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IMPLEMENTATION OF ANTI-CORRUPTION MODEL AS ONE OF THE MAJOR INSTRUMENTS IN FIGHTING CORRUPTION

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Abstract: *The article deals with historical aspects and international experience in developing anti-corruption models as well as describing the problems of implementation of such models in governmental establishments in Ukraine. Traditionally, corruption is the biggest problem for developing countries which is hard to fight. Fighting corruption in Ukraine has been presented in several comprehensive reviews. The reviews show us a list of concerns about serious changes in the field. Currently, there is an objective necessity*

to make more decisive steps to tackle corruption, which certainly is the important feature towards the improvement of the economic situation in the country. It should be noted that the implementation of anti-corruption models has been one of the most effective means of combating corruption for economically developed countries. In Ukraine, a course for implementing an anti-corruption model based on the creation of specialized anti-corruption bodies was chosen. However, there is the urgent need to mend a number of the legal and technical flaws of current legislation in order to guarantee the proper functioning of newly established state anti-corruption institutions.

Key words: *anti-corruption model, corruption, anti-corruption Law, preventing the corruption.*



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1. Problem statement

Corruption has traditionally been one of the most painful social diseases of any society. This negative phenomenon is as old as power itself.

Although, one of the key indicators of successful governance in developed civilizations was a significant decrease in the level of corruption in government. Accordingly, this trend is worse in less developed societies. Corruption, as a phenomenon which is derived from negative personal traits, stands as a challenge within society. Therefore, the way to overcome this adversity lies through changes in the public sphere, particularly through strict regulation and holding offenders to account, as well as the creation of powerful legal prerequisites for preventing corruption [28; p.34]. The aforementioned fully applies to revising the existing and creating independent and accountable judicial systems to punish those at all levels who are perpetrators of corruption.

In Ukraine, corruption has deeply penetrated all aspects of modern life. According to the doctor of economic sciences, M. Havronyuk, traditional anti-corruption measures used worldwide do not work in our country.

Following the ironic remarks by R. Malko "... Corruption in Ukraine has been long combated with. To be specific: always, but just in words. And the fighters are usually the most corrupt. Accordingly, the process is doomed from the outset..." [23, p.4]. These words indicate that each new government in Ukraine declared a war of corruption, but this struggle was always insufficiently effective, precisely because sometimes these fighters against corruption themselves were involved in corruption schemes. Furthermore, a recent study by the most well-known and reputable global civil society organization, Transparency International, that is leading the fight against corruption, showed that Ukraine scored only 30 points from a maximum possible 100 points in its Corruption Perception Index (CPI). Transparency International's 2017 CPI ranks our country in 130th place out of 180 countries included in the study. Due to Ukraine's lack of achievements in addressing corruption, our country was included with other countries scoring from 0-30 points – those that didn't demonstrate success in fighting corruption. Ukraine is included in the group of "high risk" corrupt countries along with Gambia, Iran, Myanmar and Sierra Leone [14]. Furthermore, the international accountancy firm Ernst & Young considered Ukraine to be the ninth most corrupt nation in the world in 2017 [17]. In addition, the aforementioned forms the international image of our state. If the situation in the fight against corruption in our country does not change, it will become one of the main obstacles to the status of Ukraine in terms of its Euro-Atlantic aspirations.

Currently, there is an objective necessity to make more decisive steps to tackle corruption, which certainly is the important feature towards the improvement of the economic situation in the country. It should be noted that the implementation of anti-corruption models has been one of the most effective means of combating corruption for economically developed countries. Nowadays, Ukraine holds its course towards reassurance of its sovereignty, independence, and democracy which is impossible without progress in combating corruption in key areas of the government. In particular, Ukraine has adopted a comprehensive anti-corruption package of laws and established new specialized institutions: National Anti-Corruption Bureau of Ukraine (NABU), Specialized Anti-Corruption Prosecutor's Office (SAPO), National Agency on Corruption Prevention (NACP) and Asset Recovery and Management Agency of Ukraine (ARMA). The legislation changes were followed by the complete reform of the anti-corruption infrastructure. Another key aspect of Ukraine's ongoing anti-corruption reforms can be shown by transparency in several areas, which includes electronic asset disclosure, e-procurement and opening up the public registries [12, p. 6]. Further breakthroughs have come from the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", the Law of Ukraine "On Amendments to Legislative Acts of Ukraine to determine the final benefit-recipients of legal entities and public figures", the Law of Ukraine "On public procurement", the Law of Ukraine "On cleaning of power", and the Law of Ukraine "On High Anti-Corruption Court".

However, the building of an effective anti-corruption model has not been yet completed, especially in part of the proper (impartial and immune to political manipulation) using of the anti-corruption instruments.

2. Analysis of recent research and publications

Problems of corruption had been at the focus of scholars long before Ukraine gained independence. Contribution to the study of corruption in Ukraine was made by our scientists, namely, O. U. Busol, V.O. Glushkov, V.V. Golini, I. M. Danshin, O.M. Dzhuzha, S.V. Dromov, A.P. Zakalyuka, O.G. Kalman, O.M. Kostenko, M. I. Miller, M.I. Havronyuk, V.I. Shakun and others.

3. Setting a task

The objective of the article is to study the historical background of anticorruption models, their classification and the possibility of implementation in Ukraine.

4. Presentation of the main research material

Fighting corruption in Ukraine has been presented in several comprehensive reviews. The reviews show us a list of concerns about serious changes in the field. For example, researches from the Centre for Eastern Studies underline that systemic corruption has been the dominant problem of an independent Ukraine for more than two decades. The takeover of the state by a political-business group led by Viktor Yanukovich had been one of the principal causes for large-scale street protests during the Revolution of Dignity. Following the 2014 power shift, slogans calling for combating corruption and cleaning up the elites have featured among the most important priorities announced by the current President of Ukraine. Moreover, the fight against corruption remains the West's main condition to support Ukraine.

It is difficult to make an unambiguous assessment of the achievements of the past years after the Revolution of dignity. The frequently expressed view that the anti-corruption reform has failed cannot be accepted. Complex socio-political processes should not be measured in the short-term perspective. In a legal and institutional sense, much more has been done in the field of combating corruption than over the whole previous period of Ukraine's independence. Despite this, the actual results of anti-corruption activities are few in number. The Ukrainian leadership has lost its initial zeal for reform and the parliamentary majority frequently adopts legislation that hampers the fight against corruption. The resistance of a major portion of the political elite and of various interest groups has been increasingly evident. They fear that the anti-corruption reform will prevent them from doing business in the former way. The principal success involves the establishment of two independent institutions: the National Anti-Corruption Bureau of Ukraine (NABU) and the Special Anti-Corruption Prosecutor's Office (SAPO). This is accompanied by the systemic involvement of civil society in the fight against corruption. In both 2015 and 2016, there were a drastically low number of court rulings regarding corruption-related crimes. However, more recently and for the first time in history, several prominent politicians and officials have been arrested. This has triggered serious concern in influential political and business groups which, in response, have stepped up their efforts to fight independent anti-corruption institutions. Ukraine has neared a critical moment when the first high-ranking officials may be convicted of crimes. Nevertheless, this is a very uneven fight, since it is being waged only by those employees of the anti-corruption institutions, who are ready to break the 'old ties' with support from the international community and non-governmental organisations" [20]. In addition, according to analytical research by Transparency International, Ukraine still has only achieved its 30 point in CPI in 2017 due to efforts to establish an independent anti-corruption

court that were delayed despite pressure from international and national stakeholders. While an independent anti-corruption court is urgently needed, an independent judiciary is similarly viewed as essential, by both reform minded Ukrainians and the international community. Without this, civil liberties and freedom of the media are an illusion. A legal system that is independent of political influence is a prerequisite for safeguarding the rights of all citizens, including those pushing anti-corruption reforms [11].

Nowadays, a legislative framework can create a solid ground for taking real steps towards mitigation of corruption problem. At the same time, there is number of problems need to be solved. One of these problems includes the development of an appropriate anti-corruption model, which can be applied to Ukraine and effectively influence the fight against corruption. The instrument should not only meet the requirements of international standards and agreements signed by Ukraine, but also the requirements of the mindset peculiarities of the Ukrainian nation and its perception.

Most developed countries overcome corruption through the introduction of anti-corruption models. Thus there are several approaches to the classification of anti-corruption models. According to A. Pronevych, a comprehensive analysis of international anti-corruption institutional and functional models makes it possible to distinguish three main types of state anti-corruption concepts:

multi-functional agencies authorized for the implementation of a number of anticorruption functions;

specialized anti-corruption services within law enforcement agencies; and
an independent specialized anti-corruption institution.

Within European countries, the second concept remains the most widespread. It includes the creation of an independent specialized anti-corruption service within the police, e.g. central anti-corruption administration in Belgium Federal Police or the National Directorate for Investigation and prosecution of crimes in the sphere of economy and environment of the Norway National Police etc [24, p. 262].

Boldyrev Y. gives a slightly different classification of anti-corruption models and subdivides them by regional origin, indicating the Asian, African and Latin American models.

Another scholar V. Trepak distinguishes only two basic anticorruption models: firstly a vertical strategy for combating corruption with rapid achievement (Singapore or Asian model – Singapore, Japan, South Korea, China). The effect of this model is aimed at not completely eliminating corruption but achieving an acceptable level for both government and public level of corruption [12, p. 48]. The second, horizontal strategy is focused on gradual, anti-corruption incentives and long term anticorruption activities (Swedish or Scandinavian model – Sweden, Denmark, Finland, Netherlands) [29, p. 240].

According to our consideration, it is easier to classify anti-corruption models in relation with the countries of origin: Singapore, Lithuanian, Latvian, Spanish, Romanian, Norwegian, and Hong-Kong.

One of the most prominent anti-corruption models undoubtedly originates from Singapore. After obtaining its independence, Singapore was quite a poor country that imported fresh water and building sand from abroad. But the government headed by Lee Kuan Yew turned Singapore into a financial and commercial center of Southeast Asia. In its early years as a sovereign state, foreign investors were reluctant to invest in the country with high levels of corruption. People openly accepted bribes, which was a part of the Asian lifestyle.

1. Fighting corruption in Singapore began with the following key points:
2. Decision-making procedures were simplified and any ambiguities in the law were removed.
3. Almost all business permits and licenses were canceled.

4. The salary of judges was sharply raised and the best private attorneys were attracted to these positions. Singapore judges' wages have reached several thousand dollars a year, and since 1990, have exceeded 1 million.

5. Civil servants who occupied responsible positions gained increased salary, which was raised to the level of top managers in private corporations (up to 20-25 thousand dollars a month). Now the local bureaucracy is considered to be one of the most effective and best-paid. Wages of Singaporean officials is higher than the wages of civil servants in the US who are equal in status [27, p. 23].

Determined to combat corruption, Lee Kuan Yew made no exceptions for either high-ranking representatives of his party or his family members. In 1960 the anti-corruption act was adopted. He increased the prison terms for taking bribes and authorized the anti-corruption agency to detain potential bribe-takers, conduct searches in their apartments, homes, and work-places, check bank their accounts and so on. Later punishment for bribery was repeatedly reinforced. For example, in 1989 confiscation of property was introduced. The anti-corruption agency initiated the investigation even against close relatives of Lee Kuan Yew. Several ministers suspected of corruption were sentenced to various terms of imprisonment; some committed suicide or fled from the country [25, p.33].

In the People's Republic of China, the situation was somewhat different. Thus, the basis of anti-corruption policy of China is the vertical model of combating corruption. Corruption in the country is directly linked to the existence of thousands of years history of privileged bureaucracy, which is considered to be an integral part of the functioning of the entire Chinese state mechanism [22, p. 42]. The National Bureau of Corruption Prevention is the institution which is responsible for countering this illegal phenomenon. Repressive methods dominate in China, which are used within the strict anti-corruption criminal law. The penalties for corruption offenses include the death penalty as supreme punishment. For example, about 10 thousand of officials have been shot for corruption since 2000 [26, p. 82]. According to the Corruption Perceptions Index China has got 41 points, and holds 77th position among 180 countries [14]. This proves that the strict measures of legal influence cannot be considered as absolute measures of eradicating corruption crime. Taking into account the most effective anti-corruption measures in the People's Republic we'd like to outline: improving of procedures of interaction with citizens and organizations in order to avoid bureaucratic obstacles; transparency of internal control in different areas; rotation of officials to help prevent the formation of stable corrupt ties; banning of conducting business in the area where a person holds a leading position for his children and relatives; prompt response to anonymous reports coming from hotline about a cases of reception (giving) bribes or abuse of power[13, p. 313–314].

The basis of the anti-corruption policy of the Scandinavian countries is the concept of "Good governance". This term appeared in 1997 within the framework of the UN. It combines the mechanisms, processes and institutions through which citizens express their interests, realizing legal rights. The key anti-corruption components of this concept include: public participation in decision-making processes; transparency of budgets, decisions and actions; timely response to the citizens' needs and accountability of public institutions to the public. "Good governance" includes a developed system of ethical values that are followed by civil servants and ordinary citizens [13, p. 315]. Phased anti-corruption policy in Sweden has the following results: the state holds the 6th position among 180 states with the Corruption Perceptions Index – scoring 84 points [14]. The essence of the policy in this area was to establish high ethical standards for state employees. This process was accompanied by the establishment of high salaries to officials [19, p. 314]. Key measures also included the establishment of transparent domestic public access to state documents and an independent judiciary.

According to the survey conducted by Transparency International, Denmark is one of three leaders among countries with minimal corruption, indicating its actual absence. The Corruption Perceptions Index of Denmark in 2017 is 88 points, the country holds 2nd position among 180 countries [14]. There is no specialized anti-corruption body. Information transparency of state

institutions and the freedom of the media and public access to the documents on which they are based are inherent for Denmark. Key public and private anti-corruption initiatives associated with doing business, controlled by social organizations are introduced in this country [13, p. 305–306].

The experience of anti-corruption policy gained by the United States is also worth attention. According to their law, all business institutions listed on the New York Stock Exchange, are subjected to corruption virus checks.

Despite the variability of anti-corruption models that already have corresponding success in implementation, to copy a particular system is impossible. According to the Chairman of the Commission for the Prevention of Corruption of Slovenia, Goran Klymenchych, each country must establish and develop their own. Corruption is a disease without universal means of treatment. As long as it is not detected, it is useless to hope for positive results [20, p. 5].

As for Ukraine, according to B. Kotvanov, the State cannot copy the methods of combating corruption, which are used in civilized countries where the officials, as well as state agencies have definitely regulated administrative functions and clearly defined responsibilities for their failure.

Ukrainian officials are not always motivated to fair and non-prejudicial execution of their activities. The laws followed by civil servants and law enforcement officials have a number of gaps that negate the possibility of prosecution of corrupt placeholders [21, p.15].

However, nowadays, the fight against corruption in Ukraine is one of the major challenges for the new government. For example, all the important changes that were mentioned at the beginning of the article, are not yet reflected on the actual and perceived level of corruption in Ukraine. This remains very high. Anti-corruption enforcement in general, and particularly against high level officials, is stalling and meets enormous resistance, and the public trust in the Government has further decreased in recent years. According to civil society, “the new anti-corruption tools face growing resistance from the country’s political and business elite.” This raises serious doubts regarding the sincerity of commitments and the political will of the Government to genuinely fight corruption [12, p. 17]. It is extremely important to ensure that the cases which were investigated and brought to court by the NABU and SAPO are properly adjudicated by judges with high integrity and independence. The failure to take this on immediately and in a way that the society believes will be fair and just may well spell the end of the anti-corruption reforms Ukraine has undertaken [12, p.156].

Even though, the Verkhovna Rada, Ukraine’s parliament, has adopted bill No. 7441 in general to amend the Law on the Judicial System and the Status of Judges in connection with the adoption of the Law of Ukraine on the High Anti-Corruption Court (HACC) and to define the jurisdiction of appeals in existing corruption-related cases, the HACC isn’t functioning yet. According to the law, the establishing of the court can take one year. The competition for judges of the HACC is currently underway – the second stage has already begun. The competition is held in conjunction with a public council of international experts who have already arrived in Ukraine. There is another pitfall, namely that the role of the international experts is only advisory. However, this was recommended by the Venice Commission. Moreover, the HACC will be hearing not only cases for the top corruption, but all corruption cases (if the pecuniary injury of cases will be higher than 500 times the minimum costs of living) and it means the court will be overtasked. It worth mentioning that -top corruption cases can be heard not only by HACC, which creates some room for manipulation. That means the new Law of Ukraine on the High Anti-Corruption Court [10] should be completed.

In addition, a report released on Wednesday, December 19, 2018, on the fulfilment of visa-free travel requirements reminded the European Commission of the need to take urgent measures to combat corruption. The document states that Kyiv must comply with the recommendations of the last year’s report, which have not been implemented.

Among other things, the European Commission calls on Ukraine to “urgently” abolish the obligation for anti-corruption activists to submit e-declarations; launch the work of the Supreme

Anti-Corruption Court and establish a full system of verification of e-declarations; to solve the question of the effectiveness of the SAPO and the NABU. In particular, it needs to carry out an audit of NABU and restore confidence in the SAPO [30].

The document expresses anxiety due to the politically determined appointment of auditors of the NABU. There is also criticism due to the fact that the audit of the NABU has not yet been conducted [18].

The memorandum of cooperation with the International Monetary Fund also added the form of the monthly and quarterly NAPC and NABU. NABU was obliged to place on a monthly basis data on the number of officials accused of corruption and convicted for this type of crime. The reports will indicate separately the number of deputies, ministers, courts and prosecutors who have been convicted of certain corruption articles. It will also be necessary to indicate how many people were convicted by a court of first instance, as well as an appellate court [15].

All this mentioned above indicated the incomplete fulfilment by Ukraine of its obligations and the need to minimize the level of corruption in Ukraine in the shortest possible time.

5. Conclusion

The topic concerning combating the corruption is relevant to Ukraine more than ever. To prevent corruption in the country, not only must an appropriate legal framework be created, but also its own anti-corruption model must also be implemented.

Analyzing international experience, the countries that have resolutely embarked on combating corruption realize their intentions by the development of their own anti-corruption model. Based on the analyzed materials such actions are not always effective.

In Ukraine, a course for implementing an anti-corruption model based on the creation of specialized anti-corruption bodies was chosen. Establishment of anti-corruption bodies, such as NABU, SAPO, NACP, ARMA was a key element in the development of the Ukrainian anti-corruption model. However, the fact that some provisions of the Laws of Ukraine are contrary to the Constitution of Ukraine causes civil unrest. The establishment of the High Anti-Corruption Court is the logical accomplishment of existing anti-corruption system. Obviously, there is the urgent need to mend a number of the legal and technical flaws of current legislation in order to guarantee the proper functioning of newly established state anti-corruption institutions. The neglect in solving these problems casts doubt on the agency's legitimacy.

Prospects for further research in this area lie in the improvement of the anticorruption model that our state is trying to implement as well as adoption of appropriate changes to existing legislation.

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ВНЕДРЕНИЕ АНТИКОРРУПЦИОННОЙ МОДЕЛИ КАК ОДИН ИЗ ОСНОВНЫХ СРЕДСТВ БОРЬБЫ С КОРРУПЦИЕЙ

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Аннотация: В статье рассмотрены исторические аспекты и международный опыт формирования моделей борьбы с коррупционными преступлениями, а также проблемы внедрения таких моделей в системе органов государственной власти Украины. Традиционно коррупция является самой большой проблемой для развивающихся стран, с которой трудно бороться. Обзор борьбы с коррупцией в Украине был представлен в нескольких комплексных работах. Они указывают нам на наличие определенных сомнений о присутствии существенных изменений в области борьбы с коррупцией в Украине. В настоящее время существует объективная необходимость предпринять более решительные шаги по борьбе с коррупцией, что, безусловно, повлияет на улучшение экономической ситуации в стране. Следует отметить, что введение антикоррупционных моделей стало одним из наиболее эффективных средств борьбы с коррупцией в экономически развитых странах. В Украине была выбрана антикоррупционная модель, основанная на создании специализированных антикоррупционных органов. Однако, остро стоит вопрос о невеличании ряда правовых и технических недостатков действующего законодательства, в целях обеспечения надлежащего функционирования вновь государственных антикоррупционных учреждений.

Ключевые слова: антикоррупционная модель, коррупция, антикоррупционное законодательство, предотвращения коррупции.

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ЗАПРОВАДЖЕННЯ АНТИКОРУПЦІЙНОЇ МОДЕЛІ ЯК ОДИН ІЗ ОСНОВНИХ ЗАСОБІВ БОРОТЬБИ З КОРУПЦІЄЮ

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Анотація: В статті розглянуто історичні аспекти та міжнародний досвід формування моделей боротьби з корупційними злочинами, а також проблеми запровадження таких моделей в системі органів державної влади України. Традиційно корупція є найбільшою проблемою для країн, що розвиваються, з якою важко боротися. Огляд боротьби з корупцією в Україні був представлений в декількох комплексних работах. Які вказують нам на певні сумніви щодо наявності суттєвих змін в області боротьби з корупцією в Україні. На даний час існує об'єктивна необхідність зробити рішучіші кроки щодо боротьби з корупцією, що, безумовно, вплине на поліпшення економічної ситуації в країні. Слід зазначити, що запровадження антикорупційних моделей стало одним з

найбільш ефективних засобів боротьби з корупцією в економічно розвинених країнах. В Україні була обрана антикорупційна модель, заснована на створенні спеціалізованих антикорупційних органів. Проте, гостро стоїть питання щодо невелиювання ряду правових та технічних недоліків чинного законодавства, з метою гарантування належного функціонування новостворених державних антикорупційних установ.

Ключові слова: антикорупційна модель, корупція, антикорупційне законодавство, запобігання корупції.

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