



ANTI-CORRUPTION DECLARATION: COMPARATIVE LEGAL ANALYSIS OF UKRAINE AND THE CIS COUNTRIES

Dmytro STARODUB,

Postgraduate student of financial law
University of the State Fiscal Service of Ukraine

Summary

The article deals with anti-corruption declaration of income of persons authorized to perform state functions in Ukraine and the CIS countries. It reveals the differences in the mechanism of anti-corruption declaration. The CIS countries have different systems of regulatory authorities, and in some of them there is no legal requirement of publishing declarations. Absence of liability for illegal enrichment throws doubts on the fulfillment of anti-corruption declaration of its purpose. The implementation of international standards on anti-corruption declaration and the fight against corruption will contribute to real results in this area.

Key words: corruption, anti-corruption declaration, liability, illegal enrichment, fight against corruption, liability for violations, income of public figures, subjects of declaration, declarant, obliged entities, public official.

Аннотация

В статье рассмотрено антикоррупционное декларирование доходов лиц, уполномоченных на выполнение функций государства, в Украине и странах СНГ. Выявлены различия в механизме антикоррупционного декларирования. Страны СНГ имеют разную систему контролирующих органов, а также в некоторых из них отсутствует законодательное требование публикации деклараций. Отсутствие ответственности за незаконное обогащение ставит под сомнение выполнение антикоррупционным декларированием своего назначения. Реализация международных стандартов антикоррупционного декларирования и борьбы с коррупцией будет способствовать реальным результатам в данной сфере.

Ключевые слова: коррупция, антикоррупционные декларации, доходы публичных лиц, незаконное обогащение, борьба с коррупцией.

Problem formulation. The fight against corruption has become a stumbling block for Ukraine and most CIS countries since the collapse of the Soviet Union. In Ukraine, the problem has become systemic because the entire state apparatus was permeated with corruption. Especially dangerous is the fusion of state and business. This is confirmed, in particular, by business of the President of Ukraine which has not been sold, regardless of all promises. Corruption and restriction of freedom are part of the same mechanism.

There are various methods in the system of combating corruption in the CIS countries: from increasing criminal liability to wage increase for civil servants. Among these methods, anti-corruption declaration should be noted as the main evidence base and, in the case of their publication, additional public support in combating corruption.

Status of research. The problem of the mechanisms of combating corruption was investigated by R. Messik [1], A.M. Novytskyi, B.V. Romaniuk [2], Y.V. Nevmerzhytskyi [3], P.O. Selezon, V.Y. Erokhn. Sound analysis of declaration of income of civil servants in Europe and central Asia was made by Valts Kalnins and Tanya Khavanska in 2010 [4]. However, taking into account the changes in the legal regulation that took place

in Ukraine and the CIS countries a new analysis of anti-corruption declaration need to be made.

The purpose of the article is to reveal the differences and find out the shortcomings in anti-corruption legislation in Ukraine and the CIS countries and identify methods of its improvement.

The presentation of main research material. Integration-related cooperation with developed countries facilitated the strengthening of international cooperation in the fight against corruption area. Thus, filing declaration by persons performing public duties is provided by recommendations on the implementation of the Istanbul Action Plan against corruption of Anti-Corruption Network for Eastern Europe and Central Asia of the Organization for Economic Cooperation and Development (OECD). This Action Plan was adopted in 2003 and called for cooperation between OECD and Ukraine, Azerbaijan, Georgia, Kazakhstan, Armenia, Kyrgyzstan and Tajikistan in fighting and preventing corruption. In addition, most CIS countries have ratified the UN Convention against Corruption and are members of the Group of States against Corruption (GRECO).

Recommendations on anti-corruption declaration were implemented in the legislation of the CIS countries but with significant shortcomings and remarks

that negate their effect in the fight against corruption.

Declaring income of public employees is regulated under the Law on Corruption (Ukraine, Russia, Kazakhstan and Azerbaijan) and adoption of special laws on the declaration is also applicable (Belarus, Moldova, Kyrgyzstan). However, as experts note, political will is extremely important here, as officials are obliged to agree with the recognition of liability and punishment for violations of anti-corruption declaration to themselves. This explains the delay in making positive changes to the anti-corruption laws that will take away the last hidden barriers in their application.

The place of Ukraine and the CIS countries in the annual Corruption Perception Index study demonstrates the effectiveness of various measures of combating corruption in these countries, although with a slight margin. Additionally, it should be noted that Georgia, which withdrew from the CIS, takes 48th place in this ranking, to compare with CIS countries, which do not enter the hundred (out of 140 countries).

Comparative analysis of anti-corruption declaration of officials' income in Ukraine and CIS countries can be carried out by the following significant elements:

- 1) the subjects of declaration;
- 2) form of declarations;



- 3) control of declarations;
- 4) transparency of declarations;
- 5) liability for violations in the declaration sphere.

It should be noted, that the subjects of declaration are persons who are required to declare income and assets and relevant institutions monitoring the performance of this duty.

In the system of anti-corruption declaration the definitions of such notions as “officer”, “official”, “public official” are quite essential. Restricting the range of declarants within the definition of “public official” occurs in countries that consider it appropriate to monitor only those persons who hold managerial positions and make important decisions on behalf of the State (Lithuania). In some countries there are specific rules of declaration for judges. Nevertheless, in the CIS countries the widest possible range of persons are obliged to declare their income, which often include senior managers of state enterprises (Belarus, Ukraine, Russia). This approach illustrates, in many cases, a declaratory attitude towards the fight against corruption and inflated expectations concerning the effect of anti-corruption declaration. Thus anti-corruption declaration is just one of a number of mechanisms of preventing and combating corruption and alone does not solve the problem. OECD experts who conducted the research on declarations of public figures, in their review, stick to the same point of view [4, p. 56–66]. The wider number of people whose income and property to be declared, the greater expenses for administration system are as it requires a large number of skilled workers for review and analysis of reporting and expenses for conducting of a campaign to explain the procedure of filling declarations to obliged entities. When an effective system of control of declarations operates there will always be a risk to get in sight of the competent authorities.

Among the actors who are required to submit declarations the following groups can be identified: subjects who submit declarations in accordance with the legislation on elections; those who submit declarations for employment and dismissal from the civil service; persons who are required to declare their income annually under the law on civil service or prevention of corruption (members of

parliament, judges, civil servants, etc.), and family members of declarants.

When hiring to the state authorities all candidates must submit a declaration. That is common practice of the CIS countries but still there are some differences. For example, in Russia, a person applying for position provides information about income and financial liabilities before employment; otherwise the person wouldn't get the job. This practice is common in Belarus, Azerbaijan and Kazakhstan. In Ukraine candidates for the position in state authorities are entitled to an additional 7 days period to revise declaration [5]. In Georgia, the declaration must be filed within two months of employment which is controlled by servants from personnel department. In case of not filing the first declaration by a civil servant, a servant from personnel department will bear responsibility [6]. In Moldova civil servants submit declarations within 20 days of their appointment [7].

Absolutely reasonable is a requirement of laws against corruption concerning the declaration of income and interests of persons applying for elective office. This information will help voters to understand interests of their candidates better. Officials that do not want to declare their income can refuse to participate in elections or give up the office. A similar situation arose in the 70's in the US when part of officials resigned not to declare their assets and interests.

The annual submission of anti-corruption declarations has also some differences. In Kazakhstan, submission of such declarations coincides with the term of filing tax returns and they are directly connected. President of the Russian Federation, Parliament (Duma) and the Government are required to submit declarations to May 1, while the rest of civil servants submit declaration to May 30. In general, declarations are filed in the first quarter of the next after reporting year.

In the CIS countries declaration are submitted directly to the workplace, with the exception of Kazakhstan, where such declarations are submitted to the tax authority at the place of residence of the subject. Theoretically, the head of state body knows better where and under which functions there are risks of corruption, and can pay more

attention to employees who occupy positions associated with corruption risks. Nevertheless, critical level of corruption, which is noted in government programs of the CIS countries, questions the effectiveness of such controls. For example, in Georgia's anti-corruption declaration system the declarations are submitted to the single database of anti-corruption declarations electronically. The first such submission is made as soon as public servant receives his/her personal password to access the database from the servant of personnel department. Thus, the servants of personnel department who control the declaration in a public body are responsible for the first submission of such declaration. Analysis and data verification of declarations is made by the authorized body.

Filing declarations after termination of employment is compulsory for all persons authorized to perform state or local government functions. Results of corrupt activities can be found out only after the dismissal from office. When the public official took a decision in favor of the company, and after his/her release within the first year became the employee at a company or received a large fee from it, it will clearly raise doubts about the fairness of such decisions. In Ukraine and most CIS countries anti-corruption declaration is submitted within the first year after dismissal.

Forms of anti-corruption declarations differ significantly in the CIS countries as result of different approaches to anti-corruption declaring. Thus, the income of the declarant and his family members are filed in separate declarations in Belarus, Kazakhstan, Armenia, Azerbaijan and Kyrgyzstan. While in Moldova, Ukraine and Georgia declarations contain information about family members of the declarant. In the CIS countries, anti-corruption declaring involves submitting special anti-corruption declaration. However, in Kazakhstan, persons who are required to declare their income submit tax returns. This approach is rational when the tax authorities exercise control over declarations, and there is no need to create a special procedure for such declarations that simplifies the work for the tax authorities. The negative side of this declaration is lack of transparency of information because of applying the rules of tax secrecy to it.



It should be noted that there is the division of anti-corruption declaration to income and property declaration and declaration of interests (assets and liabilities) which is also present in Kazakhstan. Here, all who shall declare their income submit tax returns and public figures, additionally, submit a declaration of assets and liabilities.

The legislation of Belarus provides for the declaration of the interest share or stocks in commercial enterprises only if this part is equal to or exceeds the index specified in the law [8], while in Ukraine, declarant must specify the size of the part in money equivalent and percentage terms and, actually, indicate enterprises to which such persons are beneficiaries. In our opinion, this part of the Belarusian law may contribute to corruption abuses, as enterprises where the declarant has small share in money equivalent, may have a decisive impact in percentage terms.

In Moldova officials who are required to declare their income and property submit declarations to personnel department at their workplace. An authorized servant from the personnel department is determined to receive declarations and submit them to a single database which is administered by the National Anti-Corruption Commission. Although, declarations are submitted in paper form, there is a database with public access from which you can easily get information about income of officials, with the exception of their personal data.

In Ukraine, the new law provides for the filing of declaration online on the web-site of the National Agency for Prevention of Corruption (hereinafter – NAPC). Thus, it is planned to move away from submission of paper declarations, although law on the civil service provides for filing both electronic and paper form, and the paper copy is kept in the personal file at the workplace.

In Russia income declaration is filed separately for each family member and it is not allowed to submit one declaration for two minor children. Civil servants provide information not only about their assets and income but also about expenses, even for family members. However, family members who have reached the age of majority (18 years in the CIS) file separate declarations on their own. Therefore, in Russia the civil servant and his/her family members are required

to submit anti-corruption declarations personally.

Richard Messik, analyzing the publication of anti-corruption declarations, stated that the law should provide for disclosure of officials' income from all sources, assets, information on income from businesses and non-profit companies, debts, gifts received and reimbursement of travel or other expenses not represented in official sources. Disclosure of these elements provides a complete picture of an individual's personal finance [1, p. 12].

It should be noted that there is a practice of division of anti-corruption declarations to those that must be made public and declarations that are not subject to mandatory disclosure. Usually declarations of persons who are in political positions (president, deputies, ministers, etc.), judges, heads of government agencies and departments and managers of state enterprises are necessarily made public. For example, in Kazakhstan disclosure of declarations of such persons postponed to 2020 and from 2017 they can be published on the websites of the relevant authorities [9]. In Belarus publication of anti-corruption declarations is not provided, as the proposal on this matter was rejected when anti-corruption law was adopted in 2015. In Ukraine, the law "On prevention of corruption" provides for establishment of anti-corruption declarations base with free access after verification of the person wishing to access the information in the declarations [5]. This order is already in force in Georgia [6].

It should be noted, that not all anti-corruption institutions are subjects of declaration control, but only those which are in charge of controlling the adequacy of the information provided in declarations. This is particularly important because of different approaches to building the system of anti-corruption bodies in Ukraine and the CIS countries.

According to the worldwide practice there are two levels of control over declarations: by competent authorities and civil society. The competent authorities are more formalized in performing their supervisory functions. Public organizations can also carry out their independent control by analyzing declarations published on the web-site or in the media. Accessibility of declarations

of public figures for free viewing in format which may be freely processed and the possibility of identified access to property registries are crucial for effectiveness of public control. Equally important is to protect persons who report to the competent authorities any acts of corruption. Since it is impossible to check every declaration of official, combination of civil and state control is quite reasonable.

In the CIS countries, authorized bodies monitor anti-corruption declarations regarding timely submission, correctness and accuracy of filling and carry out arithmetic control. Other controls such as full verification or monitoring of the lifestyle (matching revenues and costs) or other types of inspections are not always defined by law. The effectiveness of monitoring the lifestyle is directly related to the implementation of the provisions in the UN Convention against Corruption [10] on the "illicit enrichment" in criminal legislation. Among CIS countries only Ukraine implemented these provisions.

Control is usually carried out by comparing the information specified in declarations with that which is stated in public registries for inconsistencies. Using this method of verification significantly limits its effectiveness, because public officials make great efforts to fill in the information in accordance with public registers. And detection of differences does not always mean that public official desired to conceal income, property or interests. Such differences may be caused by quite objective reasons: obscurity of the declaration form, lack of explanation regarding its submission, there had been no awareness campaign on the declaration of assets and interests of civil servants. The list of subjective grounds is highly inexhaustible, and therefore after the detection of differences supervisory authorities inform the declarant about such differences and demand explanations or to correct inaccurate information.

In Ukraine control over declarations was performed by personnel department or relevant departments of the state bodies. That is, in general, control of all declarations was not exercised. Control over the accuracy of declarations was exercised by tax authorities which received the appropriate declaration within 15 days after their filing. The tax authorities, with full range of relevant information



on income and access to registers of property rights and land cadastre, should have been a very effective authority in detecting violations. However, OECD experts believe that practice when executive authority exercise control over the accuracy of declarations violates the principle of separation of powers, as there are doubts about the independence of these bodies. This practice when declarations are checked by tax authorities is present in Russia, Kazakhstan, Belarus and Azerbaijan.

In Russia and Belarus the head of the state body, where declarant works, controls submission of declarations and initiate inspections. The head initiates the inspection and send requests to the tax authorities. In Georgia, the Bureau of Public Service monitors the adequacy of information given in declarations. Thus, in Ukraine and Georgia law provides for operation of the special independent body authorized to monitor anti-corruption declarations. At the same time, in Belarus and Russia control over declarations is quite doubtful, as there is no clear liability of the head for not monitoring declarations, and what is more, access to public registries of property is closed, limiting the tools of initiator of control by complicated bureaucratic procedures for obtaining information necessary for inspection.

Civil and government control is more effective where a single base of declarations operates. In Georgia, declarations are posted on the official website for only two days after filling out a form on the website. Identification is made by means of a special access key which is produced at the web-site of the service. In Ukraine, creation of a single database of declarations is provided by the Law "On Prevention of Corruption". Introducing a single database of anti-corruption declarations is an indispensable condition for monitoring the financial situation of officials. But there is a high probability that this system will work only in 2017.

Violation of the declaration procedure in Ukraine and in the CIS countries incurs disciplinary, administrative and criminal liability. Disciplinary liability is provided by law in most CIS countries for such misconduct as untimely filing of declaration, and is invoked by the head of the institution which employs public official (Russia, Belarus).

Administrative or criminal liability for violations of anti-corruption legislation provides for such abuses as not timely submission/not submission of declaration and deliberate filing of inadequate information, which is usually a crime. Thus, regardless of the punishment it is obligatory to submit the declaration. Not timely submission/not submission of anti-corruption declaration incur administrative liability in most CIS countries, except Russia.

Filing false information involves both administrative and criminal liability. Such cases are punishable by an administrative fine in the same amount as for untimely submission of declaration. And in Belarus, additionally to the administrative fine, after second indication of false information, property which is not specified in the declaration is confiscated [11].

Criminal liability for false information in anti-corruption declarations is provided by criminal law in Ukraine and Moldova. Sanction of the Criminal Code of Moldova provides for imposition of a fine of 600 dollars, imprisonment up to one year and deprivation of the right to engage in certain activities for up to 5 years [12]. Sanction of the article №3661 of Criminal Code of Ukraine provides for stricter fines from 1700 dollars, correctional labor for up to 240 hours, or imprisonment up to 2 years, with deprivation of the right to engage in certain activities for up to 3 years [13].

Conclusions. The international anti-corruption standards for the declaration of income and assets of public officials and persons who perform public functions consists in their implementation, their distributing to the families of the declarants, publishing declarations, the determining information not to be published, creating an independent body to monitor declarations and a single database of anti-corruption declarations, incurring liability for declaring inadequate information.

Declaration forms, as other financial accounting documents, should meet the following requirements:

- 1) clearly defined form and content;
- 2) availability of the instructions and explanations from the authorized body organizing and implementing anti-corruption policy.
- 3) not overloading with redundant information which is not provided by

provisions of financial control and conflict of interest in anti-corruption law, and the collection and processing of which is not intended to exercise anti-corruption control of income and interest.

The system of declaration of income by public officials will be most effective in the situation when public bodies operate alongside with strong public institutions, when there is an access for ordinary citizens to the property registers and there is broad public awareness of the mechanisms of control over property and conflict of interests of persons who make important state decisions.

In the end, it is necessary to summarize that democracy is impossible without trust and anti-corruption declaration without transparency. Declaring of income of public officials in the CIS countries have significant differences, due to the need to find effective means of combating corruption, and, unfortunately, the lack of transparency and public control in some of them.

References:

1. Messick R. (2009) Income and assets declarations: Issues to consider in developing a disclosure regime. – Bergen : U4 Issue:6.
2. Романюк Б.В. Світовий досвід створення та функціонування інституцій з попередження та боротьби з корупцією / Б.В. Романюк // Боротьба з організованою злочинністю і корупцією (теорія і практика). – 2010. – № 22. – С. 3–12.
3. Невмержицький Є.В. Боротьба з корупцією в Україні: порівняльно-правовий аналіз/Є.В.Невмержицький// Історико-політичні студії : зб. наук. праць / ДВНЗ «Київський нац. екон. ун-т ім. Вадима Гетьмана»; голова ред. кол. І.Д. Дудко. – К. : КНЕУ, 2014. – № 2. – С. 110–122.
4. OECD (2011). Asset Declarations for Public Officials: A Tool to Prevent Corruption (Russian version). – Paris : OECD Publishing. Retrieved from [Електронний ресурс]. – Режим доступу : <http://www.oecd.org/daf/anti-bribery/48973261.pdf>.
5. Про запобігання корупції : Закон України від 14 жовтня 2014 року № 1700-VII // Відомості Верховної Ради України. – 05.12.2014. – [Електронний ресурс]. – Режим доступу :



<http://zakon5.rada.gov.ua/laws/show/1700-18/paran475#n475>.

6. The Law of Georgia “On the incompatibility of interests and corruption in public service” on October 17, 1997. Retrieved from [Электронный ресурс]. – Режим доступа : <https://matsne.gov.ge/ru/document/view/33550>.

7. О декларировании и контроле за доходами и имуществом лиц, исполняющих ответственные государственные должности, судей, прокуроров, государственных служащих и некоторых руководящих работников : Закон Республики Молдова от 19 июля 2002 года № 1264-XV [Электронный ресурс]. – Режим доступа : <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=342780&lang=2>.

8. О декларировании физическими лицами доходов и имущества : Закон Республики Беларусь [Электронный ресурс]. – Режим доступа : [www.pravo.by/pdf/2003-8/2003-8\(037-084\).pdf](http://www.pravo.by/pdf/2003-8/2003-8(037-084).pdf).

9. О противодействии коррупции : Закон Республики Казахстан от 18 ноября 2015 года № 410-V [Электронный ресурс]. – Режим доступа : http://online.zakon.kz/Document/?doc_id=33478302.

10. United Nations Convention against Corruption (2007). Supreme Council of Ukraine. Retrieved from [Электронный ресурс]. – Режим доступа : https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

11. Кодекс Республики Беларусь об административных правонарушениях от 21 апреля 2003 года [Электронный ресурс]. – Режим доступа : <http://pravo.by/main.aspx?guid=6361>.

12. Уголовный Кодекс Республики Молдова от 18 апреля 2002 года № 985-XV [Электронный ресурс]. – Режим доступа : http://www.base.spinform.ru/show_doc.fwx?rgn=3835#A000000435.

13. Кримінальний кодекс України від 05 квітня 2001 року № 2341-III [Электронный ресурс]. – Режим доступа : <http://zakon4.rada.gov.ua/laws/show/2341-14/paran3155#n3155>.

ХОЗЯЙСТВЕННАЯ ПРОЦЕССУАЛЬНАЯ СИТУАЛОГИЯ – НАУКА ОБ ОРГАНИЗАЦИИ ВЗАИМОДЕЙСТВИЯ МЕЖДУ УЧАСТНИКАМИ ХОЗЯЙСТВЕННОГО ПРОЦЕССА

Татьяна СТЕПАНОВА,

кандидат юридических наук, доцент, докторант,
профессор кафедры административного и хозяйственного права
Одесского национального университета имени И.И. Мечникова

Summary

The issue of dependence of the efficiency and promptness of the commercial court trial on the cooperation of the participants of proceedings has been examined in the article. It was stated that in some cases participants of proceedings cooperate not only with a court but also with each other. The theoretical investigation of the possibility of use of the trial cooperation studies in the field of the commercial court trial through the modeling of the court session has been held. That was proposed to understand trial cooperation studies as a research of the ways of cooperation of the participants of the commercial court proceedings. The author proposes reasons for understanding of the internal, external and international levels of the cooperation.

Key words: cooperation studies, trial cooperation studies, participants of proceedings, participants of the commercial court proceedings, exercise of legal status.

Аннотация

В статье исследуется вопрос зависимости эффективности и оперативности рассмотрения и разрешения хозяйственного дела от наличия или отсутствия взаимодействия между участниками хозяйственного процесса. Обосновано, что в некоторых случаях участники процесса взаимодействуют не только с судом, но и между собой. Проводится теоретическое исследование возможности использования наработок ситуалогии в сфере хозяйственного процесса в ходе моделирования ситуаций в судебных заседаниях. Предлагается выделять хозяйственную процессуальную ситуологию как науку об организации осуществления взаимодействия между участниками хозяйственного процесса. Обоснована целесообразность выделения внешнего, внутреннего и международного уровней взаимодействия.

Ключевые слова: взаимодействие, процессуальное взаимодействие (ситуалогия), участники процесса, участники хозяйственного процесса, реализация процессуального статуса.

Постановка проблемы. Вопрос процессуального взаимодействия участников хозяйственного процесса имеет большое значение, поскольку эффективность и оперативность рассмотрения и разрешения хозяйственного дела напрямую зависит от наличия или отсутствия взаимодействия между участниками такого дела. Именно поэтому исследование указанного вопроса косвенно влияет на такие важные составляющие процессуального права, как всестороннее, полное и объективное рассмотрение дела, вынесение законного решения, предотвращение злоупотреблений правами в процессе.

Актуальность темы исследования подтверждается тем, что в настоящее время нет ни одной фундаментальной работы, посвященной проблеме процессуального взаимодействия участников хозяйственного процесса.

Научный анализ проблем процессуального взаимодействия участников процесса осуществлялся некоторыми учеными в отдельных отраслях права. Среди них следует особо отметить работу в сфере криминалистической ситуалогии Т.С. Волчецкой, М.Ф. Сокирана и А.В. Старченко, которые послужили фундаментальной базой для исследования автором рассматриваемых вопросов. Однако в сфере хозяйственного процесса подобных исследований не осуществлялось.

С учетом указанного целью статьи является теоретическое исследование хозяйственной процессуальной ситуалогии как науки об организации взаимодействия между участниками хозяйственного процесса.

Изложение основного материала исследования. Как верно отмечает М.Ф. Сокиран, эффективность любой