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**Anti-Corruption Network  
for Eastern Europe and Central Asia**

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# **The Istanbul Anti-Corruption Action Plan**

## **Second Round of Monitoring**

### **Ukraine**

Report on key anti-corruption measures and investigation, prosecution and adjudication of corruption cases

Report presented by Ukraine at the 8<sup>th</sup> Monitoring Meeting on 29-31 March 2010.

## 1) Main achievements in the field of anticorruption efforts

Under the Ukrainian legislation corruption is one of the main threats to the national security. Especially this can be understood under the influence of the following factors: global financial crisis, huge budget deficit, stagnation of economy and others.

From the moment of the latest report on actions taken for implementation of the recommendations, which has been presented by Ukraine on 27 September 2007 at the Seventh Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, there have been certain changes in the Ukrainian legislation and institutions.

### Legislation

During the last two years Ukraine has organized an active law-making process involving scientists, international experts and representatives of public organizations.

It is important to note the role of the international projects of technical assistance for Ukraine: Project on “Strengthening Specialized Services for Combating Corruption in Ukraine” of the Organization for Economic Co-operation and Development, Project of the European Union and the Council of Europe “Support to Good Governance: Project Against Corruption in Ukraine (UPAC)”, Ukrainian Parliamentary Development Project II, Rule of Law Initiative of the American Bar Association, Threshold Program of Millennium Challenge Corporation and support of the Regional Mission of the United States Agency for International Development.

The above projects have ensured development of draft laws by experts, international expertise, parliamentary hearings, which have allowed not only to select draft laws but also to popularize them both among experts and public.

For the purposes of execution of the international obligations undertaken by Ukraine in that area, on 11 June 2009 Verkhovna Rada of Ukraine has adopted the set of anticorruption laws, namely “On the Fundamentals of Preventing and counteracting Corruption”, “On Liability of Legal Entities for Corruption-Related Offences” and “On Amending Certain Legal Acts of Ukraine Concerning Liability for Corruption-Related Offences”, which have been supposed to become effective as of 1 January 2010.

#### Brief description:

**The Law on the Fundamentals of Preventing and counteracting Corruption** broadens the list of persons subject to liability as well as subjects of preventing and counteracting corruption; sets limitations aimed at prevention of corruption – prohibition to combine civil service with entrepreneurial and other activities or with participation in various supervisory boards; to refuse to provide information; to use charitable assistance. There are also limitations on receipt of gifts, joint work of close relatives; work in supervisory boards and other organizations during two years after resignation or dismissal. There are organized checks of persons who intend to occupy public positions and also there exist limitations for persons who have been held liable for corruption-related offences. There are mechanisms of financial control over incomes and expenses of persons who are in the public service and other persons, codes of ethical behaviour, settlement of conflict of interests, requirements for transparency of private information on the persons subject to liability. The powers of citizens and their associations on preventing and counteracting corruption have been substantially expanded. There have been established sanctions, in particular related to confiscation of assets for the purpose of compensation of damages caused by corruption-related offences.

**The Law “On Liability of Legal Entities for Corruption-Related Offences”** provides for liability of legal entities for corruption and types of sanctions, which include a fine, prohibition to be engaged in certain types of activities, confiscation of assets, liquidation of the legal entity. The Law contains procedural provisions and defines competence of the law enforcement bodies with respect to this category of cases.

**The Law “On Amending Certain Legal Acts of Ukraine Concerning Liability for Corruption-**

**Related Offences”** introduced changes into the Criminal Code and the Code on Administrative Offences of Ukraine. The Law clearly delineates criminal and administrative liability for corruption. The Law set criminal liability for certain corruption-related crimes, which have never existed before. The criminal liability is envisaged for trading in influence, illicit enrichment, and commercial bribery, while the administrative liability is stipulated for obtaining undue benefits, illegal assistance, violation of the limitation on combining activities, violation of the financial control requirements etc.

These Laws have been highly evaluated by Drago Kos, the President of the Council of Europe Group of States against Corruption (GRECO). In his opinion, the Laws contain many good mechanisms.

Adoption of the said anticorruption laws has become a regular stage of implementation of the state policy aimed at preventing and counteracting corruption. These Laws materially change the legal principles of fight against corruption, identify the grounds of and the procedure for prosecution of legal entities for corruption-related offences, and introduce changes to the Criminal Code, Criminal Procedural Code and the Code on Administrative Offences of Ukraine.

For the purpose of creation of effective mechanisms of implementation of these laws in the end of 2009 for the first time in the history of independent Ukraine there has been held an open meeting of the Government devoted to issue of counteracting corruption. Based on the result of that meeting there have been adopted 13 legal acts relating to the procedure for provision of administrative services, public participation in the process of implementation of the anticorruption policy, transfer of gifts received in discharge of official functions, performance of special examinations etc.

Nevertheless, the experts, who are directly dealing with the issues of fight against corruption, have given substantial comments regarding practical implementation of these acts focusing on material deficiencies of the new legislation.

The Plenum of the Supreme Court of Ukraine has applied to the Constitutional Court of Ukraine with representations concerning compliance (constitutionality) of certain provisions of the Laws of Ukraine of 11 June 2009 and 5 June 2009 “On Amending Certain Legal Acts of Ukraine Regarding Introduction of Automated System of Document Control and Workflow in Administrative Courts” with the Constitution of Ukraine.

The Plenum of the Supreme Court of Ukraine has stressed that “certain provisions of the said laws are disputable from the standpoint of their compliance with the Constitution of Ukraine. Since operation of the adopted laws applies not only to the court system but also to the whole Ukrainian society, compliance of certain provision of such laws with the Constitution of Ukraine is extremely important”.

At the Parliament’s initiative in the end of 2009 enactment of these laws has been shifted further from 1 January to 1 April 2010. Currently, due to necessity of introducing other changes and amendments, the draft law on repeated extension of the term until 1 January 2010 is waiting for the signature of the President of Ukraine.

On 19 March 2010 President of Ukraine Victor Yanukovich has noted that this term can be substantially shortened. They consider vetoing this law.

Currently the Law of Ukraine “On Fight against Corruption” of 1999 and the Criminal Code of 2001 are effective in Ukraine.

The above-mentioned laws comprise the first anticorruption package. Currently the relevant specialized committees of the Parliament are considering the second package of anticorruption laws in this field:

- *On the Rules of Professional Behavior at the Public Service,*
- *On the Financial Control Measures Applicable to the Public Service;*
- *On Conflict of Interest in the Activities of Public Servants,*
- *On the National Anticorruption Investigation Bureau of Ukraine,*
- *On Amending the Criminal and Criminal Procedural Codes of Ukraine on Improvement of the Confiscatory Procedures,*
- *On Access to Public Information.*

## **Institutional changes**

In April 2009 in light of the first recommendation of GRECO the Cabinet of Ministers of Ukraine has introduced a position of the Governmental Commissioner on Anticorruption Policy. There has also been established the relevant secretariat to support its work, which consists of four sectors and 14 people.

According to the Regulations the Governmental Commissioner is the special authorized person who is responsible for development of the state anticorruption policy, implementation of the anticorruption strategy, coordination of the central executive authorities in this field. The Governmental Commissioner is also present at the meetings of the Cabinet of Ministers without a voting right but he is able to express his opinions.

The Governmental Commissioner is subordinated to the Cabinet of Ministers of Ukraine and is appointed to the position as advised by the Prime-Minister of Ukraine.

In September 2009 for the purposes of ensuring transparency of activities of the Government there has been established the Social Council at the Governmental Commissioner on Anticorruption Policy. Currently it comprises of representatives of 27 all-Ukrainian public organizations.

The Regulations on this body have been reviewed by Drago Kos, the President of GRECO, who has given positive conclusion.

As of November 2009, in light of implementation of the new anticorruption legislation, all draft legal acts (laws, Presidential decrees, resolutions of the Cabinet of Ministers, as well as acts of the central executive authorities) are subject to review as regard their anticorruption compliance (anticorruption expertise). The main task of such expertise is to identify corruption factors, which facilitate or may facilitate corruption-related offences and to provide recommendations on their elimination.

Another novelty in the field of prevention of corruption is establishment of units on preventing and counteracting corruption in all central executive authorities, including regional councils. These steps have been taken on the basis of the U.S. experience (*similar to internal security units*).

These units are relatively independent in their activities as they are directly subordinated to the head of the agency, the chiefs of the units are appointed by the order of the head of the central executive agency upon agreeing the candidate with the Governmental Commissioner, the structure and plans of work of the unit are also agreed with the latter.

The main functions of the unit include:

- *explanatory activities;*
- *performance of investigations and special examinations;*
- *control over implementation of the anticorruption legislation;*
- *identification and prevention of conflicts of interest.*

In April 2008 according to the Presidential Decree there has been established the Interagency Working Group on Counteracting Corruption for the purposes of coordination of activities of the law enforcement bodies; this Working Group is co-chaired by the General Prosecutor and the Head of the Security Council of Ukraine. The Working Group comprises of heads of the central executive authorities, Ukrainian coordinators in GRECO and the Istanbul Anti-Corruption Action Plan, representatives of major international projects of technical assistance. During the last two years there have been conducted regular coordination meetings with participation of the representatives of the international organizations and projects, public organizations.

The effect from the Working Group's activities has been insignificant, taking into account the status and recommendation nature of its decisions. The Working Group is unable to influence on the agencies' policy and on their heads. Political top officials have not been controlling the activities of the Working Group, have not been setting particular tasks and have not been asking for particular results.

As is known, in the beginning of 2010 the President of Ukraine has been changed and the top state officials have unilaterally declared their intentions to exterminate corruption on the whole as well as its consequences.

Decree of the newly elected President of Ukraine Victor Yanukovich on Establishment of the National Anticorruption Committee, which would have the status of consultative and advisory body, has been the first step in this area.

At present there is active ongoing work on development of the relevant Regulations and identification of the manning of the Committee.

### **International technical assistance in the field of implementation of the anticorruption policy**

As is known, national efforts in this field are the main ones, however, they can be ineffective due to non-use of the progressive experience of other states. Fortunately, the international organizations share such experience with Ukraine.

In November 2009 the international non-governmental organization Transparency International has presented the Corruption Perception Index 2009, in accordance with which Ukraine has got the score of 2,2 out of 10 and has taken 146<sup>th</sup> place.

We, respecting authority of this organization, accept this result; however, we would like to note the following arguments in that respect.

Firstly, corruption perception is not the same as the level or experience of corruption. Also it is necessary to take into account that that corruption perception is affected by the following factors:

- *global financial and economic crisis;*
- *active, open information policy of the Government on carrying out corruption investigations with respect to officials of medium and top levels.*

Also according to the results of the research carried out in 2007 – 2009 within the framework of the Threshold Program of Millennium Challenge Corporation, there is a tendency towards certain decrease of the corruption level almost in all areas of life.

During the last two years the international technical assistance has been aimed at research, informational and explanatory measure both in the territory of Ukraine and outside of it.

It should be noted that in 2008-2009 due to support of the international organizations there has been held unprecedented number of independent researches of corruption in Ukraine in various areas based on interviews, including the following notable ones: "Political corruption in Ukraine – subjects, manifestations, problems of counteraction", "Influence of political corruption on political process", "Corruption risks in basic proceedings: criminal proceedings (pre-trial and trial stages), civil proceedings, business proceedings, administrative proceedings", "Corruption risks of provision of administrative services and control and supervisory activities in Ukraine", "Corruption and regulation of entrepreneurial activities in Ukraine – customs procedures and transportation of goods", "Nationwide research of corruption while entering into higher educational establishments", "Research of corruption in the judicial system of Ukraine: courts of law and courts of appeal", "Corruption and regulation of entrepreneurial activities in Ukraine: obtaining of permissive documents on transactions with land and construction".

These and other researches form the fundamental basis for development of new approaches and mechanisms, improvement of legislation and procedures, practical measure in the field of preventing and counteracting corruption.

For the purpose of increasing effectiveness of use of international assistance of the international organizations, a relevant analysis has been performed in 2009 at the initiative of the Governmental Commissioner, upon the results of which it has been noted that there is basically no coordination in this field both on the side of the international organizations and the state agencies.

For the purpose of integration and coordination of efforts of various organizations and at the initiative of the Governmental Commissioner, it has been proposed to the international sponsoring organizations to establish the Coordination Council of the International Sponsoring Organizations, which are dealing with the issues of counteracting corruption.

13 international organizations have agreed to become members of that Coordination Council and in the beginning of February 2010 the first organization meeting has taken place.

It is planned that in the nearest future the Governmental Commissioner will harmonize efforts of the international organizations in that field in accordance with the priorities of implementation of the state anticorruption policy.

As of the end of March 2010 there are no long-term projects in Ukraine, which would have envisaged any type of assistance in the field of fight against corruption.

It is expected that in 2010 there would be a new Project UPAC-II (*Joint Project of the European Union and the Council of Europe*) as well as cooperation between Ukraine, European Union and Poland within the framework of Project on Building Integrity.

## **2) Investigation, prosecution and adjudication of corruption cases**

Fight against corruption undertaken by the law enforcement bodies remains inefficient taking into account archaism of the current Law on Fight against Corruption of 1995, as it is acknowledged by the Ukrainian leadership and the public.

Discrepancies of the above-mentioned legal acts of course affected the tendency towards reduction of the number of the exposed corruption-related offences. In 2009, 5389 protocols on corruption have been sent to courts, which is less by 13,4% compared to 2008 (6224). Accordingly, the number of the public servants, who have been made accountable, has amounted to 713 (*compared to 2419 in 2008*), from which the number of servants of the third and fourth categories has been decreased by 91% (*88 against 1072 in 2008*), and the number of public servants of the fifth-seventh categories has been decreased by 54% (*622 against 1344*).

Prosecution of corruption among high-ranking officials remains at the low level. In 2009 none of the people's deputies, deputies of Crimea and regional councils has been made accountable for corruption-related offences. The number of servants from courts and prosecutor's offices, against whom administrative actions have been brought, is also very low. Administrative liability has been imposed on three public servants of the first and second categories, three representatives of the judicial system, 29 servants of regional administrations. At the same time the number of servants from the local self-government bodies has been increased substantially up to 32430 (*1785 in 2008*).

According to the statistics from the court practice of 2008 the corrupt officials are usually sanctioned with more soft punishments then envisaged by articles of the Criminal Code (in 85% of cases), and also they are released from additional punishments – deprivation of right to occupy certain positions (*in 53 instances out of 100*). Confiscation has been applied to one out of eight convicts. Only 2% of convicts have been relieved of their military or special ranks, titles and grades.

There have been no criminal cases in Ukraine, which would have met the criteria adopted in 2008 at the Anti-Corruption Network meeting in Tbilisi. Anticorruption rhetoric has been used and is still used for the purposes of political fight. None of the resonant accusations in abuses against high-ranking officials has been proven in a court and all relevant criminal cases have been closed.

The only high-level official, who has been prosecuted by the U.S. Government for corruption-related crimes, is the former Prime Minister P.Lazarenko.