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INTERNATIONAL EXPERIENCE OF FIGHTING CORRUPTION

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SUMMARY

The article deals with the analysis of foreign anticorruption experience, the comparison of their ways of fighting this destructive phenomenon, the research of factors of the successful fight against it, approved by the international community, such as regulation of officials' actions at all levels precisely, responsibility for their violation, openness of the government, transparency and clarity of procedures of state decision making, effective mechanisms of control over the activity of state bodies, civil society, freedom of speech and independence of mass media, anti-corruption expertise conduct and financial control of public servants.

Key words: corruption, corruption counteraction, human rights violations, corrupt activities, corruption offence, government, fight against corruption.

АНОТАЦІЯ

Стаття присвячена аналізу зарубіжного антикорупційного досвіду, порівнянню їхніх способів боротьби з цим деструктивним явищем, дослідженню факторів успішної боротьби з нею, що був схвалений міжнародним співтовариством, тобто регулювання саме дії посадових осіб на всіх рівнях, відповідальності за їх порушення, відкритості влади, прозорості і зрозумілості процедур прийняття державних рішень, дієвих механізмів контролю за діяльністю державних органів, громадянського суспільства, свободи слова й незалежності засобів масової інформації, проведення антикорупційної експертизи та фінансового контролю для державних службовців.

Ключові слова: корупція, протидія корупції, порушення прав людини, корупція діяння, корупційне правопорушення, уряд, боротьба з корупцією.

Introduction. Corruption, especially in the context of deepening socio-political and financial-economic crisis in the state, is a serious threat to the national security of Ukraine. It has become one of the negative factors that influence the effectiveness of the national system of public administration and public authorities functioning. Corruption undermines the country's stability and the system of law and order, protection of rights and freedoms, as well as citizens' legitimate interests.

Nowadays the problem of corruption is very acute in our country, and it is possible to solve it only by implementing a complex of anticorruption measures that must be implemented consistently in each of the areas of public relations. It needs to be directed not only at the eradication of corruption as a phenomenon, but it also has to prevent conditions that can contribute to its appearance.

This negative phenomenon has the ability to easily and quickly adapt to changes in society and the state. It is getting a nationwide systematic nature in our country and has a decisive influence on the Ukrainian politics, economy and other spheres of public life.

Many steps have been taken on the way of solving the problem of combating corruption. Ukraine has a special anti-corruption law and anti-corruption rules implemented in a number of other normative legal acts, primarily in the law on the state service. In search of effective mechanisms of counteracting corruption our government is in constant dialogue with the international community, it takes part in several international anti-corruption conventions.

The analysis of recent researches and publications related to international anti-corruption experience has shown that this topic was little highlighted in the literature. The topicality of our research is determined by the needs of improving the mechanism of effective counteraction to corruption offences of the delegated persons while performing their official duties by means of complex studying and solving problems of the prevention technique of committing administrative offences. As for the consideration of this matter in the scientific literature, most domestic authors (M. Kamlyk,

Y. Nevmerzhytskyi, O. Prokhorenko, V. Osadchyi, V. Pietkov, S. Pietkov, T. Averianova, M. Melnyk) consider that eliminating corruption is a difficult task and the solution requires a systematic approach, as well as proper political, legal and institutional actions. The lack of positive results of the national fight against corruption encourages us to learn and summarize the international experience in this sphere.

The aim of the article is to adopt other countries experience of fighting corruption, which will allow the Ukrainian legislation to conduct more targeted reform of the current anti-corruption legislation, save money and time for it.

Research methods. The methodological basis of the research is formal logic method, which was used in clarifying the causes and consequences of corruption offences, and comparative legal method, which was used during the analysis of scientists' opinions on the studied problems, scientific categories, definitions and approaches.

Scientific novelty. This article proposes a scientific approach to the issue of corruption in Ukraine by implementing foreign experience of corruption offences counteraction in the legislation.

Practical significance. Our studies allow to identify the main methods of fighting corruption of our neighbours on the continent and the possibility of their use in our legislation.

Despite democratic transformations that occur in the Ukrainian state and that are accompanied by reforms in the political, economic and legal spheres, it is worth noting that an important component of this process must be to prevent and combat corruption.

The existing mechanism for combating corruption in Ukraine has no longer effective results, therefore the government is trying to improve the bodies that conduct pre-trial investigation and prosecution of corruption offences.

An autonomous body (outside the existing system) was created in Ukraine in 2015 for that purpose; its main task is detection and investigation of corruption offences.

This body became the National Anti-Corruption Bureau of Ukraine (hereinafter – NABU), i. e. the state law enforcement

agency that is entrusted with corruption offences prevention, detection, suppression, investigation and solving, as well as the prevention of committing the new ones. The tasks of the National Bureau are to prevent criminal corruption offenses committed by senior officials assigned to perform state or local self-government functions, which constitute a threat to national security [1].

Given the fact that the NABU is a newly created body for combating corruption, which is only recruiting staff (detectives), teaching them the algorithm of actions for the detection, solving, prevention and suppression of offences, it can be concluded that the issue of corruption will remain topical in the near future.

To improve the effectiveness of combating corruption, it is necessary to study foreign experience and to adopt probable methods of dealing with it.

Next, we are going to consider the mutual influence of countries on the European continent, for which this negative phenomenon is also an important issue.

It is necessary to learn how such problems are solved by our neighbors on the continent. This experience can provide impetus for a better understanding of the ways of overcoming overdue issues.

Today Germany is a country with a certain level of corruption, but corruption processes are not widespread throughout the territory. However, Germany continues to eradicate corruption and does everything to complete its destruction.

We can explore how corruption is spreading in the country through statistical information. For example, there are statistical reports of law enforcement agencies where it is necessary to highlight "Police misconduct statistics", in which "misconduct with the use of official position" section is set with the detailed subsections on bribery, preferential treatment and corruption.

The publication of the Federal Committee of Criminology "On the state of corruption in the country", which provides an overall picture of the processes of corruption in the state, based on the reports of each of the individual federations, is also noteworthy.

Another statistical base of the country can be derived from the General report of the Ministry of Justice and the Interior about the security situation in the state. It contains short and extended forms of the generalized information on corruption. However, this report has the biggest drawback – it was released only once in 2001.

From the above-mentioned sources, the statistical data on the state of corruption trials in the country can be traced, allowing to draw attention to certain areas of public activity that require improvement.

Besides, the way to fight corruption in Germany is full personal responsibility for the legality of their official duties is provided for public servants at any level – central and local. Public servants are required to keep secret the information and facts pertaining to their official activity after the end of their service.

They have no right to testify or make statements on the facts and information to be considered the secret of their official activities, even in court, without being given permission by the head of the service or the chief of the last place of work. These limitations on the rights of public servants provide for a higher level of their discipline and responsibility.

However, despite the fact that they are not allowed to give comments about their previous activities, the law assigns them the duty to report on criminal offences that have become known to them when performing their duties.

The German government decided to compensate for the increased demands and restrictions related to state service by the appropriate state support and other payments, guarantees, providing the stability of the workplace and promotions, as well as a decent standard of living. In Germany for a public servant to

have another job, in addition to his/her service, the prior permission of the highest official authorities is required. Permission is not required only for the acceptance of guardianship, care of sick or infirm, performing duties concerning the execution of a will, the realization of the self-employed, management of their own property, the activities related to studying and researches in scientific institutes and institutions. The law recognizes civil servants may not be engaged in any business activity in person or by proxies, including participation in the activities of the management, a supervisory board or other body, society or enterprise of any legal form [2].

Germany is trying to eradicate still existing level of corruption offences in the country by the introduction of new anti-corruption mechanisms – the intention to create a register of corrupt firms as an example. In this case, Germany is following the path of foreign experience, in particular the Israeli one. Its essence lies in the fact that the firm, which is included in such a register, shall not be entitled to perform any government contracts and becomes the object of more attention from law enforcement authorities.

Next, we think it expedient to consider such country as Poland and highlight its methods of fighting corruption. The issue of corruption in this country also has the topical status, however, in spite of that, separate legislation concerning corruption was not adopted in Poland until recently. It was considered that a number of articles of the Criminal code, which stipulate responsibility for different kinds of bribery and abuse of power by officials, were a sufficient legal basis for combating corruption. However, taking into account the need for the implementation of the signed international legal agreements, the Polish government took additional measures to combat corruption, namely in 2002, the government approved the State programme for combating corruption entitled the "Anti-Corruption Strategy". The Emergency Codification Commission of the Sejm of Poland, which was to prepare amendments to Criminal, Criminal Procedural and Criminal Executive Codes, was created and is running to fulfill this programme. In addition, the Law on "the Central Anti-Corruption Office (CAU, Centralny Urząd Antykorupcyjny)" entered into force on August 24, 2006. The main purpose of CAU is to fight the abuse of power and the use of privileges to achieve personal and property benefits, as well as activities directed against the economic interests of the state. CAU must pursue corruption-related crime, carefully check property declarations of officials and servants of local governments, and monitor attempts to violate the prohibition of combining public (state) functions with economic activities.

In addition, to strengthen the legislative support for combating corruption and organized crime in the country, appropriate amendments to the criminal code of Poland are prepared. To combat corruption in the ranks of the judiciary and other participants of the judicial process, since 2006 courtrooms of the Polish courts have been equipped with video cameras and microphones that allow to record the course of hearings and the conduct of each of their participants (judges, prosecutors, lawyers, recorders). According to the leaders of the Ministry of Justice of Poland, this introduction will not only facilitate the work on fixing the judicial process, but will also contribute to improving discipline among its members.

On November 16, 2000, a new national financial intelligence unit was established, providing for the termination of criminal actions in the financial sector and the creation of a data bank for all competent state institutions that oppose the use of illegal sources of income.

We would like to consider measures of counteraction of corruption in the Netherlands, which uses anti-corruption strategy as a set of procedures and activities, such as:

– constant reporting and publicity with respect to detection of corruption and discussion of its consequences – punishment

for corruption acts; annual reports of the Minister of Internal Affairs to the Parliament about the detected facts of corruption and measures taken to punish those involved in corruption;

- the development of the system of monitoring possible places of corrupt activities occurrence in state and public organizations and strict control over the activities of persons who work there;

- creation of the system of officials' rights and duties with determining responsibility for violation of official ethics and corruption;

- the basic measure of punishment for a corrupt activity is the prohibition to work in state institutions and the loss of social benefits provided for by public service, such as pensions and social services;

- there are internal security services in all organizations, particularly in ministries, whose duty is to register and reveal officials' errors, their intentional or inadvertent violations of existing rules and corresponding consequences of such violations [3].

First, significant attention is paid to the measures aimed at preventing corruption in the state apparatus, especially in the judiciary. Priority in this direction is given to the institution of voluntary informers who inform law enforcement bodies about cases of officials' corruption. Harsh penalties are provided for bribers: a person who gives a bribe to a judge or offers any services for the purpose of influencing the course of the proceedings, is liable to imprisonment for a period of up to 6 years or a large fine. The same actions aimed at lobbying for a particular decision in a criminal case, are punished by deprivation of liberty for a period up to 9 years. Individuals who took bribes are suspended from their duties without the right of further work in the judiciary or the public service, and are prosecuted [4].

Finland ranks fourth among the countries with low level of corruption. The authorities in Finland are honest, based on the interaction of law, civil society, traditions and values of the nation. The honesty of the authorities is not dependent on specific individuals – none of the candidates for any public office can declare to be its guarantor, but all politicians must adhere to honesty and fairness. The level of education of the nation plays an important role in this country, as educated people are much harder to manipulate: they can read laws, see how society works and how their interests are protected.

Another aspect of the Finnish tradition is «social control». The Finns are a small nation, so to hide dishonest income from the neighbors is very difficult. The political structure of society is based on these traditions as well. Power in Finland is as close as possible to the people. There really works the principle of electivity of local administrations. There are municipalities in Finland, whose population is only 200 people, but they have self-government. Such a system is the key to government legitimacy. People are not afraid of politicians, and politicians are not afraid of people – they all feel members of the same civil society [5].

The Penal code of Finland provides for different punishment for the commission of crimes by public officials: from the penalty to two years of deprivation with dismissal from the office, prohibition to hold certain posts or practise certain activities for a term from two months up to four years if there are aggravating circumstances. They are imposed for the following offences: taking a bribe by a public official or coercion to its giving; abuse of official powers; forgery; falsification of evidence; bribery for forcing to give false testimony or deliberately wrong translation of an official text, etc. [6].

Sweden was smitten throughout with corruption until the middle of the XIX century. However, a number of anti-corruption measures were carried out in the course of modernization of the country: the state regulation was based on incentives (by taxes,

benefits, subsidies) and not on prohibitions and permissions. The access to internal government documents was opened, and an independent system of justice was created. At the same time, the Swedish Parliament and the government set high ethical standards for public officials and demanded their execution. A few years later, honesty became the norm among officials. Senior officials' salaries were 12–15 times as large as workers' wages, but over time, that difference decreased up to two times. To date, Sweden is the least corrupt government.

Note that there are no special anti-corruption bodies in Sweden, Denmark, Finland – the countries with low level of corruption. There are no special governmental programs to combat corruption in Sweden. Responsibility for corruption crimes including bribery is provided for by the general Swedish legislation, in particular the Criminal Code, the Code of Judicial System. The responsibility for corruption crimes is provided for by Criminal Law in Denmark.

The current legislation of France contains a number of regulations aimed at combating corruption, especially related to financial abuse. Thus, the law according to which credit institutions should be particularly attentive to the capital, whose origin is associated with organized crime, was adopted in 1990. It is about detecting violations related to checks and promissory notes fraud submitted for encashment. The legislation provides for the right to immediately suspend operation of the account, if it is determined that a public servant opened it for the purpose of tax evasion. To protect the interests of society performing supervisory functions is entrusted to non-state commercial entities, in particular financial institutions. The French law also imposes an obligation on financial intermediaries to identify their clients, to provide a reference about third parties in whose favour transfers are made, it provides for the bank employee's liability in case of accepting a false document. If there is a suspicion, financial intermediaries, including banks, are obliged to inform special administrative services about the amount of the contribution paid into an account, as well as transactions with such funds. In this case, they are released from the duty to observe professional secrecy. The specialized public service has the right to demand cessation of such operation or to postpone it till establishing the fact about the presence or absence of the offence [7].

After getting independence in 1965, Singapore was an extremely poor state. Prosperity of corruption in Singapore as a way of life inherent in Asian mentality led to the fact that the country was in dire economic straits and was thoroughly imbued with iniquity. They had to import even drinking water, mortar sand and the most necessary commodities. The country hardly had any natural resources. Law enforcement agencies were unable to confront organized crime, and most officials were involved in corruption schemes. The population had a low level of education and was not able to defend their rights.

Many corruption offences appeared to be beyond the scope of the legislation, and law enforcement officials had no power that would allow them to effectively perform their functions. So a number of measures were taken that were enshrined in the law on preventing corruption, and the Bureau for the investigation of corruption was vested with special powers. There was a simplification of decision-making procedures, any ambiguity in the laws was eliminated as a result of the publication of clear and understandable rules. The abolition of permits and licensing took place. Civil servants' actions were fully regulated, bureaucratic procedures were simplified, and the strict supervision over the observance of high ethical standards was exercised.

Public servants in Singapore had a much more modest income compared to workers in the commercial sector; therefore, many of them used their official position for personal purposes. In the end, bribes became the only way to obtain access to resources. The government decided, both the police officer and the clerk were to obtain such income so that the temptation to take

bribes disappeared. Although a high salary did not guarantee that there would not be any corruption, but it strongly reduced bribe-takers' motivation. Salaries of public servants holding responsible positions were raised to the level of top managers of private corporations. Astronomical salaries of one hundred thousand US dollars a month were set for ministers and judges in Singapore. However, no benefits, security, a car with a driver or a state summerhouse were given to the Minister – everything was only at his/her expense.

However, if the people in the country start to receive less income – there is a reduction of officials' salaries accordingly. Therefore, the public servants' salary at all levels of the state hierarchy of the government of Singapore is pegged to the wage level in the private sector and is reviewed every year depending on it.

In Singapore every public servant at the time of his employment and annually thereafter is required to declare his assets and business investments, including his wife and dependent children investments. The discrepancy between the wealth and the salary earned leads to an administrative investigation. If the public servant owns shares in private companies, he can be offered to sell shares and stocks to avoid conflicts of interest.

In addition, public servants are required to file a special Declaration about the absence of debts each year. It is considered that the public servant, who has debts, is more likely to neglect his official duties in his self-interest, that is he is more likely to be involved in corruption schemes. The public servant providing false information in such Declaration leads to his dismissal from service.

And perhaps the most important in the fight against corruption is the principle of equality of the law, same for everyone. The Bureau is headed by a Director who reports directly to the President. The Bureau is not dependent on the police and other government agencies, including officials in the rank of Ministers. Therefore, it has the right to prosecute any citizen, regardless of his status, rank or creed. Investigations have been initiated even against close relatives of the Prime Minister of Singapore. A significant number of ministers convicted of corruption were sentenced to various terms of imprisonment, some committed suicide or fled the country. Thus, the mechanisms of clan structures were destroyed.

The Japanese experience in the fight against corruption also proves that the absence of a single codified act, aimed at fighting corruption, does not prevent from the effective problem solving.

The Japanese legislator attaches particular importance to prohibitions concerning politicians, public and municipal servants. They particularly concern numerous measures that politically neutralize Japanese officials in respect of private business both during their service and after resigning.

The Japanese lawmaker sets strict limits on financing electoral campaigns, political parties and other political organizations, strictly regulates the procedure for contributing to candidates, political funds, and establishes strict financial reporting. Violation of the provisions of the law shall entail the application of sanctions.

The actions of politicians, who for a fee from the interested party, help in resolving their problems by influencing state, municipal servants, are qualified as a criminal offence in Japan.

One of the main directions in Japan, as in many countries that are successfully fighting corruption, is personnel policy. Japanese public servants are guaranteed decent wages. Much attention is paid to politicians and officials' ethical behavior.

Georgia borrowed the successful experience of Singapore. The reform started with the bureaucracy reduction and a simultaneous significant increase of public servants and police officers' salaries.

The leaders of Singapore and Georgia realized that one of the main challenges is the need of privatization of enterprises

of state ownership. Privatization is an opportunity to abandon the practice, when huge companies are supposedly under the state control, and in fact, officials pocket all the value available at these enterprises.

The size of the Georgian budget funds received from privatization and investments was very significant.

Leaders of the new formation also decided to start improving the legislative base. Rejecting the adoption of the traditional antitrust law, the Georgian government adopted the law "On free trade and competition", which was directed not so much at preventing the monopolization of various spheres of business, but at the rejection of restrictions of competitive environment.

Powers of state bodies were significantly reduced, the number of processes controlled by them was reduced as well, and they were put into the rigid framework for planning their activities concerning time to respond to the needs of business and population. All these reduced the regulation of the market and other spheres of activity to a minimum. Thus, the number of licenses issued by public servants and licensing procedures controlled by them fell from almost one thousand to 140, and almost all state standards were cancelled.

Georgia also declared war on bribe-takers in government agencies leading the state. The new authority did not spare anybody, and the rank of the suspect was not an obstacle. Since Mr. Saakashvili coming to power, several ministers and six members of the pro-presidential majority in the parliament were arrested for corruption [8].

In the U.S. law, the concept of officials' corruption is defined quite widely. It comprises a series of wrongful acts, provided for mainly in four chapters of Title 18 of the Code of Laws: 1) "Bribery, unfair income and abuse of powers by public officials"; 2) "Officers and employees employed"; 3) "Extortion and threats"; 4) "Elections and political activities" [9].

Not only bribe-takers but also bribe givers are subject to criminal prosecution for bribery in the U.S. The Code of Laws specifies in detail which categories of officials are considered as the bribe givers. Anyone who gives, offers, promises anything of value to a public official or candidate for this post with unlawful purpose is liable for bribery. The U.S. law provides for the limitation of business activities of former public officials after resigning from the public authorities.

American officials are strictly prohibited to accept gifts in any form from any individual or group of individuals who seek for their official actions, have any common business, or perform activities regulated by the body, which employs these officials. It is not allowed to accept gifts from persons whose interests are largely dependent on these officials' performance or non-performance of their duties. The U.S. is the first country, which has provided for criminal liability for bribery outside their country in the national law.

Conclusion. The experience of the countries on the prevention of corruption is diverse and depends on the legal, social, political environment, level of economic development, improvement of public administration. Certain standards are already adopted and are in force in Ukraine, others are in the discussion stage. Nevertheless, it is worth mentioning that the effectiveness of the strategy in the fight against corruption is determined not by the amount of the proposed activities but their quality, i.e., the ability to really influence the situation and change it. Therefore, it is necessary to borrow relevant experience selectively, taking into account the available results of the relevant rule application. The necessity of using foreign experience in the sphere of fighting corruption in the public administration system of our country is predetermined by the fact that the basic laws of bureaucracy functioning are universal and practice shows that they do not depend on national circumstances in many respects.

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