

PREVENTION AND COUNTERACTION TO CORRUPTION IN THE JUDICIAL SYSTEM OF UKRAINE: INTERNATIONAL STANDARDS AND REGULATORY REGULATION

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Annotation. The article clarifies international standards and regulatory regulation of preventing and countering corruption in the judicial system. The system of international acts in the field of preventing and countering corruption is determined; the features of regulatory regulation of preventing and countering corruption in the judicial system of Ukraine are clarified and some ways of its improvement are identified.

As a result of the study, it was established that the basis of international legal regulation and legislation of Ukraine on the prevention of corruption and corruption-related offenses in the judicial system are the provisions of such international regulatory documents as – the Civil Convention on Combating Corruption, the UN Convention against Corruption, the Criminal Convention on Combating Corruption (and the Additional Protocol thereto); laws of Ukraine – the Laws of Ukraine «On Prevention of Corruption», «On the Principles of State Anti-Corruption Policy for 2021-2025», «On the National Anti-Corruption Bureau of Ukraine», «On the Judiciary and the Status of a Judge», the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses; subordinate legislation – decisions of the Cabinet of Ministers of Ukraine, orders and explanations of the National Agency for the Prevention of Corruption, on the features of the application of anti-corruption legislation; acts of doctrinal interpretation of legislation – decisions of higher judicial instances (the Constitutional Court of Ukraine and the Supreme Court) on the application of anti-corruption legislation in the process of considering cases of administrative or criminal corruption offenses.

It has been established that the main shortcomings of national legislation on the prevention of corruption and corruption-related offenses in the activities of a judge (court) are the following: a large number of anti-corruption regulatory acts that use the same concepts but with a slightly different interpretation; hasty and inconsistent adoption of amendments and additions to them; ineffectiveness of Anti-Corruption Programs, most of the provisions of which remain unimplemented due to the lack of either financial support or effective implementation mechanisms; lack of systematization of recommendations on the application of anti-corruption norms; lack of mandatory use of case law of higher courts on the application of anti-corruption legislation in the activities of courts.

Key words: corruption, courts, prevention of corruption in courts, international and national anti-corruption legislation, shortcomings of legal regulation.

1. Problem statement.

Corruption is a global problem today, but due to effective anti-corruption policies, its level in different countries differs significantly. Over the past 20 years, Ukraine has taken a number of significant steps to overcome or at least reduce the level of corruption, in particular: in 2006, it ratified the United Nations Convention against Corruption; in 2014, the Law of Ukraine No. 1700-VII “On Prevention of Corruption” was adopted, coordinated with the European Union; since 2014,

a whole system of public authorities in the field of prevention and counteraction to corruption has been created from the National Agency for Prevention of Corruption (hereinafter NACP) to the National Anti-Corruption Bureau of Ukraine (NABU); in 2018, the work of the High Anti-Corruption Court of Ukraine was launched; a long-term Anti-Corruption Program of the State was developed and implemented; the position of Commissioner for Prevention and Detection of Corruption in all public authorities, etc. has been introduced. The constant updating of anti-corruption legislation and the activities of anti-corruption bodies in Ukraine have their positive results, because according to the Transparency International Corruption Perception Index, Ukraine ranked 105th out of 180 countries in 2024, compared to 144th in 2012 [1]. At the same time, there are still many internal problems in the implementation and better compliance with anti-corruption legislation in the system of public authorities in general and the judicial system in particular.

The anti-corruption legislation of Ukraine is constantly updated taking into account the analysis and implementation of international standards for combating corruption. In this regard, the urgent research task within the framework of the scientific article is to clarify international standards and regulatory frameworks for preventing and combating corruption in the public service in general and the judicial system in particular.

2. The purpose and objectives of the study.

The purpose of the scientific article is to clarify international standards and regulatory and legal regulation of preventing and combating corruption in the judicial system. To fulfill the task set, the following tasks will be solved within the framework of the article: international acts in the field of preventing and combating corruption are identified; the features of regulatory and legal regulation of preventing and combating corruption in the judicial system of Ukraine are identified and certain ways of its improvement are identified.

3. The state of development of the research problem.

Corruption in general, as well as the system of measures and methods of preventing corruption manifestations is, was and will be the subject of research by many scientists in the field of public administration, administrative and criminal law and criminology. Among the administrative scientists who, at the monographic level, studied both the system of legislative support for preventing corruption manifestations in the public service and the mechanisms of its application, the following scientists should be distinguished: S.M. Alferov, O.M. Bandurka, O.A. Banchuk, Yu.P. Bytyak, K.L. Bugaychuk, V.M. Garashchuk, O.O. Dudorov, V.A. Zavgorodniy, T.E. Kaganovska, V.M. Martynenko, M.I. Melnyk, O.P. Musienko, O.V. Tkachenko, V.M. Trepak, R.M. Tuchak, M.I. Khavrornyuk, S.O. Shatrava and others. However, the issue of analysis and improvement of international legal standards for preventing corruption in the activities of judges (courts) was not the subject of a separate monographic or other systematic study, which necessitates its implementation within the framework of this scientific article.

4. Presentation of the main provisions.

The basis for bringing the national legislation of each participating state into line with generally recognized methods and measures for preventing and combating corruption was the UN Convention against Corruption, ratified by 183 countries of the world. The Convention provides that participating states independently develop and implement a coordinated policy to combat corruption, while the document provides for the possibility of creating two types of anti-corruption institutions: a body or bodies for preventing corruption; a body or bodies specializing in combating corruption. The beginning of the development of international legal regulation in the field of combating corruption was the adoption of UN General Assembly Resolution No. 3514 on December 15, 1975, which condemned all types of corruption, including bribery, and developed recommendations for

states to take measures necessary to prevent and combat corruption. These tasks were detailed in such documents as the UN General Assembly Resolution «Fighting Corruption» of 12.12.1996, the UN Declaration «On Combating Corruption and Bribery in International Business Transactions» of 1996, the International Code of Conduct for Public Officials of 1996, the Guiding Principles for the Effective Implementation of the Code of Conduct for Law Enforcement Officials of 1989, and became the basis for the creation of international regulatory and legal acts that established universal standards for preventing corruption [2].

The analysis of the regulatory and legal framework for preventing corruption should begin with a description of international acts, the main of which are:

1. The United Nations Convention against Corruption of October 31, 2003. (ratified in accordance with the Law of Ukraine «On Ratification of the United Nations Convention against Corruption» dated October 18, 2006 No. 251-V) the purpose of which is to promote the adoption and strengthening of measures aimed at more effective and efficient prevention and fight against corruption; to encourage, facilitate and support international cooperation and technical assistance in preventing and fighting corruption, in particular in asset recovery; to promote integrity, responsibility and good governance of public affairs and public property [3].

Criminal Convention against Corruption No. 252-V dated March 1, 2010. According to the document, in the event of detection of manifestations of corruption, the measures that must be taken at the national level are as follows: giving a bribe to national public officials; receiving a bribe by national public officials; bribery of members of national representative bodies; bribery of foreign public officials; bribery of members of foreign representative bodies; giving bribes in the private sector; receiving bribes in the private sector; bribery of officials of international organizations; bribery of members of international parliamentary assemblies; bribery of judges and officials of international courts; abuse of influence [4].

3. The Additional Protocol to the Criminal Convention on Combating Corruption (ETS-191) was ratified by the Law of Ukraine No. 253-V of 18.10.2006. According to the document, in the event of corruption, the measures to be taken at the national level [5] are as follows: giving bribes to national arbitrators; receiving bribes by national arbitrators; bribery of foreign arbitrators; bribery of national jurors; bribery of foreign jurors.

4. Civil Convention on Combating Corruption No. 2476-IV of 01.01.2006. According to the document, each party provides in its domestic legislation effective means of legal protection for persons who have suffered damage as a result of corrupt actions, in order to provide such persons with the opportunity to protect their rights and interests, including the possibility of receiving compensation for the damage caused [6].

During 2017-2024, Ukraine managed to take a number of decisive steps to establish an effective fight against corruption. On October 14, 2014, the Law of Ukraine No. 1700-VII "On Prevention of Corruption" was adopted, which became an important step in the country's path towards the international community. This Law defines the legal and organizational principles of the functioning of the corruption prevention system in Ukraine, the content and procedure for applying preventive anti-corruption mechanisms, and the rules for eliminating the consequences of corruption offenses. According to Part 1 of Law No. 1700-VII, corruption is the use by a person specified in Part One of Article 3 of this Law, or at his request, of other individuals or legal entities with the aim of persuading this person to unlawfully use the official powers granted to him or the opportunities associated with it [7]. When creating a national system of anti-corruption bodies in order to improve the anti-corruption system in Ukraine, three well-known models of special anti-corruption bodies were created and began to function: a multi-purpose specialized body endowed with law enforcement powers and preventive functions – the National Anti-Corruption Bureau of Ukraine; an anti-corruption body within the structure of an existing law enforcement body – the Specialized Anti-Corruption Prosecutor's Office within the structure of the Prosecutor General's Office of Ukraine; institutions for preventing corruption, developing policy and coordinating actions – the National Agency for the Prevention of Corruption, but at the same time their own path was chosen, combining newly created anti-corruption institutions with reformed law enforcement bodies, in particular by dividing powers

between the National Anti-Corruption Bureau of Ukraine and the State Bureau of Investigation in terms of criminal prosecution of corrupt officials; leaving the prosecutor's office with coordination and supervisory powers in the field of combating corruption [8].

It should be noted that there are a large number of anti-corruption institutions in the world, which differ from each other only in the variety of functions and actual activities. It is quite difficult to determine the most effective model of preventing and combating corruption. However, it is possible to establish the main models of existing bodies, namely: anti-corruption agencies within the structure of law enforcement agencies (Norway, Belgium, Spain, Croatia, Hungary), agencies for the prevention and combating of corruption that have law enforcement powers and preventive functions (Lithuania, Latvia, Australia, Argentina), separate bodies with a preventive function in preventing corruption and law enforcement powers in combating corruption (France, Albania, Ukraine). One of the key institutional elements of the comprehensive reform of the domestic system of preventing corruption, in accordance with international standards and successful practices of foreign countries, was the creation of the National Agency for the Prevention of Corruption. This is a separate, independent, preventive anti-corruption body, which is tasked with forming and monitoring the implementation of anti-corruption policy, coordinating the development and implementation of anti-corruption programs by state bodies, ensuring compliance by public servants with legislation on the prevention and settlement of conflicts of interest, rules of ethical conduct, implementing financial control measures and monitoring the lifestyle of public servants, etc. [9, p.129]. However, as experience shows, the presence of specialized anti-corruption bodies is not a guarantee of reducing the level of corruption, because for the effective work of anti-corruption bodies, first of all, it is necessary to ensure their institutional independence and financial stability [9, p.130]. Despite the powerful regulatory framework created to prevent and combat corruption, today in Ukraine it remains a systemic problem that exists at all levels of state power. Despite the improvement observed in certain areas, petty (domestic) and grand corruption are generally flourishing. Political parties, the legislature, law enforcement, civil servants, and the judiciary are still perceived by citizens as highly corrupt institutions. At the same time, a general condemnation of corruption has not yet been formed in society: almost a third of Ukrainian citizens believe that corruption can be justified, and bribery is a means of the fastest solution to problems in relations with various state institutions [10].

In the system of national legislation, the Law of Ukraine "On the Principles of State Anti-Corruption Policy for 2021–2025" [11] should also be highlighted, which approves the anti-corruption strategy for the relevant period. The goal of the Anti-Corruption Strategy is "to achieve significant progress in preventing and combating corruption, as well as ensuring the coherence and systematicity of anti-corruption activities of all state authorities and local self-government bodies". In this regard, the Anti-Corruption Strategy: 1) identifies the main areas for further improvement of the general system of preventing and combating corruption (sections 2 and 4), in particular: formation and implementation of state anti-corruption policy; formation of a negative attitude towards corruption; settlement of conflicts of interest, compliance with general restrictions and prohibitions, rules of ethical behavior; implementation of financial control measures; ensuring the integrity of political parties and election campaigns; protection of whistleblowers of corruption; ensuring the inevitability of legal (disciplinary, administrative, criminal) liability for corruption; 2) the most priority areas from the point of view of overcoming corruption are outlined (section 3), mainly: a fair trial, the prosecutor's office and law enforcement agencies; state regulation of the economy; customs and taxation; public and private sectors of the economy; construction, land relations and infrastructure; the defense sector; healthcare, education and science and social protection [11]. The implementation of this Strategy was complicated by the fact that for a long time the Government did not approve the State Anti-Corruption Program for the implementation of the Anti-Corruption Strategy, which was finally approved for the period from 2023 to 2025 by Resolution No. 220 of March 4, 2023 [12], which entered into force on March 16, 2023.

The next regulatory act in the system of legal regulation of preventing and combating corruption in the judicial system is the Law of Ukraine "On the Judicial System and the Status of Judges". The norms that to one degree or another determine the safeguards against corruption in the judicial system and ways to eliminate them include: 1) the principles of judicial proceedings, defined in Articles 6-14; 2) the activities of the Unified Judicial Information and Telecommunications System regarding the independent distribution of cases for consideration among judges (Articles 15, 15-1);

3) the procedure for electing judges to administrative positions and dismissing them from these positions (Article 20); 4) the foundations of the independence of the court, its inviolability and its immunity (Articles 48, 49); 5) the requirements for incompatibility, defined in Article 54; 6) the procedure for a full verification of the declaration of a person authorized to perform state or local government functions (Article 60); 7) the procedure for the formation and submission by a judge of a declaration of family ties and a declaration of the integrity of a judge (Articles 60, 61); 8) the grounds and procedure for dismissing a judge from office in case of his violation of the requirements regarding incompatibility (Article 114), etc.[13].

It should be noted that over the past 10 years, a large number of subordinate regulatory legal acts have been adopted and entered into force, which to one degree or another regulate the principles of preventing and combating corruption in the judicial system of Ukraine. These include: Resolutions of the Cabinet of Ministers of Ukraine, for example, "On approval of the Procedure for conducting a special inspection of persons applying for positions involving a responsible or especially responsible position, and positions with an increased corruption risk, and on amendments to certain resolutions of the Cabinet of Ministers of Ukraine" Resolution of the Cabinet of Ministers of Ukraine dated March 25, 2015 No. 171[14]; and a number of NACP Clarifications, for example, "On the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" with regard to financial control measures" dated 13.02.2020 No. 1, National Agency for the Prevention of Corruption [15], as well as methodological recommendations on the interpretation of anti-corruption restrictions and risks, for example, the Methodology for Managing Corruption Risks, approved by Order of the National Agency for the Prevention of Corruption (hereinafter referred to as NACP) dated December 28, 2021 No. 830/21 [16], according to which corruption risk should be understood as the probability of committing a corruption or corruption-related offense, which will negatively affect the activities of a judge and the judicial system in general. It should also be noted that already in the conditions of martial law in which Ukraine has been in place for almost three years, a number of clarifications have been adopted by the NACP on understanding the concept and content of corruption risks in general and in the activities of a judge, in conditions of martial law, in particular: Clarification dated 07.03.2022 No. 4 "On the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" regarding financial control measures in conditions of martial law (submission of a declaration, notification of significant changes in property status, notification of opening a foreign currency account in a non-resident bank institution, conducting inspections)" [17]; Clarification of the National Agency for the Prevention of Corruption on the application of the provisions of the Law of Ukraine "On Prevention of Corruption" regarding compliance with restrictions on combination and combination with other types of activity in conditions of martial law dated 05.12.2022 No. 14 [18].

5. Conclusions.

In conclusion, we note that the basis of international legal regulation and legislation of Ukraine on the prevention of corruption and corruption-related offenses in the judicial system is the provisions of such international regulatory and legal documents as - the Civil Convention on Combating Corruption, the UN Convention against Corruption, the Criminal Convention on Combating Corruption (and the Additional Protocol thereto); laws of Ukraine – the Laws of Ukraine «On Prevention of Corruption», «On the Principles of State Anti-Corruption Policy for 2021-2025», «On the National Anti-Corruption Bureau of Ukraine», «On the Judiciary and the Status of a Judge», the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses; subordinate legislation – decisions of the Cabinet of Ministers of Ukraine, orders and explanations of the National Agency for the Prevention of Corruption, regarding the features of the application of anti-corruption legislation; acts of doctrinal interpretation of legislation - decisions of higher judicial instances (the Constitutional Court of Ukraine and the Supreme Court) on the application of anti-corruption legislation in the process of considering cases of administrative or criminal corruption offenses.

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interpretation; hasty and inconsistent adoption of amendments and additions to them; ineffectiveness of Anti-Corruption Programs, most of the provisions of which remain unimplemented due to the lack of either financial support or effective implementation mechanisms; lack of systematization of recommendations on the application of anti-corruption norms; failure to ensure the mandatory use of judicial practice of higher judicial instances on the application of anti-corruption legislation in the activities of courts.

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