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Information about the author:
Khliborob Nataliia,
Senior Lecturer at the Department
of Administrative and Financial Law,
Faculty of Law, Ivan Franko National University of Lviv,
1, Universytetska St, Lviv, 79000, Ukraine
ORCID: 0000-0001-5650-5030

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ADMINISTRATIVE MEANS FOR PREVENTION OF CORRUPTION IN BULGARIA

Kolarov E.

The matter of corruption is for nowadays state very important. Democratic society could not and must not suffer public actions based only on individual or corporative interests, or having public interest only as a “masque” in the same time serving corporate lobbyist influence. When corruption is an issue of public governance state lacks trust of society, and even good actions of government seem like a result of external impact. In this line of thoughts when we speak about corruption the first to be related to it is the public administration and public governance. So important is to

safeguard public administration from being corrupted that it is a matter for public security.

Form administrative law perspective the social negative phenomenon of corruption is a key issue. It is because it relates to the use of power, relates to authorities as parties of administrative relations. And, the measures to prevent corruption in public administration are in the same time measure to achieve "good administration" – principle of modern administration and achievement of modern generation of human rights. According to Art. 41 of the EU Charter for the fundamental rights the idea of good administration as a fundamental EU citizen's right relates to some principles of modern administrative law (and administrative procedural law) like impartiality, fairness and to proceed in reasonable time.

This places corruption into the central scope of current administrative research and a key problem of organization and functioning of modern state administration. In this regard we would recommend the collective monograph of 2023 with research papers on administrative aspects of corruption issued by the Zaporizhzhia National University [1]. Materials published within this monograph show a good administrative scientific approach to the matter.

In Bulgaria, the topic of corruption became widely discussed in the frame of negotiations for EU membership when issues of openness, transparency, legitimate expectations alongside with democracy, representativeness, responsibility of institutions were key points and requirements to be fulfilled by the candidate country. In this regard administrative reform was undertaken which led to adoption of a very important procedural administrative law – Administrative procedural code (in 2006) [2]. In the same time, in Bulgaria was adopted another law that formed a specialized administrative authority – Commission for establishment of property gained through criminal activity (in 2005) [3]. That law was amended in 2012 (already in the context of the EU membership of Bulgaria) covering every illegally gained property (later that law was replaced by new one [4]), and the Commission was renamed into Commission for prevention of corruption and expropriation of illegally gained property.

So, we see, two ways opened for preventing corruptive deeds within administration: on one hand, through codification of administrative procedures setting general principles and general procedural requirements and provisions (procedural way [5, p. 7]); on the other hand, through setting-up a special administrative authority to apply anticorruption legislation (institutional way).

Civil society plays additionally important role in prevention of corruption in public administration. Through signals and alerts, through complaints and claims against actions, acts and failures of administrative bodies and administrative servants and thus harming individual legal sphere persons may upstand and safeguard their lawfully recognized rights, freedoms and interests. Administrative procedural law requires, as well, participation of civil society in procedures for adoption or issuing of some sorts of administrative acts [6, p. 144].

There is no uniform and clear definition of corruption. It appears to be a blanquette and used in a sense that covers negative effect of governance through either crimes or conflict of interests. Poenalists and criminologists stress on crimes through which that negative effect is visible and sensible – so called corruptional crimes (for example "bribe" /active, passive or intermediary both in private or in public sphere/, or "crimes on duty" /abuse of power, misuse of duty/) [7, p. 13]. Bulgarian criminologist Prof. P. Shopova points on that political corruption is to be analyzed on first place since it gives effect later to corruption practices in other social spheres [7, p. 6]. She uses a definition given by B. Stankov who states that corruption is a misuse of power provided to certain person by law or by contract, and the aim of this misuse is personal or corporate benefit. In this regard personal behaviour of an individual consist a corruption – be it as a crime (as defined in the Criminal Code), as an administrative offence (as defined in special administrative legislation) or as a disciplinary misconduct (as defined in internal rules of administration or in professional ethical codes) [7, ibid.].

The corruption, thus, exists through individual behaviour, and this is why it is difficult to precisely define every single variable of personal conduct that comprises an act of corruption. The most significant feature of this kind of behaviour is the link between public and private interest. This is why corruption relates mainly to administrative actions undertaken in relation to public procurements (where administrative contracts are going to be concluded with private companies – distributors to some material activities, or beneficiaries to public resources /especially financial – like grants from the Eurofunds/, concessions for exclusive rights to some activities /like extraction of raw materials or mining or use of sea coast/), or it may relate also to disposition with state or communal property or granting construction permissions; or appointment to civil service. Some of the checks made by the competent authority in Bulgaria [8] concern appointment of social assistants to a program to take care of senior citizens and of persons with disabilities and thus financed by an

operative program (grants received from the EU Social Fund); in the same time, on mayor's order some personal vehicles were registered to that program and fuel paid on expenditures documents but they were not used on purpose to take care of those persons (senior and with disabilities); the respective mayor appointed himself to manager of that project, and later appointed also his relative.

Another example of municipal practice that is under check by the competent authority is the issuing of necessary permissions concerning constructions and buildings – the period of making decision for issuing such documents lasts rather long, and while the procedure is pending personal meetings with applicants for such permissions are sought.

New trend of the recent decade in Bulgaria that might relate to the matter of corruption, especially political one, is the paid voting to elections. Although through all political electoral campaigns leading motto is that "buying and selling votes is a crime" information in public shows that there are channels through which attempts for vote manipulations are used.

As regards anti-corruption reform, it is worth to mention that in Bulgaria there are attempts during the last two decades to establish standards for prevention of corruption practices in public administration, parallel with reform of the Criminal law to combat organized crime.

The first law dealing explicitly with the prevention of corruption appearing in public sphere is adopted in 2008 – Act on prevention and establishment of conflict of interests. According to this act "conflict of interests" occur "when a person holding a public office has a private interest that may affect the impartial and objective performance of their official powers or duties". Additionally, there were positions listed where lack of conflict was under the scope of that law.

The next step was made in 2018 when Act on prevention of corruption and confiscation of illegally gained property was adopted. According to that law "corruption" is used with the meaning that as a result of its high public office a person abuses power, violates or fails to fulfill official duties with the aim of directly or indirectly to gain any material or immaterial benefit for himself or for other persons. In that act 50 positions in public administration are listed as falling into the scope its provisions. These individuals – acting as high positioned authorities or officers – are subject to the obligation to publish specific information on their personal income and property.

For control to these obligations a special authority is established by the act – a Commission consisting of 5 persons, elected by the Parliament,

having undoubtedly high professional and moral quality. For Chairman can be elected a person with juridical education and 10 years of professional experience, while for Vice-Chairpersons – persons with either juridical or economic education and at least 5 years of experience. The Commission makes inspections on individual declaration about the personal property, and investigates signals and information about conflict of interests.

The last step so far was made during the time when the current material was in preparation – on 6 October 2023 a new law was published [9] – dividing anticorruption measures and expropriation activities into two separate mechanisms. Thus, two legislative acts (Act on prevention of corruption and Act on expropriation of illegally gained property) and two administrative authorities (Commission on prevention of corruption and Commission of expropriation of illegally gained property) exist.

The newly established Commission on prevention of corruption consists of three members elected by the Parliament by qualified majority of 2/3 of all representatives. Each of the candidates must have juridical education and at least 7 years of professional experience. The most important activity of the Commission will be to investigate corruption crimes. For this purpose, part of the servants – in a specialized administrative department called Directorate "Prevention of corruption" – will be inspectors and investigating inspectors (the latter with juridical education and at least 5 years of professional juridical experience and at least 5 years of experience in the public security and public order services).

While the abovementioned law tries to combat corruption at high level administration there are some typical and ordinary administrative tools to counteract maladministration as unlawful and improper activities of public authorities and administrative officers. These are the signals (alerts) that citizens may turn to administrative bodies, and the administrative sanctions for improperly enriched juridical persons.

In the 2006 Administrative procedure code it is provided that a signal (alert) to administrative body may be submitted in case of misuse of powers and corruption, maladministration of state or communal property or in case of illegal or improper measures, actions or failures by public authorities or officers and by such measures affecting state or public interests or rights and lawful interests of others. The administrative body addressee to the signal is obliged to investigate and review the matter. The code provides very flexible channels of communicating to the administration in this regard – either orally (through phone call) or in writing (through submitted printed document, or through e-mail). The

competent authority receiving the signal must register it. There are only three ways for the authority to deny admittance and review of a signal: if it is submitted anonymously (different it is when the person asks for keeping his personal information in secret in order to be in safety [10]); if there is a time delay of more than 2 years after the matter on which the signal is alerting happened; and if the signal is addressed to incompetent administrative authority (in this case the latter may not open the procedure before itself but it must redirect and transfer the signal to the competent administrative body). The signals are worth since the problem would be reviewed within the administration, through fast (it is to be reviewed within 2 months) and flexible procedure. The administrative authority reviewing the signal in the immediately upper to the authority in question 9because the upper authority has controlling function toward his subordinate bodies or persons [11, p. 137]) and it has various options for action – through revision of internal documentation (even internal rules of procedures), disposition of necessary material objects or engaging sufficient staff, or even starting disciplinary procedure if necessary. If the matter concerns a crime it must directly signalize the prosecutor's office in order the criminal investigation to be started.

And finally, one more tool – the administrative material sanction against juridical person (corporation) that has been enriched as a result of several crimes – like terrorism, kidnapping, against the right of equality of citizens or the right of religion, against monetary and credit system, against financial and tax system, and many other qualifications, and especially when these crimes are committed within organized criminal group. It is provided in Bulgarian Act on administrative offences and administrative sanctions [12]. From administrative perspective specific here is the subject of the crime – individual who has the authority to make decisions on behalf of that juridical person, or to represent or supervise it, or worker/servant appointed by that juridical person and the work is in relation to fulfilment of his duties. Another specific moment is the initiative to open the procedure for imposition of the sanction – it is the same prosecutor who investigates the crime committed by the person. The prosecutor submits motivated request to the regional court and the two questions are to be dealt with separately – one criminal case for the criminal commitment and anther administrative case on the administrative sanction. One problematic moment is that if the administrative sanction is imposed (because the administrative penal procedure is faster than the criminal proceeding) and later the criminal case is finalized with no penal sentence (the person is found unguilty) then the administrative penal

procedure (that might have ended with sanction imposed) should be reopened. Administrative sanctions imposed to juridical persons might be in amount to up to 1 million BGN (= 500,000 Euro) so it appears to be a good administrative penal tool against corruption practices. The good effect of this sanctioning system depends, however, on the effectiveness of the criminal justice.

We see that there is a system for prevention of corruption in Bulgaria. It is in a steady reform during the last decades. Although these tools, the European Commission in its annual reports regularly underlines that Bulgaria is the "worst student" concerning rule of law and combat against corruption within the European Union. Problematic are the political influence over judiciary (so called "political umbrella") and lack of significant judicial penal sentences for corruption crimes. Long lasting procedures leading to closure of criminal cases without penal decisions form the impression that "the state abdicates of its functions". Moreover, after such unsuccessfully closed criminal cases the state is often defendant to damage claims.

Unsolved political and social debates on corruption influence the general public opinion to still perceive that corruption increases in Bulgaria [13]. Due to the problems Bulgaria faces with combating corruption – especially on high level of power – no positive decision has been made by the Council of the EU yet for entering the Schengen area [14] and abolishing cross-border control on the internal borders (with Romania and Greece).

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Information about the author:
Kolarov Emanuil,
Dr.iur., M.St.Eur.
Assoc.Prof. of Administrative Law
and Administrative Procedures
Faculty of Law
Angel Kanchev University of Ruse,
8, "Studentska" str., Ruse, 7017, Bulgaria

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ДОВІЧНИЙ ФІНАНСОВИЙ МОНІТОРИНГ СТОСОВНО СУДДІВ В УКРАЇНІ – ІНСТРУМЕНТ ЗАПОБІГАННЯ КОРУПЦІЇ ЧИ ВАЖІЛЬ ВПЛИВУ НА ЇХ ПРОФЕСІЙНУ ДІЯЛЬНІСТЬ?

Коломоєць Т. О., Євтушенко Д. С.

ВСТУП

В умовах активного впровадження численних «інструментів анти корупції», із унормуванням легальних засад їх застосування в Україні, важливості набуває детальний аналіз ресурсу кожного із них із ти, щоб максимально ефективно використовувати його в реаліях воєнного та повоєнного часу в Україні, з акцентом на ті додаткові складові, виникнення яких зумовлено зовнішньою збройною агресією проти України, й водночас уникнути зловживань у їх використанні, із усуненням передумов для їх «штучного» впливу на професійну діяльність особи. Це у повній мірі стосується фінансового моніторингу стосовно політично значущих осіб й зокрема суддів як національних політичних діячів, нормативні засади використання якого зазнали суттєвих змін у 2022 році (Закон України «Про внесення змін до деяких законів України щодо захисту фінансової системи України від дій держави, що здійснює збройну агресію проти України, та адаптації законодавства України до окремих стандартів Групи з розробки фінансових заходів боротьби з відмиванням грошей (FATF) і вимог Директиви ЄС 2018/843») й доцільність зміни яких зумовлена не тільки потребами реального часу у протидії корупції та злочинності в цілому, а й стратегічними