

International Experience in Preventing Corruption as a Vector for Creating a National Anti-Corruption Strategy in Ukraine

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Abstract. Given the European choice of Ukraine, there is an urgent need to create and implement a new anti-corruption policy, considering the positive aspects of the existing international experience. The relevance of the scientific investigation is conditioned by the fact that the existing problem of countering corruption is not only national but also global. The purpose of the study is to consider the international experience of preventing corruption torts to implement them in Ukrainian legislation. The methodological basis of the study is a system of methods and techniques of scientific cognition, namely: system analysis, comparative and implementation method, statistical method, and retrospective method. The study provides a systematic review of international concepts of prevention of corruption torts. It is noted that in the context of globalisation processes taking place in modern society, the need to implement positive foreign experience in the system of the current legislation of Ukraine becomes extremely relevant. A thorough analysis of a number of measures taken by leading states that are designed to prevent corruption offences was also carried out. The positive experience of states with the lowest level of corruption is positioned and ways to achieve such a result are indicated. The study analyses the anti-corruption strategies of such countries as Singapore, the Netherlands, Belgium, Israel, the United States, the Slovak Republic, Germany, and Poland. Attention is drawn to the fact that in countries with a low level of corruption, repressive measures are combined with a comprehensive elimination of the determinants of corruption offences in models of preventing corruption. The paper states that the latest strategy for preventing corruption requires the development of active cooperation between state bodies, law enforcement agencies, and civil society in order to prevent and counteract corruption torts. At the same time, an important determinant of preventing corruption torts is the growth of civil consciousness. It is emphasised that corruption offences are an extremely dangerous phenomenon inherent in all states of the modern world. It is revealed that a number of foreign countries have managed to create a modern and effective algorithm for preventing and countering corruption offences. The paper highlights the main determinants of corruption prevention that are approved by the international community, namely: normative regulation of the activities of civil servants, the establishment of a clear system of legal responsibility for violating the requirements of anti-corruption legislation, transparency in the professional activities of officials, the introduction of social programmes and educational campaigns on corruption topics. The provisions presented in the paper can become an effective basis for building a successful anti-corruption policy in Ukraine

Keywords: strategy, anti-corruption policy, implementation, current national legislation, corruption offences

Introduction

In the context of the pro-European trajectory of development of globalisation processes and the preservation of the best national established legal traditions, it is natural to ask whether the current national legislation [1] actually has international legal standards regarding responsibility for corruption offences. Currently, there is a constant discussion among researchers, which mainly concerns international standards of criminal liability for corruption offences. When there is a dispute over standards of responsibility, it should

also be about administrative responsibility for actions or omissions related to corruption. First of all, this is interpreted by the general both historical and legal development of these phenomena and a certain imperfection of the norms of administrative law.

A number of researchers were engaged in the study of corruption torts and the improvement of Ukrainian legislation. S. Abdallah, R. Sayed, I. Rahwan, B.L. Leveck, M. Cebrian, A. Rutherford, J.H. Fowler [2] note that now there is a debate

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in society about how best to prevent the negative phenomenon of corruption. The researchers examined the impact of corruption on the evolution of cooperation and penalty, and presented the original model, which reflects the evolutionary rationale for why the provision of public goods rarely thrives in countries that rely only on strong centralised institutions. The authors concluded that the participation of citizens in the processes of preventing corruption is a fundamental necessity for the protection of public goods [2].

J. Wachs, T. Yasseri, B. Lengyel, J. Kertész rightly notes that “corruption is a social plague: gains accrue to small groups, while its costs are borne by everyone” [3]. The researchers note that “significant variation in its level between and within countries suggests a relationship between social structure and the prevalence of corruption”. According to the researchers, “corruption is interrelated with such social aspects of society as segregation, interpersonal trust, civic consciousness, and community involvement, since corruption is the collective result of a community formed by the interaction between people” [3].

Exploring the psychological aspects of corruption in public administration O. Dragan, G. Yermakova, A. Chvaliuk, O. Kurchin, O. Karagodin aptly note that “ambitions to get rich quick, their low self-esteem, psychological dependencies, community-accepted image, and sense of impact were the major psychological aspects pushing the people to corruption” [4]. The researchers note “found that the sense of impact could be considered to be the primary psychological impact factor stimulating corruption actions by the civil servants, specifically” [4].

M. Bader, O. Huss, A. Meleshevych, O. Nesterenko [5] suggest that the factors associated with success in anti-corruption activities are divided into three broad categories: environmental factors, advocacy strategies of civil society organisations, and their organisational characteristics. All anti-corruption initiatives come into conflict with two key challenges: inadequate potential in terms of financial and human resources, and the lack of a reliable support base. The researchers remark that the most effective organisations are those that are able to solve one of these dilemmas, and also state that the political will of local authorities is an important factor in anti-corruption activities. The researchers’ position on the need to implement international experience in the part of the “transfer of knowledge and skills from anti-corruption organisations with greater potential to organisations with less potential” is appropriate [5].

S.-T. Maxim [6] remarks that in a society that is constantly being transformed, “the prospect of corruption affecting the top of politics and the civil service is not inevitable, or at least it can be countered and reduced so that it does not become a widespread phenomenon. For this, political reformation must be accompanied by moral renewal”. According to the researcher, the social degree of life within the normative framework can be achieved only in the line of strengthening political participation and intensifying political organisation. The authors of the study fully agree with the researcher’s opinion that the implementation of a set of educational anti-corruption measures would contribute to the development of political consciousness and responsibility among citizens [6].

A. Movchan, A. Babjak, M. Movchan [7] note that the main goal of the anti-corruption reform in Ukraine is to significantly reduce the level of corruption, losses from the

state budget and business, and increase Ukraine’s position in international ratings. The authors argue that now a number of issues remain relevant regarding the creation and operation of anti-corruption bodies, the algorithm for declaring the property of civil servants, preventing and resolving conflicts of interest, checking employees, etc. [7].

The scientific study by these authors would contribute to the implementation of international experience in preventing corruption torts as a vector for creating a national anti-corruption strategy in Ukraine.

Despite the fact that there is now a significant number of studies on this issue, the lack of integrative research significantly reduces the practical value of conceptual foundations in the development of an effective anti-corruption system of administrative and legal operationalisation of corruption torts in the activities of civil servants.

The process of restructuring the current anti-corruption legislation should be based on multiple organisational, functional, and legal measures, which together will have a significant impact in stabilising the rule of law and minimising corruption torts in the public administration system, and will serve the further development of Ukraine as a social and legal state.

The purpose of the study is to provide a general analysis of the existing international experience in preventing corruption torts and implementing it in the current Ukrainian legislation. The author hopes that this study will be an anti-corruption pointer and tool in the line of minimising corruption torts in Ukraine.

Analysis of the Results of the Survey of International Organisations “Eurobarometer”, “Transparency International”, “Corruption Perception Index”, “Open Budget Survey”

Analysing the international experience of preventing corruption torts, it can be concluded that their manifestations are the determinants that pose a real threat to democracy and security in the countries of the world, and have a negative impact on all segments of public life. In the presence of large-scale corruption manifestations, according to the author of the study, attention should be focused on eliminating the causes, and not on preventing and countering specific manifestations.

A thorough analysis of the scientific achievements of administrative scientists provides the following: 1) in the legal systems of foreign countries, the term “combat” is not used in the legislation – the subjects of legislative initiative lay down in laws and regulations only the principles of tort prevention, which are inherent only in a certain field of activity; 2) among the dominant reasons for the development and implementation of an effective algorithm for preventing corruption torts, a well-established mechanism of Interstate interaction and interaction of law enforcement agencies is positioned not only at the regional level but also at the international level; 3) active participation in the prevention of corruption torts of a number of international institutions, namely: UN, Interpol, World Bank, Council of Europe, and International Monetary Fund.

At the same time, considerations regarding the corruption dilemma correlate with the indicators of the World Bank, which indicate that during the implementation of significant reforms and constitutional transformations, opportunities for

illegal activities and corruption torts significantly increase. In addition, the media is constantly positioning the facts of existing conflicts of interest that occur as a result of using public positions to obtain illegal benefits on such a scale that it causes a significant social problem. This fact is a determinant for the production of a negative perception by society of the activities of government representatives, in fact, as such, which is aimed only at obtaining personal or group benefits.

In 2021, the EU Eurobarometer conducted specialised scientific research on positioning the level of corruption torts. 67% of respondents declared that corruption is one of the components of the business culture in their countries. 47% of respondents living in the EU stated that the level of corruption has increased significantly over the past three years. Among the EU countries with a significant level of corruption, the leaders are Slovenia (74%), Cyprus (73%), Romania (67%), Portugal (68%). Thus, according to the majority of Europeans, corruption exists in all areas of the provision of public services. According to 57% of respondents, corruption actually prevails among political figures at the national level. A third of Europeans report the dominance of corruption in the healthcare system (48%), among inspectors of control units (35%), law enforcement agencies (34%), officials authorised to grant licenses and permits (32%), employees in the field of law, court, and customs (41%) [8].

Ukraine received 32 points out of 100 possible points in the Corruption Perception Index in 2021. The indicator of Ukraine has decreased by 1 point, and now it ranks 122nd among 180 CPI countries [9].

According to the statistics of the international organisation “Transparency International” [10], the countries that are in the top ten in terms of ratings of effective measures to prevent corruption have obviously developed and put into practice an effective mechanism for preventing corruption. These countries (in order of ranking growth) include: Denmark, Finland, Sweden, New Zealand, Canada, the Netherlands, Norway, Australia, Singapore, Luxembourg, Switzerland, Ireland, Germany, Great Britain, Israel, the USA, and Austria.

According to the Open Budget Survey 2021 Ukraine, the indicator of public participation has significantly increased (from 33 points in 2019 to 39 points in 2021), which is now 2.78 times higher than the world indicator (14 points) and is the best among the countries of the region that are included in this rating [11].

The opinion of researchers regarding the implementation of positive international experience in preventing corruption is correct, since Ukraine, unfortunately, currently lacks an effective mechanism for preventing and countering this negative phenomenon.

The Role and Significance of International Experience In Preventing Corruption Torts

According to the author of the study, it is appropriate to start systematising international experience in preventing corruption with an effective anti-corruption model introduced in Singapore. The progress of this state in terms of dynamic development is tracked in all aspects (social, political, economic development) and has acquired the qualities of a stable geometric progression over a short period of time – approximately 35-40 years. A reasonable question arises: what actually was the quintessence of such forced progress. Singapore’s prime minister Lee Kuan Yew stated: “... The country’s first government in the fight against corruption

faced several challenges. The law, which was designed to regulate the anti-corruption process, was completely ineffective due to the ineffectiveness of anti-corruption measures. A significant number of corruption offences were not covered by the subject of its legal regulation, and law enforcement officers were not given sufficient powers to carry out effective activities. In addition, the complexity of combating corruption was also conditioned by the fact that a significant number of senior officials were already de facto involved in corruption activities.” [12, p. 267].

The dominant factor in the success of Singapore’s anti-corruption programme was the implementation of comprehensive administrative reform, in the context of which the salary of civil servants was increased tenfold. Lee Kuan Yew believed that civil servants should be paid the maximum salary, since they are the personification of fair and just power. An inadequate level of funding for their professional activities can lead to the generation in their minds of a tendency to be involved in corruption schemes [12].

Thus, to prevent corruption torts, the following procedural and institutional measures have been introduced and are being implemented in the Netherlands:

1) openness and timely reporting on penalties for corruption torts committed by civil servants;

2) development of modern systems for monitoring potential sources of corruption torts in public authorities and a number of measures to control the behaviour of persons who have relationships with them;

3) full formalisation of the legal status of state officials by securing their legal personality for non-compliance with the rules of professional ethics;

4) the specialised form of punishment of civil servants consists in prohibiting further activities in state bodies, losing all social guarantees, fines, suspension from the implementation of professional functions, loss of pension maintenance;

5) the results of bringing to justice for corruption torts become known to the public;

6) a specialised anti-corruption service has been established, which is an integral part of the entire state security system [13].

The experience of preventing corruption torts in Belgium is positive. Thus, to prevent corruption offences, civil servants are subject not only to measures to bring them to legal responsibility, in accordance with articles 246, 247, 504bis, 504ter of the Criminal Code [14] and articles 223, 225, 246, 247 of the Belgian Tax Code [15], but also to measures to prevent this negative phenomenon.

The Slovak Republic has developed an effective mechanism for preventive measures themselves:

1) a special line has been introduced where every citizen can provide information to the Anti-Corruption Committee regarding illegal actions of employees of state bodies;

2) a web page has been created on the Internet, where citizens can submit their own proposals for improving the mechanism for preventing corruption torts in public authorities [16].

Israel is a leading state in terms of the effectiveness of preventing corruption in public and political life. Prevention of corruption torts is provided by duplication of monitoring of potential corruption offences by a number of government and public organisations, specialised police departments, and the public comptroller’s office, which are independent of government departments and ministries. Information obtained by routing must be notified to the public [17].

Poland's experience in implementing an anti-corruption policy is relevant. Thus, the Anti-Corruption Strategy introduced in Poland [18; 19; 20] provides for the implementation of the following goals: 1) continuous improvement of anti-corruption legislation; 2) implementation of a modern algorithm for preventing corruption in all areas; 3) effective detection of corruption torts; 4) increasing the level of legal consciousness of citizens; 5) strengthening and expanding cooperation between law enforcement agencies. Currently, Poland has a decentralised model for creating anti-corruption institutions, which provides for the distribution of power between law enforcement agencies and state bodies in terms of preventing corruption torts. According to this model "...a number of powers in this area are divided between the highest state authorities (president, parliament, government) and one (several) state bodies that perform law enforcement functions. In particular, under the president of Poland, there is a Department of Public Administration, which, together with the Ministry of Internal affairs, ensures the prevention and counteraction of corruption" [21, p. 34]. The Central Anti-Corruption Bureau is actively functioning in Poland to prevent cases of abuse of power and activities against the economic interests of the state. At the same time, structural units of financial intelligence are actively functioning in Poland, which, receiving information from law enforcement agencies, have the opportunity to implement a number of effective measures to prevent and counteract corruption offences among government representatives. In Poland, a monitoring committee is effectively functioning, which includes representatives of non-governmental organisations that exercise public control over the implementation of anti-corruption policies. The range of functions of the Monitoring Committee is extremely wide: from exposing and documenting the facts of corruption torts among government officials, developing proposals for anti-corruption legislation, and conducting a number of informational and educational activities aimed at preventing corruption [22].

The experience of combating corruption torts in Germany is effective and meaningful. The anti-corruption policy of Germany is preventive and focused on the implementation of legislative, personnel, administrative, organisational, and other measures aimed at minimising the abuse of civil servants' official status. The main duty of a German civil servant is to exercise their official powers impartially and fairly only for the benefit of the entire society. The current German legislation provides for personal responsibility for the legality of their actions in the process of performing professional duties, providing information about the facts of illegal acts known to them, in particular, corruption torts. The main vectors of anti-corruption activities in Germany are: 1) extremely strict restrictions on receiving gifts and further employment after dismissal from the civil service; 2) the creation of a register of corrupt private enterprises or organisations in order to prevent contacts with public authorities; 3) the creation of a register of positions that most encourage corruption torts; 4) constant rotation of civil servants' personnel in these positions [23].

The United States has developed and put into practice a system of effective anti-corruption measures of administrative influence not only in the country, but also abroad. The Federal Law "The Racketeer Influenced and Corrupt Organizations Act", or the RICO law, played a historical role in preventing corruption. After the adoption of the Law "On

Corruption Abroad" [24], the United States of America became a leader in establishing cooperation to prevent corruption at the international level.

Thus, now the US Department of justice is the coordinator and developer of the anti-corruption policy strategy in the country. The main measures designed to prevent corruption include the following: 1) implementation of constant control over the strict submission of declarations by civil servants; 2) bringing to criminal responsibility for corruption offences not only individuals but also legal entities; 3) annual polygraph examination of officials; 4) complete lack of immunity in terms of bringing civil servants to legal responsibility regardless of their position; 5) functioning of the institute for informing about the facts of corruption abuses in public authorities; 6) clear distribution of functions among bodies engaged in anti-corruption activities; 7) attraction of public services to the public; 8) provision by political parties of a report on the financing of their election campaign.

A thorough analysis of foreign models and strategies for preventing corruption allows for the conclusion that focusing only on the repressive approach in the implementation of anti-corruption activities, by strengthening measures of criminal or administrative influence, is an extremely unjustified and one-sided approach, and the implementation of preventive administrative and organisational measures is more optimal and effective.

International experience in preventing corruption provides grounds for the author to summarise the most characteristic vectors and mechanisms, the implementation of which would be appropriate to introduce in Ukraine, namely:

1) create a single centralised body for the prevention of corruption in Ukraine, among the main tasks of which would be to investigate the facts of corruption torts complicated by a foreign element (experience of the USA, Poland);

2) continuous implementation of a systematic analysis of corruption risks and anti-corruption expertise of public administration acts and their projects (Belgian experience);

3) reformation of public authorities by optimising (reducing) public power institutions (Singapore experience);

4) development of specialised departmental laws regulating the algorithm of public service, the mechanism and principles of official rotation of employees of public authorities (experience of Germany, the Netherlands);

5) optimisation of a number of measures that would make it impossible for persons who are prone to corruption or illegal actions to enter the public service (experience of the USA, Germany, and the Netherlands);

6) reform of the existing system of legal, socio-economic support for persons performing public functions (Singapore experience);

7) ensure the effective operation of the social opinion monitoring system in relation to the activities of public institutions and the ability to report on known facts of violation of the requirements of the current legislation in the field of public service (the experience of all states under study).

Conclusions

The analysis of international experience gives us the opportunity to generalise the most characteristic mechanisms for preventing corruption, the implementation of which can be applicable in Ukraine, namely: 1) introduction of progressive international experience into the current national legislation, including proposals of international organisations

on anti-corruption policy; 2) implementation of a number of anti-corruption educational measures aimed at strengthening the degree of civic consciousness and popularising the rejection of the negative phenomenon of corruption by society through the active implementation of various anti-corruption programmes and strategies; 3) activation of the role of public organisations as autonomous subjects of anti-corruption activities; 4) giving more importance to the actual preventive and incentive measures; 5) the number of internet platforms should be expanded and interactive websites should be improved to respond more quickly to citizens' appeals about corruption offences.

It is clear that further anti-corruption activities in Ukraine require significant adjustments. In addition to the real manifestation of political will to prevent corruption, there is a need for: implementation of anti-corruption activities only on a legal basis with bringing the provisions of the current anti-corruption legislation in full compliance with the norms of the Constitution of Ukraine; implementation of an effective algorithm of anti-corruption expertise and control in the field of rule-making; identification of the most corrupt areas; implementation of proper coordination of anti-corruption activities in the state.

A priori, corruption is constantly adapting to existing changes in the macro- and micro-environment, so the strategy of anti-corruption activities should be implemented considering the existing national customs and mentality and cultural development of citizens, the civilisational evolution of Ukrainian society. International experience in preventing corruption shows that there are no universal algorithms for preventing corruption in general and in public authorities in particular. The application and implementation of a number of anti-corruption measures in Ukraine, which positively positioned a high level of efficiency, is impossible to implement by simply calculating certain components of state or municipal administration.

It is necessary to choose a unique path, which the government should establish independently based on Ukrainian legislation, traditions, mentality, etc. Further study of international experience in preventing corruption can be conducted by establishing: the reasons for the ineffectiveness of the implementation of anti-corruption policy in Ukraine; the priority of means of preventing corruption torts and refusing to further strengthen the repressive component of preventing corruption; expanding the range of countries whose experience can be useful for Ukraine.

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Міжнародний досвід запобігання корупції як вектор створення національної антикорупційної стратегії в Україні

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Анотація. З огляду на європейський вибір нашої держави існує нагальна потреба в створенні та реалізації нової антикорупційної політики з урахуванням позитивних аспектів наявного міжнародного досвіду. Актуальність наукової розвідки полягає в тому, що наявна проблема протистояння корупції є не лише національною, а й всесвітньою. Мета статті – дослідити міжнародний досвід превенції корупційним деліктам з метою імплементації його в українське законодавство. Методологічне підґрунтя наукової роботи – система методів і прийомів наукового пізнання, а саме: системний аналіз, компаративно-імплементаційний метод, статистичний метод, ретроспективний метод. У статті здійснено системний розгляд міжнародних концепцій запобігання корупційним деліктам. Зазначено, що в умовах глобалізаційних процесів, котрі відбуваються в сучасному соціумі, украї важливого значення набуває потреба в імплементації позитивного зарубіжного досвіду в систему чинного законодавства України. Також здійснено ґрунтовний аналіз низки заходів провідних держав, котрі покликані превентувати корупційні правопорушення. Позиціоновано позитивний досвід держав з найнижчим рівнем корупції та зазначено шляхи досягнення такого результату. У статті проаналізовано антикорупційні стратегії таких країн, як Сінгапур, Нідерланди, Бельгія, Ізраїль, США, Словачка Республіка, Німеччина, Польща. Звернено увагу на те, що в державах з низьким рівнем корупції в моделях запобігання корупції репресивні заходи поєднуються з комплексним усуненням детермінант корупційних правопорушень. У статті зазначено, що новітня стратегія запобігання корупції вимагає розбудови активного співробітництва державних органів, правоохоронних органів та громадянського суспільства з метою превенції та протидії корупційним деліктам. Водночас важливою детермінантою запобігання корупційним деліктам є зростання громадянської свідомості. Акцентовано на тому, що корупційні правопорушення – украї небезпечний феномен, притаманний усім державам сучасного світу. Виявлено, що низка зарубіжних держав домоглася створити сучасний дієвий алгоритм запобігання та протидії корупційним правопорушенням. У статті виокремлено основні детермінанти запобігання корупції, котрі є схваленими міжнародним співтовариством, а саме: нормативне урегулювання діяльності державних службовців, встановлення чіткої системи юридичної відповідальності за порушення вимог антикорупційного законодавства, прозорості в професійній діяльності посадових осіб, запровадження соціальних програм та освітніх просвітницьких кампаній на корупційну тематику. Наведені в статті положення можуть стати дієвим підґрунтям для побудови в Україні успішної антикорупційної політики

Ключові слова: стратегія, антикорупційна політика, імплементація, чинне національне законодавство, корупційні правопорушення