

SPECIFIC FEATURES OF CORRUPTION PREVENTION IN UKRAINE

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I. THE CRIMINAL JUSTICE RESPONSE TO, AND THE CURRENT STATE OF, HIGH CORRUPTION IN MODERN UKRAINE

Despite that many criminal investigations against high-profile corruption were announced in Ukraine in the last few years, nevertheless almost no one was found guilty in court.

A. The Current Situation

Since 2014, Ukraine has taken crucial steps to reduce high-profile corruption. The society paid considerable attention to establishing new formal structures and procedures for exposing corruption, investigating it and prosecuting high-profile corruption. The National Agency for Prevention of Corruption, the National Anti-Corruption Bureau of Ukraine, and the Special Anti-Corruption Prosecutor's Office was created. Processes in Ukraine led to the adoption of the Law on Preventing Corruption in October 2014. The main purpose of this law is to prevent and reduce the level of corruption in different governmental bodies.

Judicial reform began in 2016 with the formation of a new Supreme Court and the reduction of four levels of courts to three. The High Anti-Corruption Court was created that year. However, the court became active only in September 2019 and has not yet had time to show its effectiveness. A lengthy process of selecting judges preceded the court's creation, and international experts were involved in this process. In addition to the judges' high professional qualities, an important aspect of the selection process involved interviewing them.

Meanwhile first and second level courts suffer from a huge deficiency in the number of available judges. This situation has potentially fatal consequences for court effectiveness, especially in huge corruption cases. More than 2,500 judges left their positions between 2014 and 2019. Meanwhile, no new judges were appointed, and consequently only about 50% of available Ukrainian judgeships are filled. Further complicating matters is that a new procedure of requalifying all Ukrainian judges was started during this period. This process for assessing judges has dragged on for several years. Unless judges pass requalification, they will not obtain a higher salary. This is having troublesome impacts because the process is extremely slow and in the meantime judges are forced to wait several years at lower salaries.

The society is not satisfied with the current situation and supports decisive action against corruption. In 2019, a new president and a new parliament were elected in Ukraine. The new government has announced a new reform to the judiciary. Major changes are planned for the highest judicial authorities. Among the proposals is one to reduce the number of judges on the Supreme Court by half. Another proposal seeks to attract international experts to the process of forming the High Qualifications Commission of Judges of Ukraine, akin to the experience in previously selecting the judges of the High Anti-Corruption Court.

B. The Challenges

1. Violation of the rule of law when enacting the law on illegal enrichment, which led to the recognition of this law as unconstitutional by Ukraine's Constitutional Court
 - All cases on illegal enrichment that were under investigation have been closed, which has led to many high-ranking officials evading responsibility.
 - The adoption of this decision caused a wide public outcry, as well as the frustration of international partners of Ukraine.

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2. Public disclosure of evidence by investigative authorities in the early stages of an investigation, in order to attract public support
 - Trial investigations have often led to the publication of evidence in the media, such as recordings of telephone calls, which may lead to a violation of the presumption of innocence and the formation of a public judgment prior to a court decision.
 - Dissemination of evidence to the public in the early stages of an investigation can also lead to negative consequences in the form of loss of evidence in court.
3. Lack of legally obtained evidence
 - In some cases, persons accused of corruption were acquitted in the courts because of the poor quality of evidence, or because evidence sought to be used had been illegally obtained.
 - Lack of evidence is one of the major issues that must be dealt with during pre-trial investigations.
4. The periods of investigation and trial may last a few years, sometimes more than five years or even more
 - The lack of judges has had a significant impact, leading to lengthy investigative periods and long delays in trials.
 - Lengthy investigative periods, and long delays in trials of corruption cases, will undoubtedly affect the quality of the investigations and evidence and, thus, the court's effective consideration of the case.
 - In this regard, the public interest is of particular importance, and it is negatively affected due to long investigations of corruption crimes. In addition, such long investigations and delays in court proceedings can lead to negative consequences for the prevention of corruption among other persons, as it can lead to an increasing belief in the impunity of these crimes.
5. The lack of judges in courts
 - As mentioned above, about 2,500 judges left their positions between 2014 and 2019, while no new judges were appointed during this period.
 - The problem of insufficient judges is especially dramatic in first- and second-level courts. Many courts in Ukraine have been closed due to the lack of judges. Other courts experience about a 50-70% judicial vacancy rate. Obviously, this situation is threatening to impose fatal problems on the judicial system.
6. Impact on the judiciary by political parties and the media in corruption cases
 - In corruption cases, courts can be subject to significant political influence in the absence of a sufficiently independent judiciary. Such an effect is not acceptable as it can easily undermine the effective and fair consideration of criminal corruption cases.
 - There have been cases when courts have been subjected to widespread political criticism by political parties in specific corruption cases.
 - Another problem is the possibility of the executive branch influencing the judiciary by reducing the level of funding for the courts, reducing guarantees of judicial independence, and creating other unfavourable conditions for the judicial system.
 - In addition, there have been cases where the courts have been susceptible to attacks by the mass media, such as when imposing a sentence that differs from societal expectations.
7. Arrest is the only available option for pre-trial detention in cases involving high corruption

- When persons are accused of corruption, the only custodial measure prescribed by law is preliminary detention. No alternative methods, such as house arrest, are available.

8. Raising awareness of anti-corruption efforts

- All citizens have to be brought into the process of fighting corruption. It is important to create among the Ukrainian citizenry a non-tolerance to corruption.
- Part of this effort involves creating and advancing an understanding that corruption is a symptom of the underlying systemic problems in Ukraine, and not their cause.

C. Achievements

1. Implementation of anti-corruption electronic declarations for all public workers at middle and higher levels

- The declarations have to be updated every year, and if a worker obtains any serious profit he must declare it within ten days. All declarations are published for society and everyone is able to check a declaration of any public worker.
- This electronic declaration system is one of the significant anti-corruption measures that Ukraine has implemented in recent years. However, within it exists a crucial tension in balancing individual independence and the public interest.

2. Implementation of kinship and integrity declarations as specific judicial anti-corruption measures in Ukraine

- New declaration requirements for judges have been launched. In addition to the new electronic declaration, judges are required to complete two additional declarations. These declarations are called the declaration of kinship and the declaration of integrity. The purpose of these declarations was to reduce the risks of corruption and conflicts of interest in the judicial system. In the declaration of kinship, a judge must indicate all relatives who hold public office at all levels, and also indicate how strong their relationship is. In the declaration of integrity, a judge must indicate all information of a professional and personal nature that may cast doubt on his integrity. Failure to provide information, or providing false information, in any of the three declarations may result in the judge's dismissal. There have been cases when judges were dismissed from office for violating the deadline for submitting an electronic declaration.
- To date, no official data are available to assess the effectiveness of the implementation of the declarations of kinship and integrity.

3. Creation of the High Anti-Corruption Court with specialized judges

- The creation of the High Anti-Corruption Court began in 2016. However, it only became active in September 2019, and therefore it has not yet been able to show its effectiveness. The selection process prioritized judges with high qualifications, and international experts were involved. In addition to the high professional qualities of the judges, an important aspect was their integrity. It is absolutely crucial, as with any judge, that specialized high-level corruption judges be selected through a transparent process based on objective criteria. One of the main purposes of this court is to avoid any political influence and to assure that the judges are adequately protected from excessive external influences, including any possible encroachment on their independence and security.

4. Reformation of Ukraine's Supreme Court in 2016

- Judicial reform in 2016 resulted in the formation of a new Supreme Court and the reduction of the four levels of courts to three. The main criteria for candidates to the Supreme Court was integrity.
- There was a negative public reaction to a few candidates, who were selected for the Supreme Court,

because society disagrees with their selection given that they were involved in corrupt activity in the past.

5. Reformation of Ukraine's Supreme Court in 2019.

- The new parliament of Ukraine has passed a law that will reduce the number of Supreme Court judgeships by 50%.

D. Possible Solutions

1. Continue improving the technical skills of anti-corruption organizations and investigative media and judges

- Institutions that have been created to implement the anti-corruption strategy must constantly improve their professional qualities and technical capabilities. Anti-corruption efforts, especially aimed at high level corruption, must be continually improved and modified. There have been frequent cases where certain types of corruption were identified and anti-corruption mechanisms were developed, but the corrupt activity evolved in parallel, undermining the anti-corruption methods. Accordingly, continuous improvement among people involved in anti-corruption activities is indispensable. For example, judges who hear corruption cases must constantly improve their professional skills.

2. Increasing state financial support for judges

- Today in Ukraine, judges are not adequately protected financially. Even if judges of higher courts receive an adequate salary, judges in first- and second-level courts receive insufficient salaries. The financial independence of judges, a matter within state control, can have a positive effect in combating corruption.

3. Increasing technical knowledge and the use of electronic evidence

- The use of electronic evidence during the investigation of corruption crimes should be significantly increased in Ukraine. Also, the collection of these documents should be carried out with strict observance of laws. Procedural violations in collecting evidence have led to negative consequences in too many cases. In addition, the legislative framework for collecting evidence during investigations should be improved, which should have significant positive impacts during investigative activity.
- Another factor in the effectiveness of this type of evidence is having a sufficient technical base and modern equipment. Given the significant financial resources that participants in corruption may possess, the technical ability of anti-corruption bodies should not be inferior.

4. Continue efforts to improve the integrity, independence and professionalism of the judiciary

- In recent years, the integrity of judges has been one of the main topics for discussion within the judicial environment and among civil society. This criterion must continue to be given special attention during the selection of new judges, as well as during the certification of existing judges.

5. Adoption of new laws aimed at preventing corruption in accordance with the Constitution and international standards

- Violations of procedural rules when parliament passed anti-corruption laws led to the Constitutional Court subsequently holding them unconstitutional. Consequently, many cases against corrupt officials were closed without regard to their substantive merits. To prevent such a situation in the future, parliament must strictly follow the procedural order when adopting subsequent laws.
- In this regard, it is also extremely important to study and implement internationally successful anti-corruption efforts. Successful international practices should be implemented in national legislation. International cooperation should be an important element in the formation of effective national legislation.

6. Increase support for civil society initiatives aimed at reducing the space for corruption in different areas
 - Citizens condemn high-level corruption but regard petty corruption as a justifiable evil. This situation must be changed. People have to accept their responsibilities for limiting the scope of corruption.
 - Many Ukrainians have a dual attitude toward corruption. At one level, they strongly oppose corruption. At the same time, they tend to regard nepotism and other “minor” corrupt practices as acceptable.
 - Efforts should be made to create a new generation intolerant to corruption.
7. Ukraine should quickly begin implementing and focusing awareness on anti-corruption efforts in sectors most vulnerable to corruption, allocate sufficient resources, and measure results and plan the next cycle of anti-corruption reforms accordingly.

II. CONCLUSION

Ukraine needs to systematically pursue anti-corruption reform. Despite the introduction of new measures to prevent corruption, such as the electronic declarations, many changes need to be made. Corruption in Ukraine has organizational elements that are commonly found in countries with limited access to justice. Also influential are specific national historical features that make it difficult to solve the corruption problem without cultural changes on the part of citizens. Ukraine should focus more on preventing corruption than on punishing corrupt officials. It is extremely important for Ukraine to create a unified and systematic approach to preventing and reducing judicial corruption. Each new government in Ukraine is pursuing judicial reform. One reform was carried out in 2010, the next in 2016, and now a new reform is scheduled in 2019. A single vector should be created to improve the judicial system. Moreover, an effective judicial system is one of the most important elements in preventing and combating corruption both within the country as well as through international cooperation in this sphere. Over the past years, Ukraine has taken extremely important steps towards the prevention of corruption, such as creating new institutions, attracting international experts, and introducing new anti-corruption measures. In this regard, the issue of maintaining a balance between anti-corruption mechanisms and respect for individual and human rights remains an important issue. Unfortunately, there are still cases when the interests of citizens have been violated, which obviously leads to negative consequences such as exclusion of evidence.

The complex issue of respect for individual and human rights must be absolutely observed on the path to implementing the corruption prevention strategy in Ukraine. A special place in Ukraine’s anti-corruption strategy is occupied by the High Anti-Corruption Court, which began its work in September. Great hopes for this institution exist both within the country and by partner countries that supported the creation of this court. In addition, international organizations took part in the creation of the court, which is designed to serve as a main anti-corruption body. Finally, the judicial system in Ukraine should be provided with a sufficient level of independence and funding, as this is an important element in the implementation of an anti-corruption strategy.