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Some Issues of Institutional and Legislative Support to Prevent Corruption in the Context of Current Challenges

*The **purpose** of the paper is to clarify the urgent problems in the area of corruption preventing in the context of modern law enforcement challenges and making of some proposals to overcome them as well as to eliminate the causes and conditions that contributed to their emergence. **Methodology.** To achieve the goal of the study a set of general scientific and special methods was used, in particular: historical, logical, system-structural, statistical, modeling, analysis, synthesis, induction and deduction methods. The **scientific novelty** lies in outlining the author`s approach to the unification of institutional, legislative and practical support for the prevention of corruption, taking into account the requirements of international standarts and the specifics of national law enforcement. **Conclusions.** It is necessary to ensure a balanced relationship between legal and institutional support for combating corruption, to prevent the empowerment of authorized bodies with excessive or exclusive rights in order to prevent them from exceeding their powers, as well as to minimize the risks of arbitrary interpretation of relevant legislation, including by minimizing discretionary powers.*

Keywords: corruption; prevention of corruption; anti-corruption policy; abuse of influence; declaring of unreliable information; illicit gane; independence of judiciary; Constitutional Court of Ukraine; constitutional crisis.

Introduction

The proper organizational, institutional, legislative and practical issues of the pevention of corruption support have not lost their relevance for many years.

Furthermore, such issues become importantly taking into account a significant amount of objective and subjective factors that led to the improvement of corruption methods, increasing corruption risks and formation of new approaches to combating this phenomenon at the state level, in particular, by the law enforcement agencies.

Meanwhile, today corruption crimes remain one of the most considerable obstacles to the formation in Ukraine proper conditions for the functioning of public and private institutions, ensuring a favorable investment climate, as well as the development of the state and society as whole.

In general, preventing and combating of corruption issue has been the subject of such scientists researchs as O. Bandurka, Y. Busol, V. Hvozdetskyi, O. Dudorov, V. Borkov, V. Kyrychko, M. Kocherov, M. Melnyk, V. Tyiutyiuhin, M. Iaroshenko etc. However, the rapid dynamic development of public relations in this area encourages further research in terms of new challenges that arise in the course of law enforcement activities by judicial and law enforcement agencies.

The purpose and objectives of the study

The aim of the paper is to clarify the urgent problems in the area of corruption preventing in the context of modern law enforcement challenges and making of some proposals to overcome them as well as to eliminate the causes and conditions that contributed to their emergence.

Presentation of the main material

Research of the Corruption Perceptions Index indicators in Ukraine (2019), that have been provide by Transparency International, shows that currently Ukraine is on 126th place out of 180 possible on this indicator ("Indeks spryiniattia", 2019). Taking into account the indicators of the same rating for the previous three years, Ukraine actually returned to the «achievements» of 2017. This means that in terms of law enforcement, the quality of the fight against corruption in Ukraine is not improving, despite ongoing reforms of anti-corruption institutions. Thus, the so-called «primitive nature» of corruption still prevails (Andrushchenko", 2016, p. 148), integrated into modern society. But today there is no doubt about that the corruption is an indicator of the presence of gaps in the public system state administration (Chornyi, 2020, p. 68).

According to expert research, among the factors that reduce the level of effectiveness of anti-corruption, note such as imperfect legislation, shortcomings of the system of state institutions to combat corruption, corruption in law enforcement

and the judiciary, etc ("Rezultaty sotsiolohichnoho doslidzhennia"). At the same time, the analysis of doctrinal sources shows that these elements in their complex and in essence are the basis for the fight against corruption.

In particular, N. Pidberezhnyk, addressing the concept of «good governance», which is a comprehensive mechanism for preventing and combating corruption in the EU, emphasizes the basic principles of open government, transparency and clarity of management decision-making procedures, effective mechanisms for monitoring activities, public authorities, etc. (Pidberezhnyk, 2013, p. 158-159).

In addition to the above, according to the data for January-December 2020, published on the web portal of the Prosecutor`s General Office, the effectiveness of NABU is not significant enough. Thus, during the reporting period, 128 criminal offenses of abuse of power or official position were recorded (Article 364 of the Criminal Code), of which in 5 cases a notice of suspicion was served; 5 criminal offenses of declaring unreliable information (Article 366-1 of the Criminal Code), of which in 4 cases a notice of suspicion was served; 82 criminal offenses of accepting an offer, promise or receiving an improper benefit by an official (Article 368 of the Criminal Code), of which only 9 were served with a notice of suspicion; 38 criminal offenses concerning an offer, promise or provision of illegal benefit to an official (Article 369 of the Criminal Code), of which in 20 cases a notice of suspicion was served; 12 criminal offenses of abuse of influence (Article 369-2 of the Criminal Code) and 4 reports of suspicion ("Konventsiia Orhanizatsii", 2003).

So, despite the large number of specialized government agencies,their achievements in the direction are small and even ephemeral. The legislation contains inaccuracies that need to be addressed (Sheremetieva, 2019, p. 130-131).

This data convincingly shows that the reform of anti-corruption legislation, which has been carried out in Ukraine for more than ten years, practically does not limit real corruption practices. Thus, in fact even the provisions of the UN Convention against Corruption, ratified by Ukraine, have not been fully implemented.

Especially, given the indicators of practice, the state policy in the field of anti-corruption cannot be assessed as effective and coordinated, which reflects the principles of law and order, proper management of state affairs and state property, honesty and integrity, transparency and accountability ("Rezoliutsiia (97) 24", 1997). However, it should be noted that the provisions of international legal acts of the UN on the subject under study are set out in a fairly general way, which allows them to be clarified and detailed at the regional level and at the level of domestic law of member states (Kisilevych-Chornoivan, 2018, p. 40).

In addition, it would hardly be justified to claim the establishment in Ukraine of a truly sufficient range of practices aimed at effectively preventing corruption. And, finally, the recent events surrounding the artificial politicization of the decision of the CCU on the constitutional submission of 47 people's deputies of Ukraine on compliance with the Constitution Ukraine (constitutionality) of certain provisions of the Law of Ukraine «On Prevention of Corruption», Of the Criminal Code of Ukraine (Koziakov, & Rybka, 2016), once again questioned Ukraine's compliance with the requirements for preventing corruption among the judiciary without compromising the independence of the judiciary, especially in view of further decisions on the removal of the CCU Chairman. So, the selected adoption procedures go beyond the limits set by law, which not only exacerbated the political conflict, but also deepened the rather long law enforcement crisis caused, among other things, by the low level of law enforcement culture.

It's necessary to understand, that the special role in this process is played by proper legislative support and coordination of the activities of authorized law enforcement agencies. In this context, it is important to empower such bodies with a sufficient amount of relevant goals of their activities, while establishing sufficient procedural levers to ensure the effectiveness of activities and, at the same time, filters to prevent certain abuses.

It should be agreed that the systematic fight against corruption is impossible without improving state regulation of relations between man and government in the field of preventing and combating corruption, bringing the national legal framework in full compliance with international norms and recommendations.

At the same time, it seems reasonable to consider that the necessary for the fight against corruption, as a systemic phenomenon, requires joint coordinated systemic actions of the state executive; local governments; law enforcement agencies, including courts; business; civil society and the media as the «fourth branch of government» ("Consultative Council", 2018, p. 208-209).

Along with that, today, unfortunately, it would be premature to say that such ideals have been achieved, because despite the functioning of a number of specialized anti-corruption bodies, including NABU, SAP, NAPC, the real scale of corruption in Ukraine is not actually reduced.

Although, for example, given the integrative role of the law in the regulation of anti-corruption, it can be argued that the prosecutor's office should play an independent and, at the same time, systemic role, promoting the capacity of other anti-corruption

bodies to exercise their statutory powers and remedies (Koziakov, & Rybka, 2016, p. 101).

Almost the same point of view we could see in scientific researches of some other authors. For example, I. Kurbatova emphasizes that the Prosecutor's Office of Ukraine occupies a central place in the system of law enforcement agencies of Ukraine in the field of combating corruption. It implements this counteraction by implementing the functions of procedural management of pre-trial investigation and support of public prosecution in court, coordination of actions of law enforcement agencies in the field of combating criminal corruption. Some elements of counteraction to corruption are also present during the implementation of the function of supervision over the execution of court decisions in criminal proceedings, the application of other measures coercive in nature, restricting the constitutionally guaranteed rights and freedoms of citizens (Kurbatova, 2019, p. 67).

Besides that, it is necessary to state the frankly unsatisfactory and dangerous, from the standpoint of the need to comply with the Constitution of Ukraine and the fundamental principles of law, approach to legislative support to prevent and combat corruption.

As the scale of this problem today does not allow to cover its analysis in general, we note only that recent developments around e-declaration, which became a leading topic for scientific and professional discussions in late 2020 and will undoubtedly continue to be so instead of eliminating, by making some changes to the legislation, were only deepened by the latter.

Thus, the provisions of a number of draft laws, allegedly aimed at resolving the so-called «constitutional crisis», have been criticized. Given this, one of the most important elements of anti-corruption policy should be the need for careful planning of legislation in this area.

However, it should be understood that, despite the urgency of the above, the fulfillment of such a requirement alone cannot become an «anti-corruption panacea»: without appropriate law enforcement measures it is unlikely to really meet all the challenges facing the state today.

In particular, examining the resonant decision of the CCU, we see that the main focus is on substantiating the provisions of the Basic Law on the exercise of legislative, executive and judicial powers within the limits established by the Constitution and in accordance with the laws of Ukraine (Article 6); recognition and action in Ukraine of the rule of law; the highest legal force of the Constitution of Ukraine (Article 8); guarantee by the Constitution of the laws of Ukraine of independence and inviolability of the judge and prohibition of influence on the judge in any way (art. 126); guarantees of the independence and inviolability of a CCU judge are guaranteed by the Constitution and laws of Ukraine, as well as the prohibition of influencing a CCU judge in any way (Article 149).

In view of them, the Court concludes that it is necessary to legislate to prevent undue pressure, influence or control by the executive or the legislature on the judiciary and to prevent the emergence of regulations that will allow the legislature to control the judiciary and judges. functions and powers, which will lead to interference in the activities of the judiciary and encroachment on its independence, enshrined in the Basic Law of Ukraine.

Finally, the CCU stressed that any action to establish appropriate bodies, introduce certain forms of control or accountability should be accompanied by adherence to the principles of judicial independence and non-interference in the activities of courts and judges.

At the same time, we see that the CCU draws the legislator's attention to the fact that when introducing the powers and rights of the NAPC and other executive bodies concerning judges who have a special status and belong to the judiciary, it should distinguish the category of judges of the judiciary. judges of the CCU, taking into account the principle of independence of the judiciary ("Rishennia Konstytutsiinoho Sudu", 2020). In other words, it indicates the inadmissibility of the executive's control over the judiciary.

Thus, it should be noted that in this case, in the decision of the CCU, the substantiation of the unconstitutionality of a number of provisions of the law concerning not only judges but also other subjects of declaration is reduced to guarantees of judicial independence.

At the same time, it is difficult to argue that the nature of the wording of Article 366-1 of the Criminal Code not only significantly complicates its application in practice (as evidenced by the actual failure of the vast majority of persons against whom criminal proceedings have been initiated) it is necessary to prove the existence of the relevant intent, but also does not allow to declare unconstitutional only a certain part. This is not consistent with the concept of the rule of law and the principle of the rule of law, enshrined in the first part of Article 8 of the Basic Law of Ukraine, in particular its elements such as legal certainty and predictability of the law ("Rishennia Konstytutsiinoho Sudu", 2020).

Thus, in fact, the main objective shortcoming of the outlined decision is a certain inconsistency of wording, which calls into question its validity in the part concerning the other points of the constitutional submission.

Meanwhile, the CCU does not deny that anti-corruption reform in Ukraine has become an indisputable requirement of society, emphasizing that any reforms must be carried out in compliance with the principle of constitutionality and the rule of law, taking

into account its components such as legal certainty, predictability, proportionality and proportionality ("Rishennia Konstytutsiinoho Sudu", 2020).

Under such conditions, it would be logical and legally sound, upon the promulgation of the decision, to draft and submit to Parliament bills that would allow criminal prosecution for the relevant actions already taking into account the remarks of the CCU.

That is, the priority was to carry out proper technical and legal work instead of applying a completely populist approach of «political expediency», which hides the purpose and means that contradict the Basic Law and will have further consequences that may be qualified by certain articles of the Criminal Code.

However, the vector chosen at the time put an end to the future of Ukrainian constitutionalism, parliamentarism and anti-corruption, legitimizing unconstitutional initiatives and, de facto, threatening national security, not to mention the threat to the quality of lawmaking and sustainable law enforcement.

At the same time, it is the bodies of the judiciary and constitutional control that perform the functions of proper legal restraint of the legislative and executive branches, as well as control over the activities of these branches of government in order to prevent them from exceeding their powers. All at once, we have to agree that the process of vetting judges in this part must in itself have an adequate level of transparency and be carried out by completely impartial entities, which has not yet been implemented in the newly adopted relevant laws.

As we could see from the above, the highest judicial bodies have the right to demand the establishment of special legal regulation of the relevant relations, moreover, to claim the creation of a separate specially authorized body within the judiciary. The doctrine of constitutional law considers the decision of the CCU on the unconstitutionality of laws and other normative legal acts as a component of current legislation, which in the hierarchical sense is higher than laws, it takes place after the Constitution of Ukraine.

At the same time, the actual constitutional control is conditioned by such elements as human rights and the need to control the government. The above should be taken into account, first of all, when talking about any further steps of the state concerning the activity of the CCU and the implementation of its decisions.

Therefore, the answer to the question of what should be a single state decision that would minimize the occurrence of probable negative consequences for Ukraine, should be unequivocal: only that primarily takes into account the requirements of the Basic Law as a basis for normal society and state, despite on certain political aspirations and hopes. Of course, it should be about the development and adoption in a constitutional manner and as soon as possible of the appropriate anti-corruption legislation, taking into account the reservations expressed by the CCU.

As expected, on the wave of general resonance it was announced that allegedly 59 % of Ukrainians, according to opinion polls, have a negative attitude to the decision of the CCU. At the same time, it is necessary to understand certain features of the formation of public opinion, such as the predominant influence of the media, political elites, etc. on this process.

Combined with the catastrophically low level of trust in state institutions, including the judiciary, and the lack of a sufficient level of legal culture to analyze such events and elementary attempts to take advantage of critical thinking, such results are not unexpected, as is their active broadcasting. Allegedly as a confirmation of the urgent need to restore confidence in the CCU and the timeliness of the presidential reaction. However, in fairness, it should be recalled that the same opinion polls show an even lower level of trust in anti-corruption institutions, which in one way or another serves as an indicator of the lack of state achievements in preventing corruption.

Speaking about the steps of the so-called «restoration of confidence in the judiciary», including, in conjunction with the proposed algorithm for bringing CCU judges to justice for corruption offenses, it is advisable to refer to the CREC Conclusion № 21 (2018) ("Consultative Council", 2018).

Thus, the body notes the special importance of a balanced approach to the procedures introduced in this part, given the exceptional role of the judge in ensuring the functioning of society and a democratic state. Therefore, the latter should be based on the priority of independence, impartiality and integrity of the judiciary.

In addition to anti-corruption measures, the CCJE emphasizes the need to provide normative, institutional, infrastructural and other organizational guarantees for the independence of judges in this context, given that the state is responsible for ensuring sufficient funding for these. At the same time, according to the CCJE, a corrupt act committed by a judge should be considered in accordance with the principle of proportionality and taking into account its gravity.

It may be punishable by dismissal of a judge or other appropriate disciplinary action taken as a result of disciplinary proceedings. The benchmark in each case should be the impact of the act on public confidence in the judiciary. At the same time, the body is in favor of creating specialized bodies focused on ensuring the fight against corruption among judges ("Consultative Council", 2018).

In view of the above, it will be justified to note that the approach chosen by the legislator to regulate the peculiarities of drawing up a protocol on administrative offenses against judges and judges of the CCU by the National Agency for Prevention of Corruption (NAPC) de facto does not provide sufficient special guarantees. despite partial (formal) involvement in relevant GRP procedures.

Experts in the field of anti-corruption policy, defining its main functions, focus on such things as preventing conflicts of interest, checking the property declarations of officials and providing access to relevant information to the public.

At the same time, speaking about the group of preventive functions, among others they single out the increase of transparency of the public service, and about the so-called «repressive» functions – they emphasize the potential of criminal prosecution.

First of all, in this context, the authors point to the exceptional importance of the quality of the legal framework, and at the same time – the effectiveness of specialized legislation at all stages of criminal proceedings (Marchenko, 2018, p. 159-160), with which, of course, it is worth agreeing.

At the same time, it should be noted that especially important in this context is to ensure compliance with the basic principles of criminal proceedings, defined in Art. 7 of the CPC, in order to perform the tasks of criminal proceedings in this category of cases.

Of particular importance is the maximum coordination of law enforcement agencies, ensuring effective procedural guidance of pre-trial investigation of criminal proceedings, as well as the appropriate level of adversarial parties during the pre-trial investigation and strict performance of duties of the parties at trial and observance of their rights by the court.

It should be noted that such conclusions are in line with the provisions of the Guidelines for the Fight against Corruption (Resolution 97 (24), adopted by the Committee of Ministers of the Council of Europe on 6 November 1997). Thus, the analyzed act is about ensuring the independence and autonomy of persons responsible for investigation and trial, in particular, their protection from undue influence.

In addition, the document emphasizes the need to provide law enforcement agencies and their officials with sufficient effective means to obtain evidence and ensure the confidentiality of investigations ("Rezoliutsiia (97) 24"). Despite the fact that from a formal point of view, the Ukrainian sectoral legislation meets the above characteristics, the analysis of the practice of its application shows somewhat contradictory results, which allow to state the complex nature of the studied problem. The lack of clear ideas about the coordination of law enforcement agencies in the relevant direction at the level of the Anti-Corruption Strategy of the state for 2020–2024 is not an optimistic factor for the formation of high-quality, established and unambiguous law enforcement practice in the near future ("Proekt Zakonu", 2020).

Thus, the proposals declared in the draft (along with the need to ensure the inevitability of legal liability) to prevent corruption in the priority areas, which are the activities of the court, prosecutor's office and police, are quite controversial. For example, it is proposed to implement in the legislation the notion of reasonable doubt in the integrity of a judge, which in itself does not meet the requirement of legal certainty. Moreover, all doubts about the integrity of a judge should, in the opinion of the NAPC, be interpreted not in his favor ("Proekt Zakonu", 2020).

In view of the above, it is possible to predict the emergence of probable contract proceedings of a relevant nature and, as a consequence, the restoration of violated rights of judges in court, which will eventually entail significant costs for statutory compensation. Whether the state and society will benefit from such a step is a rhetorical question.

The authors of the Strategy did not deviate from the idea of creating «new courts», which will be formed based on the results of competitions. At the same time, from a practical point of view, in conditions when the existing courts in Ukraine are not fully staffed, and some courts do not have a single judge with the right to administer justice, such a provision does not seem entirely clear from the point of view of law enforcement. to a fair trial and a reasonable time for trial. No less controversial are the provisions proposed to the current criminal procedure legislation. It is about the possibility during the trial of criminal proceedings «to use the entire amount of evidence obtained during the pre-trial investigation, the inadmissibility of which is not expressly provided by law» ("Proekt Zakonu", 2020).

In this context, it is important (as the scientists substantiate notice), that the concept of reforming the criminal justice system in the context of their fight against corruption should be systematic, comprehensive and have a proper scientific and theoretical justification. Equally important is the fact that this process must take place gradually (Odnolko, 2020, p. 165). In this case, all of such steps must result in the transformations of law enforcement agencies from purely punitive to bodies whose main goal is to restore violated human rights and prevent such violations in general (Odnolko, 2020, p. 168).

At the same time, as V. Timashov rightly points out, the immediate goals of Ukraine's policy to combat corruption in the civil service are: protection of the interests of the State Budget; strengthening Ukraine's economic and political position in the

world community; improving anti-corruption; ensuring the creation of a comprehensive system of state control over the implementation of anti-corruption legislation; intensification of Ukraine's participation in the development of international cooperation in the field of anti-corruption; bringing the legislation of Ukraine in line with international legal acts and further formation of civil society institutions (Timashov, 2017, p. 342).

Furthermore, effective counteraction to corruption is not impossible without systemic research of the essential signs and without manifestations of corruption as a negative social phenomenon, and as a result, definition of the concept of «corruption» (Novak, 2019, p. 64).

Despite the veiled nature of the provision, there is reason to believe that it is in fact the use of materials that can only be formally obtained in a lawful manner, which in fact contradicts the principles of criminal procedure law in evidence and used to the detriment of constitutional rights. Summing up, we conclude that both the provisions of the analyzed project and further steps of the state towards the implementation of the Strategy should be based solely on ensuring the balance of public interest and constitutional rights of citizen, while meeting the basic requirements for quality of legislation and legal certainty.

Scientific novelty

The scientific novelty lies in outlining the author's approach to the unification of institutional, legislative and practical support for the prevention of corruption, taking into account the requirements of international standards and the specifics of national law enforcement.

Conclusions

Taking into account this analysis, it is necessary, in the context of optimizing the state anti-corruption policy, to ensure a balanced relationship between legal and institutional support for combating corruption, preventing the empowerment of excessive or exclusive rights to prevent them from exceeding their powers, and minimizing risks. relevant legislation, including by minimizing discretionary powers.

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Аспекти інституційного та законодавчого забезпечення запобігання корупції в контексті викликів сьогодення

Метою *статті є з'ясування нагальних проблем у сфері запобігання корупції у світлі сучасних правозастосовних викликів і формулювання пропозицій щодо їх подолання, а також усунення причин і умов, що сприяли їх виникненню.* ***Методологія.*** *Для досягнення мети дослідження було застосовано комплекс загальнонаукових і спеціальних методів, зокрема: історичний, логічний, системно-структурний, статистичний, методи моделювання, аналізу, синтезу, індукції та дедукції.* ***Наукова новизна*** *полягає в окресленні авторського підходу до уніфікації інституційного, законодавчого та практичного забезпечення запобігання корупції з урахуванням вимог міжнародних стандартів і специфіки національного правозастосування.* ***Висновки.*** *Необхідним є гарантування збалансованого співвідношення між правовим та інституційним забезпеченням протидії корупції, недопущення наділення уповноважених органів надмірними або винятковими правами з метою унеможливлення перевищення ними своїх повноважень, а так само – мінімізація ризиків довільного трактування відповідних законодавчих норм, зокрема шляхом зведення до мінімуму обсягу дискреційних повноважень.*

Ключові слова: корупція; запобігання корупції; антикорупційна політика; зловживання впливом; декларування недостовірної інформації; неправомірна вигода; незалежність суду; Конституційний Суд України; конституційна криза.