

POLITICAL INSTITUTIONS AND PROCESSES

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POLITICAL CORRUPTION IN ACTIVITY OF THE UKRAINIAN PARLIAMENT: THEORY AND PRACTICE

This article describes basic scientific approaches to study corruption as a political problem in the area of interaction between public and private sectors. Peculiarities of corruption in East European transitive countries called "incompleted democracies" were analyzed. The article also highlighted major factors that may facilitate dissemination of corruption in the post-communist countries. The interpretations of prominent domestic scholars that researched political corruption as specific practice of governance were analyzed. The paper also identifies and describes specific cases of political corruption in practice of the Ukrainian parliament, indicating its reasons and consequences for development of our country.

Key words: political corruption, nepotism, conflict of interests, bribery, clientelism.

The phenomenon of corruption as a manifestation of distortions in interaction between public and private sectors is inherent to any political system. However, its characteristics and scope in different countries differ significantly. This is stipulated by variability of internal and external factors of corruption. Internal factors of corruption, as indicated by researchers, are historical conditions of statehood and civil society, organization of political power, political regime, socio-economic situation of society, political culture, public morality and so on. International anti-corruption discourse is mainly regarded as an external factor of corruption because it is based on practice of developed liberal democracies.

Researchers which study corruption in the context of sustainable (completed) democracy, often analyze its formal and legal characteristics. For example, Joseph La Palombara, the author of a definition of corruption widely cited in Western literature, points out that "it is any action of a public official (elected or appointed), which deviates from duties defined by law in order to obtain personal benefit for themselves or other private individuals associated with a public official"¹. Typically, it is one-off interaction between an official authorized to perform state functions and another party (either an individual or a group of people), which implies unlawful acts of an official in personal interests and/or interests of the other party and receiving of the following personal gain.

In Western democracies activities of public officials is clearly regulated and exercised according to the rule of law, under the close supervision of law enforcement agencies and the public. So corruption has absolutely clear formal and legal features which can be identified and studied.

However, application of this approach to study corruption in post-communist countries, which are now defined as "incompleted democracies"², does not allow clarifying the nature of social and political phenomena.

Unlike the West, in the minds of East European citizens the limits of legal and illegal activity is not always obvious.

For political culture of this region a broad practice to exchange social services between citizens is typical, and during transition it became a kind of survival strategy. Therefore, interaction between officials and private sector regarding distribution of public goods can take unusual for Western countries forms. In particular, they may be absolutely legal and, at the same time, undermine public interest; may be aimed to demonstrate loyalty, rather than search for personal benefit, etc. These features do not allow analyzing this

¹ Palombara, Joseph La (1994). Structural and Institutional Aspects of Corruption. *Social Research*, 61 (2), 328.

² Rose, R., Mishler, W.T., Haerpfer, C.W., (1998). *Democracy and its alternatives: understanding post-communist societies*. Cambridge. Polity Press.

phenomenon in legal framework.

In fact, anti-corruption discourse as the concept of the rule of law reflect the values of Western liberal democracy and were introduced in the agenda of the post-communist states from outside, so do not reflect the inherent value of these societies. That is why attempts to eliminate corruption in Eastern Europe using the concept of the rule of law collapsed.

In post-communist countries corruption was considered by researchers as a political problem¹. It is not confined just to corruption in a political (state) sector or bribery of officials, but indicates that political structures create conditions for corruption or often require corruptive actions.

Studying corruption in Eastern Europe A. Shaio offers the following factors: 1) corruption in the region is an indispensable part of existing clientelist social structures and therefore any analysis of corruption can not be separated from the concept of clientelism; 2) clientelist structures in Eastern Europe are associated with previous communist nomenclature, but development of real socio-economic processes create new levels and forms of clientelism which are concentrated in state government and differ from those that existed under the previous regime; 3) anti-corruption policy is a response of the region to those who are outside it; 4) the success of constitutional democracy in Eastern Europe is largely dependent on social values, including selection of what is considered to be a value.²

According to the author, clientelism as a form of post-communist society is a source of corruption; in turn, corruption is a foundation of social clientelist structures. He calls this phenomenon “clientelist corruption”, that is a form of structural corruption, which must be distinguished from specific actions related to individual corruption³. Distribution of clientelist corruption undermines democratic principles of government. Under these conditions, the rule of law only protects existing status quo without breaking anything, so often “it actually contributes to organizational design and institutionalization of existing forms of clientelism and corruption”⁴.

According to E. Henkis historically corruption becomes particularly prevalent in the period of so called primitive accumulation and “wild” capitalism, when a large number of state resources and services were privatized and in transitional period when the old “rules” are not already applied, but the new one has not been formed and generally accepted yet⁵. Prevalence of corruption in post-communist region, according to the author, enables to consider this phenomenon as a social and political “pathology”, when government agencies are not able to cope with their own role in system and social integration, that leads to a hidden or partially hidden second system of redistribution “which is powered from imperfections of the main system”⁶.

All features of post-communist transition are inherent to Ukraine: fast and “wild” privatization, lack of well-established publicly accepted “rules”, rootedness of patron-client bonds, when personal loyalty is more important than professionalism. Under these conditions, corruption became an informal social regulator that Ukrainian researchers describe as “a model of economic and political relations, which is not limited to bribery, but is a specific feature of Ukrainian way of doing economic and political business in the plane of deviant behavior, but which today is almost a rule. This behavior is caused by a desire of large segments of people to achieve selfish goals (wealth, power, avoid liability, etc.) due to deficiencies in development of institutions, violation of role functions in public administration and protection of legal order”⁷. This approach to a definition of corruption in the context of Ukrainian practice of social interaction clearly indicates political nature of the phenomenon. However, we can not agree with the authors that it has only a domestic dimension.

¹ Krastev, I. (2000). *The Strange (Re)Discovery of Corruption. The Paradoxes of Unintended Consequences*. Budapest. CEU Press, 40.

² Шайо, А. (2004). Клієнтизм та здирицтво: корупція в перехідному періоді. *Політична корупція перехідної доби*. Київ: «К.І.С.», 1.

³ Шайо, А. (2004). Клієнтизм та здирицтво: корупція в перехідному періоді. *Політична корупція перехідної доби*. Київ: «К.І.С.», 3.

⁴ Шайо, А. (2004). Клієнтизм та здирицтво: корупція в перехідному періоді. *Політична корупція перехідної доби*. Київ: «К.І.С.», 2.

⁵ Генкіс, Е. (2004). Корупційні ігри: Східна та Центральна Європа, 1945 – 1999. *Політична корупція перехідної доби*. Київ: «К.І.С.», 216.

⁶ Генкіс, Е. (2004). Корупційні ігри: Східна та Центральна Європа, 1945 – 1999. *Політична корупція перехідної доби*. Київ: «К.І.С.», 215.

⁷ Михальченко, М., Михальченко, О., Невмержицький, С. (2010). *Корупція в Україні: політико-філософський аналіз*. Київ: ІПіЕНД імені І. Ф. Кураса НАН України, 40-41.

Fluidity and latency of corruption generates constant debate on conceptual definition of this phenomenon. As it was aptly noted by V. Tanzi: "It's like with the elephant, corruption is hard to describe, but not difficult to recognize when observing"¹.

Summarizing, we may note that today the majority of domestic scholars use two approaches to understand corruption: the narrow approach involves study of legal aspects of corruption (in fact we are talking about bribery)², the wide approach study structural abnormalities in political sphere (it is about political corruption).

There are several examples of definition of political corruption offered by Ukrainian researchers:

- As a type of anti-people political power, based on informal exchange of resources between power elites and other structures of society, which prerequisite is political motivation and a corresponding target³.

- As a special form of power struggle, where multimillion bribes, but not political interests of society, get win. Political corruption makes it possible to convert power in the capital, and the capital into power⁴.

- Illegitimate use of opportunities and responsibilities in the political process by public authorities for personal or group benefits (rent). This benefit (rent) may have different forms: from material to symbolic (power for power, social prestige, etc.), and mechanisms to use these powers may acquire unlawful forms.⁵

For all three definitions common is a statement of existence in Ukraine unofficial redistributive system, based on interchange between the government and big businesses. Thus, the purpose of interaction between public and private sectors is personal (group) enrichment and/or obtaining, maintaining, expanding political power.

Practice shows that in Ukraine there are different forms and manifestations of political corruption. They include criminal lobbyism, protectionism, favoritism in appointments for public office, use of official position to assist relatives, friends and supporters for benefits and advantages in every sphere of public life, buying votes, financial irregularities in election campaigns, taking illegal economic and political decisions in favor of specific clans and groups and so on⁶. They are all more or less inherent to activity of Ukrainian parliamentarism.

The problem of political corruption in the context of parliamentary practice was raised to the level of official political discourse by the third President of Ukraine Viktor Yushchenko. In the spring of 2006 during the political crisis, which resulted in premature termination of the Verkhovna Rada of Ukraine of V convocation, he used this concept to describe a mass entry of MPs, and opposition members into the ruling anti-crisis coalition. Experts also agreed that "recruiting" of MPs, who do not belong to fractions of the ruling coalition, distorted the will of citizens, limiting realization of their right to participate in public affairs, and thus contributed to development of political corruption⁷.

It should be noted that parliamentary political corruption has a long history and is not a Ukrainian invention. There have been times when charges for a vote in the British Parliament actually were paid legally⁸. So, political corruption was normal parliamentary practice at the time of establishment of civilized parliamentarism.

According to allegations of old Ukrainian deputies, parliamentary corruption appeared in the Verkhovna Rada of third convocation, when the process of "wild" and rapid privatization was in the active phase. The idea to bribe MPs and its practical implementation is associated with the former Prime Minister of Ukraine, MP of second and third convocations and at the same time representative of big Ukrainian

¹ Tanzi, V. (1998). Corruption around the World: Causes, Consequences, Scope and Cures. *IMF Working Paper, WP 98/63*, 56). Washington: International Monetary Fund.

² Мельник, М.І. (2000). *Хабарництво: загальна характеристика, проблеми кваліфікації, удосконалення законодавства*. Київ: Парламентське видавництво.

³ Михненко, М., Марчук, Р.П., Мудров, А.М. та ін. (2010). *Затобігання та протидія корупції: навч. посіб.* Київ. НАДУ, 41.

⁴ Корж, І. (2009). Політична корупція та правова безпека України. *Право України*, 6, 56.

⁵ Політична корупція в Україні: суб'єкти, прояви, проблеми протидії (2009). *Національна безпека і оборона*, 7, 7. <http://razumkov.org.ua/ukr/files/category_journal/NSD111_ukr_1.pdf> (2016, November, 01).

⁶ Михальченко, М., Михальченко, О., Невмержицький, Є. (2010). *Корупція в Україні: політико-філософський аналіз*. Київ: ІПіЕНД імені І. Ф. Кураса НАН України, 246.

⁷ 240 днів діяльності влади в новому форматі: оцінка неурядових аналітичних центрів (2007). *Національна безпека і оборона*, 3, 4. <http://razumkov.org.ua/ukr/files/category_journal/NSD87_ukr.pdf> (2016, November, 01).

⁸ Дюверже, М., (2007). *Политические партии*. Москва: Академический Проект; Трикста, 25.

business P. Lazarenko. Later, the practice to “buy votes” has become widespread. Today, according to media reports, a MP could potentially receive a reward for each type of parliamentary activity: co-authorship of the bill¹, voting on bills², writing parliamentary inquiries³ etc.

Later the practice of parliamentarism was supplemented by the phenomenon of “buying” districts and places in the “passing” part of the electoral list (such facts were especially widespread while proportional electoral system with closed lists). According to approximate estimates of experts, the price for entering political market through party lists is about 2-10 million dollars⁴; and through majority districts is from 2 to 5 million dollars, what is more expensive than electoral campaign of US Congressman.⁵

Such a high price for entering political market, on the one hand, restricts access to the parliament for general public, but on the other hand, makes electoral process a contest of a limited number of business clans and provokes other forms of political corruption in the parliament.

In general, there are a number of systemic factors which beget extremely high level of big business representation in the Parliament.

Firstly, dichotomous structure of Ukrainian society, which includes only two basic social groups: those at the top and bottom of the social hierarchy; and a small group that is in the middle. This social division reflects unequal distribution of income, where wealth is concentrated within a relatively small (7-10%) privileged group. Ukrainian academician E. Libanova believes that differences in income reflect inequalities in political power, as “vulnerable groups (poor, peasants, women) remain such due to weak political influence on government decisions, and little impact is determined primarily by their vulnerability”⁶. Moreover, according to western analysts, unequal distribution of income and wealth motivates high-income groups to intervene in politics and public administration.⁷

Secondly, abundant representation of big business in Parliament is a symbiosis of two factors: high concentration of financial and economic resources of the country in the capital-city through centralized governance and remains of the Soviet management that provides active state intervention in all spheres of public life. Under these conditions, access to power as to a mechanism which distributes public goods (public resources) is the key for obtaining non-market benefits (political rents) that far exceed profit from market production. According to Ukrainian researchers, all powerful corporations, represented in the Parliament, accumulated their initial capital in terms of non-market system of patronage and privileges from authorities at regional and central levels⁸. Redistribution of this capital between groups is carried out as an act of political will, but not as a result of market laws. Actually, this is the third important reason for incorporation of business groups in government (including parliament) - the desire to protect their own capital in the absence of property rights and long-term “rules of the game”. In Ukrainian realities rotation of business leaders is directly proportional to rotation of political parties they support.

In turn, incorporation of large businesses into highest legislative body causes a number of distortions in functioning of political institutions.

Despite the fundamental principle of civilized parliamentarism, which prohibits a deputy to vote on matters in which they personally or financially interested,⁹ Ukrainian deputies (representatives) of business groups are not only initiate bills with directly corporative interest and vote for them, but also often manage specialized parliamentary committees.

¹ Соавторы в законе (2010). *Киев. Власть денег*, 28 – 29, 16.

² П'єцух, М. (2005). Скільки коштує голос депутата. *Україна молода*, 184.
<<http://www.umoloda.kiev.ua/number/524/113/18948>> (2016, November, 01).

³ Жартовская, М. Тарантино отдыхает. За кулисами ареста радикала Мосийчука. *Украинская правда*.
<<http://www.pravda.com.ua/rus/articles/2015/09/18/7081757/>> (2016, November, 01).

⁴ Корж І. (2009) Політична корупція та правова безпека України. *Право України*, 6, 57.

⁵ Инфографика: Мандат, дорого. Сколько стоят выборы в мажоритарном округе. *ЛІГА.net*.
<http://www.liga.net/infografica/78922_tsena-mandata-skolko-stoyat-vybory-v-mazhoritarnom-okruge.htm> (2016, November, 01).

⁶ Лібанова, Е.М. (2010). Гуманізм, суспільна інтеграція та соціальний розвиток. “Демографія та соціальна економіка”. *Київ. Інститут демографії та соціальних досліджень ім. М.В. Птухи НАН України*, 2(14), 7.

⁷ Why is income inequality a matter of policy concern? (2008). *World of work report 2008 : income inequalities in the age of nancial globalization International Labour Organization, International Institute for Labour Studies*. Geneva. ІЛО, 24–25.

⁸ Пасхавер, О.Й., Верховодова, Л.Т., Агеєва, К.М. (2007). *Великий український капітал: взаємовідносини з владою і суспільством*. Київ. «Дух і літера», 9.

⁹ Роберт, Г.М. (1992). *Правила парламентской процедуры*. Вашингтон. Проблемы Восточной Европы, 182.

For example, A. Pryhodskyi – the owner of the transport corporation “Interregional Industrial Union” was elected in the Verkhovna Rada of the fifth convocation by electoral lists of the Party of Regions. In the Parliament he was the Head of the Committee on Transport and Communications. In the Verkhovna Rada of the sixth convocation this position was held by the member of the same business group – V. Kozak. In March 2011 V. Kozak was appointed as CEO of “Ukrainian Railways”. So for just a few years, members of the “Interregional Industrial Union” formed a vertically integrated structure (clan), which included a private corporation, a relevant committee in the Parliament and executive body of state policy in the sphere of private interests.

The desire to monopolize impact on a particular sector of economy is a feature of business corporations represented in the Parliament and the most severe manifestation of political corruption at the macro level, because it causes distortion of socio-economic structure of society and the vector of its development.

Such examples exist in practice of the Parliament of VIII convocation. In particular, by the list of “BPP” brothers Bohdan and Yaroslav Dubnevych were elected to the Verkhovna Rada. There are a number of companies in their joint ownership, including Corporation “Track-repair technologies”, which makes money on selling rail fasteners to the “Ukrainian Railways”. At the moment of election to the Parliament of previous convocation the younger brother Yaroslav Dubnevych officially served as president of that corporation. But despite the apparent conflict of interests, today he is the Head of the parliamentary Committee on Transport, and his older brother Bohdan Dubnevych heads the Subcommittee on Public investment projects and effectiveness of enterprise management in public sector of the Budgetary Committee. Both these parliamentary committees exercise control over activities of “Ukrainian Railways”. At the same time, according to journalistic investigation, senior positions in the “Ukrainian Railways” is occupied by people associated with Dubnevyches; and their corporation only in June 2016 received from the “Ukrainian Railways” an order for more than 13 million UAH.¹

It is impossible to find out profitability of investments made by these businessmen in politics. However, the fact that very wealthy people running for parliament, indirectly indicates a high level of profitability. In particular, according to electronic declarations of the Dubnevyches brothers, in October 2016 they kept in cash over 578,4 mln. UAH. Bohdan Dubnevych and his family own 409 objects of immovable property. Yaroslav Dubnevych and his family own 273 objects of immovable property. In addition, Dubnevych Jr. declared 51 objects of unfinished construction.²

In fairness, it should be noted that this example is just an illustration of the phenomenon, which is quite common for Ukrainian parliament. This is not surprising, because according to the Unified State Register of declarations of persons authorized to perform state or local self-government functions, in October 31, 2016 total amount of “Cash assets” declared by Ukrainian MPs of the eighth convocation is almost 12 billion UAH (excluding declarations of 12 deputies who did not submitted their declarations).³

In addition, according to Ukrainian organization “Committee of Voters of Ukraine” in 2015 119 deputies who declared more than a million hryvnia in currency (or equivalent) received compensation for housing rent in Kyiv in total amount about 167 thousand UAH. What’s interesting is that some of the deputies had registered dwelling in Kiev suburbs.⁴ This is also usual practice of wealthy Ukrainian deputies who do not refuse benefits and privileges legally assigned to the post.⁵ In this case that it is not a violation of law, but manifestation of deviant behavior of people's deputies of Ukraine.

Also this example illustrates another manifestation of political corruption in the practice of Parliament - nepotism. By definition of the draft law, initiated in the fourth convocation, nepotism is

¹ Дубневичі продали залізниці рейкових скріплень на 14 мільйонів. *Економічна правда*. <<http://www.epravda.com.ua/news/2016/06/24/596944/>> (2016, November, 01).

² Єдиний державний реєстр декларацій осіб, уповноважених на виконання функцій держави або місцевого самоврядування. <<https://public.nazk.gov.ua/search/>> (2016, November, 01).

³ Народні депутати вже задекларували грошових активів у розмірі 12 мільярдів гривень. (2016). Громадянська мережа ОПОРА. <<https://www.opora.ua/novyny/43387-narodni-deputaty-vzhe-zadeklaruvaly-hroshovykh-aktyviv-v-rozmiri-12-miliardiv-hryven>> (2016, November, 01).

⁴ 119 Депутатів-мільйонерів отримували компенсацію на житло. ВГО “Комітет виборців України”. <<http://cvu.org.ua/nodes/view/type:news/slug:119%20депутатів-мільйонерів%20отримували%20компенсацію%20на%20житло>> (2016, November, 01).

⁵ Найбільші марнотрати парламенту: БЮТівці, син Януковича, брат Ющенко. *Українська правда*. <http://www.pravda.com.ua/articles/2011/04/7/6087126/view_print/> (2016, November, 01).

activity of persons authorized to perform state functions aimed to appoint in government close relatives, cousins, friends, godfathers/godmothers, their family members and persons associated with an institution where a public official works (stakeholders)¹. In the Parliament of four last convocations a phenomenon of “family-oriented politics”² obtained unprecedented distribution. There are following stages of family ties between MPs: a) parents/children; b) brother/brother (sister); c) father-in-law/son-in-law; d) spouses; e) uncle/nephew and etc. Also, between MPs of different factions and groups there is practice to “exchange” close relatives for office of assistants. This practice was especially widespread in previous convocations, when the office of MPs’ assistant belonged to the category of public servants with all appropriate benefits and privileges, and lists of assistants were not available to the public.

In addition, it should be noted that potential subjects of parliamentary political corruption are: parliamentary associations, assistants of MPs, parliamentary staff and large business groups, which can act both as clients and as patrons. However, primary responsibility for distribution of political corruption and its consequences lies with MPs directly empowered to represent Ukrainian nation.

Structural political corruption in the Parliament eliminates the contents of legal system as fair and effective social regulator in terms of public interest. The law becomes a tool for gaining and keeping power in order to protect and increase assets. In turn, improper functioning of the highest legislative body undermines trust in this political institution³ and creates a phenomenon of legal nihilism, public despondency and destroys the principles of national sovereignty.

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2. 119 Deputativ-milioneriv otrymuvaly kompensatsiiu na zhytlo [119 Deputies-millionaires receive compensation for housing]. *VHO “Komitet vybortsiv Ukrainy” [Committee of Voters of Ukraine]*. <<http://cvu.org.ua/nodes/view/type:news/slug:119%20депутатів-мільйонерів%20отримували%20компенсацію%20на%20житло>> (2016, November, 01). [in Ukrainian].
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¹ Проект Закону про внесення змін та доповнень до деяких законів України (щодо заборони непотизму (кумівства)) 2005 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc2_5_1_J?ses=10005&num_s=2&num=&date1=&date2=&name_zp=%E7%E0%E1%EE%F0%EE%ED%E8+%ED%E5%EF%EE%F2%E8%E7%EC%F3&out_type=&id=>> (2016, November, 01).

² Левицька, Р. Родинність в політиці: традиція чи політична корупція? *ОБОЗРЕВАТЕЛЬ.ua*. <<http://obozrevatel.com/news/2007/6/4/173726.htm>> (2016, November, 01).

³ Зараз я називатиму окремі соціальні інституції. Якою мірою Ви їм довіряєте? Соціологічне опитування. *Центр Разумкова*. <http://razumkov.org.ua/ukr/poll.php?poll_id=1143> (2016, November, 01).

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