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## **CORRUPTION INDEPENDENCE IN UKRAINE**

**Abstract.** The experience of combating corruption in developed democratic countries, changes in the legislation of Ukraine, characterized the new anti-corruption system, its achievements and shortcomings, analyzed the statements of some foreign statesmen and complex expert assessments received within the framework of international monitoring mechanisms. In the anti-corruption sphere, developed proposals to improve the fight against corruption.

**Keywords:** corruption, anti-corruption legislation, anti-corruption measures, anti-corruption system, international ratings.

## **КОРУПЦІЙНА БЕЗКАРНІСТЬ В УКРАЇНІ**

**Анотація.** Схарактеризовано досвід протидії корупції у розвинених демократичних країнах, зміни в законодавстві України, нова антикорупційна система, її здобутки та недоліки, проаналізовані висловлювання окремих іноземних високопосадовців та комплексні експертні оцінки, отримані в межах реалізації міжнародних моніторингових механізмів в антикорупційній сфері, розроблені пропозиції по удосконаленню боротьби з корупцією.

**Ключові слова:** корупція, антикорупційне законодавство, антикорупційні заходи, антикорупційна система, міжнародні рейтинги.

## **КОРРУПЦИОННАЯ БЕЗНАКАЗАННОСТЬ В УКРАИНЕ**

**Аннотация.** Охарактеризованы опыт противодействия коррупции в развитых демократических странах, изменения в законодательстве Украины, новая антикоррупционная система, ее достижения и недостатки, проанализированы высказывания отдельных иностранных государственных деятелей и комплексные экспертные оценки, полученные в рамках реализации международных мониторинговых механизмов в антикоррупционной сфере, разработаны предложения по совершенствованию борьбы с коррупцией.

**Ключевые слова:** коррупция, антикоррупционное законодательство, антикоррупционные меры, антикоррупционная система, международные рейтинги.

**Target setting.** Over the last years, level of corruption in Ukraine increased and became one of pressing issues of our times. This negative phenomenon creates as genuine threat to safety, democratic development of the state and society, constitutional order, which is: compromising authority of the country, inflicts damage on democratic principles of governance of society, operation of government machine, restricts human and civil constitutional rights and freedoms, trespasses against the principles of rule of law, breaks prescribed procedures of exercise of powers by corporate officers and officials of public authorities, administrative institutions of country parts of towns (inner suburbs), destroys moral and social values, discredits state at international level. Such situation requires maximum concentration of efforts of all branches of government and local authorities.

**Analysis of basic research and publication.** Corruption in Ukraine is one of the most sensitive issues, which almost every day reflects in all the mass media in both within the country and abroad. A great number of research papers of such national scientists as L. I. Arkusha, V. M. Veresov, A. Ye. Zhalynskyi, V. S. Zhuravskyi, M. Yu. Bezdolnyi, P. T. Gega, Yu. Ya. Karasaba, M. I. Kamlyk, R. P. Marchuk, M. I. Melnyk and many other scientists is addressed to research of the causes of such state.

**The purpose of the article** is a brief description of experience of fighting corruption in developed democratic countries; changes in legislation of Ukraine, which occurred after 2014, description of new anticorruption sys-

tem, its achievements and shortcomings; giving analysis over the last year, judgments of certain foreign high officials during the international activities and periodic comprehensive expert evaluation, obtained in framework of implementation of international monitoring mechanisms in anticorruption sphere; giving suggestions on improvement of work on fighting against corruption.

**The statement of basic materials.** Corruption exists in all the countries, but in different rates, different levels and has different nature of its origin. For the time being, at explanation of causes of unprecedented rate of corruption, inefficiency of using international practice of fighting this negative phenomenon enters the foreground.

So what can Ukraine take from practice of fighting corruption in developed democratic countries? In the first instance, it is better anticorruption legislation. Ukraine supported plan of actions against corruption for states with economies in transition, which was considered and accepted in September 2003 in Istanbul and ratified Convention of the UN against corruption from October 31, 2003.

Unlike Ukraine, corruption is considered as crime in legislation of Germany. The main legislative act in this state is Fighting Corruption Act, passed on August 13, 1997. In this one they recognized such main types of corruption-related crimes as bribery of parliamentarians (§108); bribery and corruptibility in business relationships (§299); super severe cases of bribery and corruptibility in business relationships (§300); giving advantages (§331); corruptibility (§332); bribery

(§334); super severe cases of bribery and corruptibility (§335) [1].

The headmost system of anti-corruption rules is in criminal statute of the US. Two acts passed forty two years ago expressly prohibit bribe-taking (Bribery of Public Officials and Witnesses Act, Foreign Corrupt Practices Act). Moreover, in much broader spectrum of legislative acts there are measures provided to help fighting corruption [2].

In Foreign Corrupt Practices Act, signed by J. Carter on November 20, 1977, the point at issue is that all the companies, controlled by Securities and Exchange Commission (SEC), and also other American “national conglomerates”, do not have right “with aim of corruption” to offer, give any values to any “foreign official” or foreign political party with purpose to influence on official act or decision in order to gain competitive edge. The Act obligates the above American companies to keep and store books, reports and accounts.

In most of the states there is also criminal liability for bribery of representatives of trade unions and for receiving bribes by them “by agreement or with understanding”, that this will influence on their actions and decisions, and for bribe-taking in sports (bribery of participants of sports competitions, judges, coaches, seconds, starters etc.).

Some other acts of the US also touch corruption issues. For instance, in statute of the US about police it is specified that policeman does not have a right further to perform his protection or search (investigation) functions out of service for extra payment.

A policeman does not have to have relatives who are owners of cafes, shops, casinos, entertainment establishments with games of fortune and chance, who sell alcoholic beverages, lottery tickets, tobacco products. All these restrictions are intended to fight latent forms of corruption.

Many years experience of fighting corruptibility of officials in different countries gives possibility to define some forms of varieties of corruption, [3] that are:

1) receiving a reward by official (without prior agreement about it) for already performed lawful action (inaction) with appropriation of corporate opportunities;

2) receiving a reward by official upon the same conditions for action (inaction), associated with violation of official duties;

3) receiving by official a financial reward to perform lawful actions (inaction) with appropriation of corporate opportunities. The variety of this situation is extortion, when an official extorts bribe, when threatening to commit acts, that violate legal interests of the briber or not to commit acts on which briber has grounds to aspire;

4) receiving by official a financial gain to commit illegal acts in which briber is interested in;

5) receiving by official gifts from persons who depend on him/her (так чи інакше), are under his/her jurisdiction, interested in his/her gratefulness, intercession, connivance etc., without any agreement concerning specific official act;

6) exactions, toll, which are laid by official on subordinates and other persons who depend on him/her.

All the named types of corrupt actions of officials are already taken into account in new version of act about public service [4].

Taking into account strategy of fighting corruption, defined by International Legal Acts, the thing that arises is the need to recognize in national criminal law of Ukraine main types of corruption crimes:

- bribery;
- Criminal lobbying;
- cronyism (intercession on the basis of personal connections);
- illegal participation in business activity personally or through close people or empowered persons;
- giving exclusive rights with aim of mercenary use, purchase or diversion of public resources and property for corporate group;
- any use or manipulation of confidential information in personal or group purposes;
- bribery of officials;
- giving advantages, privileges, protectionism, direct or indirect contributions in the period of election campaign on behalf of certain parties and persons;
- illegal distribution of loans and investments;
- carrying out of privatization by way of arranging of illegal contests, auctions;
- actual seizure of share holding, which is in state property;
- complete or partial exemption from customs payments and taxes;
- illegal use of system of preferences concerning different industrial, financial, trade and other corporate groups [5].

There is no doubt that in new anti-corruption law of Ukraine must be tak-

en into account also other measures of fighting against corruption, which are successfully used in progressive democratic countries.

Describing state of things in fighting against corruption in Ukraine in general, it should be noted that after passing array of progressive anticorruption laws by parliament at the end of 2014, Ukraine turned to the way of systematic counteraction, prevention and revealing corruption as a whole. For the present day new in the main essence anticorruption system, which according to international standards and best world practices is mostly preventive and oriented on creation efficient mechanisms of prevention of corruption in the society, is formed and functions.

One of the main indices of efficiency of implementation of anticorruption reform in the last year was creation and meaningful beginning of activity of three key specialized anticorruption institutions, that is:

National Anticorruption Bureau of Ukraine, whose powers include prejudicial investigation of corruption and crimes associated with corruption, done by high officials, empowered on performing functions of state or local self-government, or who are especially potential threat to the society;

Designated Anticorruption Prosecution office, whose functions include performing supervision on following laws during conducting prejudicial investigation, which is realized during conducting appropriate actions by National anticorruption bureau, supporting state accusation of procedures, placed under jurisdiction of National Anticorruption Bureau, in-

termination of interests of citizen or state in court as provided for by the law and associated with corruption offenses.

In the year 2016 the National Agency for Preventing Corruption was created and it started its work. It is this body which is intended to provide implementation of anticorruption policy, determine main principles of its development, implement range of powers associated with establishing institutional anticorruption programs on provision of following law by public officers concerning prevention and conflict of interests management, rules of ethical conduct, implementation of measures of financial control concerning them, and provision of state financing of political parties as well.

Crucial role in fighting corruption at present is also played by other specially authorized subjects, such as prosecution authorities and National police.

Aided by the President of Ukraine they created National Council on Anti-corruption policy which is an advisory and consultative body.

Parliamentary control is maintained by Committee of Verkhovna Rada of Ukraine on prevention and fighting corruption, and also by subdivisions and persons on prevention and fighting corruption, created or specified in state authorities and local self-governments at nationwide and regional levels.

Three more state authorities, start of efficient activities of which will have a significant influence on state of things with fighting corruption, are on the stage of creation or establishment.

First of all – it is National Agency of Ukraine on revealing, searching and

management of assets, received from corruption and other crimes, that will ensure development and implementation of state policy in revealing and searching assets, on which a custody may be imposed during criminal proceeding and/or on management of assets, on which a custody is imposed or they are confiscated in criminal proceeding.

In the making of State Bureau of Investigation, which will perform law enforcement activities with purpose of prevention, revealing, termination, revelation and investigation of crimes, including corruption ones, placed under its jurisdiction.

It is also necessary to complete creation of Supreme Anticorruption Court of Ukraine, of which it has been continually noted. It is this anticorruption court which will execute justice in cases under investigation of National Anticorruption Bureau.

Besides creation of legislative prerequisites and start of work of designated anticorruption institutions, there was an achievement – a practical implementation of range of preventive anticorruption mechanisms since 2016.

They started a reform of law about state service and service in local self-governing authorities with intent to create dutiful system of public service.

They implemented e-procurement system ProZorro, which provided transition from corruption and latent paper tendering processes to transparent electronic system, open for everyone. Society obtained an instrument of control over public purchases, influence on its improvement and prevention of manifestation of corruption.

A start of e-declaration of material standing of public officers became a great breakthrough. This unique system is capable of revealing not only facts of unlawful enrichment, but also latent conflict of interests. Almost 1,5 millions of documents, including 1 million ones over the period of declaration of 2016 were submitted to the system of Unified State Register of entities, empowered on performing functions of state or local self-governing authorities. National agency has already started conducting first complete revisions of submitted electronic declarations of more than 100 persons, empowered on performing functions of state or local self-governing authorities.

They established direct state financing of political parties and election campaigns with purpose to create and provide functioning of system of control and establishing of restrictions, provision of transparency and accountability of financing political forces. Last year they adopted first reports of parties about property, revenues, expenses and financial obligations, first administrative protocols concerning administrative offences associated with noncompliance of procedure of submitting such reports has already been drawn up and took to court.

A remarkable achievement is practice of national tooling concerning quantitative and qualitative indices of level of corruption in Ukraine, which will give possibility of systematical monitoring and evaluation of level of corruption in our state, and also observe dynamics of indices of incidence of corruption and perception of efficiency of anticorruption activity by the general public. In December 2016 National

Agency on Prevention of Corruption presented results of first pilot study on the basis of Standard Quiz concerning level of corruption Method in Ukraine conducted with support of United Nations Development Programme and International Technical Support Project of OSCE. The Method was approved by схвалено by NAPC on January 12, 2017. Analysis of results is expected to be obtained in July this year.[6]

The achievement is also in implementation of practice of anticorruption programs in state authorities, local self-governing authorities and legal entities under public law. NAPC ratified Methodology of evaluation of corruption risks in activity of public authorities, which define array of rules and procedures concerning evaluation of corruption risks, within framework of preparation of anticorruption program of this or that public authority, with periodical review specifically with purpose of provision of the single approach in public authorities to arrangement of works on evaluation of corruption risks arising during implementation of their power. As Eligibility Guidelines concerning preparation of anticorruption programs of public authorities are prepared and ratified, further these programs are to be agreed by NAPC.

In July, 2017 NAPC cancelled decision from June 17, 2016 № 2 “List of offices with high and higher levels of corruption risks”. Now there are two individual lists ratified: with high corruption level for implementation of certain purposes, specified by article 50 (concerning full revision of declarations), and higher corruption risk for implementation of certain purposes, specified by article 56 (concerning conducting of

special revision) of Prevention of Corruption Act of Ukraine [7].

Particularly list of high corruption risk includes such offices as:

- Chief of Staff of the Presidential Executive Office and his deputies;
- Chiefs and Deputy Chiefs of functional areas of National Bank of Ukraine;
- Chiefs and Deputy Chiefs at territory directorates of State judicial administration;
- Chiefs and Deputy Chiefs of state enterprises, institutions, organizations;
- certain Chiefs at local self-governing authorities;
- certain Chiefs, responsible for implementation of anticorruption program;
- members of state collegial bodies, performing functions of government regulation.

List of higher corruption risk includes such offices as:

- Chief of Staff of the Presidential Executive Office and his deputies;
- members of state collegial bodies;
- offices that should be deputized by senior officers' staff of militaries in military registration and enlistment offices;
- Chiefs and Deputy Chiefs of functional areas of NBU;
- Chiefs and Deputy Chiefs at territory directorates of State judicial administration;
- Chiefs of state enterprises, institutions, organizations and their Deputy Chiefs (except citizens of other states);
- offices of state service determined by structure of public authorities whose jurisdiction is spread over the whole territory of Ukraine, in case of non-reasonability of creation of structural subdivisions;

– certain offices in local self-governing authorities.

Work with persons called accusers, who provide assistance in prevention and fighting corruption, still remains to be the weak point.

At parliamentary hearings on May 24, 2017, of “State of implementation of principles of anticorruption policy in Ukraine”, it was noted that level of performing measures provided by Anticorruption strategy for years 2014–2017 and plan of measures on its implementations, is approaches to 65 %, which says that there are not enough efforts, put by different subjects of anticorruption policy for its implementation into life [8].

It is pretty logical, that the consequence of Ukrainian course of integration with Europe is watchful interest of international community to the process of implementation of anticorruption reform. This is exactly why efficiency of application of initiatives in this sphere is one of key image indices of our state in international scene. We are talking about judgments of certain foreign high officials during the international activities and periodic comprehensive expert evaluation, obtained in framework of implementation of international monitoring mechanisms in anticorruption sphere.

In Parliamentary Assembly of the Council of Europe, where Kyiv continually obtained more than complimentary statements on its address, it was finally recognized that there are no noticeable and specific results of anticorruption activity in Ukraine. “The Assembly is concerned about the slow pace of the fight against corruption with limited results” – that’s what



was said in January resolution of PACE about Ukraine. “The prolonged absence of progress “in the fight against corruption, namely, trials and prison sentences for those guilty of corruption” can potentially reduce the effect of ambitious reforms and eventually undermine public confidence in the political and legal system in general”, the document reads [9].

Ambassador of European Union in Ukraine Hugues Mingarelli, during the meeting with students of Lviv National University stated that corruption in Ukraine makes potential investors worried even more than war”. Some people turn your fantasy world into the ATM. Mostly it is because of corruption. Therefore, we dedicate much of our time, energy and resources, sharing our experience of overcoming corruption with your power,” he said [10]. Judgment of former Prime Minister of Great Britain David Cameron was more categorical: “Level of corruption in Ukraine is absolutely unacceptable ... It is a cancer tumor which kills the country”.

Results of research conducted by audit company Ernst & Young over the period from November 2016 till January 2017, published in April 2017, showed that within two years country, according to level of corruption among 41 countries of Europe, Middle East, India and Africa with developed markets or developing ones, moved from seventh place to first one. Indeed, number of respondents, thinking that bribe-taking and corruption are widely spread in the country, makes up 88 %. By this index Ukraine is on the lowest positions among all the state members of research of EY. At the same time

among countries with developed markets, countries like Denmark, Norway and Finland have the lowest level of manifestation of corruption in business.

Is is also pointed out that “absence of economical growth and improvement of business climate in our country in combination with absence of efficient system of punishment can urge businessmen on violation of ethical standards” [11].

In April 2017 Petro Poroshenko signed changes into Fighting Against Corruption Act, according to which members of anticorruption public organizations are obliged to submit e-declarations.[12] This provoked criticism in the USA, EU, Canada and Britain. At the US Embassy they stated that this Act – “is a serious step backwards for Ukraine.” At the same time in July 2017 federal law enforcement bodies of the US, on the ground of documents translated by Department of State, initiated check of using money of American taxpayers by public organizations in Ukraine. The public organization – Anticorruption Centre in Ukraine – became one of the subjects of examination. The organization is suspected in inappropriate use of granted funds allocated by programs of the US, and members of the Centre in unlawful enrichment at American taxpayers’ expense [13].

Fight of Ukrainian authority against corruption comes to only to sounding promises (as chair of global anticorruption movement Transparency International (TI) Jose Ugasa stated in Kyiv in May 2017), Ukrainian authority showed “very insignificant results” in fighting against corruption and “does

not realize, how vital it should be". Atmosphere of impunity concerning corruption reigns in Ukraine. He advised Ukrainian anticorruption authorities urgently "fry big fish", in other words, to take big cases of corrupt officials of times of Yanukovych to court. According to his information, in the year 2016 in research of TI, which determined index of perception of corruption in the world, according to which "0" stands for total corruption, and "100" – for its total absence, Ukraine received 29 points from 100 and found itself on 131 place among 176 countries [14].

Such indices to the big extent are explained by spreading information about scales of corruption crimes of the times of Yanukovych. By the way it was Yanukovych who headed in 2016 other rating of TI – Unmask the Corrupt, in which the biggest corrupt official of the world was elected. "This is the evidence of the fact that not only Ukrainians, but also people in the whole world expected resolute and powerful reaction from the authority in Kyiv on crimes of Yanukovych and his environment, so that chain of corruption impunity in Ukraine has finally been broken". At Transparency International they were also disappointed with the fact that introduction of system of e-declaration of state officials' revenues "still did not give a final result". "None of the officials was not made answerable for false data in his/her e-declaration, and revision of declarations of although first wave still has not even started".

Director of European Bank for Reconstruction and Development in countries of Eastern Europe and Caucasus Francis Malege in June 2017, compared fight against corruption in

Ukraine with sport fishing – "caught, took a photo and let go" [15].

And in conclusion, United States Secretary of State Rex Tillerson, before visiting Kyiv on the next day after finishing of summit G20, made a big statement about the fact that it's pointless to fight for Ukraine, if its soul is to be killed by corruption. It's a clear hint to Poroshenko. Not to people or country but specifically to the president [16].

Over the last years a great many things were done in anticorruption sphere in Ukraine – they passed special anticorruption act and array of other legislative acts of anticorruption orientation, new anticorruption authorities were created, creation of anticorruption court is on its way of preparation. However, these measures and other ones, performed in the state and in the society, did not lead to any appreciable positive results in case of fighting against corruption. There are many reasons for that, both objective and subjective. Tragedy of the situation is also in the fact that not that Ukrainian politicians do not so much want to reform system, as they do not know how to do it, that is why after playing a little like fighters against corruption on leading national TV channels, they successfully head directly or mediately corruption schemes. For now corruption in Ukraine has the feature, that makes it to be a crisis type corruption. This type of corruption lies in the fact that this is the corruption that: a) is being born by crisis of modern Ukrainian society (and not only by imperfection of legislation); b) is capable of deepening crisis of the Ukrainian society, having a property to bring any political, economical, legal, moral reforms in Ukraine to nothing.

This is where its threat to the national security of Ukraine lies.

While learning foreign experience of fighting corruption, suggestions in both scientific literature and the press, let us stop at three methods which are, in our opinion, the most efficient at this time.

First – it's improvement of legislative base. For the further integration of Ukraine into international fight against corruption manifestations introduction of world anticorruption standards слід ratify and implement into national legislation Convention of Council of Europe about access to official documents and Convention of OECD on Combating Bribery of Foreign Public Officials in International Business Transactions.

In order to diminish corruption-bearing factors, minimization of groundless discretionary powers and opportunities for abuses on the part of officials of state authorities it is necessary to develop and ratify Code of administrative procedures, which standardizes in detail all the processes of implementation regulatory, control, permission and other powers by executive authorities at interaction with natural and legal entities. Upon that special attention should be given to maximum introduction of electronic document flow.

In order to activate fighting against corruption in the most vulnerable sectors of state administration it is offered to prepare and approve Financial Investigations Act along with taking into account offers of international experts and the public.

**Conclusions.** In order to regulate relations of state authorities, first of all, parliament, with business environment aiming to extract corruption compo-

nent out of this sphere of communication of authorities with entrepreneurs and their unions it is necessary to develop and approve Legal principles of Lobbying Act.

Second – it's further and quick conduct of administrative reform and deregulation of economy. Ukrainian system of state administration in its essence still remains to be Soviet one and it is incapable of working efficiently under conditions of market economy. Corruption manifestations, which turned into peculiar market mechanism, make it more flexible. Particularly to this lead such things as complexity of procedure of receiving services in authorities, personal contact of declarant and official, restricted access to administrative body, shortage of information about provision of administrative services, orientation of activity of authorities rather on exaction of fine, than their prevention. It is necessary to minimize personal communication of citizens with officials who prepare or take decisions. It can be achieved through use of post connection and electronic mail, creation of service centres, where citizens can bring all the documents in one time, regulation of lines, by increasing number of reception hours of officials, improvement of notification of citizens through creation of reference services and electronic resources with detailed list of all the services and procedure of their provision, introduction of mechanism of paying fines through banking facilities, not at place of revision by inspectors. For example, Amendments to Certain Legislative Acts Concerning Improvement of Conducting Construction Activities' Act of Ukraine which cancels

procedure of receiving technical conditions of fire and technical safety, which duplicated, because it is already taken into account in SCS (state construction standards) came into effect from May 12. This will favour to increase of position of Ukraine in overall rating of easiness of Doing Business, and also will allow additionally involve almost 1,2 billion of US dollars of investments into economy of Ukraine.[17]

Third – it is necessary to change world outlook of people, as complexity of overcoming corruption is also associated with interest in such unlawful actions of not only representatives of authorities but businessmen and ordinary citizens as well. People tend to give “bribe”, even if it is not extorted from them, with aim to have state decision on their behalf in the shortest terms. Researches of Ernst & Young say that 77 % of members of boards of directors or senior managers state, that they could make an excuse for such unethical behavior to help business to survive, upon that every third person is ready to give a money reward in exchange of entering or extending contract.

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