

The Dynamics of the Judiciary in Ukraine in the Context of the Rule of Law and the EU Accession Aspirations – Tetyana Antsupova. Blog on the Ukraine 2023 and 2024 EC Reports on Enlargement Policy, 2 November 2024.

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Work in Progress.

Achievements in the "Rule Of Law And Fundamental Rights": a Comparative Analysis of the Ukraine 2023 and 2024 EC Reports on Enlargement Policy.

On the 30th of October, the European Commission (EC) Enlargement Package 2024 was published.

In this blog, I highlight the added value of the 2024 Report on Ukraine compared to the 2023 Report and the progress made¹ within the Functioning of Democratic Institutions and Public Administration Reform and Judiciary and Fundamental Rights (Cluster 1, “The Fundamentals of the Accession Process”) with the main focus on the judiciary.

General notes. The Ukraine 2024 Report covers the period from 15 June 2023 to 1 September 2024 and emphasizes the formal beginning of accession negotiations, marking Ukraine's progress following the Intergovernmental Conference held on June 25, 2024. In 2024, Ukraine's Parliament implemented a new law on law-making and began drafting a National Programme for the Adoption of the Acquis. These initiatives aim to enhance legislative efficiency and strengthen EU integration structures, a shift from the 2023 report, which identified early progress in legislative reforms.

The 2024 report focuses more on anti-corruption reforms, addressing the judiciary's role in combating corruption through increased judicial oversight and transparency mechanisms. The 2023 report acknowledged the ongoing need for transparency but outlined fewer completed reforms.

Both reports discuss the effect of martial law on democratic processes. However, the 2024 Report provides updated data on martial law's restrictions on individual freedoms and the ongoing use of martial law, which has been extended multiple times since the 2023 Report.

While the 2023 Report highlighted Ukraine's economic adaptation to war conditions, the 2024 Report underscores specific developments in public

¹ To describe progress made during the reporting period, the EC uses the following scale: backsliding, no progress, limited progress, some progress, good progress and very good progress.

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administration, particularly through digitalization and decentralization efforts, contributing to more resilient governance amidst ongoing conflict.

Each report reflects Ukraine's evolving efforts to 2024 showing expanded initiatives aligned with EU policies and enhanced institutional structures.

Functioning of Democratic Institutions and Public Administration Reform.

On 24 February 2022, as a consequence of Russia's war of aggression, Ukraine temporarily invoked martial law by a Presidential decree approved by Parliament. Martial law has remained in place since then, with the current thirteenth extension valid up to [7 February 2025](#).

Martial law imposes substantial limitations on constitutional rights and freedoms. Although specific figures were not provided in the 2024 Report, I can confirm that 11 articles of the Constitution of Ukraine ensure human rights and freedoms are restricted under martial law.

The 2024 report, however, notes specific instances of disproportionate travel restrictions on parliamentary opposition and pressure on civil society organizations (CSOs), recommending these issues be addressed.

The travel restrictions on judges and other public and civil servants were not addressed in the Report. The question remains: have these restrictions escaped the EC's attention, or does it consider them proportional?

No elections took place during the reporting period, as martial law prohibits them. In November 2023 and April 2024, all parliamentary groups pledged to hold the first post-war election, with adequate notice, once martial law ends.

Progress was made on revising the electoral code. On May 27, 2024, a draft law was registered to implement OSCE/ODIHR recommendations for gender-balanced representation in Parliament and local councils. The Central Election Commission, in partnership with international organizations and civil society, developed draft amendments for the legal and organizational election frameworks, including updates to the electoral register and out-of-country voting. Ukraine adopted key OSCE/ODIHR recommendations from election observation reports but still needs to address some, including removing restrictions on voting rights for people with intellectual or psychosocial disabilities and enhancing ballot secrecy at polling stations. Additionally, Ukraine should consider the [Commission's recommendation](#) on inclusive and resilient electoral processes.

The main findings of the 2024 Report describe the progress that was made in the Functioning of Democratic Institutions and Public Administration Reform as **some progress**.

JUDICIARY

Strategic documents.

Since the 2023 Report, no Strategic document for the judiciary and/or justice system has been adopted. However, the Office of the President of Ukraine is [preparing a draft Strategy for the Development of the Justice System and Constitutional Court Proceedings for five years](#). This was stated by Deputy Head of the Presidential Office Iryna Mudra during a discussion of the key findings of the Shadow Report on Justice and Fundamental Rights.

Given that the judiciary in Ukraine should be represented by the High Council of Justice (HCJ), significant questions remain about its role, as well as the roles of the Supreme Court and other judicial governing and self-governing bodies, in initiating and drafting their own strategy.

In the 2024 Report, it is emphasized that Ukraine should develop a new mid-term strategic document for the justice system. It should cover optimisation of the court network, court management, and judicial governance system, consolidation of the Supreme Court and an improved selection procedure for its judges, modernisation of procedural codes, enforcement of court decisions, alternative dispute resolution, digitalisation, and reforms of the Bar, legal education and the judicial training system.

Judicial governance bodies.

The main governing bodies of the judiciary function after a long break. The HCJ was unable to work due to a lack of quorum from the end of February 2022. Restoring the work of the HCJ in January 2023 has been a positive development for the governance and functioning of the judiciary in Ukraine. The High Qualification Commission of Judges (HQCJ) stopped functioning at the end of 2019 and resumed on June 2023.

In the 2024 Report, there is a clearer emphasis on improving judicial independence through strengthened cooperation between Ukraine's HQCJ and the Public Integrity Council (PIC), marking progress in vetting and judicial selection standards. The 2023 report noted these efforts but had fewer specifics on the cooperation and transparent selection procedures now outlined.

Independence and impartiality.

Compared to the 2023 Report, the same message remains unchanged in the 2024 Report: “Overall, the constitution and legislation guarantee the independence of the judiciary, but certain shortcomings persist, in law and in practice. Business associations still raise concerns about the judiciary and corruption as obstacles to doing business in Ukraine. The renewed judicial governance bodies need to continue their work, alongside other measures, to effectively improve the independence, impartiality, and accountability of the judiciary and restore public trust in it, which remains very low.”

Accountability and fight against corruption.

In EC’s opinion, judicial accountability rules are in place but need stronger enforcement. Delays in qualification evaluation stem from the limited capacities of the HQCJ, PIC, NACP, and NABU. The NABU and NACP should enhance support for the HQCJ, which must develop independent capabilities for legal tests and integrity checks. Strengthening the PIC’s efficiency and the HCJ’s review of judge dismissals is also essential.

“To enhance the accountability of the judiciary and public trust in it, Ukraine should adopt legislation revising the system of judges’ declarations of integrity. An upgraded system should include, for judges of the highest courts, a temporary but meaningful verification procedure that involves independent experts.”

One of the challenging tasks is to strike the right balance between independence and accountability. Despite the judges of the newly formed Supreme Court in 2017 went through a transparent and open selection process with PIC participation and comprehensive checks and the President of the SC was dismissed after the corruption scandal, in the EC’s opinion “corruption risks in the Supreme Court still need to be adequately addressed”.

In the 2023 Report, the EC underlined: “Effective integrity tools should be used to address corruption in the Supreme Court and other courts, including through the verification of integrity and asset declarations of judges, disciplinary framework and improved selection procedures with a strong focus on integrity and professional ethics. These measures should help in building public trust in the judiciary, which remains very low. Based on opinion surveys, public trust has been growing in recent years (in 2021, 15.5% of respondents trusted the judiciary, while in 2023 it was 24.8%).”

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In the 2024 Report, the EC specified that the “corruption risks in the Supreme Court still need to be adequately addressed, in particular through the use of improved integrity declarations and verifications by the HQCJ, as well as asset declaration checks and lifestyle monitoring by the NACP, and an improved selection of Supreme Court Judges on the basis of the new legislative framework and unified criteria for evaluating the integrity of judges, approved by the HCJ.”

It is crucial to emphasize that the “improved selection” of the Supreme Court judges should be provided for future candidates, not for the current judges. Currently, the number of Supreme Court judges is naturally decreasing, with 153 judges in office. However, legislative changes alone cannot accelerate the transformation of mentality and the evolution of society. Moreover, care must be taken to avoid overly complicating the selection process, as this deters highly qualified and reputable lawyers from applying due to concerns about public shaming, excessive transparency, the “presumption of guilt” approach, and risks to their professional reputation.

Conclusion.

The 2024 Report outlines a more structured approach to judicial reform, anti-corruption measures, and human rights alignment, highlighting Ukraine's progress toward meeting EU standards despite its challenging circumstances. However, significant uncertainty remains regarding a special pathway for Ukraine's EU membership, given its simultaneous struggle to defend its values on the front line. Statements made during the [press conference](#) by HRVP Josep Borrell Fontelles and Commissioner Oliver Várhelyi on the 2024 Enlargement Package revealed no indications or steps toward a “fast track” accession process for Ukraine.