

## THE INFLUENCE OF GRECO AND SIGMA ON THE LEGAL REGULATION OF ANTI-CORRUPTION EXPERTISE IN PUBLIC ADMINISTRATION IN UKRAINE



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**Abstract.** Corruption even today during the war continues to exist and remains one of the biggest negative social phenomena which restrains the development of Ukrainian society and the state. This dangerous phenomenon is observed at almost every step because it permeates all links of power. With a view to eradicating and preventing corruption violations, eliminating corruption factors and preventing new violations the article deals with the experience of some world leaders in the fight against corruption, on the basis of which a number of regulations have been developed legal acts that have become a road map in the fight against corruption in Ukraine. These include first and foremost an anti-corruption strategy based on the expert recommendations of the Group of States against Corruption (GRECO) and the Support for Improvement in Governance and Management (SIGMA).

**Keywords:** *corruption, legislation, anti-corruption strategy, European Union, expertise, GRECO recommendations, SIGMA recommendations.*

### Introduction

The need to study measures aimed at preventing and combating corruption in Ukraine identifies the facts that affect corruption, limiting it and eradicating it as a negative phenomenon. The article is aimed at characterizing compliance with the recommendations provided by the countries of the Group of States against Corruption (GRECO) and the Support for Improvement in Governance and Management (SIGMA) for the formation of the anti-corruption strategy of Ukraine.

**Analysis of research and publications.** Many researches were devoted to the comprehensive study of the legal framework for the prevention of corruption, including by such researchers as: A. Goloschapov, Y. Demianchuk, I. Kushnarov, G. Lukianova, O. Makarenkov, O. Mynkovych, K. Rostovska, etc. However, many issues still need scientific research in particular legal regulation of anti-corruption expertise in public administration.

**Research results.** An effective fight against corruption in Ukraine is possible only if foreign experience in combating corruption is studied and applied taking into account both political and legal mechanisms for overcoming corruption. Analysing the experience of world leaders in the fight against corruption in different countries of the world, the countries of the Group of States against Corruption (GRECO) Finland and Germany, as well as Israel and Japan which are not participants in the said program deserve special attention, but show good results in this direction.

Thus, in Israel the anti-corruption strategy is provided by a system of certain «duplication of monitoring» on possible corrupt actions which is intended to make it impossible to lobby for corrupt interests in the supervisory body. In Germany the basis of the fight against corruption is monitoring the finances, both received and used. Such monitoring allows for preventive and operational control of possible acts of corruption. The Japanese experience in the fight against corruption shows that in this country the norms of anti-corruption legislation are scattered in many

national laws that pay more attention to ethical conduct of employees (Chepeliuk, 2011). As a result, human resources policies and highly developed ethical standards for the conduct of public officials are the main factors in combating corruption in that country.

In Europe, an effective fight against corruption relies on a coherent legal framework and strong public support. A striking example is Finland which according to the international organization «Transparency International» is one of the least corrupt countries among 133 studied countries.

For the timely fragmented identification and elimination of corruption factors in our country the Anti-corruption Strategy was developed and implemented. It was the result of the analysis of a number of reviews of anti-corruption legislation conducted by the Group of States against Corruption (GRECO) and the Support for Improvement in Governance and Management (SIGMA). The predecessor of this document was the National Anti-Corruption Strategy for 2011-2015 approved by the 1001 Decree of the President of Ukraine of October 21, 2011 which as already known could not become an effective instrument of anti-corruption policy. The following anti-corruption strategies were also more formal than real. The Law of Ukraine «On the Fundamentals of the State Anti-Corruption Policy for 2020-2024» is currently in the process of adoption by the Parliament. Given that the adoption phase of the Act has been under way for more than five years. It is widely believed that the anti-corruption strategy 2020-2024 will not be adopted.

In June 2022 the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On the basics of the state anti-corruption policy for 2021-2025». Among other things the Law of Ukraine «On the Foundations of the State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017» has been declared void by this Law. Comparing the time intervals related to these Laws we can come to an interesting conclusion: from 2017 to 2021 (actually 2022 year of adoption of the Law) Ukraine did not have an approved anti-corruption strategy at all.

On 6 December 2019 during the absence of an approved anti-corruption strategy in Ukraine at the 84th plenary meeting in Strasbourg GRECO conducted an analysis of

the measures taken by Ukraine to implement the recommendations made earlier, by actually conducting an anti-corruption examination of the public plane of the fight against corruption.

The document separately assessed the implementation of each recommendation contained in the evaluation report and analysed the overall implementation rate for Ukraine.

In line with the GRECO recommendations, Ukraine has fully implemented only 5 of the 31 recommendations. This level of implementation cannot be considered satisfactory.

Several recommendations deserve particular attention. For example in its first recommendation GRECO recommended that Ukraine: (and) develop and implement regulatory measures, first of all, to significantly strengthen the independence and impartiality of NACP's decision-making structures; and (and) formulate detailed, clear and objective rules for NACP's work, in particular regarding the scope of the investigations in order to ensure, in practice full transparency and at the same time accountability of the work of NACP. However, some questions regarding the accountability and transparency of the NACP remain open» (Corruption prevention in respect of members of parliament, judges and prosecutors, 2019, p. 2).

The actual failure to implement the above recommendation calls into question the functioning of NACP as an independent and impartial entity which is unacceptable in the process of building civil society and is a deterrent factor in the process of Ukraine's European integration.

GRECO further recommended: take the necessary regulatory, institutional and, at the same time, operational measures to ensure proper control over previously submitted asset declaration requirements. Such measures include inter alia but not limited to the adoption of secondary legislation enabling NACP to: carry out inspections; the adoption of an impartial procedure for lifestyle monitoring; immediate introduction of automatic checks of information and ensuring interaction of databases with observance of requirements of protection of personal data; radical introduction of concrete ways of appeal

of imposed sanctions». The Report notes that «GRECO regrets that the objective «procedure of lifestyle monitoring» is not accepted as required by this recommendation» (5, p. 4).

In an effort to fill this gap NACP announced in July 2020 that a system of monitoring the behavior of declarants was launched and even later reported results. But the system didn't last long. Already in October 2020 the Constitutional Court adopted a decision which among other things recognized the non-constitutional article on monitoring the way of declarants' life. After that NACP was unable to develop a constitutional procedure for monitoring the behavior of declarants which once again called into question the effectiveness of this structure.

That is the Government of Ukraine in the political and legal sphere formally addressed the implementation of the recommendation ignoring the most important part of it - monitoring the way of life of declarants as a guard against the phenomenon of corruption as a consequence breaking the logical chain of anti-corruption activities.

Another GRECO recommendation draws attention to the formalism allowed by Ukraine. GRECO recommends: to guarantee and ensure the thorough elaboration of all draft laws as a whole with due regard to anti-corruption level, transparency and consultation in particular by maintaining the openness and inclusiveness of the work of the committees of the Verkhovna Rada of Ukraine both de jure and de facto, including through public consultations, expert hearings with realistic deadlines for the adoption of detailed rules and guarantees for the conduct of abridged legislative procedure in Parliament; that this procedure is used only in exceptional and duly justified cases» (Corruption prevention in respect of members of parliament, judges and prosecutors, 2019, p. 9).

Ukraine explained all the recommendations of GRECO as an information function of the draft law, namely: publication of the draft law in the printed media for the national discussion; its finalization by the Main Committee taking into account the implications of the discussion and re-reading. Ukrainian authorities also refer to transparency in the promulgation of the law that is the act of authorizing the law adopted

by the Parliament of the head of state by signing and promulgation (proclamation).

GRECO takes note of the information provided and recalled that the reason for this recommendation was the irregular practice of various parliamentary committees in terms of transparency and consultation on draft laws and frequent usage of fast procedure during the laws' passing» (Corruption prevention in respect of members of parliament, judges and prosecutors, 2019, p. 9).

Another formal response to the GRECO recommendation calls into question the key reforms introduced in the country. With this simplified procedure, the Verkhovna Rada has considered a large number of draft laws, including the draft law 1008 on the reform of judicial self-government and the draft law 1032 on the reform of the Prosecutor's Office. These draft laws have gone through procedures without sufficient public discussion, proper anti-corruption expertise, full and comprehensive involvement of stakeholders.

The following GRECO recommendation recommends: to analyze the advisability of reducing the number of bodies involved in the appointment of judges; to define more clearly the tasks and powers of the Public Integrity Council, to ensure that it is composed of different representatives of society, and strengthen the rules on conflicts of interest, inter alia, by introducing an effective control mechanism» (Corruption prevention in respect of members of parliament, judges and prosecutors, 2019, p. 18). In compliance with this recommendation the Law of Ukraine «On the Reform of Judicial Self-Government» was adopted. It reflected all the prescriptions of the GRECO recommendation.

The Public Integrity Council (PIC) has developed a list of indicators to assess the suitability of judges or candidates for judicial office in particular on the relevant criteria of judicial ethics and virtue. In the course of the work of PIC, there is also a need to regularly update and supplement the list of indicators already mentioned. The last update was on December 16, 2020. This list of indicators is also based on the provisions of international instruments, namely: the Bangalore Principles of Judicial Conduct; the conclusions of the Venice Commission; the Code of Judicial

Ethics; and the guidelines of the Public Council of International Experts.

With regard to the first part of the recommendation, GRECO takes into account the adoption of the Law «On the Reform of Judicial Self-Government» which brings together the High Council of Justice (HCJ) and the High Judicial Qualifications Commission (HJQC) which is positive. However, GRECO remains still too cautious, relatively recently adopted reform which already involves an overall restructuring of the judicial system, the monitoring evaluation of which is already set out in the Assessment Report» (Corruption prevention in respect of members of parliament, judges and prosecutors, 2019, p. 18).

Such cautious assessments by GRECO relate inter alia to the fact that PIC as an institution is not yet functioning as required by law. With the outbreak of war there is no quorum in the PIC making it impossible to take any decisions. Judges cannot be dismissed or appointed. The judiciary is blocked effectively.

In particular the audit of Ukraine's compliance with the GRECO recommendations found a satisfactory result (5 recommendations out of 31 implemented) which is not sufficient to completely minimize or contain corruption phenomena. The main reason for the lack of implementation of a large number of recommendations is first of all the gaps in the existing legislation and the inaction of authorized bodies.

GRECO taking into account the significant reforms currently being implemented by the Government of Ukraine and the fact that the state bodies will continue their efforts to implement the recommendations. We have concluded that the current low level of compliance is not «globally unaccepted» within the meaning of GRECO Regulation 31, paragraph 8.3.

In the next research set out in the report – the assessment adopted on November 29, 2021 at the 89th plenary meeting in Strasbourg GRECO conducted an analysis of the measures taken by Ukraine for the period 2019 – 2021 to follow up on the implementation of previous anti-corruption recommendations in Ukraine. The conclusion is set out in the report unambiguous GRECO: «notes that the current level of compliance

with the recommendations is currently «globally unsatisfactory» (Prevention of corruption among people's deputies, judges and prosecutors, 2021, p. 28).

In order to conduct an in-depth examination of anti-corruption activities in public administration in Ukraine and the full implementation of GRECO recommendations the Government of Ukraine turned to the SIGMA program. The program assists Central and Eastern European countries in modernizing public administration systems including in the fight against corruption. SIGMA plays a key role in preparing candidate countries for EU membership.

As noted in the SIGMA report its specialists carried out a large-scale examination of the implementation of public administration reform in Ukraine and highly appreciated this process. Ukraine has in recent years clearly demonstrated the commitment to modernize public administration and to establish closer ties with the EU. Despite threats to territorial integrity and a high level of corruption Ukraine was continuing its efforts to reform, placing public administration reform on its priority agenda. This process has received considerable support from the EU. The results of this assessment are intended to assist the Government of Ukraine in planning and implementing further reforms in key areas [Corruption prevention in respect of members of parliament, judges and prosecutors, 2019]. Accordingly SIGMA points out that public administration reform is an important key to combating corruption and emphasizes the need to strengthen the role of civil society institutions in such reform.

As former Minister Alexander Sayenko highlighted: Public Administration Reform is the priority of the Government and the goals set in the Strategy of Public Administration Reform until 2020 fully meet the general European principles and criteria of good governance of SIGMA. In the SIGMA report our European partners point to significant progress in public administration reform, which means that our efforts are not in vain and we have an objective assessment of our own actions to move forward even more effectively. At each stage the results of work, key challenges and next steps should be clearly understood. This is the only way to achieve systemic and irreversible changes»

(Corruption prevention in respect of members of parliament, judges and prosecutors, 2019).

Taking into account the recommendations of GRECO and SIGMA the result of the norm-setting was the Anti-corruption Strategy for 2021-2025. It's a new strategy unlike the

previous anti-corruption strategy for 2014-2017. The aim is to achieve significant progress in the prevention and combating corruption as well as to ensure the coherence of sustainable systemic anti-corruption activities of all State and local authorities.

## Conclusions

Corruption is a large-scale problem for Ukraine affecting the entire mechanism of the State. Emulating and adapting the experience of other States focused on the recommendations of international bodies and organizations can help eradicate this phenomenon. Presented expert assessments of the public sphere of the fight against corruption by the Group of States against Corruption (GRECO) and the Support for Improvement in Governance and Management (SIGMA) is an important element of the anti-corruption strategy in Ukraine. Any anti-corruption strategy is always an important structural component of the overall anti-corruption policy of the State as a whole. In the absence of strategic conceptual ideas and goals, principles and priorities of long-term national programs based on deep scientific basis. It is impossible to build an anti-corruption policy and only its appearance is created. This we could observe in Ukraine in past years.

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