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CORRUPTION IN LOCAL GOVERNMENT AND ITS PREVENTION IN UKRAINE

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The Problem definition and its connection with relevant scientific and practical tasks. The essence of any state that seeks the path of democracy is manifested in one of the fundamental rights of the society which is democracy [1, p. 518]. Through the relevant state authorities and local self-government bodies the society can and has to overcome the crisis in the political, economic, social and spiritual spheres. It's well-known that a lot of corruption schemes have been exposed lately, which confirms the fact that corruption in one way or another has infected all levels of state government and management. The most corrupted structures turned out to be those related to the spheres of targeted funding, privatization, licensing, gas transmission sector, control and audit activities, as well as structures in the judicial and law enforcement authorities. Corruption, its measures and dynamics, is a consequence of the general economic, political and social problems that occur in the state. Corruption that is progressing at the local government level leads to the complete discrediting of local authorities, to the collapse of local and regional government, to the loss of trust in government in general.

The analysis of recent research and publications. The problem of fighting against corruption is not new. A lot of works [2, 3, etc.] are devoted to this issue. They study the essence of corruption, specific offenses and countermeasures in detail. For centuries there have been attempts to overcome this shameful phenomenon through various punitive measures, but the desired effect has not been achieved yet. The topicality of the issue is in the importance of preventing corruption in

local government bodies as a criminal phenomenon, which leads to the violation of personal rights and freedoms and results in the loss of authority by the state and local government as well as by the representative government bodies.

Setting the goals of the article and problem definition. The aim of the article is to analyse the situation with corruption offences in local government bodies and to improve anti-corruption policy of the state and local governments today.

The main research material. Corruption is an international problem. The head of the Chamber of Deputies Luciano Violante pointed in 1997 at the conference of the heads of parliaments of Central Europe that corruption is inherent in all countries, regardless of their economic levels or political systems. No nation can consider itself safe from this phenomenon. The difference is only in its scale. Corruption as he said is the problem of national security of every state [4, p. 27].

The opportunity that the local government officials have to manage resources and take decisions not in the interest of the community but in their own interests can lead to corruption acts on their side. Thus, the process of preventing corruption acts should clearly define the stages of the fight against various forms of corruption. In addition to traditional official abuse of authority like forgery and bribery there appear new forms of corruption like patronizing friends, acquaintances and relatives, receiving «kickbacks» from budget orders for chores, receiving undue rewards for the right to additional information during the tender procedures. We must point out that corruption at the local level implies direct interaction between a citizen and an official of the local government. It usually concerns the decisions of granting ownership or leasing of land, as well as issues related to the change of ownership, building permits and the placement of temporary facilities for trade and services. The nature of the corruption at the local level is very peculiar – all parties get benefit from illegal actions. There aren't usually any complaints, because local corruption acts are specific and confusing to the citizens.

In order to prevent corruption practices local governments should adopt targeted programs for the prevention of this crime, conduct anti-corruption expertise of local regulations and draft decisions, inform citizens of corruption acts and measures taken to fight against corruption,

create community advisory bodies to combat corruption. All this is supposed to create intolerance to the corrupted behavior within the society. For example, in the Chernihiv City Council, there's a Deputy Committee on the regulations, the rule of law, human rights and freedoms and prevention of corruption which in its turn is supposed to track the facts of conflict of interests involving local deputies and officials of the local government, and then to work out procedural mechanisms and order of registration of identified corruption acts with the afterward appeal to the relevant law enforcement authorities.

The new stage of fight against corruption at the state level is characterized by a number of governmental initiatives adopted as laws of Ukraine or CMU's decisions, UNO Conventions ratified by the Verkhovna Rada of Ukraine and anti-corruption recommendations of international organizations. For example, the State program for the implementation of state anti-corruption policy in Ukraine (the Anti-Corruption Strategy) for 2015–2017 approved by the Cabinet of Ministers of 29.04.2015 № 265 [5] states that its main purpose is to create an effective national system of prevention and fight against corruption based on new principles of formation and implementation of anti-corruption policies. In fact, the process of creating legal instruments to prevent corruption in our country has been launched. This program together with the Laws of Ukraine «On the Prevention of Corruption» and «On the National Anti-Corruption Bureau of Ukraine» have provided an opportunity to eliminate imperfect and fragmented legislative base, which in its course can eliminate one of the main causes of the unsatisfactory state of affairs in the field of anti-corruption policy in Ukraine, at least in its legal part. Thus, the Law of Ukraine «On the Prevention of Corruption» determined the basis for the formation, monitoring, and implementation of anti-corruption policy. The involvement of institutions and organizations of civil society, representatives of small and medium businesses to such processes can regulate the preventive activities of the state aimed at eliminating the opportunities and stimuli for corruption behavior both in public and private sectors [6]. The formation of the National Agency for the Prevention of Corruption has become a key element of the institutional support for the state anti-corruption policy. The Law of Ukraine «On the National Anti-Corruption Bureau of Ukraine» and changes to criminal

law provide legitimate legal grounds for prosecuting the most dangerous acts of corruption.

It should be noted that coordination of efforts of all law enforcement agencies at the local level is vital for the effective fight against corruption. According to the information presented by the head of Chernihiv City Prosecutor's Office at the session of the City Council of February 28, 2017 the interdepartmental working groups for the detection and investigation of certain crimes (including corruption) were created, a number of additional measures to strengthen law and order, to prevent and combat crime in the region were taken. Considering the fact that corruption is too versatile phenomenon and needs a comprehensive approach to overcome it, the Chernihiv city Prosecutor's Office pays special attention to the detection of crimes in this category. Consequently, as the result of work in that sphere, the court directed the indictment to verify the subsidiary of National JSC «Nadra of Ukraine» «Chernihivnaftohazheolohiya» which by the abuse of its official duties by prior agreement with an unidentified person and the director of a private enterprise committed embezzlement of funds of the subsidiary of National JSC «Nadra of Ukraine» in the amount of 185 000. 616 USD. In addition, specially authorized agents against corruption during the period of 11 months in 2016 compiled six protocols of administrative offenses related to corruption.

Measures to eliminate violations in the field of communal property are also taken. Thus, in the city of Chernihiv eight municipal property claims in the amount of 922 000 UAH were filed, they all have been satisfied by the court. The cost of the judgments executed this year is 1.4 mln UAH including the cost of the returned property. The claim was satisfied by the decision of the Economic Court of Chernihiv region of 10.05.2016.

This statistical evidence from the Chernihiv Prosecutor's Office shows numerous instances of violations of citizens' rights and interests of local communities, and strengthens the need for the preventive measures including anti-corruption measures.

In practice, the legal base is not sufficient to effectively combat corruption within the state and local governments. It is necessary to reduce the influence of corruption risks on the activities of the legislative

and executive authorities, to strengthen public control over their activities. As for the local governments it's important to increase the role of mechanisms of collegial, transparent and public decisions concerning property, land issues, financing budget programs.

For the managers of communal companies, communal institutions and establishments it's necessary to introduce the practice of public reports of their economic activities, and for the heads of educational institutions, medical and health institutions the practice of contracts for executives should be introduced. There must be a strict control over budget spending and full compliance with the law in the financial and economic activities. It's necessary to create an effective mechanism to prevent corruption, conflict of interest, breach of ethical standards of conduct and to ensure control over the rules on charity to persons authorized to perform state or local government functions.

Local governments need to widen the opportunities for the access to socially important information in the administration and architectural and land resources departments, also they need to help eliminate corruption preconditions for doing business, forming intolerant attitude to corruption on the side of small and medium businesses. We must recognize that the idea of intolerance to corruption formed within the society will increase the level of trust to local authorities.

An important feature of the social and psychological public attitude to corruption is the double standard. On the one hand the government is publicly demonstrating fight against corruption through the media, law enforcement, anti-corruption rhetoric of political and civil society activists. On the other hand, so-called local corruption has become a normal part of life which in some way everybody has «used» to and public corruption charges against politicians have become so commonplace that they are not perceived by ordinary citizens as something extraordinary. Electronic declarations submitted by the officials at all levels, including officials of the local government have become a new, important and effective step to eliminate corruption acts.

According to the Law of Ukraine «On the Prevention of Corruption», the National Agency for Combating Corruption reported that since 1.01.2017 the range of e-declaration subjects has been widened. According to this law, the second stage of e-declaration concerns all

officials authorized to manage state and local governments. According to the Law of Ukraine «On the Prevention of Corruption» it concerns the officials of public law and legal persons of public law who permanently or temporarily occupy positions related to the execution of organizational and regulatory or administrative and economic responsibilities. The law also applies to members of academic and educational institutions.

It should be noted that the process of electronic declaration, as well as other anti-corruption measures was provided by the state program of the Cabinet of Ministers of Ukraine to ensure the implementation of recommendations of international anti-corruption organizations, such as the monitoring mechanism of the UNO Convention against corruption, the Group of States against Corruption (GRECO), the Anti-Corruption Network of economic development and cooperation for Eastern Europe and Central Asia, the implementation of the criteria in the framework of the Action Plan on visa liberalization with the European Union and the Agreement on Association between Ukraine and the European Union.

As for local governments, the list of persons who have to submit e-declarations includes the deputies of local councils, village, town and city mayors, officials of the local government. Also, this list should include officials of local governments that perform administrative and supply functions or officials who manage or are responsible for the disposal of municipal property, excluding managers of economic planning, procurement, financial departments and their assistants. Managers of municipal enterprises, institutions, schools and their assistants should be the subjects to the declaration of income as well, because they perform organizational and administrative functions and thus directly affect the financial and economic activities of companies headed by them.

It is obvious that it is impossible to fight corruption only by adopting «narrow» political decisions. It's even more obvious (taking into account the historical experience) that it's impossible to root out corruption by harassment and all kinds of repressive measures only. For a lot of public officials corruption behavior has become quite normal. It's become the main source of their income, which is many times higher than their salary.

They created special schemes and protection systems that prevent the criminal prosecution of those responsible.

The conclusions of this study and further research in this direction. Effective fight against corruption is only possible when it's done within the whole country using systematic, comprehensive approach. The latest legislation provides enough real levers for tracking down the income and expenses of the civil servants, local government officials and deputies of all levels. It's possible now to watch the way of their life, give their public activities full transparency and openness. The control over their property and the property of their close relatives provide a real picture of the life of an official. Proposals, worked out in the regulations on the prevention of corruption in local government should be used in all structural departments of local councils, as well as at enterprises and institutions of communal ownership. We believe that local governments should take the burden of resistance to corruption, and we consider the task of fighting against corruption to be our priority. The first step should be to take effective regional economic and social measures. The implementation of anti-corruption measures by the local communities should be adequately financed.

Sources

1. Погорілко В. Ф. Народовладдя. *Великий енциклопедичний юридичний словник* / за ред. Ю. С. Шемшученка. Київ: Юрид. думка, 2012. 1020 с.
2. Мельник М. І. Корупція: сутність, поняття, заходи протидії: монографія. Київ: Атіка, 2001. 304 с.
3. Бантишев О. Ф. Злочини у сфері службової діяльності (питання кваліфікації): навч. посіб. Київ: МАУП, 2002. 128 с.
4. Денисова Т. А. Характеристика коррупции: исследования в Украине. URL: <http://law.edu.ru/doc/document.asp?docid=122467808> (дата звернення: 10.02.2017).
5. Державна програма щодо реалізації засад державної антикорупційної політики в Україні (Антикорупційної стратегії) на 2015–2017 роки: постанова Каб. Міністрів України від 29 квіт. 2015 р. № 265. URL: <http://zakon0.rada.gov.ua/laws/show/265-2015-%D0%BF> (дата звернення: 10.02.2017).

6. Про запобігання корупції: Закон України: прийнятий Верховною Радою України від 14.10.2014 № 1700-VII: в редакції від 05.01.2017. URL: <http://zakon5.rada.gov.ua/laws/1700-18> (дата звернення: 10.02.2017).

References

1. Pohorilko V. F. Narodovladdia. Velykyj entsyklopedychnyj iurydychnyj slovnyk [Great Encyclopedic Dictionary of Law] Za red. akad. NAN Ukrainy Yu. S. Shemshuchenka., 2-he vyd., pererob. i dopovn. [Ed. by acad. NAS of Ukraine Shemshuchenko Y. S., 2nd ed., revised and fulfilled] Kyiv: Yurydychna dumka, 2012, 1020 p. [in Ukrainian].

2. Mel'nyk M. I. Koruptsiia: sutnist', poniattia, zakhody protydiv [Corruption: nature, concepts, countermeasures] Monohrafiia Kyiv: Atika, 2001., 304 p. [in Ukrainian].

3. Bantyshev O. F. Zlochyny u sferi sluzhbovoi diial'nosti (pytannia kvalifikatsii) [Crimes in the sphere of official service (the problems of qualification)] Navchal'nyj posibnyk Kyiv: MAUP, 2002, 128 p. [in Ukrainian].

4. Denysova T. A. Kharakterystyka koruptsyy: yssledovanyia v Ukrainie [Characteristics of corruption: research in Ukraine]. Retrieved from <http://law.edu.ru/doc/document.asp?docid=122467808>. [in Ukrainian].

5. Derzhavna prohrama schodo realizatsii zasad derzhavnoi antykoruptsijnoi polityky v Ukraini (Antykoruptsijnoi stratehii) na 2015–2017 roky: postanov. KM Ukrainy vid 29 kvitnia 2015 r. № 265 [State program for the implementation of state anti-corruption policy in Ukraine (the Anti-Corruption Strategy) for 2015–2017: resolution of the Cabinet of Ministry of 29 April 2015 № 265]. Retrieved from <http://zakon0.rada.gov.ua/laws/show/265-2015-%D0%BF> [in Ukrainian].

6. Pro zapobihannia koruptsii: Zakon Ukrainy, pryjnytyi Verkhovnoiu Radou Ukrainy vid 14.10.2014 № 1700-VII, v redaktsii vid 05.01.2017 [On the prevention of corruption: The Law of Ukraine, accepted by the Verkhovna Rada of Ukraine of 14.10.2014 № 1700-VII, amended of 01.05.2017]. Retrieved from <http://zakon5.rada.gov.ua/laws/1700-18> [in Ukrainian].

Sheremet O. S. Corruption in local authorities and its prevention in Ukraine

The article is devoted to the analysis of corruption practices between a citizen and an official of the local government. It studies scientific views on general issues of legal regulations of the corruption crime prevention. It's stated in the article that the most effective element in fighting against corruption is the coordination of efforts of all

law enforcement agencies at the local level. The role of e-declaration in the prevention of corruption offenses committed by local authorities is determined.

Key words: *community, local authorities, corruption, crime prevention.*

Шеремет О. С. Коррупция в органах местного самоуправления и ее предупреждение в Украине

Статья посвящена анализу коррупционных деяний, происходящих при непосредственном взаимодействии гражданина и должностного лица органа местного самоуправления в Украине, а также исследованию научных взглядов по общим проблемам правового регулирования предотвращения коррупционной преступности. Отмечено, что эффективной в противодействии коррупции является координация усилий всех правоохранительных органов на местном уровне. Определена роль электронного декларирования в предотвращении коррупционных преступлений, совершаемых в органах местного самоуправления.

Ключевые слова: *община, органы местного самоуправления, коррупция, предупреждение преступности.*

Шеремет О. С. Корупція в органах місцевого самоврядування та її запобігання в Україні

Статтю присвячено аналізу корупційних діянь, що відбуваються при безпосередній взаємодії громадянина та посадової особи органу місцевого самоврядування в Україні, а також дослідженню наукових поглядів із загальних проблем правового регулювання запобігання корупційній злочинності. Зазначено, що ефективною у протидії корупції є координація зусиль всіх правоохоронних органів на місцевому рівні. Визначено роль електронного декларування у запобіганні корупційним злочинам органів місцевого самоврядування.

Ключові слова: *громада, органи місцевого самоврядування, корупція, запобігання злочинам.*

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