ADMINISTRATIVE LAW MEASURES TO PREVENT CORRUPTION: PRACTICAL APPLICATIONS IN UKRAINE

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Annotation. The aim of this work is to analyze the specific features of implementing preventive anti-corruption measures in Ukraine. The relevance of the topic is due to the development of international legal cooperation on combating corruption, within the framework of which international legal standards are incorporated into the national legislation of the state participants of international agreements. The methodological basis this work includes general and specialized methods of legal science, particularly the dialectical analysis method, formal and logical methods, normative and dogmatic methods. The article analyzes information on the state of combating corruption in Ukraine, using pre-trial and judicial statistics as sources. The results of the study reveal that the majority of offences related to corruption are administrative in nature; however, the application of administrative law measures has not led to a significant reduction in corruption offences. An analysis of judicial practice and statistical information from reports on the state of combating corruption indicates the lack of uniform interpretation of the requirements of anti-corruption legislation by pre-trial investigation bodies and judicial bodies. In this context, the complexity of practical issues that arise in cases violations of requirements for preventing and managing conflicts of interest is noted, and it is indicated that it is the legal uncertainty surrounding the definitions of «conflict of interest» and «real conflict of interest» that affects the effectiveness of the application of relevant administrative law measures to prevent corruption. The author of this work concludes that contradictory practices in cases of violations related to the requirements for preventing and managing conflicts of interest highlight the need for developing a comprehensive concept for managing conflicts of interest as a preventive anti-corruption mechanism. In the author's opinion, this situation is due to the borrowing of provisions of international legal standards for combating corruption without proper conceptual justification at the national level. It is in the absence of a conceptual basis that the legislative definition of «real conflict of interest» does not meet the requirements of judicial and administrative proceedings. The author emphasizes that mechanisms for preventing and managing conflicts of interest should be closely aligned with ethical standards and must be subject to specific legal regulation.

Key words: corruption, conflict of interest, ethical standards, anti-corruption legislation.

1. Introduction.

In countries aspiring to join the international community, anti-corruption programs are actively developing. At the domestic level, the formation of organizational and legal mechanisms for anti-corruption activities usually occurs through the implementing international law and the adoption of methodological recommendations from international organizations as basis. In accordance with the provisions of the UN Convention against Corruption, the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another. Each State Party shall develop, implement, or conduct an effective and coordinated policy to combat corruption in accordance with the fundamental principles of its legal system. It shall periodically evaluate relevant legal instruments and administrative measures to assess their adequacy in preventing and combating corruption and shall establish and promote effective practices aimed at preventing corruption. This article analyzes administrative law measures aimed at preventing corruption in Ukraine and evaluates their effectiveness in combating it.

2. Analysis of scientific publications.

Research on the issues of preventing and combating corruption in Ukraine has been the focus of studies by numerous scholars, including Heits O, Ishchuk D, Levchuk A., Maslova Ya., Okopnyk O., Pastukh I., Prykhodko A., Rivchachenko S., Shatrava S., Yaniuk N. Given the importance of analytical information, it is important to highlight the research Dudorov O. and Khavroniuk M. It is not possible to cover the entire body of work on this topic within the scope of a single article. Therefore, the focus is placed on studies that address issues related to the tools of administrative law for preventing corruption in Ukraine.

3. The aim of this work

3. The aim of this work is to analyze the current state of Ukraine's corruption prevention system and identify the characteristics of implementing legal measures for preventive anti-corruption activities.

4. Review and discussion.

One of the key conditions for the effective functioning of the public administration system is the strict implementation to the rule of law by public authorities and their officials. Violations within the realm of public administration result in significant damage, both economically and socio-politically. This is primarily due to the extensive scope of the public administration system, which encompasses the administrative-political, economic, and socio-cultural spheres.

The misuse of official powers by an individual authorized to perform functions state or the exploitation of opportunities associated with these powers, poses a serious threat to the public administration system. Such actions undermine the credibility of public authorities and disrupt the proper functioning of state institutions.

Additionally, public administration involves the allocation of resources and substantial expenditures by public authorities. For instance, in 2023, the State Budget of Ukraine allocated 14 percent of its funds to public order, security, and the judiciary, and 16 percent was designated for health care and social protection [1].

Ensuring the rule of law in public administration is achieved by adhering to the requirements, restrictions, and prohibitions established by law. Preventing the unlawful use of official powers by an authorized official, or the misuse of opportunities related to these powers, is based on the provisions of regulatory legal acts aimed at combating corruption, the managing conflicts of interest, and ethical standards.

This is due to both the potential of international legal standards for combating corruption and the system of international legal cooperation among states in the fight against corruption, which is a comprehensive mechanism for interaction between participating states. Such cooperation serves as a comprehensive mechanism for interaction between participating states.

In Ukraine, the legal and organizational principles of the functioning of the corruption prevention system, the content and procedure for applying preventive anti-corruption mechanisms, and the rules for eliminating the consequences of corruption offenses are regulated by the Law of Ukraine «On Prevention of Corruption», which entered into force on April 26, 2015. The legislator has identified the preventing and managing conflicts of interest (Chapter V) and the ethical standards (Chapter VI) as components of combating corruption. [2]

It should be noted that there are different approaches to developing national strategies for preventing and combating corruption. Conflict of interest managing programs and ethical standards can be separate components of the broader policy aimed at ensuring legality and discipline in public administration.

In this context, to assess the effectiveness of legal measures in combating corruption and to improve legislation in the field of public administration, it is crucial to determine which regulatory legal

acts adequately address certain social relations and which need further refinement. Particularly important is the availability of statistical data on the state of anti-corruption efforts, which facilitates a differentiated approach to forming legally significant information in the field of anti-corruption and supports the development of proposals for legislative improvement by the scientific legal community.

In Ukraine, sources of information on corruption and corruption-related offenses are derived from pre-trial statistics, which are based on periodic reports from the Prosecutor General's Office, the National Anti-Corruption Bureau, the Ministry of Internal Affairs, and judicial statistics. The latter are compiled from periodic reports by courts of first instance, appellate courts, the Supreme Court, and the High Anti-Corruption Court. The analysis of these statistics and the generalization of judicial practices help clarify compliance with anti-corruption legislation and provide insight into the real state of justice administration.

According to the conclusions drawn from the generalization of judicial practice in cases of administrative offenses related to corruption, a key trend is the absence of a uniform and established practice in the judicial consideration of these cases. Additionally, there is a lack of effective mechanisms to ensure consistency in the interpretation and application of relevant administrative and legal prohibitions [3].

Judicial practice in cases related to violations of the requirements for preventing and managing conflicts of interest (Article 172-7 of the Code of Administrative Offenses) is highly inconsistent. Courts frequently close proceedings on the grounds of the absence of offense elements, a lack of corrupt interest, no evidence of a corrupt offense, failure to prove intent, or due to contradictory evidence in the case materials.

One of the most common manifestations of actions taken in a conflict of interest is the awarding of bonuses or other monetary incentives. The analysis of judicial practice reveals that courts do not have a unified approach to legally assessing situations where decisions are made regarding bonuses or additional payments. In such cases, judicial practice is particularly controversial.

In analyzing trends and procedural features in cases of administrative offenses related to corruption, legal scholars suggest clarifying certain provisions of the legislation. However, in our view, not all proposed explanations regarding managing conflict of interest can be supported.

It seems debatable to argue that a real conflict of interest arises not only when the contradiction between a person's private interests and their official duties actually affected their objectivity or impartiality in decision-making or in performing official actions, but also when such a contradiction merely had the potential to influence them.

Taking into account the legislative definition of «real conflict of interest», the aforementioned position effectively nullifies this definition and creates grounds for exemption from proof not provided for by law.

The event and the composition of the offense can only be confirmed or refuted by appropriate and admissible evidence. Given that evidence in a case of an administrative offense is factual data, in order to qualify a decision as one made under conditions of a real conflict of interest, it is necessary to establish that the decisions were biased or partial. The absence of this characteristic indicates the absence of the legal structure of the tort as a whole.

The position that administrative liability for violating the requirements for preventing and managing conflict of interest is based on an objective attitude toward guilt does not seem sufficiently justified. Legal scholars have already pointed out the peculiarities of offenses with formal components and the challenges of determining the guilt of individuals committing administrative offenses. [4]

The signs of an administrative offense include, among others, social harmfulness and the person's foresight of the potential occurrence of harmful consequences. Given the presumption of innocence and the principle of culpable liability, without establishing the subjective side of the offense, it is impossible to qualify a decision as one made under conditions of a real conflict of interest.

We draw attention to the fact that the formal finding of guilt for violating the requirements for preventing and managing conflicts of interest, in practice, leads to the unjustified administrative liability of officials who have committed acts related to the performance of their official duties.

We are critical of the argument that a real conflict of interest will occur even in the absence of a choice for the person, and the proposal that «the subject could have refused to act at all». In some cases, such behavior may violate the provisions of the law.

For example, an official performing administrative functions (the head of an institution), by virtue of his official duties and in accordance with the legislation, issues orders under his signature for the remuneration (payment) of a close person for the performance of production tasks. The Law of Ukraine «On Remuneration» stipulates that remuneration related to the performance of production tasks and functions is included in the salary structure. In this case, we are talking about compliance with the rights of employees in accordance with labor legislation, and the issuance of the order is a technical matter and a mechanism for exercising the employees' rights to remuneration. A real conflict of interest arises only when a person has the opportunity to exercise discretionary powers when considering issues related to their private interest.

The Supreme Court of Ukraine indicated that discretion is not an obligation, but the authority of an administrative body, since the legal concept of discretion allows for the possibility of choosing between alternative courses of action and/or inaction. If the legislation requires the adoption of only a specific decision, then this is not the exercise of discretion (authority), but the fulfillment of an obligation. [5] Under the above circumstances, the issuance of bonus orders under the signature of an official (head of an institution) occurs solely by virtue of official duties and is conditioned by compliance with the rights of employees in accordance with the law. In this case, there is no useful motive, and therefore no subjective side.

In general, the complexity of practical issues that arise in cases related to violations of the requirements for preventing and managing conflicts of interest, in our opinion, indicates legal uncertainty surrounding the definitions of «conflict of interest» and «real conflict of interest», which can significantly affect the application of relevant administrative and legal prohibitions.

It should be noted that the legislator has identified administrative liability for corruption-related offenses as one of the main components of the preventive anti-corruption system. [6] Legal theorists define the main purpose of the administrative and legal mechanism for preventing corruption as ensuring a preventive function, the implementation of which aims at preventing corruption and corruption-related offenses. [7] Given these guidelines, it will be useful to assess the effectiveness of the implementation of the national strategy for preventing corruption as a whole, based on generalized key statistical indicators regarding corruption and corruption-related offenses.

Table 1 presents the ratio of administrative corruption-related offenses to criminal corruption offenses. Practical observations indicate that the intensification of efforts by the Ministry of Internal Affairs to process records of administrative corruption-related offenses does not effectively contribute to reducing overall corruption.

Table 1. Generalized statistical indicators based on the reports of the Ministry of Internal Affairs regarding the state of combating corruption, specifically corruption and corruption-related offenses.

Annual report of the Ministry of Internal Affairs on the state of anti-corruption efforts	Total number of administrative corruption-related offense records submitted to first-instance courts	Total number of corruption offenses for which criminal proceedings have been concluded with investigation
2020	11994	3908
2021	14152	4775
2022	6757	3161
2023	14211	4358
9 months 2024	12518	4454

Source: Ministry of Internal Affairs of Ukraine. Annual Reports on the State of Combating Corruption [8].

Table 2 highlights the ratio of cases involving administrative corruption-related offenses to those involving criminal corruption offenses. Based on statistical data from reports on the state of justice administration, we critically evaluate the effectiveness of administrative and legal measures in preventing corruption.

Table 2. Generalized statistical indicators based on reports from courts of first instance concerning cases of corruption and corruption-related offenses

Annual report of the courts of first instance	Total number of cases of administrative corruption-related offenses (Articles 172-4, 172-5, 172-6, 172-7, 172-8 of the Code of Administrative Offenses)	Total number of criminal proceedings related to corruption offenses in the field of official and professional activities associated with the provision of public services (Articles 364-370 of the Criminal Code of Ukraine)
2020	7987	7127
2021	9510	8090
2022	2745	9332
2023	2871	8703

Source: State Judicial Administration of Ukraine. Annual Reports of Courts of First Instance on the Consideration of Cases of Administrative Offenses and Annual Reports of Courts of First Instance on the Consideration of Materials in Criminal Proceedings [9] [10]

Table 3 illustrates cases of violations related to conflict-of-interest reporting requirements. Notably, there has been an increase in the number of such violations. However, a significant portion of these cases were closed, often due to the absence of evidence or the lack of the necessary elements to constitute an administrative offense.

Table 3. Generalized statistical indicators from reports of courts of first instance regarding cases of violations of conflict-of-interest reporting requirements

Annual report of the courts of first instance	Total number of cases of violations of conflict-of-interest reporting requirements (Article 172-7 of the Code of Administrative Offenses)	Total number of cases closed	Including those due to the absence of an event or the elements constituting an administrative offense
2020	864	397	213
2021	1396	500	277
2022	1312	464	211
2023	2707	821	461

Source: State Judicial Administration of Ukraine. Annual report of courts of first instance on the consideration of cases of administrative offenses [9].

The practice of applying Article 172-7 of the Code of Administrative Offenses indicates an ambiguous assessment by pre-trial investigation bodies and judicial bodies of actions that suggest the presence of signs of an administrative offense related to corruption in a person's actions. The lack of a uniform interpretation of legal norms significantly affects the effectiveness of the application of administrative and legal prohibitions.

According to legal scholars, the contradictory practice in cases related to the violation of requirements for preventing and managing conflicts of interest is due to the collision of legislative acts in terms of managing conflicts of interest. To address this issue, it is proposed to give priority to laws that regulate (determine) the status of persons authorized to perform state or local government functions. [3]

Agreeing with the remark regarding the collisions within Ukraine's anti-corruption legislation, we add that in the event of a conflict between acts of equal legal force, courts should apply the approach of the priority of the norms of a special law over the norms of the general law. [11]

Investigation of the circumstances of the case requires the court to clarify the principles, legal, and organizational foundations of the activities of the relevant body, which are regulated by special regulatory legal acts. In such circumstances, the principle of *lex specialis derogat generali* applies, the essence of which is that a special law within the framework of resolving an individual dispute cancels the effect of a general law.

Secondly, the legislative definitions of «conflict of interest» and «real conflict of interest» contain evaluative concepts that are left to the discretion of the law enforcement officer.

We assume that this situation is due to the borrowing of provisions of international legal standards for combating corruption without proper conceptual justification at the national level. It is in the absence of a conceptual basis that the legislative definition of «real conflict of interest» does not meet the requirements of judicial and administrative application.

In the absence of a sufficiently substantiated conceptual and terminological apparatus and a unified approach to resolving disputes in the field of corruption prevention, the law enforcement officer is suggested to be guided by methodological recommendations provided by the executive body with a special status, which ensures the formation and implementation of the state anti-corruption policy. [12] Note that the interpretation (clarification) of legal norms does not create new legal norms and should not go beyond the law enforcement process.

In our view, the contradictory practices in cases involving violations of the requirements for preventing and managing conflicts of interest highlight the need to develop a holistic concept of managing conflict-of-interest as a preventive anti-corruption mechanism.

The public administration system, by its nature, operates as a zone of potential conflict - every state decision inherently generates both benefits and costs. The critical determinant is whether the official responsible for the decision acted in accordance with the principle of *sine ira et studio* [13, p. 158-160]. In practice, this principle entails professional independence, a balanced consideration of all aspects of decision-making, and prioritizing public or state interests over private ones.

Therefore, mechanisms for preventing and managing conflicts of interest must be closely aligned with ethical standards. Moreover, differences in the legal and organizational frameworks governing the activities of public or state authorities necessitate specific legal regulations for managing conflict of interest.

5. Conclusions.

The importance of preventing corruption in public administration in Ukraine is highlighted by statistical data on corruption and corruption-related offenses. Most corruption-related offenses are characterized as administrative violations, emphasizing the urgent need for effective administrative law measures to combat corruption. However, the inconsistent interpretation of legal norms by pre-trial investigation bodies and judicial authorities significantly undermines the effectiveness of administrative and legal tools in preventing corruption. In this context, it is particularly crucial to address the highly inconsistent judicial practices in cases involving violations of requirements for preventing and managing conflicts of interest. The complexity of practical issues arising in cases related to violations of the requirements for preventing and managing conflicts of interest reflects legal uncertainty surrounding the definitions of «conflict of interest» and «real conflict of interest». This legal uncertainty can significantly impact the application of relevant administrative and legal prohibitions. In our view, the contradictory practices in such cases highlight the need to develop a comprehensive concept for managing conflicts of interest as a preventive anti-corruption mechanism. Mechanisms for preventing and managing conflicts of interest should be closely aligned with ethical standards and require specific legal regulation.

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