HISTORICAL ANALYSIS AND LEGAL FEATURES OF CORRUPTION PREVENTION IN UKRAINE

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Abstract. The article emphasized that corruption in Ukraine is the number one problem throughout the history of the formation and functioning of Ukrainian statehood. The catch phrase uttered two hundred years ago by the historian Karamzin, reflecting the essence of the Ukrainian state in one phrase “Steal”, is still relevant today. The main problem of corruption in Ukraine is that the laws themselves lay the corruption space, due to the ambiguity of their interpretation and wording. Traditionally, after the adoption of any program, concept, law in the field of combating corruption, additional formal support takes place in the form of mandatory publication in the media, and the most interesting thing in each structure is the creation of public councils that do not perform those functions, which are assigned to them, and historical features show and prove, that any action aimed at combating corruption gains the opposite result. Today there is no unified understanding in the prevention of this phenomenon, due to the fact that it is necessary to start with a change in the psychology of people, from the moral and political climate in a society that does not see or do not trust the state guidelines that exist today. Due to this, a public opinion has been formed that the government itself is corrupt at all levels and in order for a turning point in the consciousness of the people to occur, it is necessary to show the inevitability of punishment. Only after that will there be a really intolerant attitude towards corruption in society, when the government itself will increase its responsibility to society, when the judicial system will be completely independent of power then and there will be a certain shift in the prevention of corruption. It was concluded that it is necessary that the fight against corruption should have a systemic form where the main principles in the fight against corruption should be the legality and openness of power. The most important thing is that criminal offenses of a corrupt nature always go unpunished due to what they have committed.

Key words: corruption, analysis, prevention, historical and legal features, corruption, historical analysis, prevention, legal features, anti-corruption legislation.
INTRODUCTION

The article emphasized that corruption in Ukraine is the number one problem throughout the history of the formation and functioning of Ukrainian statehood. The catch phrase uttered two hundred years ago by the historian Karamzin, reflecting the essence of the Ukrainian state in one phrase “Steal”, is still relevant today.

The main problem of corruption in Ukraine is that the laws themselves lay the corruption space, due to the ambiguity of their interpretation and wording. Traditionally, after the adoption of any program, concept, law in the field of combating corruption, additional formal support takes place in the form of mandatory publication in the media, and the most interesting thing in each structure is the creation of public councils that do not perform those functions, which are assigned to them, and historical features show and prove, that any action aimed at combating corruption gains the opposite result. Today there is no unified understanding in the prevention of this phenomenon, due to the fact that it is necessary to start with a change in the psychology of people, from the moral and political climate in a society that does not see or do not trust the state guidelines that exist today. Due to this, a public opinion has formed that the government itself is corrupt at all levels and in order for a turning point in the consciousness of the people to occur, it is necessary to show the inevitability of punishment. Only after that will there be a really intolerant attitude towards corruption in society, when the government itself will increase its responsibility to society, when the judicial system will be completely independent of power then and there will be a certain shift in the prevention of corruption.

MATERIALS AND METHODS

When analyzing the historical and legal problems of the fight against corruption, the following methods were used: formal-legal, comparative-legal, historical-legal, analysis of judicial practice, data from the Office of the Prosecutor General.

The theoretical basis of this article was the modern scientific developments of domestic and foreign scientists on the application of restrictive measures to participants in criminal proceedings, the direction of improving legislation on this issue and law enforcement practice. The synthesis and generalization method was used to form the conclusions.

RESULTS AND DISCUSSION

Conceptual analysis in the field of preventing corruption in Ukraine should be considered through a certain matrix of formation, a state-organized corruption component. According to L. Yu. Lubsky, several types of statehood have developed in Ukraine throughout history, which, in fact, certainly had a corruption background in the form of a patrimonial, police and palace format. When dismantling the patrimonial type of state, the institutional matrix of functioning is due to unconditional service to the state and total worship, which leads to a distribution economy built on the principle of a “feeding” system (Lubsky, 2014).

The concept of “feeding” is essentially synonymous with corruption in Ukraine, which at the level of mentality today is fully manifested in the criminal proceedings of recent years concerning city mayors, who often refer to the region precisely as gaining maximum opportunities for enrichment. Unlike the institute of “feeding,” the modern Ukrainian Judicial Institute also punishes.
Despite the resonant criminal proceedings, the modern so-called "patrimonial law" is relevant in modern realities, when the mayor of the city begins to feel like a kind of "prince" and in the right to do whatever he wants, constructing a certain corruption scheme.

As for the theory of the police state, which replaced patrimonial legal consciousness, begins with the reign of Peter I, who began to develop public administration through the prism of regulations and official duties. The principle of serving the homeland in the common outline of police statehood was based on the formula of serving the Fatherland, serving in the name of the common good was considered. But even during this period of history, corruption flourished in the close environment of Peter I. A vivid example is A. D. Menshikov, one of the favorites and one of the powerful and strong people of that era, who was not seen once in the theft of budget money. So, for example, in January 1715, Menshikov’s state abuses were revealed. The fixed capital was taken under various pretexts of land, estates, villages. He specialized in taking away from the heirs of embezzlement property. Menshikov also sheltered schismatics, fugitive peasants, charging them for living on their lands. After Lefort’s death, Peter said of Menshikov: “I have one hand left, thieving, but faithful”. The abuse case lasted several years, a large penalty was imposed on Menshikov, but active participation in the conviction of the death of Tsarevich Alexei in 1718 (his signature in the verdict was the first) regained his royal mercy (Lubsky, 2014).

Thus, the police state under Peter I finds a new formula for building a state, expressed in the culture of serving the state becomes a kind of brand that significantly pushes the Christian ideology of state management to the second line, which, in principle, did not interfere with the development of corruption.

The transition to palace statehood in Ukraine is associated with the period from the middle of the XVIII century to the beginning of the XX century. and is foreshadowed by the reorientation of interests from public to verbatim, according to I. I. Glebova, the “palace power” was interested in the almost exceptional enrichment of those who composed it, that is, an extremely narrow social layer (Glebova, 2011).

The most negative moments of palace statehood in Ukraine were due to the alienation of power from society. This watershed is still kept today in distrust of power structures, officials of all stripes. Today, the state is trying to bring certain bridges between power and society by creating civil society institutions. But there are a lot of problems left.

Considering the next historical type of statehood, included under the name nomenclature, covers the entire Soviet period. From the position of historical retrospective, the nomenclature laid an interesting phenomenon of administrative workers of the so-called political nomenclature in the form of eternal leaders who, of their own free will, practically did not leave their posts. This phenomenon laid a certain clan, which is still present on the political scene of the Ukrainian state at all levels from the national to the local.

The conceptual foundations of the Soviet nomenclature laid:
1) class nature of state power;
2) one-party political system;
3) the exclusive role of the CPSU;
4) party-ideological control over the management of affairs in the state.

In fact, various forms of official abuse of party nomenclature can be distinguished.
Deriving revenue from a particular decision; official position for personal purposes; practice of feeding the entire control apparatus. Yes, the called nomenclature entrepreneurship laid a time mine, which works today, only in other forms and volumes. Thus, the Soviet school laid down the nomenclature law working today in the form of peculiar, systemic, specific Ukrainian legislation.

The modern peculiarity of corruption is expressed in the client-corporate form of relations between Ukrainian officials, based on devotion and patronage and is essentially a vivid continuation of nomenclature corruption (Lubsky, 2014).

The peculiarity of the client-corporate model of Ukrainian reality is that the constant search for a patron has any political and economic levers that can be used in a particular corruption scheme.

The established mass consciousness of Ukrainian society today presents a terrible spectacle due to the fact that any life issue in practice cannot be resolved without the provision of paid services. All this leads to stagnation of the socio-political life of the state at the expense of the corruption component.

Conceptual analysis of various types of formation of the Ukrainian state makes it possible to identify patterns of its development. One of which is the corruption essence of the development of Ukrainian statehood.

As for the modern Ukrainian format for preventing corruption, the basic document today is, of course, the Constitution of Ukraine, which acts as the highest regulatory legal act in Ukraine. Legal norms are enshrined in the Constitution of Ukraine, which states that the Constitution of Ukraine has the highest legal force, direct effect and is applied throughout Ukraine. Laws and other legal acts adopted in Ukraine should not contradict the Constitution of Ukraine.

The concept of corruption is defined by the Law of Ukraine of October 14, 2014 No. 1700-VII “On the Prevention of Corruption,” according to which it is “the use by the person referred to in Part One of Article 3 of this Act of the powers or opportunities conferred upon her for the purpose of obtaining or accepting such benefit or accepting the promise/offer of such benefit for himself or herself or others, or the promise/offer or provision of such benefit to the person, respectively, referred to in Part 1 of Article 3 of this Law, or at its request to other individuals or legal entities in order to persuade this person to unlawfully use his official powers or related opportunities” (Law of Ukraine “On the Prevention of Corruption”).

It should also be noted that the prevention of corruption is the activities of state authorities, local governments, civil society institutions, organizations and individuals within their powers: regarding the identification and further elimination of the causes of corruption; identification, prevention, suppression, disclosure and investigation of corruption offenses; to minimize and/or eliminate the consequences of corruption offenses.

The damage from criminal offenses of a corruption orientation is large. The state suffers significant losses in the economic sphere, there is a violation of market mechanisms. The activities of the President of Ukraine V.V. Zelensky in the fight against corruption are indicative, starting with the adoption of a number of regulatory legal acts against corruption, a direct line with the people is organized every year, and measures are constantly being taken to combat this negative phenomenon. Despite this, the statistics of corruption criminal offenses of Ukraine are constantly growing, it can be seen.
Having analyzed the data, we can conclude that the damage from criminal offenses of a corruption orientation for 2020 is approximately equal to the damage for the previous 4 years. At the same time, the indicator of the state’s attitude to the fight against corruption was determined by the number of criminal proceedings. In 2020, the largest number of corrupt officials were prosecuted.

Unfortunately, even perfect laws do not create unconditional guarantees of compliance with all prescriptions. Violations of anti-corruption laws are still widespread.

The facts of non-compliance by officials with prohibitions and restrictions were also established by law enforcement agencies. They revealed them by almost a third more than in 2019. This is especially important given the possibility of applying to unscrupulous officials such an effective anti-corruption measure as dismissal due to loss of confidence.

Another deterrent is the confiscation of property acquired with unconfirmed income from civil servants.

Of course, there are results and there is a destruction of the stereotype of permissiveness and impunity of impure officials, but according to the Corruption Perception Index (SPI), which reflects the perception of the situation with corruption in certain countries by businessmen and analysts, both foreign and representing the countries themselves, Ukraine’s position in the anti-corruption rating is not comforting. Of course, you can disagree with this index, and it really evaluates subjectively enough, but at the moment in Ukraine there is no unified system for assessing corruption, in particular methods for calculating it in various spheres of public life. This circumstance complicates the formation and implementation of an anti-corruption policy, and, accordingly, the need to create such a system is updated.

How to deal with corruption in Ukraine:

1. Opinions are put forward on the need to exclude from the Constitution of Ukraine the rule on the priority of international law over national law. But whether to assume that Ukrainian legislation will take precedence over international legislation, then the entire international legal framework governing the fight against corruption will fade into the background and Ukrainian law will remain the main regulator in this segment, which in turn will increase domestic corruption.

2. The power that is formed by corruption is able not to fight corruption, but only to continue it. In Ukraine, there is a huge division between power and society. For bodies that must represent the people and personify the purity of power, loudly called the bodies of the people’s representation, their responsibility to the people is often proclaimed in words. Civil society institutions must act as a definite bridge between government and society. Who are not coping with this problem.

3. Not confidence in the authorities is expressed in the current situation, when officials of different levels have luxurious palaces not only on the territory of our country, but also abroad, as well as assets and accounts recorded both on members of their families and on “acquaintances”, declared and not. Property needs to be legal and transparent, especially if the accounts or properties are owned by public servants.

In order to eliminate corruption, it is necessary to carry out a deep restructuring of the entire apparatus of public administration, cutting off unnecessary links. Each issue should be in the exclusive competence of one department, but there should be no managerial “vacuum”. It can
be assumed that you can fill the vacuum by introducing a system of double subordination. The system provides that workers are not in one place, but mobile. This will stimulate the results of work, as wages will directly depend on their activity. Decent wages and fears of punishment for a corruption offense will reduce the desire to break the law.

It is necessary that the fight against corruption should have a systemic form where the main principles in the fight against corruption should be the legality and openness of power. The most important thing is that criminal offenses of a corrupt nature always go unpunished due to what they have committed.

When studying the issue of historical and legal features of criminological analysis of preventing corruption in Ukraine, it is also worth paying attention to the trends in the development of legislation of foreign countries in this direction.

Countering corruption abroad is carried out by a variety of methods of a punitive and preventive nature. Punitive, criminal-legal methods used in all states of the world to combat various manifestations of corruption do not lose their relevance, as evidenced by the legislative experience of foreign countries in recent years. An equally important role is played by the prevention of corruption in the public and private spheres, the formation of an anti-corruption culture in society.

Around the world, anti-corruption legislation is aimed at legally ensuring the solution of tasks such as the prevention (primary and secondary) of acts of a corrupt nature, punishment for corruption as an unlawful act (a set of acts). Despite the fact that the array of anti-corruption legislation is extremely large and varies from state to state, several common blocks of sectoral anti-corruption acts can be distinguished:

- criminal legislation (criminal code), which includes norms on the responsibility of individuals and legal entities for active and passive receipt of illegal benefits, bribery of foreign officials, influence trading, laundering of criminal proceeds, etc., as well as certain criminal law acts issued along with codes (Australia, Germany, Italy, Canada, USA, France, etc.) or for example, The UK Bribery Act 2010 (Bribery Act, 2010) was completely innovative, especially in terms of criminal liability of legal entities, and according to the requirements is recognized as much more stringent, than the OECD Convention against Bribery of Foreign Officials in International Commercial Transactions, Whereas it does not establish a statute of limitations for criminal prosecution and does not contain any instructions on immunity from criminal prosecution for members of parliament or for judges or prosecutors (Report from the Commission to the Council and the European Parliament EU Anticorruption Report. Brussels);

- legislation regulating the sphere of private law, which provides for sanctions for corruption offenses related to audit, corporate ethics, etc. (Australia, Brazil, United Kingdom, Italy, Canada, Slovenia, USA, South Africa);

- legislation regulating the interaction of state authorities and non-state institutions, in particular lobbying;

- legislation regulating issues of public sphere, namely suffrage (lei complementar, de 4 de junho de, 2010), public service, conflict of interest (Australia, Great Britain, Georgia, Moldova, Republic of Korea, USA, France, Czech Republic, etc.). Often, the actions of these laws apply not only to civil servants, but also to senior executives of companies with state
participation. Thus, according to the Law of the French Republic on Transparency of Public Life of October 11, 2013. Heads and heads of public institutions of industrial and commercial nature are obliged to submit annually to the Supreme Body for Transparency of Public Life a declaration of conflict of interest and property status, which includes income and expenses for the reporting period. This requirement also applies to joint-stock groups with majority participation of the state and local collectives. The draft of the new French law on transparency, combating corruption and modernizing the economy, published on March 30, 2016, aims to further strengthen the fight against corruption and provides for: the organization of a special service responsible for preventing corruption and helping to identify it; creating a register of lobbyists; protection and financing of informants, etc.

Another block is legislation on countering the laundering of criminally obtained funds, which is also successfully applied to the proceeds of international and national corruption. The analysis of foreign legislation provides grounds for the conclusion that in recent years, not only states belonging to the common law family, but also countries traditionally belonging to the continental system of law, have used the norms of criminal, criminal procedure and civil procedure legislation to freeze, seize and confiscate the proceeds obtained from laundering corrupt acts. This is primarily due to the fact that many states change their legislation in this industry in order to unify it to facilitate further use.

At the same time, the formation of European legislation was and continues to be influenced by the approach developed in the Anglo-American theory, which undoubtedly influenced the formulation of standards enshrined in international conventions and treaties, especially in terms of the use of the institution of civil confiscation.

The publication of comprehensive acts in certain states in which the legislator tried as much as possible to cover the public and private spheres of state life is noteworthy: Italian laws on the prevention of corruption and combating lawlessness in the state administration of 2012 and on crimes against public administration, mafia-type associations and false reporting 2015; Slovenian Law on Integrity and Anti-Corruption 2010; Laws of the EAEU Member States – Law of the Republic of Belarus dated July 15, 2015 No. 305-Z “On Combating Corruption” (hereinafter referred to as the Law of Belarus on Combating Corruption), Law of the Republic of Kazakhstan dated November 18, 2015. No. 410-V of the Anti-Corruption Air Defense System (hereinafter referred to as the Anti-Corruption Law of Kazakhstan) and the like.

A special place among anti-corruption acts is occupied by legislation on the protection and promotion of persons reporting corruption, which in some states has already firmly entered the arsenal of measures aimed at preventing corruption (USA (Sarbanes-Oxley Law and Dodd-Frank Law), Romania, Republic of Korea).

The analysis of the main directions of the criminal policy of a number of states in the field of combating corruption makes it possible to highlight the main trends in the development of the legislation of these countries. First of all, it should be said about the establishment of a legal definition of corruption acts, about the development of a list of such acts and their differentiation in separate chapters (sections) of national criminal laws.

The Law on the Prevention and Control of Corruption Activities 2004 in one of the BRICS countries – the Republic of South Africa – strengthened responsibility for corruption and other
crimes related to corruption activities. The law includes the general concept of “corruption” as a crime and in subsequent norms specifies the content of corruption activities depending on the circle of persons and prohibited acts committed by: 1) certain persons (civil servants, foreign public officials, agents, deputies of the legislative body, judicial and investigative officers); 2) in connection with the provision or receipt of improper remuneration; 3) in connection with specific issues (testimony and evidence in the trial, contracts, government purchases and tenders, auctions, sports competitions, gambling); 4) due to a possible conflict of interest and other unacceptable activities (acquisition of a private interest in a contract, agreement or investment of a state body, witness intimidation, obstruction of the investigation of the crime).

In addition, this law contains a number of other security measures, including those related to the safety of property, which is likely to be subject to confiscation. In addition, in order to impose certain restrictions, a register was established by the South African Ministry of Finance, which is open to the public, containing information about persons and companies found guilty of corrupt activities related to tenders and contracts.

Officials, under penalty of criminal punishment, are obliged to report to the police all acts of a corrupt nature that are or may be subject to the 2004 Act. Similar to the anti-corruption legislation of other foreign countries, the 2004 South African Law is extraterritorial in nature. As a rule, a single definition of a corruption crime is not given in the national legislation of individual CIS member states, and its definition is formulated by listing an exhaustive list of acts carried out by a person using his official position and (or) in order to obtain benefits for himself or third parties. Legislators of one group of states attempt to define a “corruption crime” directly within the framework of criminal law (for example, Kazakhstan). There is a broader approach, according to which corruption crimes are recognized as any deliberate acts of officials aimed at illegally obtaining and providing material goods and other advantages (in particular, Kyrgyzstan).

In the criminal laws of some CIS countries, the concept of a corruption crime is deduced by the legislator grouping certain forms of corruption acts in independent chapters based on the signs of an official crime (Azerbaijan, Moldova).

Legislators of other states are changing the approach to the definition of “corruption crime” in the context of criminal codes, establishing in special anti-corruption laws an exhaustive list of “corruption offenses”. An example is the Law of Belarus on the fight against corruption. The attention of legislators of the CIS member states to the criminalization of new anti-corruption criminal acts in line with the recommendations of international anti-corruption standards continues to remain unchanged.

Developing such complex issues, some countries have already resorted to criminalization as a complete composition of bribery – promises and offers of improper advantages. For example, in the Criminal Code of Azerbaijan (Article 311 “Taking a bribe (passive bribery), Art. 312” Bribery (active bribery) ”and the Criminal Code of Moldova (Art. 333 “Taking a bribe”, Art. 334 “Giving a bribe”) responsibility for offering any or material benefits or promise (assurance) of their receipt, firstly, is enshrined in the dispositions of the relevant criminal law norms and, secondly, is included in the concept of “taking a bribe” and “giving a bribe” (Semukina, 2014). In the criminal legislation of other states, the possibility of criminalizing
the offer and promise of bribes so far remains only at the level of scientific or legislative
discussion, which may be due to difficulties in law enforcement practice (Sudorenko, 2013).

In the framework of the recommendations of the 2003 UN Convention against Corruption
on the need to criminalize illegal enrichment (Article 20), the “pioneers” in criminalizing
illegal enrichment are the Criminal Code of the Republic of Moldova of April 18, 2002 No.
985-XV (Article 3302 “Illegal enrichment”) (Registrul de Stat al Actelor Juridice al Republicii
Moldova) and the Criminal Code of the Kyrgyz Republic of October 1, 1997 No. 68 (Article
308-1 “Illegal enrichment”) (Ministry of Justice of the Kyrgyz Republic). At the same time,
the legislation of each of these countries, taking into account national legal principles,
differently defines aspects of such criminalization (Semukina, 2014). It should be noted that
modern anti-corruption international standards (UN Convention on Criminal Liability for
Corruption, 1999) approve and recommend the criminalization of acts of legal entities. This
institute was introduced into the criminal legislation of only two CIS member states. For
example, in Azerbaijan, criminal-legal measures applied to legal entities are provided for in
the General Part of the Criminal Code and are regarded in the criminal-legal sense as other
measures of a criminal-legal nature. Another area of criminalization of the institution of
criminal liability of legal entities can be traced in the criminal law of Moldova, where, along
with individuals, legal entities are recognized as subjects of crime, and in relation to them
the peculiarities of the imposition of certain types of punishment are provided.

RECOMMENDATIONS

Thus, countering corruption in Ukraine lies in the problem of legislation. All institutions
of the state, public organizations, citizens should be involved in the fight against corruption.
Great responsibility lies with the authorities, which must act openly and controlled by society.
The openness of the government means ensuring citizens’ access to information about the
activities of the executive authorities, about corruption and the results and methods of
combating it, about the procedures for making and executing government decisions, about
the mandatory declaration of the income of civil servants, providing information about the
real estate of officials and their families, etc. The most important ally of states in the fight
against corruption is civil society. Without effective interaction with non-governmental
organizations, with civil society, the inclusion of the public, public formations in this process,
it is impossible to solve the problem of corruption.

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