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STATE OF IMPLEMENTATION OF CERTAIN GRECO'S “SOFT” LAW” DOCUMENTS IN UKRAINE

Summary. At the end of the XX century, a specialized international organization, the Group of States against Corruption (GRECO), was established to assist and coordinate the anti-corruption activities of the member states of the Council of Europe. The norms developed by GRECO, on one hand, must be universal, as they must be implemented in detail in the anti-corruption legislation of each state. But on the other hand, they must meet the real anti-corruption needs of a particular country, reflect its own approach to combating corruption.

The author analyzes the degree of implementation of certain "soft law" documents, which were developed in the framework of GRECO. First, Resolution (97) 24 of the Committee of Ministers of the Council of Europe "On Twenty Guiding Principles for the Fight Against Corruption" and states in which normative legal act of domestic law each principle is embodied. In addition, the author proposes to systematically set out the principles of anti-corruption activities in the text of the Law of Ukraine "On Prevention of Corruption". Second, Recommendation on Codes of Conduct for Public Officials. In order to implement the provisions of this document in Ukraine, the General Rules of Ethical Conduct for Civil Servants and Local Government Officials were adopted. Third, the Recommendation On the General Rules for Combating Corruption When Financing Political Parties and Election Campaigns ".

Finally, it is concluded that despite the recommendatory and ancillary nature, GRECO Resolutions and Recommendations are an important tool for anti-corruption activities. Finally, they complement the vector of development defined in the anti-corruption conventions and recognize possible ways to prevent corruption. Ukraine declaratively adheres to most recommendations and resolutions, adapting their provisions to domestic legislation. At the same time, the degree of their actual implementation, in our opinion, needs further improvement. To this end, it is important to develop effective mechanisms for the implementation of regulations and to create a system of supervision and control.

Key words: corruption, anti-corruption law, resolutions, recommendations, GRECO.

Problem setting. In 1999, the Council of Europe established a new international organization, the Group of States against Corruption (GRECO). This organization provides effective and systematic assistance to member states in combating corruption and monitors compliance with anti-corruption standards. It is important to note that membership of GRECO, which is an extended agree-

ment, is not limited to the member states of the Council of Europe. GRECO actively and independently develops its own legal practice of "jurisprudence", which is to interpret the rules of anti-corruption conventions of the Council of Europe and the practice of anti-corruption policy of member states [1, p. 211].

Any State which has participated in the elaboration of an extended Partial Agreement may accede by notifying the Secretary General of the Council of Europe. GRECO's activities include: monitoring compliance with Council of Europe anti-corruption standards; developing the necessary legislative, institutional and practical reforms; GRECO provides a platform for the exchange of best practices in the field of prevention and detection of corruption.

GRECO's practice makes it clear that the "one size fits all" approach is not constructive. GRECO policy must take into account the specifics of each country. Thus, the norms developed by GRECO must be carefully adapted to each specific country. It can be concluded that GRECO not only provides organizational and legal means of implementation of the relevant international anti-corruption standards, but also must ensure the "precise adjustment" of the legal and organizational principles of all major state and public institutions for the implementation of state anti-corruption policy [2, p. 210].

Analysis of recent researches and publications. GRECO's role in the fight against corruption is becoming increasingly visible, and its documents are increasingly influencing the legislation and law enforcement practices of its member states. Issues of international anti-corruption activities, its directions and regulatory framework have been studied by such scholars as I. Nurulaev, A. Tsyryn, S. Bakhin, K. Smirnova, A. Kulis, N. Andriichenko, O. Reznik and others. At the same time, we consider it necessary to describe in more detail and comprehensively the main anti-corruption documents of a recommendatory nature, adopted within the framework of GRECO activities and the nature of their implementation in Ukraine.

Purposes of the article is a description of state of implementation of certain GRECO's "soft law" documents in Ukraine.

Summary of the main matter of research and explanation of scientific results. An important international document on anti-corruption is Resolution (97) 24 of the Committee of Ministers of the Council of Europe "On Twenty Guiding Principles for the Fight Against Corruption", adopted by the Committee of Ministers on 6 November 1997 at its 101st session. Thus, this international document agreed on the basic principles of combating corruption at both the international and domestic levels. They are: 1) to take effective measures to prevent corruption and, in this regard, to raise public understanding and promote ethical behavior; 2) guarantee the recognition of national and international criminal corruption; 3) ensure that those responsible for preventing, investigating, prosecuting and resolving corruption cases have independence and autonomy, their powers are free from influence and have effective means to gather evidence, protecting people who help the government in the fight against corruption, and maintaining the confidentiality of investigations; 4) provide appropriate measures for confiscation and deprivation

of income as a result of corruption; 5) provide appropriate measures to prevent pressure on lawyers dealing with corruption cases; 6) limit immunity from investigation, prosecution or court decision on insurance cases of corruption to the limits necessary in a democratic society; 7) promote the specialization of people or bodies responsible for the fight against corruption and provide them with appropriate tools and training to perform their tasks; 8) ensure that financial legislation and the authorities responsible for its implementation contribute to the fight against corruption in an effective and coordinated manner, in particular by denying the possibility of tax cuts, in accordance with the law or regulations on illicit benefits or other costs associated with corruption; 9) ensure that the organization, operation and decision-making of public administrations takes into account the need to combat corruption, in particular by ensuring transparency compatible with the need to achieve efficiency; 10) ensure that the rules concerning the rights and responsibilities of officials contain anti-corruption requirements and ensure appropriate and effective disciplinary measures; to promote further specification of behavior expected from public officials; 11) ensure that appropriate audit procedures address the actions of the civil service and the public sector; 12) confirm the role that audit procedures can play in preventing and detecting corruption outside administrative bodies; 13) ensure that the system of public responsibility takes into account the consequences of corrupt behavior of public officials; 14) adopt accordingly transparent procedures for social procurement, which embody fair competition and deter corrupt officials; 15) encourage the adoption of codes of conduct by elected representatives and promote the rules for financing political parties and election campaigns that contain corruption; 16) ensure that the media have the right to freely receive, transmit information on corruption issues and are subject only to such restrictions as are necessary in a democratic society; 17) ensure that civil law takes into account the need to combat corruption and, in particular, provides effective means and rights for those whose interests are affected by corruption; 18) encourage research on corruption; 19) ensure that, in every aspect of the fight against corruption, possible links to organized crime and money laundering are taken into account; 20) to develop to the widest possible extent international cooperation in all areas of anti-corruption [3].

The text of the Resolution recommended that these principles be incorporated into national law. In Ukraine, the principles outlined above have indeed found their legislative expression in various legal acts. For example, the second principle is expressed in the note to Art. 45 of the Criminal Code of Ukraine. The fourth principle was enshrined in the joint order of the National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes and the Ministry of Justice of Ukraine of January 29, 2020. № 58/299/5 "On Approval of the Procedure for Interaction of the National Agency of Ukraine issues of detection, search and management of assets obtained from corruption and other crimes, and the Ministry of Justice of Ukraine in the execution of court decisions on confiscation, special confiscation, recovery of assets into state revenue in criminal proceedings", which was issued to enforce court decisions on confiscation, special confiscation, recovery of assets into state revenue in crimi-

nal proceedings and settlement of the procedure for submission by the Agency for Search and Management of Assets of information to be entered in the Unified State Register of Assets Arrested in Criminal Proceedings [4]. And the ninth principle is enshrined in Art. 19 of the Law of Ukraine "On Prevention of Corruption", which establishes a list of public authorities that are obliged to adopt anti-corruption programs. The anti-corruption program is the third most important anti-corruption document after the anti-corruption strategy and the state program for its implementation. It defines the principles of general departmental policy to prevent and combat corruption and aims to manage corruption risks in the activities of a particular authority [5]. The fourteenth principle is reflected in paragraph 6. Art. 5 of the Law of Ukraine "On Public Procurement", which calls the principle of public procurement the prevention of corruption. In order to implement this principle in Ukraine there is an electronic procurement system, where the customer announces a purchase in the system (through a personal account on the site where he is registered), information about the purchase immediately appears on all authorized sites and the portal prozorro.gov.ua. Interested bidders submit bids and may reduce their price during the lowering auction, which takes place in three rounds. After the auction, all received bids (documents submitted by bidders to participate in the procurement) are made public and the customer selects the winner - starting with the bid with the lowest price. If such an offer meets the terms of the purchase, the customer declares it the winner. If it does not answer – the customer disqualifies it with the reason and considers the following offer at the price [6].

The nineteenth principle of the Resolution, which stipulates the need to take into account the connection between corruption and organized crime in the implementation of anti-corruption measures, is enshrined in the Law of Ukraine "On Organizational and Legal Basis of Combating Organized Crime." Thus, in Part 2 of Art. 5 of this Law defines the list of state bodies specially created to combat organized crime: the Coordination Committee for Combating Corruption and Organized Crime under the President of Ukraine, special units for combating corruption and organized crime of the Security Service of Ukraine [7]

At the same time, we are convinced of the need to define the principles of combating corruption in national legislation in a separate article of the Law of Ukraine "On Prevention of Corruption". Such a unified approach will allow to develop really high-quality legislation that will simplify the understanding of the basic principles of anti-corruption.

With regard to the recommendations adopted within the framework of GRECO, the recommendations of international organizations are traditionally considered as certain rules designed to ensure predictability in the legal regulation of relations between parties of different nationalities and willing to eliminate conflicting provisions of national norms [8, p. 154].

Such recommendations, in turn, do not give rise to rights and obligations, they only assume a general position, which the subjects are obliged to follow. Recommendations should not concern the content of national law, as law-making is a sovereign right of every state. And if the rules of international law deter-

mine the model of behavior, express an authoritative point of view on the implementation, interpretation and application, the rules of "soft law" do not contain such requirements [9, p. 47].

We offer to analyze some of the GRECO Recommendations. In particular, the Recommendation on Codes of Conduct for Public Officials. This recommendation was adopted by the Committee of Ministers at its 106th session on 11 May 2000. It defines civil servants as a key element of public authority. They have specific responsibilities and tasks and must have the necessary qualifications and the appropriate legal and material resources to carry out these tasks effectively. It is emphasized that corruption is a serious threat to the rule of law, democracy, human rights, equality and social justice, which hinders economic development and threatens the stability of democratic institutions and the moral foundations of society. The recommendations define the basic principles of the civil servants activity, his rights, the procedure for reporting, outline the essence of the conflict of interests and ways to avoid it, the procedure for receiving gifts, restrictions on this; attitude to former civil servants, etc.

Based on these recommendations, an order of the National Agency of Ukraine for Civil Service Affairs "On Approval of the General Rules of Ethical Conduct for Civil Servants and Local Self-Government Officials" was issued in Ukraine. This order described in detail how international legal recommendations would be implemented in Ukraine. For example, outlined the general responsibilities of civil servants and local government officials, clarified the limits of the use of official position and the use of resources of the state and local community, and outlined the use of information and its exchange [10].

Recommendation N Rec. 4 The Committee of Ministers of the Council of Europe to the Member States "On the general rules for combating corruption when financing political parties and election campaigns". Was adopted on 8 April 2003, as political parties are a fundamental element of the democratic system of the state. That is why the prevention of and fight against corruption in the financing of political parties and election campaigns in all states should be carried out in accordance with common standards [11].

The adoption of this Recommendation was extremely important, as political parties spend significant amounts of money on campaigning and gaining voter support during elections. Such financial support is often provided by influential business representatives who intend to go to parliament and act in the interests of their own business. Accordingly, we have a situation where a businessman finances a party so that its representatives can get the required number of votes and go to parliament, and the party in return gave such a patron a place in its list and, accordingly, in parliament [12, p. 110]

In Ukraine, in order to introduce new anti-corruption standards in the financing of political parties and election campaigns, amendments were made to the Law of Ukraine "On Political Parties in Ukraine". This law has received mostly positive reviews from international institutions. On the other hand, international organizations have pointed to a number of gaps in legislation. In

addition, the practice of its application indicates some shortcomings that need attention from public authorities. For example, the lack of mechanisms to prevent over-financing of election campaigning in presidential and local elections; the danger of shadow financing of election campaigns through candidates' own funds; lack of an exhaustive list of areas for which it is allowed or forbidden to spend budget funds [13, p. 86].

Conclusions. Summarizing the above, we would like to emphasize that, despite the recommendatory and ancillary nature, the GRECO Resolutions and Recommendations are an important tool for anti-corruption activities. After all, they complement the vector of development set out in the conventions regarding the fight against corruption and recognize possible ways to prevent corruption. Ukraine declaratively adheres to most recommendations and resolutions, adapting their provisions to domestic legislation. At the same time, the degree of their actual implementation, in our opinion, needs further improvement. To do this, it is important to develop effective mechanisms for implementing regulations and creating a system of supervision and control.

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Бондренко О. С. Стан упровадження деяких норм «м'якого права», прийнятих у рамках діяльності GRECO, в Україні

Анотація. Стаття присвячена важливій темі – правовому порядку впровадження норм «м'якого права» GRECO до вітчизняного антикорупційного законодавства. Наприкінці ХХ століття з метою допомоги, координації антикорупційної діяльності держав-членів Ради Європи було утворено Групу держав проти корупції (GRECO). Норми, які розробляються GRECO, з одного боку, мають носити універсальний характер. Але, з іншого боку, вони повинні відповідати реальним антикорупційним потребам конкретної країни, відображати її власний підхід до протидії корупції.

Автор аналізує норми «м'якого права», які були розроблені в межах діяльності GRECO. Ці норми не породжують права та обов'язки, вони лише займають загальну позицію, якої суб'єкти зобов'язані дотримуватися. Автором проаналізовано ступінь упровадження окремих документів «м'якого права», які були розроблені в рамках діяльності GRECO. По-перше, це Резолюція (97) 24 Комітету міністрів Ради Європи «Про двадцять керівних принципів боротьби з корупцією». Зазначено, у якому нормативно-правовому акті вітчизняного права знайшов своє втілення кожен принцип. Окрім того, автор пропонує систематизовано викласти принципи антикорупційної діяльності у тексті Закону України «Про запобігання корупції».

По-друге, з метою впровадження положень Рекомендації (97) 24 Комітету міністрів Ради Європи «Про двадцять керівних принципів боротьби з корупцією» в Україні було прийнято Загальні правила етичної поведінки державних службовців та посадових осіб місцевого самоврядування.

По-третє, Рекомендація щодо Загальних правил боротьби з корупцією під час фінансування політичних партій та виборчих кампаній. Виконання цього документу зумовило оновлення стандартів у фінансуванні політичних партій та виборчих кампаній і внесення змін до Закону України «Про політичні партії в Україні».

Насамкінець робиться висновок, що, незважаючи на рекомендаційний та допоміжний характер, резолюції та рекомендації GRECO є важливим інструментом антикорупційної діяльності. Зрештою, вони доповнюють вектор розвитку, визначений у конвенціях щодо боротьби з корупцією, та визнають можливі шляхи запобігання корупції. Ступінь їх фактичного впровадження, на наш погляд, потребує подальшого вдосконалення. Для цього важливо розробити ефективні механізми імплементації нормативних актів та створити систему нагляду та контролю.

Ключові слова: корупція, антикорупційне право, резолюції, рекомендації, GRECO.