Draft Law 1029 “On amending certain legislative acts of Ukraine to guarantee effectiveness of the institutional mechanism of corruption prevention”
2019-09-02

Background

On August 29, Draft Law 1029, entitled “On amending certain legislative acts of Ukraine to guarantee effectiveness of the institutional mechanism of corruption prevention” (hereinafter referred to as the Draft Law), was submitted by President Volodymyr Zelenskyy and registered in the Verkhovna Rada. The Draft Law aims to lay the ground for renewal of the leadership of the National Agency for Prevention of Corruption (NAPC) and strengthen its effectiveness and accountability. According to the explanatory note to the Draft Law, it is motivated by the ineffective performance of the current NAPC leadership and its lack of professionalism and political neutrality. In addition, the Draft Law proposes changes to certain provisions regulating public funding provided to political parties, although no rationale for these amendments is provided.

Key provisions

The main provision of the Draft Law are as follows:

• The leadership structure of the NAPC will be reformed: the current five-member collegial body will be replaced by a single NAPC Chairperson. The NAPC Chairperson will be responsible for overall NAPC performance and can appoint up to three deputies.

• A new procedure for appointing the NAPC Chairperson is introduced. A Selection Committee comprised of six members will be established to appoint the NAPC Chairperson. Three members of the Committee will be appointed by the Cabinet of Ministers at its own discretion and another three will be selected by the Cabinet based on proposals of international anti-corruption organizations.

• The Selection Committee must be established within 14 days after the dismissal of the current NAPC Chairperson, and the appointment of a new Chairperson must be completed within 45 days of the dismissal of the previous. All meetings of the Committee are public and must be broadcast live.

• Every two years, the effectiveness of NAPC will be subject of an external independent evaluation conducted by an Evaluation Committee. The Evaluation Committee will be comprised of three members, all international anti-corruption experts, appointed by the Cabinet of Ministers in a procedure similar to the appointment of the international members of the Selection Committee.

• The results of the external evaluation of the NAPC will be made public. A negative review in the evaluation can serve as grounds for the Cabinet of Ministers to dismiss the NAPC Chairperson.
• The annual amount of funds from the State Budget allocated to the statutory activities of political parties is reduced to half of the current amount of public funding beginning from 2020. This means that eligible parties in 2020 will receive UAH 283 million (approx. USD 11.3 million) instead of UAH 565 million (approx. USD 22.6 million) in public funding.

• The eligibility threshold for a party to obtain public funding is increased from the current two percent of votes in the nation-wide constituency in parliamentary elections to five percent. In other words, beginning from 2020, only the five parties that won seats in the proportional component of the 2019 parliamentary elections will have the right to receive public funding, instead of the eleven parties that qualified under the existing rules by receiving two percent of the proportional vote or more in the recent elections.

Analysis

The renewal of the NAPC leadership, as proposed in the Draft Law, potentially constitutes an important step forward. The current NAPC management has attracted repeated criticism from Ukrainian and international observers, including IFES, for its inability to perform its mandate, specifically in the area of political finance oversight, in an effective and impartial manner.

The inclusion of three international anti-corruption experts in the composition of the Selection Committee should be assessed positively. This could significantly increase the professionalism of the Committee and prevent potential attempts by domestic political stakeholders to exert undue influence on its decision-making, in line with GRECO recommendations.1

Introduction of a new management structure of the NAPC, with a Chairperson and up to three deputies, has the potential to increase the effectiveness and accountability of the institution to the public. The new leadership structure could also streamline its decision-making process and prevent infighting within the organization.

Nevertheless, the Draft Law proposed by the President has several significant shortcomings that could undermine its positive potential:

• The time period for appointing the Selection Committee is extremely short (14 days) and could potentially lead to an inability of international anti-corruption organizations to nominate enough professional candidates, with the Cabinet of Ministers appointing them instead. This could undermine the credibility and integrity of the Committee. Similarly, the overall 45-day deadline for selecting a new Chairperson may prove too short for a comprehensive, inclusive and transparent selection and vetting process.

• The procedure the Selection Committee must follow when selecting the NAPC Chairperson is not explained in the Draft Law, which leaves room for manipulation and a selective approach.

• The Draft Law does not specify the procedure for the external evaluation of the NAPC. This poses a risk of an arbitrary approach towards the assessment of the NAPC performance that could result in a politically motivated dismissal of the NAPC Chairperson.

The Draft Law provisions that deal with public funding of political parties do not correspond to the subject of the Draft Law and, if implemented, could result in a setback for political finance reform:

1 See Recommendation I, GRECO Evaluation Report, Corruption prevention in respect of members of parliament, judges and prosecutors, Ukraine, Strasbourg, 13 June 2017.
• The decrease in the overall amount of the annual public funding to political parties will negatively affect the potential of this instrument to prevent the dependence of political parties on big private donors and undermine its contribution to their long-term institutional development.

• The increase of the eligibility threshold for receiving public funding could weaken the overall competitiveness of Ukraine’s party system and skew the playing field in favor of the established and relatively richer parliamentary parties.²

In addition, the Draft Law was not subjected to any public discussions before being submitted to the parliament. Lack of public consultations around the Draft Law provisions is a negative precedent that could undermine its quality and prospects of implementation. It is important that the parliamentary committee in charge of reviewing the Draft Law undertake broad consultations with all relevant stakeholders.

Conclusions

Draft Law 1029 has a potential to improve the professionalism, effectiveness and accountability of NAPC by replacing and restructuring its management. However, before the Draft Law is adopted, several important amendments to its text should be considered:

• Extend the period for appointing the Selection Committee members and the period for renewal of the NAPC leadership;

• Explain the procedure for selecting the new NAPC Chairperson by the Selection Committee and ensure that this procedure is inclusive and transparent;

• Specify the procedures of external independent evaluation of the NAPC and list the indicators of such evaluation; and,

• Remove all changes to the provisions related to the public funding of political parties in order to maintain the current level of annual public funding and the eligibility of non-parliamentary parties to receive public funding.

IFES reiterates that the process of drafting amendments to the legislation that regulates political finance and prevention of corruption should be open and inclusive. Consultations with all relevant stakeholders should be held prior to the registration of any draft law and its consideration by the Parliament.

---

² The Explanatory Note (paragraph 111) to the Venice Commission’s Code of Good Practice in Electoral Matters emphasizes the importance of extending public funding to non-parliamentary parties as a matter of ensuring equality of opportunity for different political forces: “All parties represented in parliament must in all cases qualify for public funding. However, in order to ensure equality of opportunity for all the different political forces, public funding might also be extended to political formations that represent a large section of the electorate and put up candidates for election.”