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Combating corruption: International standards and national practice

Боротьба з корупцією: міжнародні стандарти та національна практика

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Abstract

The purpose of the article is to study modern standards and practice of combating corruption, as well as international and legal documents that are the cause for the existence of different approaches in understanding corruption. The main objectives of the article are to clarify the efficiency of modern well-known indicators that assist in determining the level of corruption in the country; to scientifically substantiate the principles for raising the efficiency of international cooperation in combating corruption within government; to analyze international acts of declarative and binding nature. During the study, general scientific methods of analysis and synthesis, a historical and systemic approach were used. Political analysis was widely used, descriptive and comparative analysis was accomplished. It has been concluded that the states must comply with international norms governing the fight against corruption in order to maintain the global law and order and combating corruption in the world, and in particular in Ukraine. It has been proved that it is necessary to establish more precise criteria for determining the level of corruption than currently existing ones in order to increase the effectiveness of international cooperation in

Анотація

Мета статті – дослідити сучасні міжнародні стандарти та практику боротьби з корупцією, а також міжнародно-правові документи, які є причиною існування різних підходів до розуміння корупції. Основні завдання статті: з'ясувати ефективність сучасних загальновідомих показників, за якими визначається рівень корупції в державі; науково обґрунтувати засади для підвищення ефективності міжнародної співпраці по боротьбі з корупцією в органах влади; проаналізувати міжнародні акти декларативного та загальнообов'язкового характеру. Під час дослідження використовувалися загальнонаукові методи аналізу та синтезу, історичний та системний підхід. Широко використовувався політичний аналіз, здійснено описовий та порівняльний аналіз. Зроблено висновок, що для підтримки глобального правопорядку та боротьби з корупцією у світі, і зокрема в Україні, держави повинні дотримуватися міжнародних норм, що регулюють боротьбу з корупцією. Доведено, що для підвищення ефективності міжнародної співпраці по боротьбі з корупцією в органах влади необхідно встановити більш точні критерії визначення рівня корупції, ніж існуючі

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combating corruption in government. Suggestions aimed at combating corruption at the international level have been formulated.

Key words: corruption, counteraction, international standards, anti-corruption, international legislation.

Introduction

The socio-political and scientific literature focused on international political problems, politicians and scientists increasingly note that corruption in government has not only an international dimension, but is also a serious problem of world politics. There is no objection to the risk of widespread corruption.

Corruption is common to all countries, regardless of economic factors and political development, but differs only in the scale and impression in vital areas of society.

The effective fight against corruption worldwide provides the creation and realization of a coherent anti-corruption policy that protects society from the negative impact of corruption and protects human and civil rights. In the context of globalization, national anti-corruption measures were insufficient. It is no coincidence that the UN Secretary-General Ban Ki-moon notes that, for example, billions of dollars are stolen or spent annually in developing countries - due to bribery and other abuses... The global financial crisis highlights the need for stronger regulation. To do this, you need to work together to more actively combat corruption.

The world community, concerned about the growing number of global corruption crimes, has developed various fundamental global instruments to counteract and combat corruption. Among them it should single out the fundamental "United Nations Convention against Corruption" signed in 2003. The need for international organizations and governments to engage and cooperate closely with society in the fight against corruption was manifested in the formation of the United Nations Convention against Corruption (UNCAC) Coalition in 2006, an international network of civil society organizations in support of UNCAC. From this moment, a single world standard for combating corruption begins to be formed under the influence of both state and non-state participants.

Nowadays, while studying the anti-corruption issue, one should take into account the common

сьогодні. Сформульовано пропозиції, спрямовані на подолання корупції на міжнародному рівні.

Ключові слова: корупція, протидія, міжнародні стандарти, боротьба з корупцією, міжнародне законодавство.

interest of society in combating this negative phenomenon. Therefore, there is a necessity in developing and implementing such anti-corruption measures that would meet international standards. Since corruption in government has both an international dimension and is also a serious problem in world politics. That is why the development and implementation of a coherent anti-corruption policy will facilitate the improvement of the effectiveness in fighting against corruption at all levels. To this end, the authors of the article have analyzed legislative provision of the national practice and its compliance with international standards in the sphere of combating corruption.

Literature Review

The problem of corruption and the fight against it is one of the most researched topics of the present day. There has been considered empirical research on the determinants and effects of corruption (Amegavi, Quarshie and Mensah, 2021).

Theoretical basis of the scientific article is the works of scholars on the topic under study. Thus, scholars in some scientific works study only the general theoretical problems of corruption (Eigen, 2002). Others have carried out analysis of national and international measures taken for fighting against corruption (Gadowska, 2010; Börzel, Stahn and Pamuk, 2010; Brusca, Rossi and Aversano, 2018).

There are research works that study the positive experience of anti-corruption policy and the possibility of its application in some countries, in particular China (Holmes, 2015); India (Singh, 2019); Slovakia and the Czech Republic (Sicakova-Beblava and Beblavy, 2016); Turkey (Soyaltin, 2017); Ukraine (Teremetskyi and Demianchuk, 2017).

Besides a lot of scholars from around the world focused their research papers in the field of combating corruption in the health care sector during 2020-2021 (Hunter and et., 2020; Kirya,

2020; Teremetskyi and et. 2021); in the field of public administration (Artello and Albanese, 2021; Lee and Liu, 2021; Jang, 2021; Rakhel and Putera, 2021); business area (Bawole and Langnel, 2021; Sharma, 2021), etc.

Thus, given the large number of scientific developments on anti-corruption issues, it can be argued about the relevance of the matter on international anti-corruption standards.

Methodology

The empirical basis of the scientific article was the legislative provisions of Ukraine, the international law provisions, in particular, related to the issue of counteracting and preventing corruption. While working on the article, scientific data from modern jurisprudence, the science of international relations, world politics and economics were actively used. Theoretical basis of this article was the scientific developments of domestic and foreign scholars on international anti-corruption standards, directions for improving laws in this area and law-enforcement practice.

During the study, general scientific methods of analysis and synthesis, a historical and systemic approach were used. Political analysis was widely used, descriptive and comparative analysis was accomplished. The authors used case-study method for the comparison of the role of civil society in international cooperation against corruption, as well as to study the experience of certain States in combating corruption.

Results and Discussion

The issue of combating corruption remains particularly problematic among the challenges to the world community. By acquiring new features, corruption penetrates into all spheres of life, thereby damaging the state. The World Bank estimates that one trillion dollars is wasted in the world every year (The World Bank, 2021).

The close link between corruption and organized crime is even more dangerous. These phenomena, representing symbiosis, complement each other, thereby increasing the sustainability of their activities.

The world community, concerned about the tendencies in the development of corruption, is trying in every way to counteract to this phenomenon. In this regard, global forums are discussing, adopting international standards and

mechanisms to combat corruption. However, the fight against corruption is carried out in most cases locally, at the national level, since the process of integration of States in this matter is slow. In addition, declarative acts are numerically superior to general binding documents among the adopted international instruments. Problem with the harmonization of legislation on liability for corruption is also a serious obstacle.

Analysis of international and legal documents indicates about the existence of different points of view in understanding the essence of corruption. For example, the Resolution of the VIII UN Congress on Crime Prevention "Practical Measures to Combat Corruption" (United Nations, 1990) defines corruption as "a violation of ethical (moral), disciplinary, administrative, criminal nature manifested in illegal use of the official position by a subject of corruption" (1). The Background paper on international action against corruption, adopted by the IX UN Congress on the Prevention of Crime (United Nations, 1995), understands corruption as "the abuse of state power for personal gain" (2). According to the United Nations Convention against Corruption, corruption is the abuse of state power for personal gain, for the benefit of third parties and groups, and various forms of misappropriation of public funds for private use. In addition, nepotism (buddy system, clanship) is referred to corruption according to the Convention (United Nations, 2003).

"Corruption threatens the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice, and jeopardizing sustainable development and the rule of law" (United Nations, 2003). The negative consequences caused by that phenomenon (undermining the trust in government, harm to the individual, society, operation of organized crime, declining professionalism of officials, etc.) both hinder the progressive development of civil society and pose a serious threat to national security interests of any country. Numerous miscalculations in the field of preventing and combating corruption by the authorities in some countries are the result of insufficiently scientifically sound steps, resulted to the loss of public confidence in the government's anti-corruption initiatives. Therefore, the world community has rightly concluded that the fight against the negative effects of corruption in certain countries and the measures they use have only a short-term effect. And the achievement of positive results is

possible only through joint activities. That is the reason that the international community seeks to adopt as many international acts as possible and conclude intergovernmental agreements that would contain effective measures for preventing and combating corruption. Unfortunately, many of these international instruments are of a recommendatory nature and are used by states only as a mean for monitoring corruption.

The need to fight against corruption is recognized by government agencies, business and civil society organizations around the world. The specifics of this problem, theoretical and practical complexity of combating it are the lack of a single criterion for assessing corruption and generally accepted methods of measuring its level in a country. The level of corruption in the country cannot be also objectively assessed for obvious reasons only by collecting empirical data (Topchiy, Zabarniy, Lugina, 2020).

The level of the state corruption is most often determined by the help of the perception of corruption index introduced by Transparency International. Made for the first time in 1995, being the unique and innovative project, the perception of corruption index quickly drew attention of the largest media that in turn raised public interest to a problem and even forced to compete the states in attempts to improve the indicators. The basis of the index was formed by assessment of independent experts in the international finance and experts in human rights in a ten-point scale (since 2012 - in hundred-point scale). The assessment is higher, the corruption level is less. But this approach has several shortcomings: first, there are no absolutely independent experts, as we know - it influences an objectivity of estimates; secondly, in connection with the growing popularity of Transparency Public opinion becomes tolerant to corruption - at first at the household level, and then and to political corruption. Thirdly, it is impossible to neglect national peculiarities of perception of corruption, the same act can be considered as tradition or standard of behavior in one State and as corruption crime in another one. Fourthly, using this rating, it is sometimes difficult to track dynamics of fight against corruption worldwide, the states as both leading, and lagging behind in this rating not often change the positions in a root. It is no longer about any exact quantitative measurements of corruption manifestations.

Transparency International made the index of bribers in 1999, which represented the rating of the most economically developed countries

depending on prevalence of applying corruption practices in the activity of the companies of those countries. Thus, citizens of any State have an opportunity to get acquainted with the countries participating in "corruption export". On the one hand, this index can partially reflect corruption level in the State, loyalty to corruption practices or the aspiration to struggle with them by business of any given State; on the other hand, the international business has the specifics, data on corruption transactions abroad can distort a real picture of level of corruption in the state.

Transparency International has begun to conduct researches under the name "Global Barometer of Corruption" since 2003, which in a form represents sociological poll of citizens from the different States about their experience of collision with corruption acts. Tasks of this project are the consideration of corruption on the industries; identification of the most corrupted state departments; assessment of efficiency of actions for fight against corruption taken by the governments, etc. Its undoubted advantages are the wide empirical database of manifestations of corruption; possibility of carrying out analysis of efforts of the States on fighting against corruption; research of these phenomena in dynamics. However, data of the Barometer is not always meet with the Index of corruption perception and the questions of sociological poll are annually changed by originators in attempt of achieving the maximum objectivity in corruption level assessment.

In addition to corruption studies conducted by Transparency International, there are many other indicators of corruption in the State. The study "Quality of Public Administration," created in 1996 by the World Bank experts D. Kaufman, A. Kraai and M. Mastruzzi, is very productive and important for solving the tasks of this study. The "Quality of Public Administration" is a rating of the effectiveness of public administration, consisting of six indicators: taking into account the opinion of the population and the accountability of state agencies, political stability and no violence, the efficiency of government, the high standards of legislation, the rule of law and deterrence of corruption. It is noteworthy that other indicators of the quality of public administration are also at a low level in the vast majority of countries with low rates of deterrence of corruption (Kaufman, Kraai and Mastruzzi, 2005).

Researchers D. Kaufmann, A. Krai and P. Zoido-Lobaton conducted a series of international surveys (with the participation of the World

Bank, International Country Risk Guide, etc.). The survey participants were divided into two groups: businessmen and ordinary citizens of the country, and a group of experts. The advantages of the KKZ index are the wide coverage of the countries where the surveys were conducted and the variety of sources used in them. One of the disadvantages of this method is too wide range of questions, as well as their heterogeneity in various surveys (Kaufmann, Krai and Zoido-Lobaton, 1999).

It is obviously necessary to establish more accurate criteria for determining the level of corruption than we have today in order to improve the effectiveness of international cooperation against corruption in the authorities. To this end, a number of actions are suggested:

- 1) to analyze the causes of the occurrence and spread of corruption in a particular country, to trace the historical path of this phenomenon in specific conditions;
- 2) to determine what is the maximum permissible level of corruption and whether it will be the same everywhere;
- 3) to study the existing national successful experience in the fight against corruption, as well as to consider the failures of states in this way;
- 4) to study international instruments aimed at combating corruption, to evaluate their effectiveness at the moment;
- 5) to compare paragraphs "3" and "4" in order to consider the possibility of applying the experience of countries that have most succeeded in combating corruption and creating international norms that can be implemented in countries with a high level of corruption (taking into account their specifics, to conduct the so-called "benchmarking" of anti-corruption);
- 6) to create anti-corruption programs that combine the "carrot and sticks" – from democratization of all spheres of life, economic and political freedoms, the creation of an active civic position among the population and finally the formation of civil society, conducting preventive and explanatory work on the harm and inadmissibility of corruption to strengthening the selection of personnel for public service posts, the inevitability of punishment for deeds;
- 7) to improve the quality of anti-corruption expertise of regulatory legal acts, to introduce a system for assessing the regulatory impact of bills at all levels of state power.

The work "Corruption Around the World" provides important methods for measuring corruption. The hypothesis that there are no direct methods for measuring corruption seems interesting. "There are no direct ways to measure corruption, but there are indirect ways to obtain information about its predominance in the state or state agency" (Tanzi, 1998).

This information, according to the famous economist V. Tanzi, can be found: 1) "in reports on corruption available in published sources, including newspapers. The Internet is becoming an increasingly valuable source; 2) in regard to the cases of the corruption crimes investigated at such often state institutes, which face corruption as tax administration, customs, police and some other; 3) in researches from poll" (Tanzi, 1998).

Assessment of efficiency of providing any given public service, for example, registration of legal entities could become interesting option for measuring the level of corruption in the State. Time spent on expectation of providing service, its cost and also existence of options of receiving service by means of acts of corruption, their quantity and cost could enter this assessment. Certainly, it is impossible to determine corruption level in the country by one criterion, but the number of indicators at thorough development of a technique of estimation could be increased reasonably.

We consider that conditional division of all states is represented to the most expedient into:

- 1) those, which fight against corruption and recognize its harm for country's political, social and economic development.
- 2) those, which do not consider corruption in authorities a serious problem.

It is possible to distinguish those countries who successfully combat corruption and those who are not so successful or those who failed to combat corruption.

It is difficult to distinguish the "successful" states in fight against corruption from "unsuccessful". The key question is - how is success considered? The answer cannot be decisive. It is possible to consider the state "successful" in fighting against corruption when the prevalence of officials' personal interest over public is illegal, when it is systematically struggled, all conditions for fight are created, there are concrete results of anti-corruption.

Each state has the relation to fight against

corruption, independently takes measures by which it is guided in this fight. In this work we suggest to consider the most effective anti-corruption international standards (programs), the borrowing of which would be useful both for the international community in general, and for Ukraine in particular. The importance for the solution of problems of our research submits also the analysis of fight against corruption in the states which did not make great progress in this direction: their experience can warn other states and the entire international community against commission of already made mistakes in anti-corruption area. Lessons of international experience of fight against corruption in the state are especially relevant for our state which is searching for effective anti-corruption policy.

If we consider the Corruption Perception Index for previous years, there are the same states like: Denmark, New Zealand, Finland, Sweden, Norway, Singapore, Switzerland. At the same time, almost all of the listed countries successfully combat corruption and occupy high places in the ratings for at least the last decade (Transparency International, 2019; Transparency International, 2020; Transparency International, 2021).

We can distinguish 3 anti-corruption models among the successful States in the fight against corruption. The Scandinavian countries (Norway, Sweden, Denmark) and some countries of Northern and Western Europe (Finland, Switzerland) are the representatives of the first anti-corruption model. A characteristic feature of the "Northern European" model of anti-corruption policy can be considered the active role of state agencies in the redistribution of funds in the state, with their maximum possible transparency and accountability to society. One of the reasons why any corruption crime covered by the media immediately becomes a national scandal is undoubtedly the moral approach established in the society of these states. Due to the high level of trust between people, any corruption is perceived sharply negatively as a manifestation of immoral behavior. The population trusts the state, tax evasion in the Scandinavian countries is not considered acceptable; moreover, every citizen could review documents submitted to State institutions.

For example, the Danish Parliament, public activists, representatives of the media work closely together and carry out joint monitoring of potential acts of corruption. The State provides citizens with social guarantees and implements them in Denmark. Citizens trust the government

and are ready to pay high taxes, knowing that the quality of public services will certainly be high. An important point is the developed corporate social responsibility of Danish business. The company's reputation is usually more important for its managers than short-term success from participating in a corruption transaction. The absence of a separate anti-corruption legislation does not prevent Finland from successfully counteracting this devastating phenomenon (Oikeusministeriön, 2021). A number of conditions deliberately implemented by the Finnish authorities allow deterring corruption within the limits that do not pose a threat to public development: existence of developed civil society institutions, including the media; desire to minimize state intervention in the economic sector; transparency and openness of decision-making by officials, openness and accessibility of most regulatory legal acts and by-laws; political, financial and personnel independence of the justice system from the executive branch of power, a valid guarantee for protecting persons who assisted the relevant agencies in the fight against corruption; as well as other measures aimed at reducing bureaucratization, improving the quality of public administration, creating a system for monitoring the activities of officials with a decent level of salaries of officials, etc.

We would particularly like to note the work with civil society and the creation of an atmosphere of rejection of corruption in all forms by society and negative attitudes towards it among public servants.

Another anti-corruption model is observed in Southeast Asian countries, primarily in Hong Kong, Malaysia, Singapore, Taiwan. South Korea and Japan also belong to this model. Its specificity lies in a verified personnel policy, the maximum withdrawal of the state from regulation of the economy, the formation of specialized anti-corruption agencies, equality of all under the law, severe punishment for corruption crimes.

Singapore's leading principles in combating corruption include: (1) wages of officials according to the average salary of successful private sector employees; 2) mandatory annual declaration of their assets, property and debts by state officials; a prosecutor has the right to verify any bank, joint-stock and settlement accounts of those suspected in the violation of the Anti-Corruption Act; 3) particular attention to corruption cases precisely in regard to high-ranking officials to support political leaders'

ineligible moral authority; 4) maximum liquidation of extra administrative barriers for economic's development. Thus, it can be noted that anti-corruption policy is based on the creation of a state management system, where officials have practically no incentive to commit corruption crimes. At the same time, Singapore has the principle of public control over the actions of officials, as well as the principle of equality under the law and the inevitability of punishment for the crime committed.

The core of anti-corruption policy in Japan is a well-constructed personnel policy and a tough system for regulating the activities of officials. A double incentive system (financial and moral), with severe penalties for non-compliance with laws and regulations, shows its effectiveness in combating state corruption in Japan.

A combination of strict restrictive laws with the system of incentives and rewards preventing corruption is the specific feature of the "American model" of combating corruption (Canada, USA and partly Australia) is characterized by.

US anti-corruption laws have systemic nature. It also includes legal acts that regulate the lobbying, banking, exchange and other activities. The level of corruption in the United States is significantly lower than in other States despite the fact that it is not a guarantee of its complete eradication. The fight against corruption is facilitated by the fact that there are virtually no immunities for officials in the United States. It is also worth noting that the United States is trying to prevent acts of corruption in the exercise of power by preventing corruption based on the norms of codes of honor of public servants.

In general, we would like to emphasize that in all countries that successfully fight against corruption the broadest range of means and methods is used, always including close interaction with the structures of civil society, based on a well-thought-out system of law, openness and accountability of the authorities. Nevertheless, on the example of anti-corruption strategies of the United States, Europe and East Asia, it can be concluded that not a single state has completely eradicated corruption.

A lot of international documents have been currently adopted in order to fight against corruption within various international organizations. That emphasizes the significance of the issue and the aspect that counteraction to corruption is the global task of the whole world.

These are such international treaties as: 1) the Inter-American Convention against Corruption, adopted by the Organization of American States in 1996, entered into force in 1997 (the Organization of American States, 1996); 2) the Convention against Corruption involving EU officials or officials of EU countries, adopted by the Council of the European Union in 1997 (Council of Europe, 1997); 3) the OECD Anti-Bribery Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, entered into force in 1999 (OECD, 1997); 4) the Council of Europe Criminal Law Convention on Corruption, 1999, entered into force in 2002 (Council of Europe, 1999a); 5) the Council of Europe Civil Law Convention on Corruption, 1999, entered into force in 2003 (Council of Europe, 1999b); 6) United Nations Convention against Corruption, entered into force in 2005 (United Nations, 2003); 7) the African Union Convention on Preventing and Combating Corruption entered into force in 2006 (The Assembly of the African Union, 2003); 8) the Arab Anti-Corruption Convention entered into force in 2010. (General Secretariat of the League of Arab States, 2010).

The UN Convention against Corruption, universal international treaty uniting 172 states, should be distinguished among the above-mentioned international treaties against corruption.

The implementation of the Art. 20 of the UN Convention against Corruption on illicit enrichment remains difficult for many states, as for Ukraine. This Article was not included in the list of those where Ukraine has jurisdiction and which are binding. Under this Article, "each Member State shall consider adopting such legislative and other measures, which may be necessary to criminalize intentional illicit enrichment" (United Nations, 2003).

This provision may conflict with the constitutional presumption of innocence principle and the right of the accused not to testify against themselves, as well as their husband (wife) and other close relatives.

Nevertheless, Ukraine seeks to improve legislation in this area. Various options are being worked out to improve the forms of declaration of not only income, but also the expenses of officials. Thus, the Resolution of the Cabinet of Ministers of Ukraine "On the state of financial and budgetary discipline, measures to strengthen the fight against corruption and control over the use of state property and financial resources"

(Resolution No. 1673, 2006) establishes legal principles for monitoring shortcomings and violations of fiscal discipline, as well as a mechanism for bringing to justice those found guilty of their admission.

The obligation to declare expenses is established in many countries. The need for such a declaration is enshrined at the legislative and secondary levels by acts on parliament, public service, taxes, financial control, codes of conduct for various categories of officials, and anti-corruption legislation. Similar acts are valid in the USA, Great Britain, Belgium, Italy, Finland, Canada, Australia, China and other states. Ukraine also joined the OECD Anti-Bribery Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997.

Ukraine participates in the Council of Europe Civil Law Convention on Corruption of 1999. The Convention is aimed at protecting people suffered losses as a result of acts of corruption, including the possibility of damages. Moreover, the Convention was perhaps the only international instrument that defined corruption.

The implementation of international anti-corruption law is an integral component of the global anti-corruption order, as well as a prerequisite for the effective fight against corruption at the national level. The analysis shows that the legislation of almost all states has fragmentation of the implemented provisions of international instruments, their selective nature, which significantly reduces the success of the right to exercise.

Summarizing the above, we should note that we have recently made a lot of efforts to improve Ukrainian anti-corruption legislation that should go in line with international anti-corruption standards. The implementation of such standards is currently important both for ordinary citizens and law-enforcement officials.

Conclusion

Corruption is transnational phenomenon that is inherent to any country and causes significant economic consequences and hinders economic development both in the developed and developing countries. The fight against corruption belongs to those problems that cannot be solved alone without considering political, economic and social problems.

Limiting the scope of corruption largely

depends on the implementation of international standards on combating corruption taking into account specific features of corruption and its level in every country with a clear definition of powers and functions of state institutions and their officials; formation of new approaches in public affairs management; formation of trust between public authorities and citizens, creation of an effective mechanism of public control, introduction of information activities among population on intolerance to corruption.

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