MODERN FORMS AND METHODS OF COMBATING CORRUPTION

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В статье исследованы современные формы и методы в сфере противодействия коррупции в Украине. Основными административно-правовыми подходами в сфере предотвращения и противодействия коррупции предложено считать электронное декларирование, деятельность прокуратуры, создание Высшего антикоррупционного суда Украины и др. Подчеркнуто, что электронное декларирование является средством повышения результативности функционирования нашего государства в направлении устранения коррупционных рисков в работе государственных служащих.

Ключевые слова: демократическое государство, коррупция, электронное декларирование, прокуратура, Высший антикоррупционный суд Украины.

The article investigates modern forms and methods in the field of combating corruption in Ukraine. The main administrative legal approaches in the field of prevention and counteraction to corruption are proposed: electronic declaration, activity of the prosecutor's office, creation of the Supreme Anti-corruption Court of Ukraine, etc. It is emphasised that electronic declaration is a means to improve the effectiveness of our state in the direction of eliminating corruption risks in the work of civil servants.

Key words: democratic state, corruption, electronic declaration, prosecutor's office, the Supreme Anti-corruption Court of Ukraine.

În articol sunt cercetate formele și metodele moderne de combatere a corupției în Ucraina. Printre principalele măsuri administrative-juridice sunt propuse: declarația electronică, consolidarea capacității Procuraturii, crearea Judecătoriei Supreme Anticorupție din Ucraina etc. Este evidențiat că, declarația electronică este un mijloc de creștere a eficienței funcționării Statului nostru, în direcția eliminării riscurilor de corupție în activitatea funcționarilor publici.

Cuvinte cheie: stat democratic, corupție, declarație electronică, procuratură, Curtea Supremă Anticorupție din Ucraina.

Problem formulation. At the present stage of development of any democratic state, corruption is one of the most urgent tasks, the solution of which will ensure political, social and economic stability of the country. Indeed, corruption in society is a destructive mechanism that covers all spheres of life. Corruption is fairly recognized as one of the most important problems that poses a threat to the national security of each state, including Ukraine. In the context of this, the fight against corruption has become the subject of attention of state authorities, civil society institutions, mass media, individuals, and others.

Analysis of recent research and publications. Such scientists as O. Nadzhafov, O. Prokhorenko, E. Strilchenko, O. Tkachenko, M. Havroniuk, B. Chela, A. Cheshko and others carried out solid research in the field of combating corruption. The issues of the corruption offence were investigated by S. Alfiorov, I. Bogatyriov, I. Klochko, E. Nesvit, A. Onyshchuk and others. The legal nature of the fight against corruption was considered in his writings by S. Bondar, V. Gornyk, V. Kravchenko, S. Kravchenko and others. Taking into consideration the contributions made by scientists to the study of various aspects of corruption, the urgent issue is the definition of effective forms and methods to overcome corruption, which could be the basis for solving this important problem.

The purpose of the article is an administrative legal analysis of contemporary forms and methods in counteracting the fight against corruption.

Presenting main material. In the current situation, the overcoming of corruption in the functioning of public authorities is the topical issue. For example, one of the main reasons for the spread of corruption is the low level of effectiveness of control and supervisory tools in terms of income and expenses of officials. An anti-corruption declaration, which is a provision by officials and members of their families of information on income, property, liabilities, etc., and whose purpose lies in detecting and preventing corruption offences, is one of the key measures to combat corruption.

One of the urgent tasks of combating corruption and ensuring the rule of law in the field of public administration is the creation of an effective monitoring mechanism for combating corruption both in the public and private spheres. In this aspect, the system of declaration of incomes and property status of officials is important. This is consistent with established international practices and standards. In particular, according to Paragraph 5 of Article 8 of the United Nations Convention against Corruption of 31 October 2003, each State Party seeks, where it is appropriate and in accordance with the fundamental principles of its domestic law, to introduce measures and systems that oblige public officials to provide the relevant bodies with a declaration, inter alia, on non-commissioned activities, occupations, investments, assets and substantial gifts or profits, which may give rise to a conflict of interest in relation to their functions as public officials [1].

According to the World Bank, more than 150 countries have introduced requirements for the declaration of property [2]. Indeed, the electronic declaration provided for in the Law of Ukraine "On the Prevention of Corruption" is an innovation not only for our state, but it also differs from the practice that exists in Europe. The difference in the form of declarations is essential, for foreign countries they are tax returns, and for ours they are property and information declarations.

V. Marenko observes that each state makes its own decision on which type of information society should be implemented. National models are distinguished by political strategies, specifics of national markets, legislative traditions, information infrastructure development, economic resources, etc. Also, the author offers two main forms of information society, namely Western and Asian [3, p. 545].

Given the fact that in today's conditions the European integration processes are relevant, the West European type of information society is right for our country.

As far as electronic declaration is concerned, it is one of the newest instruments devoted to counteracting the corruption of the state management apparatus. In particular, in 2016 amendments to the legislation of Ukraine were introduced, according to which, as noted by D. Bugas and O. Lukianenko, from 01/09/2016 all Ukrainian officials are obliged to annually announce in electronic form their property, incomes and financial liabilities, as well as the assets of family members [4].

Restrictions on access to information are carried out in accordance with the law on the basis of the following grounds: exclusively in the interests of national security, territorial integrity or public order, in order to prevent disturbances or crimes, to protect public health, to protect the reputation or rights of others, to prevent disclosure of the information obtained confidentially, or to maintain the authority and impartiality of justice; disclosure of information may seriously harm those interests; the public interest in obtaining such information is prevalent from the disclosure of such information [5].

The European integration intentions of Ukraine make it necessary to consider the peculiarities of the electronic declaration of the property status of public officials in European countries.

The British experience in electronic declaration is curious. The legislation of this country does not regulate the obligation to declare the property assets of civil servants. However, in accordance with the

Code of Civil Service, civil servants must declare at their place of employment any conflicts of interest that may arise in connection with their position [6]. The form of declaration is established by each ministry or state agency. At the time of appointment, ministers are obliged to declare information on all incomes they receive outside the ministry and to leave the company's management, which could lead to a conflict of interest in the performance of their official duties. The list of financial interests of ministers is published annually on the government website [7].

The development of the information society requires the widespread use of information and communication technologies for solving various social problems. In particular, modern political, socio-economic technologies, aimed at creating a competitive product of the domestic information economy are being produced. Our state should provide for the creation of effective space, in the context of which information becomes a public resource of development. In this aspect, it is urgent for Ukraine to ensure timely verification of the data of e-declarations authorized by the Law of Ukraine "On Prevention of Corruption" [8]. It is important to modernize the system of electronic declaration of the state of civil servants' status according to the best European standards (for example, to borrow the experience of Great Britain).

It should be emphasised that when considering the issue of verification of electronic data in Ukraine, it should be noted that in 2017 the decision of the National Agency for the Prevention of Corruption "On approval of the procedure for controlling and full verification of the declaration of the persons authorized to fulfill state or local self-government functions" came into force. The document provides a mechanism for implementing the specified control structure and a complete check of the declarations of officials.

According to the decision, the verification of an electronic declaration can be made at the moment of the subject's declaration of their authority, that is, while in the corresponding position, as well as within three years after the termination of the relevant activity. In case of detecting certain violations, inaccuracies of declared assets or conflicts of interest, the National Agency for the Prevention of Corruption proposes to the subject of electronic declaration to provide written explanations and / or copies of supporting documents.

The full verification of the electronic declaration takes 60 calendar days from the date of the decision to hold it. If necessary, the term may be extended, but no more than 30 calendar days. If in the course of the inspection the inaccurate information was established, the decision on the results of the full inspection is sent to specially authorized entities in the field of combating corruption [9].

The system of electronic declaration contributes to the achievement of the following main goals: increasing the level of transparency of the activities of law-enforcers and the trust of citizens; prevention of a conflict of interests and its settlement in case of occurrence, which enables to ensure a high level of integrity of an employee of a law enforcement agency; control over changes in the assets of certain law enforcement officers in order to prevent them from committing certain unlawful acts of corruption that, in turn, will protect them from unreasonable allegations and reveal the facts of illegal enrichment, other illegal activities by providing appropriate confirmatory documents and other evidence [10, p. 161].

In the context of the integration of our state into the European space, the ratification process of the agreement between Ukraine and the European Union on the transformation of the prosecutor's office in the light of European practice is relevant. In a democratic state, as well as a system of criminal justice, the modern view of the role of the prosecutor's office is a top priority for our state. In particular, in the present situation a number of structural transformations of the law-enforcement system have already been carried out and new anti-corruption legislation has been adopted.

In pursuance of the recommendations of the European legal institutes, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Prosecutor's Office" dated October 14, 2014, according to which a new model of the prosecutor's office was drawn up that is close to the legal systems of the member states of the European Union.

G. Sereda emphasises that from the very beginning of the development of Ukrainian statehood and legal legitimization of the prosecutor's office, its organizational and legal status, the scope and content of the powers of prosecutors are in the process of permanent reform [11, p. 9].

Coordination of the activity of law enforcement bodies plays a special role in overcoming corruption with the bodies of the public prosecutor's office. The indicated function in the process of transformation of the prosecutor's offices was substantially changed. According to Article 10 of the Law of Ukraine "On Prosecutor's Office" dated November 5, 1991, the Prosecutor General of Ukraine and prosecutors subordinate to him coordinated the activities of law enforcement agencies on issues of combating crime and corruption in order to increase the effectiveness of counteraction to crime and corruption. In particular, corruption was seen as an independent object of coordination activity along with crime, and, accordingly, the coordination powers extended to that part which was related to administrative corruption offences. In Part 2 of Article 25 of the new Law of Ukraine "On Prosecutor's Office" corruption is defined as the object of coordination activity solely in its criminal forms [12]. Thus, the legislator drew entities acting outside the scope of criminal prosecution, namely the National Agency for the Prevention of Corruption, the Government Commissioner for Anti-Corruption Policy, etc., out of the coordination competence of the prosecutor's office.

One of the important stages in the transformation of the prosecutor's office is the appearance of the Specialized Anti-Corruption Prosecutor's Office (Part 5, Article 8-1 of the Law of Ukraine "On the Prosecutor's Office"), the functional load of which includes both criminal and non-criminal spheres: supervision of the activities of the National Anti-Corruption Bureau of Ukraine and the prosecution for the consequences of criminal offences.

V. Dragan and Z. Zagynei noted that during the creation of the Specialized Anti-Corruption Prosecutor's Office there was used the experience of leading European countries, such as Germany, where special departments for combating corruption may be set up in the prosecutor's offices of certain lands (for example, the department at the prosecutor's office in Wuppertal, specialized prosecutor's office for combating North Rhine-Westphalia land corruption, etc.) [13, p. 51].

O. Pronevich believes that such practices exist in Spain (the State Prosecution Service for Combating Corruption and Organized Crime), Romania (National Anti-Corruption Directorate in the Prosecutor's Office at the Supreme Court of Cassation), Sweden (National Anti-Corruption Division within the Swedish Prosecutor's Office), etc. [14, p. 263-265].

According to the Law of Ukraine "On Prosecutor's Office", the following specialized functions are assigned to the Specialized Anti-Corruption Prosecutor's Office: overseeing the observance of laws in conducting operational and search activities, pretrial investigation by the National Anti-Corruption Bureau of Ukraine; maintenance of state prosecution in relevant proceedings; representing the interests of a citizen or a state in court in cases provided for by this law and related to corrupt or corruption-related offences [12].

Further, the Law of Ukraine "On Amendments to the Law of Ukraine "On the Prosecutor's Office" on ensuring transparency in the organization of the activities of the Specialized Anti-Corruption Prosecutor's Office in order to implement the recommendations of the International Monetary Fund" of 18.02.2016 introduced a number of innovations that increased the degree of independence of the Specialized Anti-Corruption Prosecutor from the Prosecutor General of Ukraine , as well as the procedure for appointment to the administrative posts of the Specialized Anti-Corruption Prosecutor's Office has been changed. In particular, the competence of the Prosecutor General of Ukraine eliminated the right to appoint heads and deputy heads of structural divisions of the Specialized Anti-Corruption Prosecutor's Office, and transferred the respective powers to the Specialized Anti-Corruption Prosecutor. A competition commission is playing a key role in the appointment of a Specialized Anti-Corruption Prosecutor, as a candidate appointed by the Prosecutor General of Ukraine. The introduction of new requirements for candidates for the office of prosecutors of the Specialized Anti-Corruption Prosecutor's Office relates to innovations, so that a person who has higher legal education, a legal service experience of at least 5 years and a state language can be appointed by the prosecutor [15]. Thus, our state continues to form a model prosecutor's office that is as close as possible to the European legal system.

Investigating the methods and forms by which the prosecutor's office carries out human rights functions, R. Sydorenko concluded that the main forms of implementing the administrative powers of the prosecutor's office are the publication by prosecutors of relevant documents of the prosecutor's response, which include a protest, an order, a submission and a ruling [16, p. 678].

K. Khromova emphasises that coordination of efforts in this direction with other law enforcement bodies remains the leading form of administrative legal counteraction to corruption, which is expressed in joint coordination sessions, meetings, etc. [17, p. 108]. However, it is necessary to focus attention on other forms of such activities.

Based on the analysis of the Laws of Ukraine "On Prosecutor's Office", "On Prevention of Corruption" and the Order of the General Prosecutor's Office of Ukraine "On Approval of the Regulations on the Specialized Anti-Corruption Prosecutor's Office of the General Prosecutor's Office of Ukraine", in the scientific literature the following classification of the forms of activity of the prosecutor's offices concerning counteraction to corruption depending on the content of actions, which compose the content of the corresponding form is proposed: coordination; legal form; administrative supervisory and control form; jurisdictional form [18, p. 103]. The adoption of the Laws "On Prosecutor's Office" and "On Prevention of Corruption", the system of forms of functioning of the prosecutor's offices was expanded by analytical, accounting and organizational legal forms. However, control, coordination and administrative and supervisory activities remain the leading forms of anti-corruption activity.

M. Beliakov believes that the updated Ukrainian legislation provides for a rather high concentration of powers within the competence of the National Agency for the Prevention of Corruption, which, according to the scholar, is inappropriate. In particular, M. Beliakov proposes to temporarily retain the powers to compile protocols on administrative corruption and related offences under the prosecutor's offices for a transitional period and to approve the joint Provisional Regulations on the Procedure for the Transmission of Materials on Administrative Corruption Offences by the National Agency for the Prevention of Corruption to the Prosecutor's Office. In this situation, according to the scientist, it is expedient to determine the amount of information, terms of transmission, procedure and subjects of such transfer, etc. [19, p. 231].

Taking into account the aforementioned, the main step for anti-corruption policy is to create an effective system of anti-corruption justice, in particular, to create an appropriate institution – anti-corruption judges.

The idea of creating anti-corruption courts appeared for the first time in the recommendations of the Organization for Economic Co-operation and Development as one of the components of the anti-corruption reform of Ukraine in general. The recommendations state that the creation of specialized judges will allow the National Anti-Corruption Bureau and its affairs to be isolated from ordinary judges, given the high level of their corruption [20, p. 84-85].

Anti-corruption courts as an institution have proven themselves positively around the world. Foreign experience shows that such an institution is one of the most effective means of combating corruption offences. For example, for the judicial systems of Slovakia, Bulgaria, the Philippines, etc. anti-corruption courts are not a novelty.

It should be noted that the Constitution of Ukraine prohibits the creation of extraordinary and special courts (Part 5, Article 125). However, world and European practice has confirmed the expediency of creating specialized courts that are guided by universally recognized rules of procedure and which include the Specialized Anti-Corruption Court. In particular, the Law of Ukraine "On the Judiciary and the Status of Judges" of 02/06/2016 provides for the existence of the Supreme Anti-corruption Court in the system of judicial system of Ukraine.

In addition, the Law of Ukraine "On the Supreme Anti-corruption Court of Ukraine" was adopted, which envisages the introduction of the activities of the Supreme Anti-corruption Court of Ukraine. The task of the Supreme Anti-corruption Court is to administer justice in accordance with the principles and procedures established by the law in order to protect individuals, society and the state from corruption and related crimes and judicial control over the pre-trial investigation of these crimes, observance of the rights, freedoms and interests of persons in a criminal the proceedings [21]. Today it is only planned to introduce the activity of this public authority. There are problems related to the lack of relevant specialists in this field, the experience of forming such a court, the systemic vision of the work of the Supreme Anti-corruption Court.

Conclusions. Under current conditions, among the main administrative and legal approaches in the field of prevention and counteraction to corruption, we can distinguish electronic declaration, activity of the prosecutor's office, creation of the Supreme Anti-corruption Court of Ukraine. Taking into account the best European practices, important directions in the field of combating corruption have been implemented in Ukraine. Electronic declaration is a means to increase the effectiveness of our state in the direction of eliminating corruption risks in the work of civil servants. This will have a positive effect on the activity of officials of state authorities and local self-government bodies and will promote the increase of their authority in society, as there is the possibility of proper public control. The activity of the Prosecutor's Office in the field of combating corruption at the present stage of Ukraine's development is at the stage of reform, which is due to the need to adapt the national legislation to European standards. In particular, the Specialized Anti-Corruption Prosecutor's Office has been introduced. It should be noted that the activities of the prosecutor's office in the field of prevention of corruption conditions prosecutors to use mainly administrative compulsory forms of work. The formation of organizational and institutional mechanisms, involvement of the public in the active opposition to this negative phenomenon, as well as the education of intolerant attitudes in society to any manifestations of corruption is important. With the enactment of the Law of Ukraine "On the Supreme Anti-corruption Court", the provisions on the need to form the Anti-corruption Court (35 judges) during the year were established. The judges will be elected by the High Qualifications Commission of Judges (HQC) with the help of six members of the Council of International Experts, which also needs to be set up. Its structure may include both citizens of Ukraine and foreigners. Independent Supreme Anti-Corruption Court Ukraine should become the basis for intensifying the struggle in the field of corruption.

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У статті досліджено сучасні форми та методи у сфері протидії корупції в Україні. Наголошено, що, враховуючи кращі європейські практики, в Україні здійснені важливі напрями у сфері подолання корупції. Основними адміністративно-правовими підходами у сфері запобігання та протидії корупції запропоновано вважати: електронне декларування, діяльність прокуратури, створення Вищого антикорупційного суду України тощо.

Підкреслено, що електронне декларування є засобом підвищення результативності функціонування нашої держави у напрямі усунення корупційних ризиків у роботі державних службовців. Це позитивно вплине на діяльність посадових осіб органів державної влади та органів місцевого самоврядування та сприятиме підвищенню їхнього авторитету у суспільстві, оскільки виникає можливість реалізації належного громадського контролю.

Акцентовано, що діяльність прокуратури у сфері боротьби з корупцією на сучасному етапі розвитку України знаходиться на стадії реформування, що обумовлено необхідністю адаптації національного законодавства до європейських стандартів. Так, було запроваджено Спеціалізовану антикорупційну прокуратуру. Зазначено, що діяльність органів прокуратури у сфері запобігання корупції зумовлює застосування прокурорами переважно адміністративно-примусових форм роботи. Важливими є формування організаційних та інституційних механізмів, залучення громадськості до активної протидії цьому негативному явищу, а також виховання нетерпимого ставлення у суспільстві до будь-яких проявів корупції.

Наголошено, що з набуттям чинності Закону України «Про Вищий антикорупційний суд» закріплено положення щодо необхідності протягом року сформувати Антикорупційний суд. Незалежний Вищий антикорупційний суд України має стати фундаментом для активізації боротьби у сфері корупції.

***Ключові слова**: демократична держава, корупція, електронне декларування, прокуратура, Вищий антикорупційний суд України.*