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On the Issue of Integration of Civil Society Institutions in Preventing Corruption in Ukraine: Administrative and Legal Dimension

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Abstract. The relevance of the subject under study is based on the exponential growth of corruption threats to the effective activities of state and local government bodies, which are the centre of consolidation of the democratic foundations of the social system. The purpose of this study was to position the main existing gaps in the modern administrative and legal dimension of streamlining the mechanisms for involving civil society institutions in preventing corruption torts in Ukraine and methods of their elimination, considering the available practices. To implement the tasks of scientific intelligence, the following methods were used: system analysis, comparative implementation, forecasting, statistical. It was found that changes in Ukraine, both in the economy and in politics, actively affect the production of new relationships, the development of modern relations between public administration bodies and public institutions (associations). It was noted that the constant relationship between state authorities and society is evidence and a guarantee of the socio-legal constancy and evolution of any state since the existing problematic issues of escalation in Ukraine cannot be solved without the full aid of society. At the same time, this also applies to civil society institutions. An integrative study of the function of civil society institutions to prevent corruption torts in public authorities was conducted. Practical proposals were given in terms of solving an entire range of theoretical and practical tasks that will prevent the commission of corruption offences by civil servants. To improve the norms of Chapter 13-A "Administrative offences related to corruption" of the Code of Ukraine of Administrative Offences, proposals were made to amend the following articles: Art. 172^4 of the Code of Administrative Offences "Violation of restrictions on co-operation and combination with other types of activities", Art. 172^6 "Violation of requirements of financial control", Art. 172^8 "Illegal use of information that became known to a person in connection with the performance of official or other legally defined powers". To ensure the effectiveness of anti-corruption institutions, it was proposed to develop and adopt the "Regulation on public anti-corruption associations (institutions) and their powers". This paper can be useful for a wide range of readers: scientists, law enforcement officials, public anti-corruption institutions, and anyone interested in preventing corruption offences

Keywords: illegality, prevention, corruption offences, administrative and legal mechanism

Introduction

The axiomatic nature of consolidating the efforts of law enforcement agencies and civil society institutions to prevent corruption challenges necessitates the detailed doctrinal regulation of the actual mechanism, forms, and essence of this co-operation, and also requires a comprehensive analysis of the current legislation regarding the identification of existing gaps and casuistic factors, the presence of which only reduces the effectiveness of prevention corruption torts in strategic quintessence. A comprehensive approach to the implementation of certain anti-corruption measures is undoubtedly the dominant guarantee of the effectiveness and quality of the prevention of corruption offences at all levels of its existence and is a key determinant of the factual lowering of the level of the corruption element in the activity of the Ukrainian state in its strategic quintessence. The success of integrity as a guideline of anti-corruption policy lies in the systematic constructive adjustment of all components of the system of current national legislation [1-3], which considerably impact the effectiveness and quality of the algorithm of the corruption tort prevention process. Currently, the dominant issue is one that requires a priority solution – introducing changes to the current Ukrainian anti-corruption legislation [1-3], since its inefficiency is conditioned upon the archaic, anaemic, or casuistic nature of its certain prescriptions.

Problematic aspects of improving the legal mechanism and the current legislation in terms of preventing corruption torts, among which studies of many foreign authors are essential. Thus, O.L Valencia Casallas, N.E. Ojeda Gómez, and W.A. Hernández Díaz point out that corruption should be understood as a cyclical phenomenon in which its motive and consequences content from each other. The prevention of this negative phenomenon is fundamental because it performs a double function – it acts as a mechanism of modernisation, at the same time it becomes an effective tool that prevents the recurrence of corruption offences. The authors are correct to believe that prevention as a strategy involves a series of actions and measures to be taken in advance, which

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will further reduce the risk and damage caused by corrupt actions. The author's team proposed several measures to prevent corruption, namely: 1) raising awareness in promoting the anti-corruption strategy in educational institutions of all levels; 2) introducing modern methods of preventing corruption and fraud in companies; 3) introducing ethical codes in all institutions; 4) developing and implementing the national policy on the prevention and counteraction of corruption [4].

Investigating corruption in Ukrainian society, T. Bogolib notes that corruption in Ukraine is one of the determinants of political and economic instability. The author emphasises that corruption is inherently destructive in all areas of Ukrainian society and poses serious obstacles to the implementation of economic reforms, hinders the development of market institutions, and threatens the national security of the state. The author concludes that the national anti-corruption policy should be improved and proposed an algorithm to prevent corruption [5].

In their studies, I.M. Kopotun, L.V. Herasymenko, O.V. Tykhonova, M.I. Leonenko, K.V. Shurupova thoroughly analysed the role of public control and countering corruption offences through social communication networks. The author team researched the international experience and activities of foreign non-governmental organisations in terms of preventing corruption crimes. In the context of scientific intelligence, the authors confirmed the hypothesis – the level of corruption is much lower in those countries whose population has a higher degree of anti-corruption activity in social networks, and there is also a much higher degree of development of anti-corruption public organisations. The authors' position on the need to create anti-corruption social networks in Ukraine is valid [6].

S.-T. Maxim notes that in the conditions of a society that is constantly changing, "…the prospect of corruption affecting the top of politics and public service is not inevitable, or at least this phenomenon can be counteracted and reduced so that it does not become a massive phenomenon. For this, political reformation must be accompanied by moral renewal". According to the author, the social standard of living within normative limits can be achieved only towards strengthening political involvement and activation of political organisation. The scientist's opinion that the implementation of certain educational anti-corruption measures will contribute to the development of political consciousness and responsibility among citizens [7].

N. Parisi, researching international and European models of institutionalisation of corruption strategies, notes that this adverse phenomenon should be overcome using a holistic strategy that combines prevention and prosecution, mobilising all segments of the national community, and improving the activities of all bodies called to prevent manifestations of corruption offences [8].

Carrying out a comparative legal analysis of anti-corruption policy in Ukraine and Poland, O. Zakharova, O. Harasymiv, O. Sosnina, O. Soroka, I. Zaiets conclude that manifestations of corruption are a real obstacle to the exercise of human and citizen rights, the level of social justice, economic development and endangers the effective functioning of the market economy. In the context of scientific intelligence, scientists note that "…the key to successful anti-corruption efforts can be the availability of modern national anti-corruption legislation, which most closely meets the requirements and recommendations that the state relies on in relevant international relations" [9].

The scientific intelligence of these scientists serves as an indicative basis for the creation of a single and functional algorithm for improving the national administrative anti-corruption legislation.

The Role and Importance of Civil Society Institutions in the Implementation of Administrative Measures in the Prevention of Corruption Offences in Executive Power Bodies and Local Self-Government Bodies in Ukraine

To optimise the positioning of proposals for improving the administrative and legal components of the mechanism for the prevention and prevention of corruption offences in relation to the issue under study, namely the involvement of public society institutions (hereinafter – PSI) in anti-corruption activities, as well as the desire to formulate a complex and strategically correct process of the specified modernisation, the analysis and additions to the basic propositions emphasised by administrative law scientists were positioned, which allowed consolidating them into the following blocks, namely:

A. The exceptional dispositive nature of the norms of the current Ukrainian legislation [3] regarding administrative responsibility for offences that are correlated with corruption offences.

A thorough analysis of Chapter 13-A of the Code of Ukraine on Administrative Offences [3] (hereinafter – the CUAO) is the basis for the need to improve the current legal prescriptions:

1) Article 172^4 of the CUAO establishes the illegality of "…combination of professional activity with entrepreneurial or other paid activity by persons subject to anti-corruption legislation". However, the legislators did not consider the generally accepted international practices, according to which this restriction concerns not only the direct implementation of economic activities, but also the beneficial position of the management entity. Thus, O. Syniavska and V. Ivantsov draw attention to the existing positive practice of governing these aspects in the regulations of the Federal Republic of Germany "… the key threat to the civil service is the emergence of a conflict of interests of an official in which their management decision may be based not on the priorities of the service, but on personal commercial aspirations. For these purposes, German federal legislation makes provision for the obligation of a person to transfer to the state for trust management all corporate assets that such a person owns at the time of appointment or election to a position" [10, p. 111]. O. Syniavska and V. Ivantsov note that the legislation of Ukraine does not declare as a tort the departure of a person appointed to a public service position from the composition of management bodies while maintaining the position of the ultimate beneficial owner, which completely contradicts the existing prescription regarding "… preventing the coexistence of professional and entrepreneurial activities" [3].

The authors of this paper believe that it is appropriate to add a paragraph to the prescription of the disposition of Parts 1 and 2 of Article 172^4 of the CUAO [3], namely:

"…as well as the preservation of the status of the beneficiary from such activity" because the main determinant of the occurrence of a conflict of interests is not the process of performing entrepreneurial activity itself, but the inherent reception of profit from actions. Therefore, the introduction of the proposed amendment to Article 172^4 of the CUAO [3] will contribute to the neutralisation of the phenomenon of opposing professional, official, and personal corporate interests of a person endowed with powers in public servant's performance of managerial functions. Clarification of Article 172^4 of the CUAO [3] will enable civil society institutions, which constantly monitor the corrupt activity of individuals endowed with power, to reveal hidden facts of the existing commercial interest of officials, which will increase the effectiveness and efficiency of the anti-corruption practice of PSI, along with the quality and the effectiveness of their interaction with law enforcement agencies in the context of reporting corruption-delict behaviour.

B. Incorrect definition of the tort prescribed in Article 172^6 of the CUAO [3].

The main problematic issue regarding the formation of an effective anti-corruption system is to recognise the abstractness of positioning this phenomenon in the current legislation of Ukraine, since without a clear specification of the meaning of the phenomenon, it is very difficult to identify certain measures, the implementation of which is necessary to prevent its manifestations. A. Bukhtiarova and K. Kramarenko note that: "… one should not draw an analogy between the effectiveness of combating corruption and the unjustified expansion of the content of this phenomenon. The law enforcement practices show that the unjustified attribution of a general tort to corruption offences blurs the boundaries of such an institution, which leads to the impossibility of effective further procedural support for litigation at the stage of Investigation and judicial consideration. The clarity of the criteria of corrupt illegal behaviour serves as the basis for the effectiveness of preventive influence on potential offenders, as it creates guarantees for the effectiveness of the law enforcement system" [11, p. 32].

Fully agreeing with A. Bukhtiarov's opinion, it is worth paying attention to the undoubted analogy of the positioning of the generality of consolidation in the dispositions of corruption torts in the CUAO [3]. The requirements declared in Article 172^6 of the CUAO [3], as the quintessence of a corruption offence, are conditioned by "…untimely submission without valid reasons of the declaration of a person authorised to perform the functions of the state or local self-government". The specific feature of a corrupt action must be the fact that the act really has a selfish reason and intention – obtaining an illegal profit from the performance of official functions. The existing interpretation of the disposition of Article 172^6 of the CUAO [3] makes it impossible to unambiguously identify an action as an offence related to corruption. The mentioned circumstance fairly regularly leads to the automatic inclusion in the proceedings of administrative torts in the field of public service in the category of corruption offence at the same time with cursory results: recording data about the offender in the "Unified state register of persons who committed corrupt or corruption-related offences (Register of corrupt persons)" [12]; taking measures of disciplinary influence – dismissal from the position held; changing the liability of the tort with its attribution to the jurisdiction of National Anti-Corruption Bureau of Ukraine, etc.

The specified gap in the current legislation of Ukraine [3] determines as a set of possible negative consequences for a person authorised to implement the functions of the state or local self-government, who did not commit a corruption-related offence in the context of the components and content of the composition of the corruption offence. Therewith, the existing legal confusion should be subjected to the listed legal restrictions, as it creates an added unnecessary burden on specialised anti-corruption institutions. Based on the above, it is right to propose changes to the disposition of Part 1 of Article 172^6 of the CUAO [3], in terms of supplementing it with a part of the hypothesis, namely: "… committed with the purpose of concealing a substantial change in the property status of the declarant." The proposed amendment of Article 176^6 of the CUAO [3] would contribute to a considerable improvement in the effectiveness and efficiency of its application in the field of prevention of corruption offences, in contrast to the general range of offences inherent in the specified legal norm, thereby laying the foundations for the synergistic integration of the existing information regarding the illegal enrichment of civil servants obtained in public investigations into the field of evidence base in judicial review of the case.

C. Absence of clearly established criteria for distinguishing between criminal and administrative corruption offences.

The main problematic factors in the implementation of the algorithm of administrative and legal response to corruption offences are not a painstaking method for the accumulation of evidence, problems with the effective implementation of investigative actions and covert intelligence – this determinant is the existing imperfection, and occasionally a contradictory nature of the norms of the current legislation. Presently, scientists [13; 15] discuss the delimitation of the composition of a criminal offence, namely: "Abuse of power or official position" (Article 364 of the Criminal Code of Ukraine [16]), "Official negligence" (Article 367 of the Criminal Code of Ukraine [16]) with the composition of an administrative offence, which are positioned precisely in the provisions of Article 172^8 "Illegal use of information that has become known to a person in connection with the performance of official or other legally defined powers" [3] and Article 172^7 "Failure to take measures to combat corruption" of the CUAO [3].

V. Ivantsov claims that "… distinguishing the specified elements of offences only by the signs of the objective party can lead to the potential evasion of the delinquent from legal responsibility for the formal presence of all elements of the offence in the absence of signs of harm" [17, p. 50]. Positioning the V. Ivantsov's opinion regarding the specific norms of the current legislative acts, one can conclude that the subject of the legislative initiative in terms of the one and only criterion regarding the distinction between administrative and criminal offences is the fact of substantial damage, which can be detected under the condition of the fact of material damage caused by the action or inaction of the subject of responsibility. Therewith, under circumstances that make it impossible to assess the amount of material damage caused during the proceedings, a legal case arises, for which the pre-trial investigation body or the court must reclassify

the actions taken and use the norms of the CUAO [3] instead of the norms of the Criminal Code of Ukraine [16], which is a positioning of the inadequate degree of preventive optimality and effectiveness of the current situation of the above-mentioned norms of the CUAO [3].

A further "inhibitor" of the effective and optimal activity of the PSI is certain incompatibility of the position of the mechanism of regulatory support of the mechanism of their specialised professional activity to the current public needs, which are positioned by the current state of dynamic development of society, considering the inadequate effectiveness of existing anti-corruption legal protection measures. Paradoxical is the situation when public anti-corruption associations (institutions) (hereinafter – PAA(I)), upon adopting prescriptions regarding functioning procedures, which are legally subordinated to current legislation [1-3], obviously count on absolute transparency and complete interaction with state authorities.

To eliminate the positioned gap of the current national anti-corruption legislation [1; 2; 18], the author of this study proposes to prepare and adopt the Cabinet of Ministers of Ukraine's resolution "Regulations on public anti-corruption associations (institutions) and their powers", in which several main points will be highlighted that would contribute to ensuring the legality, quality, and complexity of the functioning of the PSI in the context of the declared programme goal and purpose.

There is a need to adjust not only the regulatory aspects of PAA(I) activity, but also the organisational and functional aspects. A thorough investigation of the scientific output of administrative scientists and statistical sampling of facts allows the author to conclude on the current state of involvement of the PSI in the prevention of corruption offences in Ukraine:

a) adverse effect of exponential growth of quantitative indicators of public associations that only declare the rank of anti-corruption institutions.

As of December 1, 2020, 92,150 public organisations are officially registered in Ukraine, including 1,860 with the rank of anti-corruption [19]. At the same time, "…the real number of anti-corruption institutes that perform a practical function in preventing corruption offences does not exceed 2% of the declared number" [20]. The given statistical data casts great doubt on the concept of the interrelation between the number of anti-corruption public organisations and the quality and effectiveness of the public anti-corruption effect, which provides every reason to review the current situation of this component of public organisations.

b) optional involvement of anti-corruption public institutions in anti-corruption initiatives.

Considering the prescriptions of national legislation [2; 18; 21], public associations, having positioned their programme purpose and goals, independently outline procedural issues and the vector of their achievement, since they have complete autonomy regarding the coordination of their programme activities. Current legislation [1; 2; 18], unfortunately, does not make provision for any obligations or methods and means of intensification of programmatic and anti-corruption activities. To eliminate the existing gaps in national legislation [1-3] it is proposed to make provision for a norm in the Regulation on public anti-corruption associations (institutions) and their powers as follows: "…A public association that has received the status of anti-corruption and does not carry out some independent measures aimed at revealing and informing law enforcement authorities about corruption determinants, risks, or torts for two consecutive calendar years, gets rid of the given status with the obligation to further change the statutory documents and information placed in state registers", which will contribute to the requirement to confirm the "threshold" involvement of a public association or its acting members in the practical implementation of anti-corruption measures".

c) lack of an effective algorithm for improving the level of practical skills and abilities of members of public institutions in the field of prevention of corruption offences.

Priority Vectors for the Further Improvement of the Mechanisms of Involvement of Igs in the Prevention of Corruption Offences in Ukraine

Considering the fundamental programmatic goal of the PAA(I), namely the disclosure of the existing corruption risk, the monitoring of possible corrupt actions of civil servants, the summarisation of data that testify to the tendentious and corruption-determined nature of state administration prescriptions, and the incorporation of facts that can presumably be used as evidence, the request regarding the acquisition and continuous improvement of specialised skills and knowledge of all members of public institutions of the anti-corruption branch acquires an essential meaning.

The authors of this paper believe that the inclusion of the following norms in the project "Regulations on public anti-corruption associations (institutions) and their powers" should serve as a preventive measure that would prevent the possibility of public anti-corruption institutions neglecting their duty to systematically improve the qualifications of their members: "Professional members of public anti-corruption associations (institutions) who have not been sent for advanced training or internship to specialised anti-corruption bodies of state authorities for two consecutive calendar years are recognised as associate members from the next calendar day after the two-year period from the moment of the previous completed advanced training or internship, and if the previous qualification improvement or internship was not implemented, from the next calendar day after the end of the two-year period from the time of joining the public anti-corruption association (institution). In the case of an insufficient number of qualified members in the contingent of a public anti-corruption association (institution) for two consecutive months, such an association (institution) is obliged to introduce changes to the statutory prescriptions and in the relevant state registers, transforming the purpose and organisational and legal form of association by positioning according to the general, non-specialised requirements declared in the Law of Ukraine "On Public Associations" [2].

At the same time, it is impossible to overlook the administrative legal component of regulating the involvement of anti-corruption public institutions as a legal anomie in terms of the regulation of their involvement during the staffing of public administration institutions according to the criterion of "honesty". It is appropriate to pay attention to the fact that currently in the national legislation [1; 2; 18] there are no criteria and stages of checking for "honesty", which negatively affects the conclusions made during all stages of checking and making the final decision by the competition commission. To eliminate the mentioned gap in the national legislation, the authors of this paper propose to outline the algorithm and quintessence of all stages of checking the

integrity of candidates for the substitution of vacant positions in public service bodies in the project "Regulations on public anti-corruption associations (institutions) and their powers".

Conclusions

The strategy of involving civil society institutions should be based on the consolidation of two approaches, namely: 1) improvement of the procedure for the creation and activity of anti-corruption civil society institutions; 2) further improvement of the general system of involvement of civil society institutions in the prevention of corruption offences.

The effectiveness and quality of the implementation of several anti-corruption measures of the PSI equally depends on the degree of interpretation of their legal status not at the local, but at the general national level, which obliges to adopt the "Regulations on public anti-corruption associations (institutions) and their powers"

The specified legal structure will contribute to a substantial increase in the role of civil society as an autonomous and extremely fruitful entity in the prevention of corruption offences, strengthening the Ukrainian prescriptions of anti-corruption practice, forming the foundations of a new constructive escalation of the Ukrainian legal system and the public apparatus without the harmful interference of corruption in their functioning.

Cooperation between the state and institutions of civil society should be ensured through: 1) adoption of modern anti-corruption legislation that meets world standards and considers GRECO's recommendations; 2) certain measures involving the PSI and state and local self-government bodies regarding existing corruption risks that occur or may arise in their activities; 3) certain joint actions designed to form the psychology of negative attitudes towards corruption in the citizens of Ukraine, to strengthen the culture of integrity, respect for the rule of law.

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До питання інтеграції інститутів громадянського суспільства в процес запобігання корупції в Україні: адміністративно-правовий вимір

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Анотація. Актуальність тематики наукової розвідки ґрунтується на експонентному зростанні корупційних загроз для результативної діяльності органів державної влади та місцевого самоврядування, котрі є осередком консолідації демократичних засад соціального ладу. Метою статті є позиціонування основних наявних прогалин у сучасному адміністративно-правовому вимірі впорядкування механізмів долучення інститутів громадянського суспільства власне до процесу превенції корупційних деліктів в Україні та методам їх елімінування з урахуванням наявного досвіду. З метою реалізації завдань нашої наукової розвідки застосовано наступні методи: системний аналіз, компаративно-імплементаційний, прогнозування, статистичний. З'ясовано, що зміни в Україні, як у економіці, так і в політиці, активно впливають на процес продукування нових взаємовідносин, на хід утворення сучасних стосунків органів державного управління з громадськими інститутами (об'єднаннями). Наголошено, що постійний взаємозв'язок органів державної влади й соціуму є свідченням і гарантією громадсько-правової сталості й еволюції будь-якої держави, тому що існуючі проблемні питання ескалації в Україні немислимо розв'язати без цілковитого сприяння соціуму. Водночас це стосується й інститутів громадянського соціуму. Проведено інтегративну розвідку функції інститутів громадянського суспільства щодо превенції корупційних деліктів в органах державної влади. Надано практичні пропозиції в частині вирішення цілого спектру теоретичних, практичних завдань, які запобігатимуть вчиненню корупційних правопорушень державними службовцями. З метою удосконалення норм Глави 13-А «Адміністративні правопорушення, пов'язані з корупцією» Кодексу України про адміністративну відповідальність надано пропозиції щодо внесення змін до статей: 1724 КУпАП «Порушення обмежень щодо сумісництва та суміщення з іншими видами діяльності», 1726 «Порушення вимог фінансового контролю», 1728 «Незаконне використання інформації, що стала відома особі у зв'язку з виконанням службових або інших визначених законом повноважень». З метою забезпечення ефективності діяльності антикорупційних інститутів запропоновано розробити та прийняти «Положення про громадські антикорупційні об'єднання (інститути) та їх повноваження». Стаття може бути корисною для широкого загалу читачів: науковців, працівників правоохоронних органів, громадських антикорупційних інститутів, усіх, хто цікавиться питаннями запобігання корупційним правопорушенням

Ключові слова: протиправність, превенція, корупційні правопорушення, адміністративно-правовий механізм