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**FIGHT AGAINST CORRUPTION IN UKRAINE  
AS THE PRECONDITION FOR INTRODUCTION  
OF VISA-FREE REGIME WITH THE EUROPEAN UNION**

**БОРОТЬБА З КОРУПЦІЄЮ В УКРАЇНІ  
ЯК ПЕРЕДУМОВА ЗАПРОВАДЖЕННЯ  
БЕЗВІЗОВОГО РЕЖИМУ З ЄВРОПЕЙСЬКИМ СОЮЗОМ**

**БОРЬБА С КОРРУПЦИЕЙ В УКРАИНЕ КАК ПРЕДПОСЫЛКА  
ВВЕДЕНИЯ БЕЗВИЗОВОГО РЕЖИМА С ЕВРОПЕЙСКИМ СОЮЗОМ**

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**Abstract.** *Nowadays, the only unreformed component, which remains within the legal system of Ukraine is the Ukrainian court system. The main factors that affect the activity of the courts in Ukraine are both political and economic corruption. If we compare the degree of influence on the courts, we can say that the activity of the CCU mostly suffers from political corruption while the economic corruption significantly affects the activity of courts of general jurisdiction.*

*To implement legal instruments to combat corruption in Ukraine the appropriate system of enforcement bodies has been implemented. It involves the National Anti-Corruption Bureau of Ukraine (hereinafter – NABU), Anti-corruption Prosecutor Office, the National Agency for the Corruption Prevention (hereinafter – NACP) and the Agency for Investigation / Return Assets.*

*The article defines that unresolved problem is the launch by the National Agency for the Prevention of Corruption of the electronic declaration system to be held on 15 August 2016. The launch of e-declaration is an essential is the final commitment of Ukraine to obtain the free visa regime. The final decision on the implementation by Ukraine of the criteria of the Action Plan on Visa Liberalization was approved by the EU Commission on 18 December 2015. The document stipulates that Ukraine fulfilled all the criteria set of four blocks of APVL. Nowadays Ukraine is expecting to get the visa regime from the EU.*

*In general, for effective implementation of anti-corruption policy in Ukraine should be introduced a systematic approach. The phenomenon of corruption is systemic, and accordingly it*

*must be overcome only by joint efforts. It is necessary to ensure the independence of anti-corruption bodies and prevent their political dependence on the governing bodies; establish effective work of the National Agency for Corruption Prevention, the National Anti-Corruption Bureau, Anti-corruption Prosecutor's Office and the Agency for Investigation/return assets must; inform the public on their performance; and to provide penalties for officials who committed corruption offenses.*

**Key words:** *legal system, anti-corruption policy, anti-corruption agencies, visa-free regime, electronic declaration.*

**Анотація.** Єдиною не реформованою складовою, яка залишається в рамках правової системи України є система українських судів. Основними факторами, що негативно впливають на діяльність судів в Україні є політична та економічна корупція. Якщо порівнювати ступінь впливу на діяльність судів, то можна сказати, що діяльність КСУ найбільше потерпає від політичної корупції, в той час, коли економічна корупція істотно впливає на діяльність судів загальної юрисдикції.

Для реалізації правових актів у сфері боротьби з корупцією в Україні створено відповідну систему органів. Її складають: Національне антикорупційне бюро України (далі – НАБУ), Спеціалізована антикорупційна прокуратура, Національне агентство з питань запобігання корупції (далі – НАПЗК) та Агентство з розшуку/повернення активів.

У статті визначено, що серед невирішених проблем залишається питання запуску Національним агентством із запобігання корупції системи електронного декларування, що відбувся 15 серпня 2016. Запуск системи електронного декларування є останнім зобов'язанням України щодо запровадження Європейським Союзом безвізового режиму для нашої держави. Остаточне рішення щодо виконання Україною всіх критеріїв Плану дій з візової лібералізації було ухвалене Комісією ЄС 18 грудня 2015 р. У документі зазначається, що Україна виконала всі критерії, встановлені з чотирьох блоків ПДВЛ. Відповідно на сьогодні очікується надання Євросоюзом безвізового режиму для України.

Загалом для ефективної реалізації антикорупційної політики в Україні необхідно запровадити системний підхід. Адже корупцію неможливо знищити і повністю викоринити в якомусь конкретному публічному органі або за допомогою певних окремих установ. Явище корупції є системним, відповідно і долати її потрібно лише спільними зусиллями. Для цього необхідно забезпечити принцип незалежності роботи антикорупційних органів та унеможливити їх політичну залежність від правлячої влади; налагодити ефективну роботу Національного агентства з питань запобігання корупції, Національного антикорупційного бюро, Спеціалізованої антикорупційної прокуратури та Агентства з розшуку/повернення активів з обов'язковим інформуванням громадськості по результати їх діяльності; забезпечити покарання для посадовців, що вчинили корупційні злочини, з неможливістю подальшого зайняття посади державного службовця тощо.

**Ключові слова:** *правова система, антикорупційна політика, антикорупційні органи, безвізовий режим, електронне декларування.*

**Аннотация.** Единственной не реформированной составляющей, которая остается в рамках правовой системы Украины является система украинских судов. Основными факторами, что негативно влияют на деятельность судов в Украине, является политическая и экономическая коррупция. Если сравнивать степень влияния на деятельность судов, то можно сказать, что деятельность КСУ больше всего страдает от политической коррупции, в то время, когда экономическая коррупция существенно влияет на деятельность судов общей юрисдикции.

Для реализации правовых актов в сфере борьбы с коррупцией в Украине создана соответствующая система органов. Ее составляют: Национальное антикоррупционное бюро Украины (далее – НАБУ), Специализированная антикоррупционная прокуратура, Национальное агентство по предупреждению коррупции (далее – НАПЗК) и Агентство по розыску / возврату активов.

В статье определено, что среди нерешенных проблем остается вопрос запуска Национальным агентством по предупреждению коррупции системы электронного декларирования, что состоялся 15 августа 2016. Запуск системы электронного декларирования является последним обязательством Украины о введении Европейским Союзом безвизового режима для нашего государства. Окончательное решение по выполнению Украиной всех критериев Плана действий по визовой либерализации было принято Комиссией ЕС 18 декабря 2015. В документе отмечается, что Украина выполнила все критерии, установленные в четырех блоках ПДВЛ. Соответственно на сегодня ожидается предоставление Евросоюзом безвизового режима для Украины.

В целом, для эффективной реализации антикоррупционной политики в Украине необходимо ввести системный подход. Ведь коррупцию невозможно уничтожить и полностью искоренить в определенном общественном органе или с помощью определенных отдельных учреждений. Явление коррупции является системным, соответственно и преодолеть его нужно только совместными усилиями. Для этого необходимо обеспечить принцип независимости работы антикоррупционных органов и исключить их политическую зависимость от правящей власти; наладить эффективную работу Национального агентства по вопросам предотвращения коррупции, Национального антикоррупционного бюро, Специализированной антикоррупционной прокуратуры и Агентства по розыску / возврату активов с обязательным информированием общественности по результатам их деятельности; обеспечить наказание для должностных лиц, совершивших коррупционные преступления, с невозможностью дальнейшего занятия должности государственного служащего и т. д.

**Ключевые слова:** правовая система, антикоррупционная политика, антикоррупционные органы, безвизовый режим, электронное декларирование.

**Current problems.** Nowadays, the only unreformed component, which remains within the legal system of Ukraine is the Ukrainian court system. The main factors that affect the activity of the courts in Ukraine are both political and economic corruption. If we compare the degree of influence on the courts, we can say that the activity of the CCU mostly suffers from political corruption while the economic corruption significantly affects the activity of courts of general jurisdiction.

**The aim of the article** is to define the consequences of judicial reform in Ukraine and to analyze both the competence and activity of anti-corruption agencies in our state.

**Important research results.** The necessity to overcome the political and economic corruption led to judicial reform in Ukraine. Two weeks ago the amendments to the Constitution of Ukraine and the Law of Ukraine "On the Judicial System and Status of Judges" entered into force. They have become the response to the challenges of overcoming corruption in Ukraine. These changes are key provisions of the judicial reform in Ukraine. The judicial reform has introduced a set of new approaches, standard rules on the organization of the judicial system and the administration of justice in Ukraine.

In Ukraine the judicial reform has been caused by several factors. In particular, according to the conducted GFK-Ukraine, Democratic Initiatives Foundation named after Kucheriv and the

Razumkov Center of Sociological Studies, the trust and confidence within the national courts are critical – only 5-10% [Закірова]. These figures are much more lower compared with trust and confidence to the government, parliament and other public institutions. Such low level of confidence is caused by few key issues.

Firstly, the corruption that hit the judicial system is characteristic not only for judges but also for those who through the corruption has the ability to "solve" their problems in the courts, especially the oligarchs. The political dependency of judges is based on both the legal mechanisms and the system of informal practices. Many of the judges are used to this system and only see their role in serving the interests of political power, not in the protection of human rights and encouraging the principle the rule of law.

Secondly, the dissemination of negative and adverse effects in the justice system deters foreign investors and therefore prevents the economic development in Ukraine. The business environment in many cases does not trust the integrity of the delivered judicial decisions. The settlement of the commercial disputes in Ukraine is conducted by professional judges, while in many European countries these disputes are resolved by involving of the authoritative experts whom the business environment believes.

The essence of the ongoing judicial reform is determined by a number of innovations. One of them is the establishment of separate Higher Anti-corruption Court, which will be formed through open competition. He will examine the cases, untried by National Anti-Corruption Bureau. The Higher Anti-corruption Court decisions should possible be appealed only in the Supreme Court of Ukraine. Currently, this Court is not operating due to the lack of precise term to be put into effect.

However, in Ukraine to prevent and combat corruption a complex organizational and legal mechanism has been functioning. In particular, a big number of legal acts have been adopted and relevant competent authorities have been operating in this field.

Dated to October 2016 the legal basis in the combating of corruption in Ukraine include the following legal documents: Criminal Code of Ukraine 2001; Code of Ukraine on Administrative Offences, 1984; The Law of Ukraine "On Prevention of Corruption", 2014; The Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", 2014; The Law of Ukraine "On principles of state anti-corruption policy in Ukraine (Anti-corruption Strategy) for 2014-2017 years" 2014; Decrees of the President of Ukraine "On establishment of the National Anti-Corruption Bureau of Ukraine" 2015 №17 and "On the National Council for Anti-Corruption Policy" 2014 № 808; Resolution of the Cabinet of Ministers "On approval of the official investigation into the persons authorized to perform state functions or local government" 2000 № 950 "On measures to improve the training of employees of state and local government on fighting corruption» 2003 № 828 "On approving the state program on the implementation of state anti-corruption policy in Ukraine (the Anti-corruption strategy) for 2015-2017 years" 2015 №265, «On establishment of the National agency for the prevention of corruption" 2015 №118; The Code of Conduct of Workers responsible for the design and delivery of documents; Order of the Department of Civil Service of Ukraine 2010. № 214 "On Approval of the General Rules of conduct for public officials" and others.

In particular, the Code of Administrative Offences contains a Chapter 13-A "Administrative offenses related to corruption" (Art. 172-4 Violation of restrictions on combining with other activities; Art. 172-5 Violation of statutory restrictions on receiving gifts; Art. 172-6 Violation of financial control; Art. 172-7 Violation on prevention and settlement of conflict of interest; Art. 172-8 Illegal usage of information that was known for persons with official authority; Art. 172-9 Failure to combat corruption) [2].



The Criminal Code of Ukraine stipulates criminal responsibility for the crime of corruption in Chapter XV «Crimes against the credibility of public authorities, local governments and associations" (Art. 356. Arbitrariness; Art. 357. Stealing, appropriation, extortion of documents, stamps, seals acquired by fraud or malpractice or damage; Art. 358. Forgery of documents, seals, stamps and forms, sale or use of forged documents, stamps, seals) and Chapter XVII Crimes in service activities and professional activities related to the provisions of public services (Art. 364 Abuse of power or position; Art. 366 Forgery; Art. 366-1. Declaring of false information; Art. 367 Negligence, Art.368 Acceptance of offer, promise or receipt of improper benefits by officer; Art. 368-2 Illegal enrichment; Art. 368-4 Bribing a person who provides public services; Art. 369 Offer, promise or giving of an undue benefit to officers; Art. 369-2 Trading by influence; Art. 370 Provocation of bribery) [3].

The Law of Ukraine "Principles of State Anti-Corruption Policy (Anti-corruption Strategy) for 2014-2017 years" defines the vector of anti-corruption policy in the medium term. In fact, it is a comprehensive document about national policy on the issue of fighting corruption, which clearly describes the current situation of corruption within the state and its main factors. In its turn, the Law of Ukraine "On Prevention of Corruption", that came into force on 26 October 2014 and was enacted on April 26, 2015, provides the establishment of the National Agency of Corruption Prevention [5].

To implement such large range of legal instruments to combat corruption in Ukraine the appropriate system of enforcement bodies has been implemented. It involves the National Anti-Corruption Bureau of Ukraine (hereinafter – NABU), Anti-corruption Prosecutor Office, the National Agency for the Corruption Prevention (hereinafter – NACP) and the Agency for Investigation / Return Assets.

Thus, according to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine» № 1698-18, the National Anti-Corruption Bureau of Ukraine is a state law enforcement agency that is responsible for the prevention, detection, suspension, investigation and disclosure of corruption offenses within its jurisdiction and to prevent new offences. The objective of NABU is to prevent criminal corruption offenses committed by senior officials authorized to perform state functions or local authorities [4].

The monitoring for the National Bureau is carried out by the Verkhovna Rada Committee on the combating with organized crime and corruption.

In December 2015 in our country the Anti-corruption Prosecutor's Office had been finally established [9]. It is an independent pillar within the prosecution system link of Ukraine. The formation of Anti-corruption Prosecutor's Office, determination of its structure and staff is conducted by the Prosecutor General of Ukraine in coordination with the Director of the National Anti-Corruption Bureau of Ukraine. The objectives of the Anti-corruption Prosecutor's Office include: the observance of laws during operational activities of the preliminary investigation by the National Anti-Corruption Bureau of Ukraine; maintenance of public prosecution in appropriate proceedings; representation of citizens or the state in court in cases provided by law and related to corruption or corruption-related offenses.

Also the important role for the effective combating with corruption plays the activity of the National Agency for the Corruption Prevention. It is the central executive body of Ukraine with special status, which provides the development and implementation of the state anti-corruption policy. Its functions also are stipulated under the Law of Ukraine "On Prevention of Corruption" 2014 [6].

The National Agency for the Corruption Prevention has a preventive function, in particular, including checks of declarations of civil servants and their life style, the disclosure of any information about corruption or abuse of their position.

The functions of NACP include: conducting of analysis of preventing and combating corruption in Ukraine, activities of public authorities; preparation of proposals for formation and implementation of anti-corruption policy, drafting of regulations on these issues; monitoring and enforcement of legislation on ethical behavior, prevention and settlement of conflict of interest in the activities of persons authorized to perform state functions or local government and similar entities; coordination of consultations to identify the public authorities; realization of cooperation with persons who in good faith report on possible facts of corruption or corruption-related offenses [6].

The official launch of the National Agency for the Corruption Prevention was held on August 15, 2016.

Another institutional pillar whose existence is crucial for anti-corruption policy in Ukraine is the National Agency of Ukraine for detection, investigation and management of assets derived from corruption and other offenses (hereinafter - the Agency for Investigation /asset recovery) [7]. The Agency is the central executive body of Ukraine with special status that provides the development and implementation of state policy in the identification of assets which can be seized in criminal proceedings and/or asset management that are seized or are confiscated in criminal proceedings. Nowadays the Agency has not started its work yet.

Talking about the activity of the following bodies I could define some crucial and important problems. Last year due to the pre-trial investigations carried out by NABU and SAP funds totally amounting 411 million UAH, 75 mln. USD., 7 million euros and a number of movable and immovable property of authorities involved in corruption crimes were arrested. During the previous year, the courts were handed materials of 24 criminal proceedings, 87 public servants were accused in corruption and 34 acts were compiled of indictments.

Moreover, due to the activity results of NABU and the CAP Ukraine recovered 45 million UAH. For instance, 10 million were returned to the account of "State Food and Grain Corporation" within the investigation of the facts of embezzlement of public funds by officials of the company and 35 million – for "Zaporizhzhyaoblenergo" within the investigation proceedings on the fact of misappropriation of funds by officials of the company. In the nearest future another 100 million hryvna will be return in favour of "Zaporizhzhyaoblenergo".

Nevertheless, the unresolved problem is the activity of NABU. In particular, during last year NABU received 234 appeals and complaints against its employees, 10 officer investigations were conducted, two operational-search cases were opened, about 6 criminal proceedings in regard of Art. 368 of Criminal Code of Ukraine (receiving a bribe) were launched. Other words, despite of the creation of a certain competent body combating the corruption the unsolved problem is still referred to the staff that is involved in the work of these bodies [3].

Another problem is the launch by the National Agency for the Prevention of Corruption of the electronic declaration system to be held on 15 August 2016. The launch of e-declaration is an essential condition for Ukraine to receive from IMF the financial assistance in amount of 3 billion dollars. Furthermore, the additional maintenance in amount of 1.2 billion euros from the European Union, as well as significant financing from the World Bank and other international institutions. Moreover, the launch of the electronic declaration is the final commitment of Ukraine to obtain the free visa regime.

The final decision on the implementation by Ukraine of the criteria of the Action Plan on Visa Liberalisation [1] was approved by the EU Commission on 18 December 2015. The document stipulates that Ukraine fulfilled all the criteria set of four blocks of APVL. Nowadays Ukraine is expecting to get the visa regime from the EU. From legal point of view this means that the EU Commission should initiate a legislative proposal to the European Parliament and the EU Council to amend Regulation (EC) № 539/2001 of 15 March 2001 on withdrawal of

Ukraine from the list of countries with visa regime of entry and inclusion of our country to the list of countries whose citizens (holders of biometric passports) do not need visas for short-term (90 days) to travel to Member States of the Schengen area. The document must be supported by the European Parliament and the Council of EU. With the aforementioned positive endorsement by the EU, the Council will finally announce the date of visa-free regime for Ukraine.

According to the Ukrainian legislation, the electronic declarations have the legal significance only after the system receives a certificate of conformity from the State Agency for Special Communications. But August 12, 2016 the State Agency for Special Communications decided not to provide the certificate for the system of electronic declarations.

It means, that from legal point of view, if the system does not have such certificate, it cannot be started and if it is launched in test mode, the declarations will not be accepted as adequate testimony and evidence in courts and therefore (officials) cannot be held criminally responsible for providing false information, including information related to the availability of their real estate.

Also among the problems within Ukrainian judicial system is the existence of judicial corporatism. The judicial corporatism in our country is very closed and consolidated. The judges deliver to their colleagues unreasonably soft penalties for corruption offenses. Moreover, the judges' dynasties establish the relationships beforehand. This is common practice when children of judges of high specialized courts begin their practice and work in the courts of first instance.

**Conclusions.** Based on the abovementioned, we should conclude that for effective implementation of anti-corruption policy in Ukraine should be introduced a systematic approach. The phenomenon of corruption is systemic, and accordingly it must be overcome only by joint efforts. It is necessary to ensure the independence of anti-corruption bodies and prevent their political dependence on the governing bodies; establish effective work of the National Agency for Corruption Prevention, the National Anti-Corruption Bureau, Anti-corruption Prosecutor's Office and the Agency for Investigation/return assets must; inform the public on their performance; and to provide penalties for officials who committed corruption offenses.

In addition, it is obvious to have the political will and the realization that it is necessary first of all for Ukraine, and the rule of law should not just be a declaration, but actually operate at all levels of state power in Ukraine.

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