

Yevtushenko Daria Serhiivna,
PhD in Law,
Assistant Professor at the Department of Constitutional
and Administrative Law,
Zaporizhzhia National University,
66, Zhukovskoho, Zaporizhzhia, 69600, Ukraine
ORCID: 0000-0001-5334-8498

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ORGANIZATIONAL-LEGAL INSTITUTES OF ANTI-CORRUPTION: CONTENT UPDATE

Kolpakov V.

RESEARCH

An important reason for reforming the anti-corruption system is the following indicators: a) perception of the prevalence of corruption; b) effectiveness of anti-corruption activities; c) corruption experience of society. The results of the study of these parameters were published in the report of the National Agency for the Prevention of Corruption “Corruption in Ukraine 2022: understanding, perception, prevalence”.

According to the report, corruption ranks 3rd among the main problems of society. High living costs and military activities ranked first and second in 2021–2022. 64,2% of the population consider corruption a very serious problem. This indicator statistically decreased after 2 years of stability (in comparison with 2021, the decrease was 4,4 p.p.).

Speaking about the corruption prevalence perception indicator in general, then 81,1% of the population and 69,2% of entrepreneurs believe that corruption is somewhat or very common in Ukraine.

As for corruption level dynamics, in 2022, more than twice as many representatives of the population reported its decrease in comparison with the previous year – 15,5% (in 2021 – 5,5%). At the same time, 29,2% of the population believe that the level of corruption in Ukraine has increased over the last 12 months (this share is significantly smaller than 10 in 2021 when it was 41,8%, though it’s still larger than the share of those considering that the level of corruption has decreased). As for entrepreneurs, the share of the respondents who believe that the level of

corruption has decreased, is three times greater than the share of those reporting the increase of corruption (45,7% vs. 16%).

The vulnerability of the Ukrainian bureaucracy to the interventions of corruption temptations turned out to be an urgent and painful problem already in the initial phases of the development of state independence. Even in the interval between the adoption of the Declaration on the State Sovereignty of Ukraine (July 16, 1990) and the Act of Proclamation of Independence of Ukraine (August 24, 1991), the legislator considered it necessary to implement urgent measures to strengthen law and order in the republic and outline in this document the importance of combating corruption.

The first law on combating corruption was adopted in Ukraine in 1995. It was aimed at preventing corruption, identifying and crossing its manifestations, restoring the legitimate rights and interests of individuals and legal entities, eliminating the consequences of corrupt acts. Analysis of the practice of its application has shown that further strengthening of anti-corruption efforts is impossible without further reforms of the regulatory framework.

This led to the development of a new legislative act. As a result, in April 2011 the Law of Ukraine “On the Principles of Preventing and Combating Corruption” was adopted. It defined the basic principles: a) prevention and combating corruption in the public and private spheres of public relations, b) compensation for the damage caused by corruption offenses, c) restoration of violated rights, freedoms or interests of individuals, d) rights or interests of legal entities, e) interests of the state.

In October and November of that year, the “State Program to Prevent and Combat Corruption for 2011–2015” and the “National Anti-Corruption Strategy for 2011–2015” were adopted consecutively. Unfortunately, both documents were not based on substantive research and analysis of previous efforts. In this period, regular corruption studies, which would have provided an analytical basis for monitoring the implementation of the anti-corruption strategy and its future updates, were not conducted. The Central Election Commission, the Chamber of Accounts, the courts, and the Prosecutor’s Office were left out of their focus. There were no links to other relevant reforms, which are important in terms of eliminating the preconditions for corruption or creating effective tools for bringing perpetrators to justice: reforms of the law enforcement system, judiciary, external audit, etc. In addition, the State Program lacked clear, measurable, achievable, relevant and time-limited indicators of implementation of its tasks. The indicators themselves had

no qualitative basis and were formal (“report and proposals”, “corresponding legal act”, “conducted seminars”, “annual report”, etc.). In fact, they were process-oriented only, so even their full implementation could not lead to any significant changes and ensure the achievement of objectives.

Therefore, it was quite natural and reasonable to decide to develop a new anti-corruption legislative act. Such a document was adopted on October 14, 2014. It was the current Law “On Prevention of Corruption” [1].

The law synchronized anti-corruption policy and legislation, based on the current economic and socio-legal situation. With its adoption, the normative regulation of the anti-corruption mechanism evolved, a consistent improvement of the institutional system through new preventive mechanisms began.

Thus, the main components of the preventive anti-corruption system, according to this Law, are: 1) the functioning of the National Agency for the Prevention of Corruption, a specialized body for the prevention of corruption; 2) rules for the formation and implementation of anti-corruption policy; 3) anti-corruption restrictions: a) regarding the use of one’s official position, b) receiving gifts, c) combining jobs and combining with other activities, d) joint work of close persons related to the performance of state or local government functions; 4) prevention and settlement of conflicts of interest; 5) special anti-corruption tools: a) anti-corruption expertise, b) a special anti-corruption audit, c) the Unified State Register of Persons Who Committed Corruption or Corruption-Related Offenses, d) requirements for transparency of information and access to it; 6) protection of whistleblowers (persons who report facts of corruption) from unlawful dismissal, transfer, changes in the essential terms of the employment contract); 7) legal liability for corruption and corruption-related offences; 8) elimination of the consequences of corruption offenses: a) cancellation of acts, b) recognition of transactions as void, c) compensation for losses in court; 9) international cooperation.

In accordance with the Law of 2014 “On the Prevention of Corruption” and in the development of its provisions, important transformations took place in the system of organizationally structured anti-corruption institutions [2; 37].

First of all, it should be noted the creation of the National Agency for the Prevention of Corruption as a central executive body with a special status. Its main functions were: ensuring the formation and implementation of anti-corruption policy with the involvement of the

public; analysis and study of the situation with corruption; development, monitoring and coordination of the implementation of the Anti-Corruption Strategy and the state program for its implementation; monitoring and control over the implementation of acts of legislation on professional ethics and conflicts of interest; coordination and methodological assistance in identifying and eliminating corruption risks; implementation of financial control, verification of declarations, monitoring of the lifestyle of persons authorized to perform the functions of the state or local government; approval of the rules of ethical behavior of civil servants and officials of local self-government; cooperation with whistleblowers, taking measures for their legal protection; providing methodological and advisory assistance on the application of anti-corruption legislation; implementation of international cooperation in the field of anti-corruption policy.

At the same time, the Agency received the right to demand the necessary information from the governing bodies; make binding instructions (to eliminate violations of the implementation of anti-corruption legislation); apply to law enforcement agencies with mandatory conclusions regarding the identified signs of offenses; apply to the court with claims (applications) to declare illegal legal acts, individual decisions, invalidate transactions issued (accepted, concluded) as a result of violation of anti-corruption legislation) have access to databases of state and other bodies (for financial control, in particular for checking declarations).

In the format of the implementation of anti-corruption legislation, the following were also created: the National Anti-Corruption Bureau of Ukraine; Specialized Anti-Corruption Prosecutor's Office; State Bureau of Investigation.

In the mechanism of combating corruption, these structures interact with each other, with other law enforcement agencies, the executive branch, local self-government, and civil society actors.

The National Anti-Corruption Bureau of Ukraine was established as a state law enforcement agency with broad enforcement powers. It is he who is entrusted with the duty of direct prevention, detection, suppression and disclosure of corruption crimes that are committed by senior officials authorized to perform the functions of the state or local self-government, and constitute a threat to national security. To this end, the National Bureau carries out operational-search activities; conducts a pre-trial investigation of criminal offenses related to its jurisdiction, as well as conducts a pre-trial investigation of other criminal offenses in cases

specified by law; takes measures to search for and seize funds and other property that may be subject to confiscation or special confiscation for criminal offenses related to the jurisdiction of the National Bureau; interacts with other state bodies, local governments and other entities to fulfill their duties; carries out information and analytical work in order to identify and eliminate the causes and conditions that contribute to the commission of criminal offenses attributed to the jurisdiction of the National Bureau; provides confidentiality and voluntary cooperation with persons who report corruption offences.

The Specialized Anti-Corruption Prosecutor's Office was created as part of the General Prosecutor's Office of Ukraine as an independent Department. Its leader is also the Deputy Prosecutor General of Ukraine. The main areas of activity of the Anti-Corruption Prosecutor's Office include: supervision over compliance with laws in the conduct of operational-search activities, preliminary investigation by the National Anti-Corruption Bureau of Ukraine; participation in the consideration by the courts of the petitions of detectives and prosecutors during the pre-trial investigation; participation in the judicial review of criminal proceedings investigated by detectives of the National Anti-Corruption Bureau of Ukraine.

The State Bureau of Investigation has the status of a state law enforcement body and exercises its powers directly and through territorial administrations. The State Bureau of Investigation solves the tasks of preventing, detecting, suppressing, disclosing and investigating crimes committed by officials who occupy a particularly responsible position in the public service; judges and law enforcement officials; officials of the National Anti-Corruption Bureau of Ukraine, the Deputy Prosecutor General, the head of the Specialized Anti-Corruption Prosecutor's Office or other prosecutors of the Specialized Anti-Corruption Prosecutor's Office.

The law of 2014 introduced significant changes to the regulatory framework for the institution of whistleblowers, anti-corruption expertise of legal acts; conflict of interest; information support for anti-corruption activities; special check and others.

Important changes have been made to the Criminal Code. For the first time in the history of Ukraine, it presents a list of corruption criminal offenses and states that the perpetrators of them are subject to a number of restrictions and prohibitions.

Thus, they cannot be released from criminal liability: in connection with repentance (Article 45); in connection with the reconciliation of the

perpetrator with the victim (Article 46); in connection with bail (Article 47); in connection with a change in the situation (Article 48); they cannot be given a more lenient punishment; than provided by law (Article 69); the court does not have the right to release such a person from punishment in connection with the loss of public danger by the act (part 4 of article 74); release from serving a sentence with a trial (part 1 of article 75; article 79) or on the basis of an amnesty (part 4 of article 86); the terms of the actual serving of the sentence have been increased; appointed by the court for a corruption offense; for parole (art. 81); replacement of the unserved part of the punishment with a milder one (Article 82); pardon (part 3 of article 87); a conviction for committing a corruption offense cannot be prematurely dismissed by the court (part 2 of article 91).

The Code of Administrative Offenses[3] was supplemented with Chapter 13-A “Administrative Offenses Related to Corruption”. It contains norms providing for responsibility for: violation of restrictions on part-time employment and combination with other types of activity (Article 172-4); violation of legal restrictions regarding the receipt of gifts (art. 172-5); violation of financial control requirements (art. 172-6); violation of the requirements for the prevention and settlement of conflicts of interest (art. 172-7); illegal use of information that became known to a person in connection with the performance of official or other powers determined by law (Article 172-8); violation of the restrictions established by law after the termination of the powers of a member of the national commission that carries out state regulation in the field of energy and utilities (Article 172-8-1); failure to take measures to combat corruption (art. 172-9); violation of the prohibition on placing bets on sports related to the manipulation of an official sports competition (art. 172-9-1); violation of legislation in the field of environmental impact assessment (art. 172-9-2).

As a result of these transformations, there are reasons to note some positive trends in combating corruption.

Thus, sociological studies have recorded a noticeable decrease in the proportion of citizens who have direct experience of involvement in corrupt relations. In 2013, 60 percent of respondents had it, and largely thanks to these data, in April 2017, the international audit company EY ranked Ukraine in first place in the world in terms of corruption among 41 countries surveyed (including from Africa). By the beginning of 2022, less than 40 percent of the citizens surveyed indicated its presence.

There is also some improvement in the comparative indicators of the level of corruption, which is recorded in a special rating by the international organization “Transparency International”. According to her, in the period from 2013 to 2019, it increased from 25 to 30 points. In 2021, Ukraine received 33 points and took 117th place out of 180 countries, which is 3 points better than the previous indicators.

However, this progress does not satisfy society. Citizens perceive it as too slow, and corruption is recognized as one of the most important problems. In scientific publications on this issue, it is noted that annually, experts estimate the loss of the state budget from the illegal activities of the shadow business in Ukraine at UAH 12–13 billion.

The reluctance of foreign investors to invest in the Ukrainian economy is mainly due to corruption, since the amount of bribes usually equals the amount of capital invested in the business. Corrupt bureaucracy has turned into a kind of all-powerful monster.

The impression is that it is in the interests of the bureaucracy that laws are adopted and amended. The official is omnipotent and unpunished. And in the country now there is no real force, including in the highest echelons of power, which would be able to curb bureaucratic arbitrariness [4; 122–123].

Returning to positive changes, we note that progress in minimizing corruption risks is correlated with: a) the start of work of the Supreme Anti-Corruption Court with appropriate jurisdiction; b) rebooting the National Agency for the Prevention of Corruption; c) modernization of legal regulation; d) improvement of law enforcement practice.

The update of the anti-corruption policy and its regulatory support is related to the new Anti-Corruption Strategy for 2021–2025, which became part of the Law of Ukraine “On the Basics of the State Anti-Corruption Policy for 2021–2025” [5].

The draft, among other measures, provides for the need to ensure the inevitability of legal liability for corruption and corruption-related offences. In particular, we are talking about disciplinary, administrative and criminal liability [6; 41–42].

CONCLUSIONS

The above study of administrative and legal means of combating corruption in Ukraine allows us to draw the following conclusions. In 2021–2022 (compared to 2019), Ukraine showed a slight improvement in its position in the global “Corruption Perception Index” of Transparency International. Its index was 33 points (30 points in 2019). Thus, it took

117th place among 180 states. In 2019, the country was nine places lower and ranked 126th in the ranking. Experts believe that this became possible thanks to the administrative, legal and organizational efforts to launch the High Anti-Corruption Court, reformat the National Agency for the Prevention of Corruption, and strengthen responsibility for corruption offenses. However, there are insufficient grounds for a positive assessment of this progress.

In this regard, it is advisable to rebuild anti-corruption practices on the basis of a) deep implementation of digital technologies in the field of corruption prevention; b) creation of a single state information processing center; c) will focus on the development of convenient alternatives to existing anti-corruption practices; d) intensify the formation of zero tolerance for corruption; e) to introduce the inevitability of responsibility for corruption; f) adopt relevant changes to the anti-corruption legislation.

SUMMARY

The purpose of the research is: a) to obtain new knowledge about the organizational and legal institutions for combating corruption; b) in highlighting the reform of anti-corruption structures; c) in the theoretical understanding of administrative and legal means of combating corruption in Ukraine under martial law. In terms of the Law of Ukraine dated May 12, 2015 “On the Legal Regime of Martial Law”; Decree of the President of Ukraine dated February 24, 2022 “On the introduction of martial law in Ukraine”; On the principles of the state anti-corruption policy for 2021–2025; On the principles of the state anti-corruption policy for 2021–2025; State anti-corruption program for 2023–2025 is analyzed: a) program documents on combating corruption; b) anti-corruption regulations; c) organizational and legal institutes; c) forms and methods of activities of entities fighting corruption; d) materials of the report of the National Agency for Prevention of Corruption “Corruption in Ukraine 2022: understanding, perception, prevalence”; e) materials of international organizations “Transparency International”, “Management Systems International (MSI)”, international auditing company “EY”. The work of the National Agency for Prevention of Corruption is described in detail; National Anti-corruption Bureau; Specialized anti-corruption prosecutor’s office; State Bureau of Investigation. A detailed analysis of the current Law of Ukraine “On the Prevention of Corruption” 2014 is presented. Attention is focused on the norms of this law, which contain a list of specific restrictions on the use of an official position for personal gain; using gifts for personal gain; restrictions on the joint work of relatives in

the civil service; regulate the rules of ethical behavior of civil servants; regulate the submission of income tax returns. The important components of the preventive anti-corruption system are highlighted: a) anti-corruption expertise, b) special anti-corruption inspection, c) the unified state register of persons who have committed corruption or corruption-related offenses, d) requirements for the transparency of information and access to it; 6) protection of whistleblowers (persons reporting the facts of corruption) from illegal dismissal, transfer, changes in the essential terms of the employment contract).

Key words: anti-corruption institutes, anti-corruption regulations, corruption, martial law regime, National Agency for Prevention of Corruption, National Anti-Corruption Bureau, Specialized anti-corruption prosecutor's office, State Bureau of Investigation.

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Information about the author:

Kolpakov Valerii,

Doctor of Juridical Sciences, Professor,
Head of the Department of Constitutional and Administrative Law

Zaporizhzhya National University,
66, Zhukovskoho str., Zaprizhzhia, 69600, Ukraine
ORCID: 0000-0002-8580-3261

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**АДМІНІСТРАТИВНІ ПОВНОВАЖЕННЯ ОРГАНІВ
ПУБЛІЧНОЇ АДМІНІСТРАЦІЇ ЩОДО РЕАЛІЗАЦІЇ
АНТИКОРУПЦІЙНОЇ ПОЛІТИКИ ДЕРЖАВИ**

Ковбас І. В., Крайній П. І.

Українське суспільство впродовж останньої декади ХХІ століття перебуває у стані якісних змін. Останні стосуються з-поміж іншого його активної участі в управлінських процесах: від надання пропозицій на громадських обговореннях до участі у процедурах пов'язаних із формуванням органів публічної влади. Очевидною є тенденція щодо формування в Україні власної парадигми забезпечення участі громадськості у здійсненні управління державними справами. Право що передбачено Основним Законом набуває нового забарвлення. Такі зміни викликані впливом значної кількості факторів які впливають на суспільно-політичні процеси як в суспільстві так й державі. Одним із них став виданий Президентом України Указ «Про заходи щодо впровадження Концепції адміністративної реформи метою якої стало «... формування системи державного управління, яка стане близькою до потреб і запитів людей, а головним пріоритетом її діяльності буде служіння народіві, національним інтересам. Ця система державного управління буде підконтрольною народіві, прозорою, побудованою на наукових принципах і ефективною» [1]. Навряд чи автори документу передбачали що проведення реформи відбуватиметься так довго. Однак, на сьогодні ми не можемо не враховувати прогресивність даного підзаконного акту та його виключну роль яку він відіграв в процесі еволюційних змін у взаємовідносинах людини та держави.