

Artículo de investigación

"External Activities" of Public Officials: What are the Anti-Corruption Standards of Legal Regulation?**«Зовнішня діяльність» публічних службовців: якими мають бути антикорупційні стандарти правового регулювання?**

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Written by:

Tetiana Kolomoiets⁶⁰ORCID: <https://orcid.org/0000-0003-1101-8073>**Valerii Kolpakov⁶¹**ORCID: <https://orcid.org/0000-0002-8580-3261>**Serhii Kushnir⁶²**ORCID: <https://orcid.org/0000-0002-4780-5784>**Oleksii Makarenko⁶³**ORCID: <https://orcid.org/0000-0003-0042-165X>**Natalia Halitsyna⁶⁴**ORCID: <https://orcid.org/0000-0001-5955-7485>**Abstract**

The object is public relations that are directly related to the settlement of the principles of "external" activity of public servants. The subject is the anti-corruption standards of legal regulation of "external" activities of public officials. Research methodology is shaped by both general scientific and special methods of scientific research. The basic is dialectical analysis, semantic, comparative-legal, logical-legal, modeling, forecasting are also used.

The following conclusion can be made. Anti-corruption standardization of legal regulation of "external" activities of public servants helps to systematize, unify the principles of such regulation, and increase the efficiency of enforcement. It is advisable: a) awareness of the importance of "external" activities of public servants for the latter (their personal growth, personal realization), and for the public service as a whole (including the formation and improvement of the quality of human resources), consolidation of official norms-definition of the "external activity of public servants" as any activity of the latter out of office regardless of place, time, form, payment; b) introduction of a

Анотація

Об'єктом є суспільні відносини, які безпосередньо пов'язані із врегулювання засад «зовнішньої» діяльності публічних службовців. Предметом є антикорупційні стандарти правового регулювання «зовнішньої» діяльності публічних службовців. Методологію дослідження формують як загальнонаукові, так і спеціальні методи наукового дослідження. Базовим є діалектичний аналіз, використовується також семантичний, порівняльно-правовий, логіко-юридичний, моделювання, прогнозування.

За результатами дослідження можливо зробити наступні висновки, що антикорупційна стандартизація правового регулювання «зовнішньої» діяльності публічних службовців сприяє систематизації, уніфікації засад такого регулювання, підвищенню ефективності правозастосування. Доцільним вбачається: а) усвідомлення важливості «зовнішньої» діяльності публічних службовців як для останніх (їх особистісного зростання, особистісної реалізації), так і для публічної

⁶⁰ Doctor of Legal Science, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine. Honored Lawyer of Ukraine, Dean of Law Faculty of Zaporizhzhia National University

⁶¹ Doctor of Legal Science, Professor, Head of Department of Administrative and Business Law of Zaporizhzhia National University

⁶² Doctor of Legal Science, Associate Professor, Vice-Rector of Zaporizhzhia National University

⁶³ Ph. D., Associate Professor of Civil Law Department of Zaporizhzhia National University

⁶⁴ Doctor of Legal Science, Professor of Department of Administrative Law of Taras Shevchenko National University of Kyiv

"mixed" model of legal regulation of "external" activity of public servants, with a combination of prohibition (business in all manifestations) and restrictions (with clear definition of criteria); c) unification of the principles of regulation of "external" activity of public employees and their concentration in the "basic" anti-corruption legislative act, alignment with the provisions of the legislation on public service; d) harmonization of the provisions on "external" activities of public servants with the legislation on declaring the income received from any sources outside the place of public service; e) to introduce the notification of the direct supervisor at the place of public service about "external" activity; f) the introduction of relevant, unlawful acts committed in connection with violations of the law on "external" activity by public officials, sanctions (penal or personal property).

Key Words: Monitoring, lifestyle, lifestyle monitoring, public servant, family members, model, anti-corruption tool, "private autonomy" of a person, private and personal life, standards.

служби в цілому (в тому числі формування й підвищення якості кадрового ресурсу), закріплення офіційної норм-дефініції «зовнішня діяльність публічних службовців» як будь-якої діяльності останніх поза місцем служби незалежно від місця, часу, форм, оплати; б) впровадження «змішаної» моделі правового регулювання «зовнішньої» діяльності публічних службовців, із поєднанням заборони (бізнес у будь-яких проявах) і обмежень (із чітким визначенням критеріїв); в) уніфікація засад регулювання «зовнішньої» діяльності публічних службовців та зосередження їх у «базовому» антикорупційному законодавчому акті, узгодження із положеннями законодавства про публічну службу; г) узгодження положень про «зовнішню» діяльність публічних службовців із законодавством про декларування доходів, отриманих із будь-яких джерел поза місцем публічної служби; д) впровадити повідомлення безпосереднього керівника за місцем публічної служби про «зовнішню» діяльність; е) впровадження релевантних за змістом протиправним діянням, вчиненим у зв'язку із порушенням законодавства про «зовнішню» діяльність публічними службовцями, санкцій (штрафних або особисто майнових).

Ключові слова: моніторинг, спосіб життя, моніторинг способу життя, публічний службовець, члени сім'ї, модель, антикорупційний засіб, «приватна автономія» особи, приватне та особисте життя, стандарти.

Introduction

The current state of systematization and unification of the principles of legal regulation of public service in different countries of the world testifies to the diversity of approaches to standardization of "external" activity of public servants, which results in complication of law enforcement and increase of corruption actions of public servants, directly related to incompatible with incompatible activities. To eliminate this, it is advisable to identify the "basic" anti-corruption standards for the legal regulation of "external" activities of public servants and to put them into practice in different countries. In search of effective means of preventing corruption in all its manifestations, which also made it impossible to "merge" the public service and business, to "divert" public servants from fulfilling their duties, aimed at ensuring realization and protection of public

interests, but at the same time and were not a specific obstacle for the realization of these personal rights by these persons, as well as their involvement as persons with practical competencies, considerable experience of practical work in the process of formulating the future human resources of the public service, a special place is taken away standards of legal regulation of the so-called "external" activities of public servants. It is quite possible to consider them as anti-corruption standards, since their fixing is actually oriented towards eliminating corruption risks in public service, which would threaten the purpose of the public service.

The analysis of the state of legal regulation of the respective relations in different countries of the world shows, unfortunately, its "kaleidoscopic" variety, the variability of approaches to the

definition of "external" activity of public servants, the levels of normalization of the forbidden or restricted model, the lists of exceptional activities, the measures taken to respond violations, etc.

All this testifies to the lack of norm-making focused on the regulation of the relevant issue, the principles of systematic and uniformity, as a consequence – the diversity of standards of thematic rulemaking and enforcement with broad limits of the manifestation of the subjective resource of all interested persons, which in turn has a negative impact activities of public servants, formation of prerequisites for acquiring signs of corruption or corruption-related offenses. In order to remedy such a defect in thematic rulemaking and enforcement, it is quite acceptable, on the basis of an analysis of the experience of different countries of the world, to identify the basic anti-corruption standards for the legal regulation of the "external" activities of public servants, which is the purpose of this article.

Theoretical framework

A large body of scientific literature has been studied to prepare this study.

First of all, it should be noted that the issue of "external" activity of public servants have been studied by the scientific community (for example, Yaremenko S., & Yaremenko O., 2019; Vasilyeva, 2015), or in the context of analyzing the whole variety of anti-corruption means of legal regulation (for example, Willoria, Sinestrom, & Bertok, 2010).

Also, we considered the papers that in a generalized way compared to one or two anti-corruption restrictions on public servants (for example, Suslova, Flury, & Badrak, 2017; Kolomoiets, 2018).

Thirdly, to study the issue of the "external" activity of public servants we also referred to the works about the identification of several "basic" problematic aspects of legal regulation and implementation practices (for example, Kolomoiets, & Kushnir, 2018; Kolomoiets, 2019).

Moreover, we paid attention to the scientific articles on the issues of clarifying the nature of the "anti-corruption" standards of legal regulation of the activity of public servants as a whole and with a fragmentary mention of the

"external" activity of the latter (for example, Presnyakov, 2019).

Besides, it should be noted that in the scientific literature there are no works in which the issues of forming the "basic" model of "anti-corruption" standards of legal regulation of "external" activity of public servants.

Thus, this problem actualizes the need to restore the corresponding gap in order to strengthen the foundations of scientific in the modern thematic "anti-corruption" normative reducing the "riskiness" of the "external" activity of public servants.

Methodology

The work is performed on the basis of a combination of both general scientific and special methods of scientific knowledge. The dialectical method of scientific cognition was used as a basic one, which made it possible to investigate qualitative changes in the formation of "anti-corruption" standards of "external" activity of public servants, their relevance to the real needs of anti-corruption enforcement. The method of semantic analysis was used to find out the essence of "external" activity, its varieties. The logical and legal method has made it possible to find out the "anti-corruption" standards of legal regulation of the "external" activity of public servants, the problematic aspects of their implementation in different countries of the world. By means of comparative legal analysis the shortcomings and advantages of "anti-corruption" standards of legal regulation of "external" activity of public servants in different countries of the world were revealed. Forecasting and modeling methods have been used to formulate recommendations on basic "anti-corruption" standards for the legal regulation of "external" activities of public officials (the "basic" model for any country in the world).

Results and discusión

- I. "External" activity of public servants: is it advisable at all to standardize it?

The analysis of public service law, anti-corruption legislation of different countries of the world suggests that the attention to the "external" activity of public servants is paid in terms of normalizing the degree of its permissibility (or permit, or restriction, or prohibition). By regulating the model of behavior of a public servant outside his or her main activity, focused

on securing the realization and protection of public interests, the legislator mainly focuses on the fixed provisions that "... such activity is not unacceptable or incompatible" (Willoria, Sinestrom, & Bertok, 2010) ... Did not give rise to a conflict of interest" (Yaremenko S., & Yaremenko O., 2019), "... did not limit the presence of a public servant in the workplace and the absence of basic duties " (Willoria, Sinestrom, & Bertok, 2010) etc. Undoubtedly, the main purpose of the professional activity of a public servant is his / her activity to ensure the realization and protection of public interests. However, it should be remembered that the activities of public officials outside the main activity, such as: their creative, scientific activity, their involvement in teaching activities (including for the formation of public service personnel - for the preparation of future public services, are quite possible) employees, to enhance the professional competence of public servants who have already served, etc.), other activities. All this activity of public servants is "external" in relation to their main activity, "additional", "auxiliary".

Therefore, it is logical that it should not be "distracted" by the public service, adversely affecting the performance of their professional duties, but, given the objective conditionality of its existence, should be normalized. A public servant should be aware that by "diverting" from his or her core activities within a particular pattern of behavior, he or she does not cause harm, does not create threats, does not "diminish" his or her value to the public service, and may be the other way around when it comes to "external" activities of a public servant outside the defined model of the latter. Thus, the standardization of the "external" activity of public servants is an objectively conditioned necessity, oriented towards eliminating the prerequisites for: a) restriction of the constitutionally guaranteed, rights, freedoms, legitimate interests of the public servant himself ("personal" development, "personal" realization; b) committing unlawful acts of public servants directly related to the "diversion" of the main activity, "splicing" with incompatible with the public service activities, "corrosion" of the public service.

II. The main priorities of legal regulation of "external" activity of public officials in the countries of the world

The analysis of the relevant legislation of different states allows to conditionally distinguish several "basic" priorities in the settlement of the relevant issues. First of all, one

should pay attention to the level of appropriate regulation. In most countries, the "external" activity is regulated either in the "basic" anti-corruption legislation (Ukraine, Latvia, Georgia, Czech Republic, Kazakhstan, Moldova, Hungary, etc.), or in the "basic" law on a public service (Germany, Belarus, Austria, etc.), or an act that fixes the principles of ethical conduct of public officials (Norway, the Netherlands, the United States, etc.), or simultaneously in an anti-corruption and ethical act (Singapore, Brazil, United Kingdom etc.). At the same time, it should be noted that, unfortunately, the definitive defect prevails, namely the absence of an official normative definition of "external" activity of public employees (analogues of "part-time", "combination", "other paid activity", etc.). This adversely affects enforcement, creating the preconditions for the exercise of subjective discretion in the process of interpreting and applying legislation.

Basically, the "outside" activity of public officials in the law is indicated by the phrase: "simultaneous occupation of other positions" (for example, legislation of Argentina, Czech Republic, France, Germany, Hungary, Ireland, Italy, etc.), "paid positions" (for example, Australia, India, South Africa, "State pension posts" (such as Australia), or "positions in certain bodies" (for example, France, Germany), "combine with any governmental or "non-governmental position (for example, Spain), the institutional political activity (for example, Great Britain). The lawmaker either lists or defines job attributes, or activities that can be considered by outsiders to be "outsourced" activities. However, the degree of detail of "outsourced" signs may vary. It may be:

- a) both paid (for example, Ukraine, Moldova) and free (for example, Germany);
- b) indicating specific bodies and positions (for example, curators, advisers in Japan), and not relevant (for example, Ukraine);
- c) at the same time detailing the maximum amount of the fee for "external" activities (for example, USA);
- d) obtaining a mandatory place of work (for example, Latvia, Germany);
- e) with the possibility of "external" activity only in the system of the same public institution (for example, Georgia).

Models of regulation are different, namely: prohibition ("hard"), mixed (prohibitions,

restrictions) and permitting. The most common is the so-called mixed model, which allows to regulate the ratio of the main activities of public servants with economic (business) activity as a forbidden model (however, certain exceptions, provided that the requirements are met, take place in Latvia (Yaremenko S., & Yaremenko O., 2019) and other types of "external" activities for which the legislator sets boundaries. Attention should also be paid to the very lists of activities that are "external" to public officials. They differ not only in quantitative but also in qualitative measures. Traditionally such activities as teaching, scientific and creative activities that are allowed to public servants are considered to be "outsourced", however, the latter is a prohibition on public servants in Romania, since there are certain difficulties in determining the fees. An "expanded" list of such activities is provided for in the legislation of Czech Republic (expert activity), Slovenia (sports activity, journalistic activity, and agricultural activity), Ukraine (instructors activity in sport, medical practice), Latvia (economic activity in the status of entrepreneur provided that the income is received only from agricultural production, forestry, fisheries, rural tourism and professional practice of a practitioner) (Yaremenko S., & Yaremenko O., 2019). In the case of "mono-regulation" of the relevant principles of "external" activity of public servants in a single legislative act, there is no prerequisite for their variability (regarding the list of activities).

Unfortunately, it is quite widespread that such bases are normalized in various legal acts, which results in the solution of conflicts and grounds for different practice of applying the law on "external" activity of public servants, including the part of occurrence of "risks" to the public service. And, undoubtedly, it is worth paying attention to the sensitive rules that provide for liability for violation of the legislation on "external" activities of employees. Most of them are penalties or organizational penalties. Only for the "forbidden" model of regulation of this issue are strict personal, sometimes personal and property sanctions are provided. However, they are unlikely to be relevant to the features of public servants' actions, unfortunately, in most cases, which creates the preconditions for such acts in the future. And the specifics of the normalization of the basis of "external" activity of public servants, related to the implementation of valuation concepts ("paid position", "paid activity"), definitive defectiveness, dispersion in fixing the principles and disproportionate reaction to violations of established norms, determine the anticorruption risk of external

activities of public servants and the objective need to formulate anti-corruption standards for its legal regulation and their practical implementation.

III. "Basic" standards of "anti-corruption" regulation of "external" activity of public servants

As the "basic" standards of appropriate regulation of the principles of "external" activity of public servants, which would eliminate the prerequisites for "splicing" of public service with activities that are incompatible, unacceptable, which would "distract" public servants from their main professional activity, we may offer:

- a) the definition of "outside" activity as any type of activity that is performed outside the primary functional purpose of a public servant, whether or not it involves remuneration; fixing the appropriate definition as a basic norm-definition for understanding the "external" activities of public servants in all situations;
- b) the definition and normalization of the thematic terminological apparatus (all activities that "mediate" the "external" activity of a public servant);
- c) taking into account the maximum effectiveness of the "mixed" model of regulation of the principles of "external" activity of public servants, which combines prohibited and restricted types of the latter, to choose to standardize it;
- d) to define criteria for clarifying those types of "external" activities that are subject to restrictions (the criteria should be transparent, concise, fully defined);
- e) to eliminate any "links" of the public service with economic (business) activity in any manifestation;
- f) to provide notice to the director at the principal place of service of any "external" activity;
- g) to harmonize the provisions on "external" activity with the provisions on the declaration by the public servants of the income received for engaging in any kind of "external" activity;
- h) to systematize and consolidate the principles of regulation of "external" activity of public officials in the "basic" anti-corruption legislative act, harmonizing with them the provisions of the legislation on public service;

- i) to establish responsibility for violation of the legislation on "external" activity of public servants depending on the consequences of the violation or the penalty or personal material to ensure the relevance of the type and size of the reaction of the state to committing unlawful acts of the latter.

Conclusions

Given the specifics of the public service and those directly empowered to implement it, focusing all their efforts on securing the realization and protection of public interests, while avoiding any prerequisites for "diversion" from the latter, "splicing" with activities that are incompatible with incompatible activities public service, the issue of formulating anti-corruption standards for regulating the "external" activity of public servants is an urgent need of today, a priority of anti-corruption policy.

Thus, anti-corruption standardization of legal regulation of "external" activities of public servants contributes to the systematization, unification of the principles of such regulation, and increase of efficiency of enforcement.

It seems necessary to make the following changes in the doctrine and legislation:

- a) awareness of the importance of "external" activity of public servants both for the latter (their personal growth, personal realization) and for the public service as a whole (including formation and improvement of quality of human resources), consolidation of official norms-definition of the "external activity of f public servants" as any activity of the latter out of place of service regardless of place, time, forms, payment;
- b) introduction of a "mixed" model of legal regulation of "external" activity of public servants, with a combination of prohibition (business in all manifestations) and restrictions (with clear definition of criteria);
- c) unification of the principles of regulation of "external" activity of public employees and their concentration in the "basic" anti-corruption legislative act, alignment with the provisions of the legislation on public service;

- d) harmonization of the provisions on "external" activities of public servants with the legislation on declaring the income received from any sources outside the place of public service;
- e) to introduce the notification of the direct supervisor at the place of public service about "external" activity; the introduction of relevant, unlawful acts committed in connection with violations of the law on "external" activity by public officials, sanctions (penal or personal property).

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