraine for a comprehensive internal assessment of the country's progress in anti-corruption in four directions:

- anti-corruption policy;
- prevention of corruption;
- criminalization of corruption and law enforcement activities;
- international cooperation.

TI Ukraine presented a study on the potential of the life monitoring technique in the spring of 2021, along with a number of recommendations. Currently, none of them have been implemented by the NACP yet.

1. The report states that the NACP should consider and take into account the recommendations of TI Ukraine regarding the proper legal regulation of the life monitoring procedure.

2. The rejection of the alternate reading of draft Law No. 3450, which was supposed to improve the lives of corruption whistleblowers, was a negative event that the public blamed. It was also amended several times, effectively eliminating the entire whistleblower protection institution. After the President's ban, the law was adopted in a respectful interpretation.

3. Experts assessed the conducted competition for the position of the head of the NACP as an objective one. They noted that it was held without undue external influence.

The report accumulates and highlights the public sector's standpoint on important issues of anti-corruption policy. We hope that the heirs of the Report will read and take into account its conclusions and recommendations in their further justification.

4. Discussion

Granting the status of a class candidate in the European Union is rather a procedural decision. The political scientist, vice-rector of the Ukrainian Catholic University, Dmytro Sherengovskyi, explains that it crystallizes a road map for passing a class-specific path that Ukraine will need to follow.

“Candidate status is a necessary step to the class. This is how the procedure takes place; it is relatively sanctioned and specified. This is not exactly a political decision but a procedural one. The class cannot be achieved without the status of a seeker – this is the first decision that should be taken. In case it is positive, it opens up a reason for the Council of the European Union and each country, in particular, to grant Ukraine this status”, he says.

“Secondly, after entering the candidate status, consultations will begin on what specific reforms should be carried out in order to fully integrate into the European system. And this is not only a matter of trade and beneficial relations but actually entering the EU. And this means that certain processes of production, distribution of goods or provision of certain services must comply with the rules of internal demand, by which all other member countries live. The issue of legislation is also of particular significance. It is necessary for Ukraine’s legislation not to contradict to the morality existing in the European Union”, the vice-rector explains.

Ukraine’s compliance with the EU in political, economic, cultural and social terms is really important for Europeans. Natalia Haletska, the deputy of the Council of Indigenous Peoples of Lviv, the head of the commission for foreign cooperation, says that the status of a seeker will allow Ukraine to get European class. Consequently, it’s worth getting despite everything. In addition, it will give us access to many European finances.

“Obtaining the candidate status is important, as it formally allows Ukraine to apply for training and, therefore, to gain access to European structural funds. This is an extremely large number of different vacancies in the European Union. For instance, it would be interesting for Ukrainian educational institutions to allow mobility under the Erasmus program in the field of education. Currently, Ukrainian educational institutions can apply for cooperation with European agencies, which significantly expands their opportunities. There are also other structural finances to which Ukraine could apply for developing and reconstructing the state. These are the opportunities that Ukraine can get as a candidate to the EU class”, says the deputy (Ukraine is a candidate for the EU).

“It is also worth noting that our Association Agreement is so deep and comprehensive that it is similar to the agreements that the applicant countries had in their accession process. That is, the integration of our internal requests and services actually takes place earlier. Thus, we have to fight for the elimination of fresh trade barriers with the European Union. For instance, non-tariff barriers for access of our goods to European demand, Natalia Haletska explains. – Although the path to class is relatively long, we can act point by point and, thus, bring Ukraine closer to it, as well as simplify the instrument of Ukrainian goods in the European Union.

Previously, duties and duty-free rates were removed, but this was done temporarily, only for a while. Thus, the agreement about what will happen next, about the perspective, is also one of the moments of adjustments”.

5. Conclusion

Therefore, it can be stated that although anti-corruption bodies have been established in Ukraine, the conditioning of these bodies is ineffective. There are no results of conditioning, coordinated behavior in implementing the main anti-corruption measures, which, in turn, forms a negative attitude of the public towards such newly created institutions. This is caused primarily by many factors, the lack of specially trained specialists who would apply anti-corruption policy, were familiar with the issues of preventing and countering corruption, and had the relevant qualifications and experience. Secondly, it is caused by the lack of functional experience and institutional capacity of these bodies, since these are recently created bodies, they form their conditions based on the experience of European and world practice, which does not always work. Thirdly, these bodies began their conditioning sluggishly, because their labor force was long in formation. Fourthly, there is no commerce between these bodies, which should be regulated by current regulations, and anti-corruption institutions duplicate each other's conditions. This applies to drawing up executive protocols, monitoring compliance with legislation regarding filling out certificates, and conflict of interests, etc.

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