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NATIONAL PRACTICES OF PREVENTING CORRUPTION IN COURT SYSTEMS

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Summary

The article presents a comparative analysis of anti-corruption activities of international institutions and specially created national bodies. The aim of their work is to minimizing the level of corruption in judicial systems. Author proves the necessity of borrowing the experience of other states on board with corruption in the judicial system of Ukraine and implementation of international anti-corruption standards into national legislation. In conclusion, the arguments were made along with recommendations on improvement of the national anti-corruption strategy of the judicial system of Ukraine.

Key words: anti-corruption standards, preventing of corruption, judicial system of Ukraine, international experience.

Аннотация

В статье проводится сравнительный анализ антикоррупционной деятельности как международных институций в целом, которые в последнее время, приобрели особую активность, так и специально сформированных национальных органов, чья работа направлена на минимизацию уровня коррупции в судебных системах. Обоснована необходимость заимствования опыта зарубежных государств по борьбе с коррупцией в судебной системе Украины и внедрения международных антикоррупционных стандартов в национальное законодательство. На основе анализа механизмов предотвращения и противодействия коррупции в мире сделаны выводы и сформулированы рекомендации по усовершенствованию национальной антикоррупционной стратегии судебной системы Украины.

Ключевые слова: антикоррупционные стандарты, борьба с коррупцией, судебная система Украины, международный опыт.

Problem statement. In the end of the 20th century society admitted corruption to be a global problem of each country. Global Corruption Barometer research results from Transparency International and Gallup International Association are a proof to this. According to this research, in 2013 each forth respondent proved that he/she did give bribes for certain services. The highest bribery level was seen in Liberia and Sierra Leone. Over 75% of respondents answered that they had to give bribes. The lowest bribery level was set in Austria, Belgium, Canada, Japan, Georgia, Norway, Portugal, Spain, Finland which was no less that 5%. Ukraine got in the 30–39% group beside Bangladesh, Bolivia, Egypt, Indonesia, Jordan, Kazakhstan, Mexico, Nepal, Pakistan, Solomon Islands, South Soudan, Taiwan and Vietnam.

That is the reason why the anti-corruption activity of the international institutions has become more active lately. As a consequence, a number of international acts (obligatory and

recommended) were created and gained large popularity. They were prepared and adopted by UNO, Organization of Economic Collaboration and Development, the Organization of American states, the Council of Europe, the EU, the AU. International law instruments differ by the scope of use but everybody's aim is to implement universal standards of fighting corruption by way of maintaining the anti-corruption laws implementation on the national level [2, p 28].

Actual issues of the research. For a long while, people trying to stop corruption had positive as well as negative experience of fighting this social anomaly. Each country were trying to develop their own efficient system of actions which would minimize its negative consequences. Singularity and soleness of the countries' historical development make their experience of fighting corruption a unique one.

Special aspects of public policy in fighting with corruption of the country consist in the quest to find the optimum line of fighting the corruption. This



is determined, on the one hand, with the state, structure and dynamics of corruption (corruption is heterogeneous in different countries – in some it is often associated with theft of state property, abuse of office, in others – taking bribes, etc.), the economical state, aspects of the legal system and culture of the society, and on the other hand with specific measures of fighting corruption.

The apparent willingness of Ukraine to become an equal member of the international community by forming the foundations of legal, social and democratic state requires providing an appropriate level of enforcement, which in turn necessitates the serious study and implementation of international experience of civil society, political, economic, social and legal mechanisms to overcome corruption, which already proved their effectiveness. Adaptation of foreign programs aimed at fighting with corruption opens great prospects in the fighting this issue, especially in the absence of our own effective anti-corruption mechanism [6, p. 188].

State of the research. This topic has not been abandoned and Ukrainian scientists. The most common problem of corruption is covered in the works of M. Buromnytskoho, V. Hrebeniuk, N. Zelynsky, A. Senatorova, A. Majewska, O. Vinogradova and others who are trying to resolve the problem of fighting against corruption at the doctrinal level [11, p. 339].

The importance of the study of corruption in the judiciary is determined with that during the period of ongoing transformation of the country it is the judiciary institutions, who form up the “top of the pyramid of justice”, that are intended to play the key role in establishing of the democracy and ensuring the implementation of the declared rule of law in the Constitution of Ukraine. Modern realities of the social development dictate the need for the reforming of the courts as public authorities that are subject to corrupt practices [8, p. 124]. In support of this, we present the results of a nationwide poll, according to which 49% of respondent citizens of Ukraine consider the court to be the most corrupted among a large number of existing public authorities. When asked “Did you

personally come across corruption in the courts?”, 65% of the responded citizens said that they faced it constantly, 16% – that they encountered it rarely, 14% – did not encounter, but heard much about it, and only 5% believe that there is no corruption in the courts. As of question “Are you aware of credible cases of bribery of the judge?” 51% of the responded citizens said that they are aware of such incidents from trusted sources, 26% personally bribed the judge, 5% personally received bribes, and only 18% of respondents indicated that they were not aware of such incidents. Citizens of Ukraine consider the imperfect system of control and preventing of corruption as one of the reasons of malpractice and believe that the courts cannot achieve truth and are sure that the judgment can be bought for the money [4].

Purpose and objectives of the article. The purpose of this article is to identify the main aspects and characteristics of global international legal anti-corruption strategies, the development of which is going under the active influence of international organizations, analysis of the experience of fighting corruption in the judicial systems of the least corrupted countries in the world for the further implementation of the most effective of them in the anti-corruption policy of Ukraine.

Primary material statement. Great Britain is a low-corrupted country compared with other European countries. High standards of public behavior are traditional for this country; that is the result of political and legislative actions, moral changes and effective social control of public servants [7, p. 84]. This country has a long tradition of fighting corruption. The first law on corruption in the government agencies was adopted in 1889. The laws adopted in 1906 and 1916 concerning corruption were a social response to the growth of this problem [3]. However, at our homeland, the first laws aimed at fighting with corruption were adopted much earlier than in the United Kingdom. Thus, in the days of Peter the Great, the laws following were enacted: “On the prohibition of bribes and promises”, “On penalties for bribery and corruption”, “On predators’ punishment

for bribery by the deprivation of the estate and execution”. The dynamics is very revealing: at first the ban – it is no use; then the punishment – it is no use; then rigidity of the punishment – and no use once more. This historical episode is a typical demonstration of the futility of fighting corruption with punitive methods only. Of course, the perpetrators should be prosecuted, taken to the court and be punished, but it has virtually no effect on the problem.

An interesting experience of France, where in 1993 the Central Service for Fighting with Corruption was founded, which is responsible for important functions such as coordination of activities, centralization of information necessary to prevent and detect evidence of active and passive corruption, abuse of power on the part of public officials and private individuals, bribery, actions in interested motives, and assistance to the judiciary in case of complaints about such facts.

The Criminal Code of France has a separate section “About the breach of duty”. In this section, the following crimes with the evidence of corruption are defined, like extortion or taking offerings, gifts, benefits, etc. for specific actions with the purpose to abstain from certain acts or abuse their influence [9, p. 117].

French criminal law refers to corruption such illegal acts of bribery, abuse of power, misappropriation and embezzlement, attempts to professional secrecy and so on. The content of these laws is very similar to the malfeasance under the criminal law of Ukraine.

In France, in order to prevent corruption a specialized center is created in every department to prevent and fight corruption, which includes the prefect, the prosecutor, a representative of the Court of Appeal, the director of tax administration, a government commissioner of the regional clearing house, the general treasurer and the director of the competition, consumption and theft fighting department.

In order to strengthen the position of the judiciary in fighting with corruption in the courts of a second instance, the specialized units are created.

Thus, the French Anti-corruption experience is quite interesting for our country. This is primarily due to the



similarity of some specific aspects of administrative-territorial structure of our countries and doctrinal approaches to the problem of fighting corruption.

Successful results in the fighting against corruption became possible by the implementation of the principles of separation of powers, independence of the judiciary from government influence and free of interference of other branches of government in a political and legal framework of Italy. Thanks to this structure, the Italian judicial system is the most important of the three branches of government mechanisms for fighting with corruption. The Italian Constitution embodies the political decision to provide the exclusive rights to promote and punish the judges to the judges of Parliament. Two-thirds of the members are elected by the judges and one third – by the political parties. In addition, the Administrative Commissions have the status of the courts and Italian Constitution provides the administrative proceedings for certain criminal cases. As an effective anti-corruption mechanism a fact should be considered, that judges, prosecutors and investigators are deemed to be members of a single profession and regularly change their roles. Each prosecutor is autonomous. Each prosecutor has the same guarantees of independence as a judge [10].

The main penalty for corruption actions is a ban for working in governmental bodies and loss of social benefits that provide public service, such as pension and social services in the Netherlands. The scale of punishments includes fees and suspension from duty.

One of the least corrupt countries in the world is Finland. Authoritative international organization “Transparency International” for several years places Finland at the honorable place of the list. The government of Finland, like any other developed democracies, is a system of interaction of law, civil society, traditions and values of the nation. Often the main driver of corruption is considered as salaries of public officials. Salaries of the Finnish judges are not the highest in the EU (40 250 euros per year after taxes; for example, in Switzerland, the judge receives 100,956 euros). Therefore, a high level of judicial salaries is not the

decisive factor in anti-corruption. The respect of working ethics is important in Finland. The Finns believe that bribing means losing self-respect, even if no one will know about it because the judge will feel dependent on the person who recruited him to crookedness. This is contrary to the ethics of Finnish behavior.

In the Islamic Republic of Pakistan created special courts for the purpose of criminal prosecution of persons accused of corruption.

Thus, in many countries, corruption is significantly minimized by adjusting the entire system for public services, developing of the laws with a clear statement of the rights, duties, prohibitions and restrictions of civil servants of all categories, in some cases, focusing on judges.

The anti-corruption policy of Singapore amazes with its successes. The strategy of fighting corruption in this country differs with clarity and consistency, based on the “logic of control of corruption”, “attempts to eradicate corruption must be based on the desire to minimize or eliminate the conditions that create an incentive and opportunity of an inducement of a person to commit corruption actions”.

The key unit to fighting against corruption is a permanent specialized body – the Bureau of investigating of corruption, which has the political and functional independence. This independent body investigates and tries to prevent corruption actions. Citizens are free to appeal to the Bureau about the judges and claim damages. The Bureau examines the cases of abuse of court employees and informs the relevant authorities to take appropriate measures. The Bureau examines methods of public officials potentially prone to corruption, in order to identify possible weaknesses in the management and, if necessary, recommends taking appropriate measures to the heads of these departments.

Singapore is one of the leaders in the world in terms of the absence of corruption in the judicial system, economic freedom and development.

Provided that in Singapore the Bureau is acting to investigate corruption for fighting with corruption in general and directly at judicial authorities, in the

Republic of Korea a special committee of 15 people was established, which is directly subordinated to the President, and is acting in accordance with Law of the Republic of Korea “About fighting with corruption” and supervises all matters related to the progress of the “Program to fighting with corruption”. The committee is composed of prominent politicians, lawyers, professors of famous universities and leaders of popular movements. The government added to this group only one officer, a minister of government policy coordination, who is acting as a coordinator of actions of the government and the committee.

We have described already a form of corruption in European countries, but bribery is qualified as the most blatant form of corruption by the Criminal Code of Canada – it is as a violation of the Constitution and the act of treason. Not only is the judge who was tempted to bribe subject to Criminal punishment, but the person who gave it.

In contrast to the Finns, one of the basic principles of public service of Canada is financial incentives for civil servants that are providing adequate standard of living. Thus, the appellate judge in Canada receives a year salary in the amount of 237 300 dollars. According to Canadian legislators, it is not only minimizing the corruption, but also supports retaining of qualified staff in the judicial system [5].

Anti-corruption measures in the judicial systems of foreign countries are generally similar. This is caused by the integrational processes of the legislation, the alignment and coordination of response activities to the corruption actions and exchange of the experience of implementing of the anti-corruption measures. To a greater extent this applies EU members. But the measures of each country have their own characteristics. This is due to the specifics of their development, legal traditions, mentality and level of social activity of citizens of each country. However, common aspects for them is the political will to actively fight with corruption; create systemic anti-corruption legal framework and monitor its implementation; the legal reform, combined with reforms of economic, organizational and even cultural field;



establishing of an independent law enforcement; involvement of the Non-Governmental Organizations in fighting with corruption [1, p. 32].

Conclusions. Analysis of the schemes that are preventing and fighting with corruption in foreign countries allows us to create recommendations for improving the national anti-corruption strategy of the judicial system of Ukraine.

First, a strong political will of the top officials is needed to prevent and fight with corruption in the judicial system and a single state policy formed on its basis for the fighting against corruption, which would include a set of political, economic, social and legal measures. No legislative or administrative or any other measures to fighting with corruption cannot be effective if there is no political will at all levels.

Secondly, the organized social control by civil society for the justice system is needed (this is a prerequisite for creating an atmosphere of transparency) and a guaranteed prosecuting of violations. An important role is played by truly independent media.

Thirdly, not only independence of the judiciary is needed, but also of law enforcement. This approach is clearly demonstrated by the law enforcement system in Italy, Britain, France and other countries.

Fourthly, strict accountability of judges and those people who are endowed with public authority to the actually independent body that monitors the purity of civil servants, and has the authority to bring the officials to justice regardless of their place in the hierarchy of power is needed. An essential element of this proposal is to repeal immunity of judges, because 81% of Ukrainian citizens believe that canceling of the immunity will reduce the level of corruption [4].

The international experience of fighting with corruption in the judiciary was analyzed and these proposals are made based on it, that in our opinion can become the foundation of a successful national anti-corruption policy of the judicial system of Ukraine.

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