

Map of **ANTICORRUPTION
CONDITIONALITIES**

European Pravda: 'Secretary of the Venice Commission: Hungary's demands to Ukraine seem artificially manipulated'

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Serhii Sydorenko, The European Pravda, Strasbourg _ Thursday, 25 January 2018, 16:55

In recent months, Ukrainian mass media, experts and politicians keep referencing the Venice Commission.

In autumn, the Commission published their recommendations for Ukraine as to what the new court for hearing anti-corruption cases. In December, the Venice Commission attempted to put to an end the language conflict between Hungary and Ukraine (we already published Ukrainian translation of [the Venice Commission opinion on the provisions of the Law on education](#)).

Unfortunately, both decisions faced a common obstacle: politicians are trying to interpret the Venice Commission advice as it suits them. For instance, both Hungary and Ukraine announced their "victory" in the language debate. As for the President's law draft on the anti-corruption court, allegedly based on the Commission recommendations, it was harshly criticized for ignoring the recommendations.

In order to fully clarify the matter of what exactly was recommended to Ukraine, the European Pravda had a talk with Thomas Markert, Secretary of the Venice Commission, in Strasbourg.

We focused on the anti-corruption issue first; language issue is a few pages down.

"A mere suspicion is enough to block the candidate"

- In October the Venice Commission passed a decision on the anti-corruption court (HACC), in December - on language provisions of the Law on education. In February, another one is due, now on income declarations of civil activists. Are you going through a "Ukrainian period"?

- I would say that this situation is rather traditional for Ukraine. We collaborate with Ukraine more than with any other state.

- Are you following, whether your recommendations are actually implemented?

- The Venice Commission is an advisory body, it does not impose its solutions. Therefore, it is the task of primarily political bodies to control implementation of our solutions - for instance, PACE takes into account our opinion when monitoring the country.

Still, we as the Venice Commission also watch closely what happens after our recommendations are approved.

- In Ukraine we are having an on-going discussion concerning the phrase that the panel of

experts formed according to foreign institutions and donors should have a *definitive role* in the Anti-corruption court judges selection. What is meant by this “*definitive role*”?

- We deliberately avoided prescribing an exact method - which is the right thing to do, considering that the Council is reviewing the new project now.

The main idea of our recommendation is that the stage of judge selection is indeed crucial. Our experts heard about that during their visit to Kyiv. In addition, civil activists we spoke with stressed upon the fact that this responsibility is best assigned not to the civil society, but to international players. Therefore, yes, our opinion states that international experts should play a definitive role in selection process.

In what way it will be executed is a different issue.

Perhaps, this expert body should not define the appointed members of the anti-corruption court.

However, it should be able to prevent appointment of people who do not seem to be appropriate candidates.

- Here we have different people interpreting this recommendation in different ways. For instance, the President’s draft states that international expert’s recommendation can be overruled with two thirds of votes from the High Qualification Commission of Judges of Ukraine.

- This mechanism does not seem to assign the definitive role to the experts the way it is stated in our recommendations.

We already witnessed the Supreme Court judge selection process, when too often two thirds of votes were in favour of approving the candidates against the advice of the Public Integrity Council. The risk of this situation repeating itself is very real - the High Qualification Commission of Judges will not follow the advice of international experts.

Therefore, this mechanism is not in line with our recommendations.

- Therefore, there should be the right to veto?

- We did not say specifically that there should be the right to veto, however, it is definitely in line with our recommendations.

- The opponents say that just suspicion of lack of integrity is not sufficient to block the appointment of the judge, meaning that these allegations should be proved.

- In case of the anti-corruption court, requirements concerning judges should be particularly strict. It is a normal situation.

Certainly, allegations or publications concerning a certain candidate should be verified, as one cannot take at face value all that was written or said about a certain person.

However, if after the check there remains even a small suspicion of the candidate’s corruption, it is sufficient ground to block their appointment as the anti-corruption court judge.

“Nobody is saying it is forever”

- According to the Venice Commission recommendation, the expert group should include donors representing the western states. Here in Ukraine some say that this will limit our sovereignty.

- Ukraine has had similar precedents. For instance, international experts participated in appointing heads

of the National Anti-corruption Bureau and Specialized Anti-corruption Prosecutor's office. At the time, we also recommended Kyiv to provide the mechanism for international participation. I find it has proved effective.

I believe this approach to be appropriate for Ukraine during the current special period. This is about the crucial issue for Ukraine, crucial for democratic transformation of your country.

As it is not just us, but people of Ukraine call for creating institutions prepared and equipped to fight corruption!

I would like to stress the temporary character of this solution.

No one insists on this mechanism remain in place indefinitely. No one says it is a normal long-term solution. However, your country is suffering a corruption crisis at the moment, which should be dealt with.

- When will this period be over?

- I don't think we should set the time frames. As soon as the court start functioning properly and we see changes in the judicial system, the discussions as to when to abolish this specific mechanism will be timely. Then the standard mechanism of judge appointment should be put in place.

- In Ukraine some say that the Venice Commission recommendations are against the Constitution, thus justifying the need to deviate from them.

- Certainly, the final decision on whether the Constitution is observed lies with the Constitutional court, yet I don't think these fears are justified.

The anti-corruption court is a "specialized court", not special or extraordinary, creation of which is prohibited by the Constitution, and the Venice Commission gave detailed recommendations how to ensure it. The essence of the special courts, prohibited in Ukraine and international practice as well, is very different from this notion.

"I was shocked by the terms of creation of such court"

- Did you have the chance to look through the President's law draft?

- Yes, I did read the law draft. The Venice Commission did not provide an official analysis of the law draft, yet we considered the fact that it is heavily criticized by the international partners of Ukraine, they are asking to rewrite it.

- Did you speak to the World Bank and the IMF concerning the issue?

- We did not directly advise them, however they reference our approved recommendations - in my understanding they simply read the text and adopted it for use. Sometimes we are asked to additionally clarify one of the conclusion paragraphs of the Venice Commission opinion, but it concerns requests from political bodies. World financial institutions have no need for that having enough lawyers of their own.

Ukrainian authorities, namely the Presidential Administration, never addressed us after the recommendations were approved; however, in the process of their preparation we consulted them.

I believe this draft law should be improved and brought in line with the Venice Commission recommendations.

Of course, just the fact that the president submitted the law draft is a step in the right direction, as it enables further cooperation with him.

As far as I know, President Poroshenko indicated possible review of the law draft. In my opinion, it would be beneficial for MPs, as well as the Presidential administration, to participate in the discussions.

- After we further develop the law draft, should we submit it to the Venice Commission once more?

- The problem is as follows: if we prepare a new opinion concerning the new draft law, it can be interpreted in different ways once again.

Therefore, the best alternative, in my opinion, is for the Presidential Administration representatives, MPs, and Venice Commission experts to work together and develop amendments which would leave everyone satisfied.

If this invitation comes, the Venice Commission is prepared to take part in this work. I do not think they would object to sending one of the reporters drafting our opinion, as well as one of the Venice Commission Secretariat representatives. In that case, they would be able to get involved with improvement of the draft law, informing the Commission of their work.

In my opinion, it would be worthwhile to involve the IMF and World Bank representatives with such project, as these are institutions from which Ukraine is hoping to get financing and which have already outlined their conditions. If they are involved in the process, Ukraine can make sure that the finalized law draft will be in accordance with their expectations.

Changes are necessary not just in the issue of selecting judges.

I was astonished by the terms of the anti-corruption court creation, set by the law draft. It is proposed that in case the law is passed the court is not to be created at once - instead, the President would have to submit another law on launching the anti-corruption court, and only after one year the court would be put in place.

Once more, our opinion stresses the immediate creation of such court.

“Agreement with minorities representatives must be reached”

- Another high-profile Venice Commission opinion is on language provisions of the Law on education. Were there any manipulations concerning that one?

- Certainly. Everybody selects only the parts of our opinion that suit them and reads it, and these are opinions we hear both from Ukraine and abroad.

- What are your key recommendations to Kyiv concerning the Law?

- There must be two distinct parts here: concerning minority languages which are EU languages and others. The discrepancy between the law provisions concerning these groups is too significant; the latter are in a much worse situation concerning the former.

Also there seem to be the problem with following the Constitution, which separately mentions Russian language, but not any other. Legally, it is problematic that under the law “On Education” the Russian language ended up in a worse position.

As for the European languages, the solution can be found through, for instance, some new laws acts,

Ministry instructions. However, the decision concerning the teaching method, how many lessons for which subject, should be made independently, without the Venice Commission.

The main objective is to ensure that students could properly speak and write, about complicated subjects as well.

Now everything is up to your government. You must consult representatives of the minorities, first of all, Romanian and Hungarian, as the most numerous, but you must also consider opinion of other minorities to agree on the necessary amount of subjects taught in these languages.

That's not all, there are other recommendations. For instance, Ukraine must fulfil its international obligations and allow functioning of private schools which teach in minority languages. Transition period should be changed as well; such changes should not take place overnight.

- You mean the law can be sufficiently improved without making changes, including article 7?

- Concerning minorities whose languages are EU languages, yes, it is possible.

- It's just that we keep hearing demands to change this very article from our Hungarian neighbours.

- Yes, this demand is voiced, yet it is kind of artificially manipulated.

Article 7 has enough flexibility, and even though it was first in law on international languages (such as English, French, German), it can be adapted to guarantee the rights of Hungarian, Romanian, Bulgarian, Greek etc. There are no legal obstacles.

- The key problem in our conversation with Hungary is that it insists that any limitations to the rights of minorities are unacceptable. Such as if now one can study only in Hungarian from nursery school to university, than this possibility should be granted indefinitely. They say it is granted by the European and international law.

- No, we do not share this opinion. We think the country can transfer from exclusively Hungarian-speaking system to the mixed one, when part of the curriculum will be taught in Hungarian, and part in Ukrainian.

Moreover, it is even more beneficial for the students themselves to receive education in two languages.

However, criticism from Hungarians is justified until there are no guarantees for the languages of minorities. Therefore, parliament acts should ensure these guarantees, for instance, the number of hours to be taught in minorities' language.

Along with that, the state language should be taught adequately, so that a person could integrate, be competitive on the job market - one has to speak Ukrainian well in order to do that, not just Hungarian.

Bilingual education is an advantage in and of itself.

- For the meantime we often hear the opinion that on the contrary, we have to adapt the job market (in the regions inhabited by the minorities) to the needs of those who do not speak Ukrainian well enough.

- Now, this is an odd idea. It is not the government that creates the job market. Citizens must speak the official language of the state!

In conclusion. I will call on to Ukrainian authorities once again: you must not put off serious discussions with minority representatives. To sit and do nothing is the wrong way to go.

- Do you mean minorities or neighbouring countries? After all, the latter ones are voicing the most categorical demands.

- It is much more logical to reach agreement with the minorities. If you come to an agreement with them, on a national level, it is unlikely that the neighbours would object to it.

Interviewed by Serhii Sydorenko, editor of "The European Pravda"

[Original text.](#)