

PHENOMENOLOGY OF INTEREST IN THE FORMATION OF HUMAN HABIT (ANTI-CORRUPTION ASPECT)

Oleksandr Boiarsky¹, Yana Maslova², Alevtina Pekhnyk³

Abstract. *The subject* of the study is the conceptual, theoretical and methodological foundations of the use of digital tools in law enforcement on the example of individual institutions (National Agency for the Prevention of Corruption, Ministry of Justice of Ukraine). *Methodology.* General scientific methods were used in the research process. The comparison method was used to summarize the approaches of different researchers regarding the main dominants of the implementation of the idea of electronic registers and their interaction by default. The analysis was used to determine the quantitative and qualitative parameters that characterize the specifics of the activities of the National Agency for the Prevention of Corruption, the Ministry of Justice of Ukraine in the digital era. Induction and deduction were used to determine the approaches to the main dominant legal forms of activity of the central bodies of state executive power. The results of the study showed that the introduction and application of digital skills in the activities of public authorities creates conditions for the effective performance of their powers, as well as contributes to the public interest in general. *Conclusion.* It is concluded that the significance of interest for the development of human civilization is manifested in the fact that: a) interest, along with needs and values, motivating the social subject (individual, group, historical community, class, nation, society), is the driving force of the historical process (immanent – dynamic property of interest); b) the realization of interest is impossible without its awareness, which occurs in the process of constant comparison of the life situation of individuals, social groups, historical communities among themselves (intellectual and practical property of interest). It is established that the public interest in the activities of the anti-corruption body is expressed in ensuring the prevention and counteraction to corruption, which is specified through the main powers. It is noted that a potential conflict of interest will differ from the real one in the case when a private interest existing in the sphere of official activity contradicts official or representative powers and this actually affects, but cannot affect the performance of official duties, attention is focused on the actions to be taken by the subject who has a conflict of interest.

Key words: interest, human habit, people-centeredness, public interest, prevention of conflict of interests.

JEL Classification: E43, D74

1. Introduction

The formation, development and improvement of the phenomenology of democratic statehood in Ukraine is accompanied by powerful and permanent processes of municipalization of state and public life. One of the most important factors in these processes, along with the formation and further institutionalization of the constitutional-legal and socio-existential institution of local self-government, its subjects and bodies, is the development of the idea of interest in law as its driving force. It should

be noted that a distinctive feature of the economic, political and socio-cultural crisis processes taking place in our society today is the reassessment of values and rethinking of the role, importance of man and his choice in relation to the emerging global problems of our time. After all, what until recently was perceived as inviolable postulates, today is either completely rejected or raises doubts about its "usefulness", significance, which leads to uncertainty and even confusion of a person, inability to quickly transform their ideas, views, value orientations – and

¹ Bilhorod-Dnistrovsky city-district court of Odesa region, Ukraine (*corresponding author*)

E-mail: oleksandrboarskij2@gmail.com

ORCID: <https://orcid.org/0000-0001-9129-3766>

² National University "Odessa Law Academy", Ukraine

E-mail: yamaslova@gmail.com

ORCID: <https://orcid.org/0000-0001-6725-7036>

³ National University "Odessa Law Academy", Ukraine

E-mail: pekhnik2@ukr.net

ORCID: <https://orcid.org/0000-0003-2534-7652>



This is an Open Access article, distributed under the terms of the Creative Commons Attribution CC BY 4.0

as a result to shortcomings in the mobility of life aspirations and interests (Shelistov, 2017: 6).

It can be argued that a person in the system of coordinates of a democratic state based on the rule of law, where the rule of law was considered as an effective organization capable of providing everyone not only with the necessary minimum of rights and freedoms, but also guaranteeing a set of social benefits that allow to realize personal creative potential, to be confident in ensuring a decent existence, begins to lose its primary role and its strategic importance in favor of the actions of state institutions aimed at maintaining their power and self-preservation. Under such conditions, it is important to study the essence of the concept of "interest" as a regulator of legal innovations in general and in certain areas of public relations (for example, in the field of corruption prevention). The sphere of corruption prevention was chosen because corruption is a destructive phenomenon that mediates crises in various spheres of public life, as some officials thus protect their own interests and the interests of persons close to them, neglecting the interests of the state and its citizens. Under such conditions, the activities of the authorities contradict the interests of the state, which leads to its isolation from citizens and society. There is no doubt that the consequences of any violations of the law, including corruption, impede the development of a democratic, legal, social state, which Ukraine proclaimed itself in Article 1 of the Constitution of Ukraine (1996).

The problem under study is due to the active processes of development of public power, including public self-government, in the context of the formation of a democratic state based on the rule of law, which, in turn, occur under the significant influence of globalization factors, especially the influence of legal globalization factors, which leads to the emergence of a single world legal space with the presence of common norms of behavior of states and peoples, which objectively implies the formation and emergence of the same behavioral and activity guidelines for individuals who are on the territory of national states – most of whom are either actively involved in the processes of international interstate integration or wish to join them in the near future.

Hence, it can be argued about the essential, axiologically and praxeologically important role of the phenomenology of interest (Romain, 2015; Shimazawa, Ikeda, 2014; Golladay, Jain, 2020) in the formation and development of individual and collective habit of a person in general and its importance for the mechanism of corruption prevention. The purpose of the article is to establish the phenomenon of interest in the formation of a person's habit for the purposes of anti-corruption activities by defining: a) the concept of "interest"

and its significance for human-centrism in law; b) the significance of "interest" in the activities of the National Agency for the Prevention of Corruption; c) theoretical and applied features of preventing conflicts of interest.

2. The concept of interest and its importance for human-centrism in law

The key term "interest" and various related legal concepts were introduced into jurisprudence, studied and widely used by German lawyers in the second half of the 19th century. The concept of interest was used by them mainly in the sense of benefit, use or benefit brought by a certain object. Interests were understood as vital needs in a broad sense. They distinguished between material interests related to the use of external life benefits and spiritual or ideal interests.

To reveal the profile issues, it is necessary to study the definitional characteristic of "interest", which by its semantic meaning contains a large number of characteristic features.

For example, the "Encyclopedia of Sociology" contains the following definition of the term "interest": a) as the orientation of the subject to the objects significant for him, which is associated with the satisfaction of the individual's needs; b) as a real reason for the activity of social actors aimed at satisfying certain needs, which is the basis of direct motives, motives, ideas, etc. and is determined by the position and role of these actors in the system of societies and relations (Interest Encyclopedia of Sociology).

Thus, in this definition, interest is characterized from two sides: on the one hand, as the orientation of the subject to the objects significant for him, which is associated with the satisfaction of the needs of the individual, that is, it assumes: a) the appropriate behavioral and activity guidelines (praxeological component), which b) is aimed at objects that are of particular importance to a person (personality) (value component), because they c) satisfy his needs (existential-consumer component) – here we can state the emergence of the relevant procedural-logical chain – first "the emergence of the individual's need for any object" – "understanding and awareness that such an object is of particular importance to him" – "formation of the relevant interest"; and, on the other hand, interest as a real reason for the activity of social actors aimed at satisfying certain needs that underlie the immediate motives, motives, ideas, etc., which is determined by the position and role of these actors in the system of societies – that is, interest: a) causes appropriate actions of social subjects (a higher level of

generalization of the subject composition) (functional component), the reason for which is b) satisfaction of their certain needs (subject-object component), the basis of such needs c) are direct motives, motives, ideas, etc. (subjective-psychological component), and d) such manifestations of social subjects are determined by their position and role in the system of society or societies (social-determining component). Based on the analyzed approach to the understanding of interest, there are general psychological and activity-behavioral blocks, which can be written in the following form – "needs arising from the manifestation of the internal nature of the subject, which are determined by his experience and position in society" – "the implementation by the subject of appropriate (many of which are predictable, taking into account the content of the individual and collective habitus) actions to achieve and realize the stated needs". Such blocks, according to the authors, give a more complete picture of the existential-psychological and functional-activity components of interest as a social and socio-normative phenomenology, since it acts as a determinant, result and at the same time the cause of the formation, development and improvement of individual and collective human habits, because its behavioral-activity component is based on the practical experience of a person in different life situations, which he acquired in the process of socialization.

From the point of view of psychological approach, interest is a consumer attitude or motivational state that encourages cognitive activity, which unfolds mainly internally. In the conditions of cognitive activity formation, the content of interest can be increasingly enriched, including new connections of the objective world. Emotional and volitional aspects of interest are manifested specifically – as an intellectual emotion and efforts related to overcoming intellectual difficulties. Interest is closely connected with the actual human level of mastering reality in the form of knowledge (Interest. Psychological encyclopedia).

A characteristic feature of this approach is the emphasis on the internal state of the subject, in our case a person. Indeed, interest has a consumer character and forms a clear motivational state of intentions and behavior of a person, which encourages cognitive activity, which unfolds mainly in the internal plan. However, it should be borne in mind that such cognitive activity arises as a result of communicative interaction of a person with other members of society, acquaintance and use of relevant forms of life, which have a typified, stereotypical nature, that is, in fact, in the process of socialization (including legal socialization), and, ultimately, is the result of the individual and even more so the collective habitus formed by it. However, it should be

borne in mind that such cognitive activity arises as a result of communicative interaction of a person with other members of society, acquaintance and use of relevant forms of life, which have a typified, stereotypical nature, that is, in fact, in the process of socialization (including legal socialization), and, ultimately, is the result of the individual and even more so the collective habitus formed by it.

Thus, it can be stated that such a more subjective psychological approach allows to reveal deeper processes that arise in human psychology, its individual and collective habits in the process of formation and implementation of local interest.

In the Modern Encyclopedia, interest is interpreted as follows: 1) in sociology and economics – the real reason for social actions that underlies the direct motives (motives, ideas, etc.) of individuals and social groups involved in them; 2) in psychology – the attitude of a person to an object as something valuable and attractive to him. The content and nature of interest are related both to the structure and dynamics of motives and needs of a person, and to the nature of the forms and means of mastering reality that the person possesses (Interest. Psychological encyclopedia).

This approach has already been analyzed above, but, according to the authors, it would have a higher level of scientific and praxeological productivity if these two approaches were combined into one doctrinal position. Namely, if the interest was considered as a psychoactive reaction of a person and other subjects of society to external "stimuli" – life situations, the solution of which would lead to the emergence of the relevant social experience of these subjects and the implementation of appropriate behavioral and activity guidelines in the future, that is, appropriate practical behavior based on and taking into account such experience. In addition, in this approach, a significant axiological emphasis on the understanding and significance of interest for the individual is very attractive.

The philosophical dictionary contains a more "down-to-earth" interpretation of the term under study – interest from the material point of view as a benefit, benefit ("to have one's own interest"). The one who has an interest in something is called an interested person; the one who constantly pursues certain interests or who is made some offer in the expectation of success is called an interested person. Interest is something that excites and holds our attention because it has positive or negative value for our practical or theoretical needs. Depending on the subject of interest, we speak of material and spiritual, scientific and artistic, general and private interests (Interest. Philosophical Dictionary).

Thus, here is practically formed a cross-section of human psychological assessment of interest as an internal phenomenology of a person, which determines his need for something, participation in something, inclination to something, that is, to an object (subject) of the material or ideal world. Moreover, here the system of coordinates is built around the studied phenomenology of interest, because the relationship between the "interested" and the "interested" here acquires its praxeological coloring and differs in the level of intensity and relevance for a person in relation to a particular object (subject) of interest. Hence, in relation to the forms of life activity, which have existential and axiological significance for a person and are the basis of one's life experience, due to their typification and stereotyping, and in their totality form individual and collective habits, a person first (at the initial stage of socialization) acts as an interested subject, and then (in the process of further socialization and in the process of legal socialization) as an interested party, since the person considers these forms important for oneself, especially in the context of solving one's interests, since they are the basis of one's teleological dominants and satisfy one's needs.

The Encyclopedia of Modern Ukraine contains a more specific definition of the term under study, and it is in the activity-behavioral sense: interest is "a characteristic of a person's attitude to someone or something that expresses the positive or negative orientation of his activity, activity, historical creativity to find, choose, use or create ways, means, methods, norms, social institutions that can satisfy human needs." Interest, along with the needs and values that motivate a social subject (individual, group, historical community, class, nation, society), is the driving force of the historical process. The realization of interest is impossible without its awareness, which occurs in the process of constant comparison of the life situation of individuals, social groups, historical communities with each other (Interest. Encyclopedia of modern Ukraine).

That is, based on the above definition of the phenomenon under study, in contrast to the above positions, the emphasis is placed not only and not so much on the practical orientation of a person to realize his needs, but on the technological aspects of their formation, understanding, comprehension and implementation through the determination of the relevant determinants of behavior and the use of appropriate forms of its realization, namely, through the definition of their activities, historical creativity (determinants) – to seek, choose, use or create ways, means, methods, norms, social institutions (forms of implementation) that can meet human needs.

Thus, the significance of interest for the development of human civilization, its ubiquity and practical

applicability are manifested in the fact that: a) interest, together with needs and values, motivating a social subject (individual, group, historical community, class, nation, society), is the driving force of the historical process (immanent dynamic property of interest); b) the realization of interest is impossible without its awareness, which occurs in the process of constant comparison of the life situation of individuals, social groups, historical communities among themselves (intellectual and practical property of interest).

Applied to the definition of a person's collective habit, it should be noted that the latter arises as a reaction to the relevant social "stimuli" from social groups, historical communities, classes, nations, society – that is, it is not only the possibility of occurrence, but also the fact of the emergence of a collective interest, which is realized through the relevant social practices of these subjects and leads to the formation of their collective habitus. In this sense, the sociological theory of Pierre Bourdieu is quite productive, in which the interest, first of all, refers to the "collective", to "social structures" and their "reproduction" (Korkyuf, 2001: 250). At the same time, such an interest in no way negates the individual interest, moreover, both interests are in the respective genetic unity and interconnection as a whole and its part. Therefore, the collective habitus arising from the collective interest in the relevant society is able to encompass what constitutes the individuality of individuals and their actions. Thus, it is possible to interpret the individual in its relation to the collective and to emphasize the role of both individual and collective interest in the formation of the collective habit of man.

Hence, we can draw a general methodological conclusion that the category of "interest" plays a decisive role in the formation of individual human habit and its collective habit, which is based on individual life (behavioral and activity) experience of solving interpersonal (interpersonal), individual-group, individual-collective issues of existential nature regarding the existence and stable functioning of the territorial human community in the relevant territory of the state under normal conditions of functioning of a democratic society. In the context of contextualization of interest as applied to the definition of a collective habit of a person, it should be noted that the latter arises as a reaction to relevant social "stimuli" from social groups, historical communities, classes, nations, society, that is, it is not only the possibility of occurrence, but the fact of the emergence of collective interest, which is realized through the relevant social practices of these subjects and leads to the formation of their collective habitus.

3. The concept of "interest" in the activities of the National Agency for the Prevention of Corruption

The key subject of public administration in the field of preventing and combating corruption is the National Agency for the Prevention of Corruption, which covers the entire territory of Ukraine and whose specificity is the absence of its territorial bodies at the level of regions, districts, cities, etc. As a public administration entity in the field of preventing and combating corruption, the National Agency is authorized to implement the state anti-corruption policy. Defining the activities related to the prevention and counteraction of corruption as the purpose of the National Agency for the Prevention of Corruption and as a type of public administration, it should be noted that the prevention and counteraction of corruption is a specific administrative activity of public administration entities, which is an external expression of the implementation of the tasks of anti-corruption bodies aimed at preventing corruption acts with the help of specific administrative means in order to ensure public interests. At the same time, it is the public interest that determines the activities of the National Agency for the Prevention of Corruption as a subject of public administration. The category of public interest is quite controversial for understanding in administrative law, which is due to the following: 1) the essence of public-law relations has a subjective-objective nature, that is, it is objectively described by the legal nature of this phenomenon and subjectively enshrined by the legislator in the norms of administrative law; 2) public interest is a certain aggregate of private interests, when the aggregate of private interests at a certain stage, according to the law of the dialectic of "mutual transition of quantitative and qualitative changes", turns into public interest; 3) in a general sense, public interest means the interest of the human community, population, people, etc. (Averyanov, 2004: 24).

Public interest in the activities of the National Agency for the Prevention of Corruption is expressed in ensuring the prevention and counteraction to corruption, which is specified through the main powers of this anti-corruption body: analysis of the state of prevention and counteraction to corruption in Ukraine, approval of anti-corruption programs, control and verification of declarations of declaring entities, ensuring the functioning of the Unified Whistleblower Reporting Portal, the Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions, and the

Unified State Register of Persons Who Committed Corruption or Corruption-Related Offenses, etc.

That is, the National Agency for the Prevention of Corruption is an authorized entity whose activities are aimed at streamlining public relations to prevent corruption through the use of specially defined methods, ways and forms in order to ensure the public interest.

It seems important to pay attention to the principles of the National Agency for the Prevention of Corruption, which are enshrined on the official website of this body as values, namely: independence. "The interests of the people of Ukraine are above all" means positioning the National Agency for the Prevention of Corruption as a recognized authority in preventing and combating corruption, as an impartial and apolitical body (Official website of the National Agency on Corruption Prevention). In addition, according to the official website of the National Agency for the Prevention of Corruption, the structural subdivisions of this specialized anti-corruption body include 19 entities, of which the Department for the Prevention of Conflict of Interest is a separate entity.

4. Prevention of conflict of interest: theoretical and applied characteristics

The International Code of Conduct for Public Officials (1996) stipulates that public officials must perform their duties in accordance with the law and with full integrity, must not use their official position for personal gain for themselves or their family, and must not have any financial or other interests incompatible with their office. This document also provides for the obligation to report activities that may lead to a conflict of interest.

The **powers** of the National Agency for the Prevention of Corruption to apply conflict of interest instruments are defined by the Law of Ukraine "On Prevention of Corruption" and are as follows:

- 1) The National Agency for the Prevention of Corruption within seven working days provides explanations on the procedure for resolving conflicts of interest in case of receipt of a report of a real or potential conflict of interest (part 3 of Article 28). This obligation of the NAPC corresponds to the right of a person to seek clarification from the National Agency (part 5 of Article 28);
- 2) as a form of external control, it is possible for an authorized person of the National Agency to participate in the work of the collegial body as an observer without the right to vote (Article 33) (On Prevention of Corruption, 2014).

In the first case, the confirmation of the absence of a conflict of interest is provided by the National Agency for the Prevention of Corruption in relation

to specific actions (decisions), the possibility of which in the future or now raises doubts about the existence of such a conflict. This is due to the fact that the confirmation of the National Agency for the Prevention of Corruption on the absence of a conflict of interest is of an individual nature, and the consequence of its receipt is the release of a person from liability for actions for which he/she applied for clarification, if in the future such actions were found to be a conflict of interest. That is why, in order to obtain clarification on the merits of the issue, the National Agency recommends to indicate in the application complete and, if possible, documented information that discloses the content of the powers under which the person performs certain actions (makes decisions), private interest and, in general, the situation in which doubts about the existence of a conflict of interest arose.

Thus, the conclusion on the presence/absence of a conflict of interest, in addition to an exhaustive list of official or representative powers of a person, requires the establishment of the procedure and method of their implementation, which helps to determine the limits of discretion in making relevant decisions or taking actions, and therefore exclude or confirm the likelihood of negative impact on them, contradictions between private interest and official powers (*Implementation of measures to prevent and resolve conflicts of interest of entities authorized to perform the functions of the state or local self-government, as well as the establishment of prohibitions and restrictions*).

When establishing the presence/absence of a conflict of interest, the National Agency for the Prevention of Corruption takes into account the provisions of the current anti-corruption legislation, the provisions of the Annex "Model Code of Conduct for Civil Servants" to the Council of Europe Recommendation No. R (2000) 10, which states that a civil servant should not allow his/her personal interests to conflict with his/her public office. Avoidance of such conflicts – real, potential or possible – is his duty (Article 8) (Recommendation of the Committee of Ministers to the Member States of the Council of Europe on Codes of Conduct for Civil Servants, 2000), scientific conclusions on the essence of conflict of interest.

Doctrinal views on the definition of the concept of "conflict of interest" are quite diverse, but similar in content: a conflict of interest should be considered a situation in which the personal interest of a civil servant may affect the objectivity of the performance of his official powers and functions and in which there is a possibility of a conflict between the personal interest of a civil servant and the legitimate interests of citizens, organizations, society, the state, which may result in harm to these

legitimate interests of citizens, organizations, society (Volyanskyi, 2014):

– a conflict of interest is a contradiction between public interests within a certain position and private interests of a person holding this position, arising from violation of the basic principles of civil service, violation of restrictions and prohibitions related to the civil service, dishonest performance of official duties by an official, in particular, non-compliance with the rights and legitimate interests of citizens, organizations, society and the state, non-compliance with the requirements of current legislation, low level of social security of civil servants (Gudkov, 2014: 121);

– a conflict of interest is a contradiction between public legal duties and private interests of an official, in which the official has his/her personal interests, which may adversely affect the performance of his/her duties and functions (Bodun, 2009: 224), etc.

That is, there is no doctrinal distinction between potential and real conflict of interest.

According to O. P. Khamkhodera (2019: 320), the essence of the conflict of interest as a tool for preventing corruption is that it is not just a contradiction or legal conflict between private and public interests, but a way to counteract corruption, and this is how it should be interpreted:

1) as the activities of authorized entities aimed at identifying possible causes of conflict of interest, timely elimination of these causes and settlement of the conflict situation within the current legislation of Ukraine;

2) as a separate legal institution of administrative law, which is a set of legal norms aimed at regulating the activities of state bodies and other legal entities of public law related to the prevention and settlement of conflicts of interest as a way to combat corruption. The correlation of conflict of interest, regardless of its type, with corruption shows that these are multifaceted concepts. Their interconnection is that the existence of a conflict of interest is a risk that can lead to corruption.

The Decision of the Constitutional Court of Ukraine in the case of legally protected interest dated December 1, 2004 No. 18-рп/2004 states that "the conflict of interest is inherent not only in legal and non-legal interests, but also in a conglomerate of legitimate interests protected by law and law. It is about exclusively legitimate but competing interests of buyer and seller, debtor and creditor, employer and employee, consumer and producer, prosecutor and lawyer, investigator and suspect, etc. The interests of the citizen and the state, the individual and the society, the shareholder and the joint-stock company, the national and the universal, the private and the public, etc. are characterized by a certain conflict. The same Decision

of the Constitutional Court of Ukraine also states that the etymological meaning of the word "interest" includes: a) attention to someone, something, interest in someone, something; curiosity, admiration; b) importance, value; c) what interests someone the most, what constitutes the content of someone's thoughts, concerns; d) aspirations, needs; e) what benefits someone, meets someone's aspirations, needs; benefit, profit (Decision of the Constitutional Court of Ukraine in the case of legally protected interest, 2004).

Generally speaking, a private interest will reflect what is important to a particular individual. If a person belongs to the category of entities covered by the Law of Ukraine "On Prevention of Corruption", he/she has private interests, but they should not be ensured by the special status of the person as an entity performing the functions of the state or local self-government. Identification of a conflict of interest, according to V. P. Vasiliev, is associated with the following factors: 1) the threat to the objectivity of a civil servant during his service; 2) the gap between private and public interest; 3) the possibility of harming the legitimate interests of other entities (Vasiliev, Dekhanova, Kholodenko, 2009: 149).

Paying attention to the regulatory features of the prevention and settlement of conflicts of interest, it should be noted that they differ depending on the type of existing conflict – potential and real. The first of them is characterized by the following features: a) the presence of a public servant's private interest (any property or non-property interest of a person, including those caused by personal, family, friendly or other non-service relations with individuals or legal entities, including those arising from membership or activity in public, political, religious or other organizations) in the sphere in which he/she performs his/her official or representative powers; b) the possibility of a relationship between objectivity in decision-making or actions during service and what is important to a particular person.

A real conflict of interest is possible provided that: there is a contradiction between the private interest of a public official and his/her official or representative powers; this will affect the objectivity or impartiality of his/her decision-making, or the commission or omission of actions in the performance of his/her official powers.

Thus, a potential conflict of interest will differ from a real conflict of interest in the case when a private interest existing in the sphere of official activity contradicts official or representative powers and this actually affects, but cannot affect the performance of official duties (Maslova, 2021: 126).

Taking into account the needs of law enforcement, the Letter of the High Specialized Court for Civil and Criminal Cases dated May 22, 2017 "On Bringing to Administrative Liability for Certain Corruption-Related Offenses" (On Bringing to Administrative Responsibility for Certain Corruption-related Offences, 2017) details the signs of a real conflict of interest, for the detection of which it is necessary to establish a simultaneous set of facts, for example, the presence of a private interest of a public official, which must be clearly formulated and defined.

The fact of a conflict of interest mediates the need of persons who have it to take certain actions:

- 1) take measures to prevent conflicts of interest;
- 2) notify no later than the next working day from the moment when the employee learned or should have learned about the conflict of interest. The notification is addressed to the direct supervisor, and if the civil service position does not provide for a direct supervisor or it is a position in a collegial body – to the National Agency for the Prevention of Corruption or a collegial body;
- 3) not to take actions and make decisions in conditions of a real conflict of interest, as well as not to persuade subordinates to commit any illegal actions in favor of their private interests or the interests of a third party;
- 4) take measures to resolve the conflict of interests.

It is at this stage that a person may have doubts about the existence of a conflict of interest, and then he is obliged to seek clarification from the territorial body of the National Agency for the Prevention of Corruption.

The measure of independent settlement of the conflict of interest: a) occurs by deprivation of the relevant private interest (if the nature of the interest allows for its deprivation); b) related to the need for the manager to provide documents confirming the fact of deprivation of private interest (if the nature of the interest and the way of its deprivation provide for the possibility of documentary confirmation).

If, for subjective or objective reasons, the deprivation of private interest did not occur, measures of external settlement of the conflict of interest are applied:

- 1) removal of a person from performing a task, taking actions, making a decision or participating in its adoption;
- 2) application of external control over the exercise of powers by a person (implemented in the form of verification by another employee of the body of the status or results of the task, verification of decisions or draft decisions, performance of the task in the presence of another employee of the body or participation of an authorized person of the National

Agency for the Prevention of Corruption in the work of the collegial body in the status of observer and without the right to vote);

- 3) limiting a person's access to certain information;
- 4) revision of the scope of official powers;
- 5) transfer of a person to another position (if it corresponds to his personal and professional qualities and is vacant);
- 6) dismissal (On Prevention of Corruption, 2014).

Thus, prevention of conflicts of interest as a tool for preventing corruption can be considered in two meanings:

- 1) as the activities of authorized entities aimed at identifying possible causes of conflict of interest, timely elimination of these causes and settlement of the conflict situation within the current legislation of Ukraine;
- 2) as a separate legal institution, which is a set of legal norms aimed at regulating the activities of state bodies and other legal entities of public law related to the prevention and settlement of conflicts of interest. Depending on the type of conflict of interest, the measures that should be applied to exclude the conflict of interest from practical activities will differ.

Summing up, it should be noted that the powers of the National Agency in terms of providing clarifications, methodological and advisory assistance on the application of legislative acts on the prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government, and persons equated to them, is of great importance in the effectiveness of the corruption prevention mechanism (Methodological recommendations for the prevention and settlement of conflicts of interest). This is further confirmed by the fact that in cases of violation of the requirements of the Law of Ukraine "On Prevention of Corruption" on the prevention and settlement of conflicts of interest, the National Agency has the right:

- to make orders on violation of the requirements of the legislation on prevention and settlement of conflicts of interest, other requirements and restrictions provided by the Law of Ukraine "On Prevention of Corruption";
- to submit to the head of the relevant body, enterprise, institution, organization an order to eliminate violations of the law, to conduct an official investigation, to bring the guilty person to the statutory liability;
- to draw up protocols on the commission of relevant administrative offenses related to corruption (primarily under Article 172-7 of the Criminal Code of Ukraine, which provides for administrative liability for violation of requirements for the prevention and settlement of conflicts of interest).

Thus, in 2019, the authorized persons of the National Agency revealed 768 violations of the Law of Ukraine "On Prevention of Corruption". As a result of inspections and monitoring of 117 persons, 515 reports were drawn up and sent to court in accordance with the established procedure (Report on the activities of the National Agency for the Prevention of Corruption for 2019, 2020).

In 2020, within the competence of the Department for compliance with the legislation on conflict of interest and restrictions on the prevention of corruption: 942 explanations were provided on the presence/absence of conflict of interest, the procedure for applying the rules for its settlement (556 on the application of the requirements of the legislation on the prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them, 339 on the presence/absence of a conflict of interest in case of doubt, 47 on the procedure for resolving conflicts of interest in the actions of persons who do not have a direct supervisor); 239 protocols on administrative offenses related to corruption were drawn up and sent to court in accordance with the established procedure (Report on the activities of the National Agency for the Prevention of Corruption for 2020, 2021).

5. Conclusions

The conclusion is made about the importance of interest for the development of human civilization, its ubiquity and practical applicability, which are manifested in the fact that: a) interest, together with the needs and values, motivating the social subject (individual, group, historical community, class, nation, society), is the driving force of the historical process (immanent dynamic property of interest); b) the realization of interest is impossible without its awareness, which occurs in the process of constant comparison of the life situation of individuals, social groups, historical communities among themselves (intellectual and practical property of interest).

It is established that the National Agency for the Prevention of Corruption is an authorized entity whose activities are aimed at regulating public relations to prevent corruption through the use of specially defined methods, ways and forms in order to ensure the public interest. The public interest in the activities of the anti-corruption institution is expressed in ensuring the prevention and counteraction to corruption, which is specified through the main powers. It seems important to pay attention to the principles of the NACP activity, which are enshrined on the official website of this

body as values, namely Independence. "The interests of the people of Ukraine are above all" means positioning the NACP as a recognized authority in preventing and combating corruption, an impartial and apolitical body. In addition, according to the official website of the National Agency for the Prevention of Corruption, the structural subdivisions of this specialized anti-corruption body include 19 entities, of which

the Department for the Prevention of Conflict of Interest is a separate unit.

It is noted that a potential conflict of interest will differ from the real one in the case when a private interest existing in the sphere of official activity contradicts official or representative powers and this actually affects, but cannot affect the performance of official duties, attention is focused on the actions to be taken by the subject who has a conflict of interest.

References:

- Shelistov, Yu. I. (2017). The theory of legal statehood. Moscow: "Direct-Media".
- The Constitution of Ukraine: adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28, 1996. Available at: <http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>
- Conflicts of interest in research: looking out for number one means keeping the primary interest front and center (2015 Jun). *Curr Rev Musculoskelet Med.*, 8(2): 122–7. PMID: 25851417; PMCID: PMC4596167. DOI: <https://doi.org/10.1007/s12178-015-9270-2>
- Shimazawa, R., & Ikeda, M. (2014). Conflicts of interest in psychiatry: strategies to cultivate literacy in daily practice. *Psychiatry Clin Neurosci.*, Jul; 68(7): 489–97. Epub 2014 Jun 19. PMID: 24802771. DOI: <https://doi.org/10.1111/pcn.12201>
- Golladay, G. J., & Jain R. (2022). Conflict of Interest: Full Transparency. *Arthroplast Today.* Jan 31; 13: 208–209. PMID: 35141377; PMCID: PMC8814589. DOI: <https://doi.org/10.1016/j.artd.2022.01.019>
- Interest Encyclopedia of sociology. Available at: http://endic.ru/enc_sociology/Ihteres-360.html
- Interest Psychological encyclopedia. Available at: http://endic.ru/enc_psy/Interes-8607.html
- Interest Modern encyclopedia. Available at: http://endic.ru/enc_modern/Interes-4270.html
- Interest Philosophical dictionary. Available at: <http://endic.ru/philosophy/Interes-915.html>
- Interest. Encyclopedia of modern Ukraine. Available at: http://esu.com.ua/search_articles.php?id=12403
- Korkyuf, F. (2001). The collective in dispute with the individual: pushing away from the habit. Pierre Bourdieu's socioanalysis. *Aleteia Institute of Experimental Sociology*, pp. 250–281.
- Administrative law of Ukraine. Academic course: textbook: in 2 volumes: T. 1. General part (2004) / ed. number V. B. Averyanov (head). Kyiv: Legal Opinion Publishing House, 584 p.
- Official website of the National Agency for the Prevention of Corruption. Available at: <https://nazk.gov.ua/uk/>
- International Code of Conduct for Civil Servants. Available at: https://zakon.rada.gov.ua/laws/show/995_788#Text
- On prevention of corruption: Law of Ukraine dated 14.10.2014 No. 1700-VII. Available at: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>
- Implementation of measures to prevent and resolve conflicts of interest among subjects authorized to perform the functions of the state or local self-government, as well as prohibitions and restrictions. Available at: <https://wiki.nazk.gov.ua/wp-content/uploads/2020/10/2-1-Metodichni-nastanovi.-Konflikt-interesiv.pdf>
- Recommendation of the Committee of Ministers to the member states of the Council of Europe regarding codes of conduct for civil servants (2000). Available at: http://crimcor.rada.gov.ua/komzloch/control/uk/publish/article;jsessionid=ADD49945492AB4622122873FCCB7BD8D?art_id=48082&cat_id=46352
- Volyansky, P. B. (2014). Ways to prevent conflicts of interest in public service. *Public administration: improvement and development*, vol. 6. Available at: <http://www.dy.nayka.com.ua/?op=1&z=726>
- Hudkov, D. V. (2014). Conflict of interests and ways of its settlement in national legislation. *Law and Society*, vol. 1–2, pp. 120–124.
- Bodun, T. (2009). Conflict of interests as a determinant of reforming the power system in Ukraine. *Collection of scientific papers of the National Academy of Sciences* / by general ed. V. P. Prikhodka. Kyiv: NADU, vol. 2, pp. 224–235.
- Khamkhodera, O. P. (2019). Prevention of corruption in the public service. Administrative law of Ukraine. Full course: textbook / Galunko V., Dikhtievskiy P., Kuzmenko O., Stetsenko S. and others. The second edition. Kherson: OLDI-PLUS.
- Decision of the Constitutional Court of Ukraine in the case of interest protected by law dated December 1, 2004 No. 18-pp/2004. Available at: <https://zakon.rada.gov.ua/laws/show/v018p710-04#Text>
- Vasiliev, V. P., Dekhanova, N. G., & Kholodenko, Yu. A. (2009). Public administration. Moscow: Business and Service.
- Maslova, Ya. I. (2021). Prevention and settlement of conflicts of interest as a means of preventing corruption. *Legal position*, vol. 2(31), pp. 125–128.

On Bringing to Administrative Responsibility for Certain Corruption-related Offences: Letter of the Higher Specialized Court for the Consideration of Civil and Criminal Cases dated May 22, 2017. Available at: <https://ksa.court.gov.ua/sud2118/pres-centr/news/351905/>

Methodological recommendations for the prevention and settlement of conflicts of interest. Office of the Executive Directorate of the Social Insurance Fund of Ukraine in the Dnipropetrovsk region. Available at: http://www.fse.gov.ua/fse/control/dnp/uk/publish/printable_article/107287;jsessionid=DEF4EFF58255D107B61697F3005908A4

Report on the activities of the National Agency for Prevention of Corruption for 2019. Available at: <https://nazk.gov.ua/wp-content/uploads/2020/04/Zvit-NAZK-za-2019-rik-15.04.2020.pdf>

Report on the activities of the National Agency for the Prevention of Corruption for 2020. Available at: <https://nazk.gov.ua/wp-content/uploads/2021/04/NAZK-Zvit-za-2020-rik-15.04.2021-1-1.pdf>

Received on: 10th of March, 2023

Accepted on: 27th of April, 2023

Published on: 23th of May, 2023