UDC 343.341

https://doi.org/10.32689/2617-2224-2020-2(22)-150-161

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CONCEPTUAL PRINCIPLES FORMING ANTI-CORRUPTION INSTITUTIONS IN THE SYSTEM OF BODIES OF THE GOVERNMENT AUTHORITIES: UKRAINIAN AND WORLD EXPERIENCE

Abstract. The system of anti-corruption and anti-corruption bodies in Ukraine is currently undergoing formation and development, but this process is slow. The National Agency for the Prevention of Corruption, the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office, the National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes, as well as the former staff court. However, these state institutions do not benefit the state, and cases of prevention and fight against corruption are solitary rather than systemic.

In addition, there is a problem with the politicization of the formation and development of anti-corruption institutions.

Therefore, today there is a need to study the foreign experience of anti-corruption institutions in order to implement such experience in Ukrainian realities.

The article analyzed the experience of organizing anti-corruption institutions in Finland, France, the Netherlands, Singapore, Japan, South Korea and China. The existence of different models of formation of anti-corruption institutions abroad is substantiated, while the effectiveness depends not only on the presence or absence of such institutions, but also on the quality of staff, political support for the activities of such bodies and the development of anti-corruption institutions.

In Ukraine, anti-corruption institutions are beginning to emerge and develop. These include: Specialized anti-corruption prosecutors; National Anti-Corruption Bureau of Ukraine; The National Anti-Corruption Agency; The State Bureau of Investigation; National Agency of Ukraine for Detection, Investigation and Management of Assets Received from Corruption and Other Crimes; High Anticorruption Court.

Keywords: corruption, anti-corruption policy, public authorities, anti-corruption institutions, conflict of interests.

КОНЦЕПТУАЛЬНІ ПРИНЦИПИ ФОРМУВАННЯ АНТИКОРУПЦІЙНИХ ІНСТИТУЦІЙ ОРГАНІВ ДЕРЖАВНОЇ ВЛАДИ: УКРАЇНСЬКИЙ І СВІТОВИЙ ДОСВІД

Анотація. Система органів запобігання та боротьби з корупцією в Україні на даний час переживає становлення та розвиток, разом з тим цей процес відбувається повільно. В Україні створено та діє Національне агентство з питань запобігання корупції, Національне антикорупційне бюро України, Спеціалізована антикорупційна прокуратура, Національне агентство України з питань виявлення, розшуку та управління активам, одержаними від корупційних та інших злочинів та ін., а також сформований кадровий склад Вищого антикорупційного суду. Однак, зазначені державні інституції не приносять користі державі, а випадки запобігання та боротьби з корупцією носять поодинокий, а не системний характер.

Крім того, існує проблема за політизованості формування та розвитку антикорупційних інституцій.

Тому, на сьогодні виникла потреба у вивченні закордонного досвіду антикорупційних інституцій, з метою імплементації такого досвіду в українські реалії.

У статті проаналізовано досвід організації антикорупційних інституцій у Фінляндії, Франції, Нідерландах, Сінгапурі, Японії, Південній Кореї та Китаї. Обґрунтовано існування різних моделей формування антикорупційних інституцій за кордоном, тоді як ефективність залежить не лише від наявності чи відсутності таких установ, а й від якості персоналу, політичної підтримки діяльності таких органів та розвиток антикорупційних інститутів.

В Україні антикорупційні інститути починають формуватися та розвиватися. До них належать: Спеціалізовані антикорупційні прокурори; Національне антикорупційне бюро України; Національне агентство з питань запобігання корупції; Державне бюро розслідувань; Національне агентство України з питань виявлення, розслідування та управління активами, отриманими від корупції та інших злочинів; Вищий антикорупційний суд.

Ключові слова: корупція, антикорупційна політика, органи державної влади, антикорупційні інститути, конфлікт інтересів.

КОНЦЕПТУАЛЬНЫЕ ПРИНЦИПЫ ФОРМИРОВАНИЯ АНТИКОРРУПЦИОННЫХ ИНСТИТУТОВ ОРГАНОВ ГОСУДАРСТВЕННОЙ ВЛАСТИ: УКРАИНСКИЙ И МИРОВОЙ ОПЫТ

Аннотация. Система органов предотвращению и борьбе с коррупцией в Украине в настоящее время переживает становление и развитие, вместе с тем этот процесс происходит медленно. В Украине создан и действует Национальное агентство по предупреждению коррупции, Национальное антикоррупционное бюро Украины, Специализированная антикоррупционная прокуратура, Национальное агентство Украины по вопросам выявления, розыска и управления активам, полученным от коррупционных и других преступлений и др., А также сформирован кадровый состав Высшего антикоррупционного суда. Однако, указанные государственные учреждения не приносят пользы государству, а случаи предотвращению и борьбе с коррупцией носят единичный, а не системный характер.

Кроме того, существует проблема с политизированности формирования и развития антикоррупционных институтов. Поэтому сегодня возникла потребность в изучении зарубежного опыта антикоррупционных институтов, с целью имплементации такого опыта в украинских реалиях.

В статье проанализирован опыт организации антикоррупционных институтов в Финляндии, Франции, Нидерландах, Сингапуре, Японии, Южной Корее и Китае. Обосновано существование различных моделей формирования антикоррупционных институтов за рубежом, тогда как эффективность зависит не только от наличия или отсутствия таких учреждений, но и от качества персонала, политической поддержки деятельности таких органов и развитие антикоррупционных институтов.

В Украине антикоррупционные институты начинают формироваться и развиваться. К ним относятся: Специализированные антикоррупционные прокуроры; Национальное антикоррупционное бюро Украины; Национальное агентство по предупреждению коррупции; Государственное бюро расследований Национальное агентство Украины по вопросам выявления, расследования и управления активами, полученными от коррупции и других преступлений; Высший антикоррупционный суд.

Ключевые слова: коррупция, антикоррупционная политика, органы государственной власти, Антикоррупционный институты, конфликт интересов.

Formulation of the problem. To form a positive international image of Ukraine, the rapid development of corruption hinders the implementation of important reforms of the modern Ukrainian society, as well as the economic development of our state.

It should be noted that the most corrupt Ukrainians highlight those institutions which are called to fight corruption — courts (66 %), law enforcement agencies (64 %), civil service (56 %), and also health (54 %), Parliament (53 %), political parties (45 %), media (22 %), public organizations (20 %) [1].

Today the problem arose to systematically analyses the development of anti-corruption institutions abroad in order to identify best practices and implement them in the Ukrainian society. It should be noted that there are either special institutions preventing corruption abroad or special courts and police are in charge of these issues.

An analysis of recent research and publications, which launched the solution to this problem.

The problem of preventing and overcoming corruption, including the creation of anticorruption authorities, is analyzed by scientists in various fields of science, including lawyers, political scientists, sociologists, psychologists, public officials, and others. In particular, the problems of the conceptually categorical apparatus "corruption", the responsibility for corruption offences, and the systematisation of corruption are analysed by: O. Busol, O. Guskov, L. Bagrie-Shahmatov, O. Dudorov, A. Zakalyuk, O. Kalman, M. Kamlik, O. Kostenko, O. Kuznetsov, M. Melnyk, E. Nevmerzhitsky, A. Radyk, S. Seryogin, M. Khavronyuk and others.

Formulating the goals of the article (statement of the task). The purpose article is to carry out systematic analysis of the formation and development of anti-corruption bodies of state power abroad and in Ukraine.

Presenting main material. Analyzing the experience of forming anticorruption institutions in Europe and Asia.

Finland is considered to be the least corrupt country in Europe, but in the country has never issued any special laws on corruption or the creation of special bodies for its control. Corruption is seen as a part of criminal crime and is regulated at all levels of the law by the legal standards on the fight against bribes [2].

The control of the implementation of anti-corruption norms and the adoption of measures in case of their violation is carried out by traditional judicial and law enforcement agencies. A personal role is played by the Chancellor of Justice and the Ombudsman of the Parliament, who are appointed by the President of the Republic, and they are completely independent of all state structures, including each other. They are guided only by law in their activities. Their instructions include all the right instruments that are necessary for conducting investigations and taking appropriate measures.

To investigate allegations against senior officials of a special category (members of the government, the Chancellor of Justice, the Ombudsman of Parliament, members of the Supreme Administrative Court) there is a special institution — the State Court, convened as necessary, but acts on the basis of the

country's constitution. This court may also consider allegations against the president of the country [3, p. 179].

The State Court is headed by the president of the Supreme Court, and consists of the chairman of the Administrative Court, Extra Court and five deputies of the parliament elected by the parliament. In fact, this is a "court of impeachment", which may decide to remove from the position of persons of the specified category. In the postwar period, the State Court convened only once. Thus, neither high positions, nor deputy mandates, nor public activities are saved from accusations of corruption and punishment in Finland. In the fight against corruption, Finland actively uses international legal instruments, cooperates with other countries in this field, practices its legislation according to international norms and laws. She signed and ratified the main documents, including the 1997 Convention on Corruption, the Convention on the Organization of Economic Cooperation and Development 1998 on the fight against bribes, the United Nations Convention against Corruption, 2003. [3, p. 179].

The main functions of the Central Anti-Corruption Service In France are: centralization of information necessary to prevent (detect) facts of active and passive corruption, abuse of office from both civil servants and individuals, as well as Assist the judicial authorities in the event of their request for information, indicating the facts of the offences. The Central Service informs the Prosecutor of the republic for conducting an investigation [4, p. 282]. Thus, this service serves as a prevention of corruption and overcoming it.

The main anti-corruption measures in the Netherlands are that: firstly, created strict public control over the activities of officials; secondly, mass media that announce cases of corruption and often carry out independent investigations play an important role in combating corruption; thirdly, materials related to corruption actions, if they are not related to the system of national security, necessarily become known to the general public; fourthly, a special type of the special police has been created that has wide powers in disclosing corruption crimes [5, p. 196; 6, p. 180–181]

The Singapore Corruption Investigation Bureau (BROC) was founded in 1952 as an independent body that functions as a preventive and anti-corruption institution. The Bureau was created on the basis of another body — a division of the Singaporean Police, known as the Anticorruption Division. By 1952, all cases of corruption were investigated by the efforts of this small subdivision. The main reason for the creation of the BRKD was the fact that in the 1940s – early 1950s, corruption became part of the everyday life of Singaporeans. To investigate all cases of corruption, the Singapore Government has created an independent body that was not part of the police structure and was given investigative powers. At the beginning of its activity, BRDD faced a number of problems. Gathering evidence in cases of corruption was complicated, due to the imperfection of anti-corruption legislation. The lack of trust in the work of the Bureau on the part of the public has been considered as another problem. Citizens refused to cooperate with the ARDS, did not

believe in the effectiveness of his work and were afraid of revenge. Today, the Bureau's work is based on four core principles of the fight against corruption, which include: effective law enforcement, anti-corruption legislation, the administration of justice and administration. [2].

In Japan (the Corruption Perceptions Index — 76, ranked 15th among 175 states), personnel policy is one of the most important directions of struggle against corruption. It is based on the principle of meritocracy, the creation of initial conditions for objectively gifted and hard-working people, so that they in the future could have a high social status in conditions of free competition. Thus, the leading positions in the state should be the most capable persons, regardless of their social or economic background [7, p. 176]. A decent level of material support is part of the prestige of public service in Japan. An important step in Japan's anti-corruption activities is the adoption in 2001 of the Law "On Disclosure of Information". The provisions of this document guarantee the citizens of the state access to official information stored in the authorities. The requirement for disclosure of information addressed to the Council for the control of disclosure of information is foreseen in the event of restrictions on access to certain types of information [7].

In South Korea, in accordance with the Republic of Korea Law on Combating Corruption of 2002, any adult citizen of the country has the right to start to investigate the fact of corruption. The South Korean Special Correctional Authority is the Committee on Audit and Inspection, which is obliged to initiate an investigation of corruption charges on any application by citizens [7, p. 176].

The root of the anticorruption policy of the People's Republic of China is the vertical model of countering corruption. The problem of corruption is connected with the existence of the millennial history of the privileged bureaucracy, which is considered an integral part of the functioning of the entire Chinese mechanism [7, p. 42]. The counteraction to this unlawful phenomenon is coordinated by a specialized body — the National Bureau for the Prevention of Corruption.

In China, repressive methods prevail under the rigid anti-corruption criminal legislation. Sanctions for the commission of corruption offences include the highest degree of punishment: since 2000, about 10 thousand officials were executed for corruption [9, p. 82]. According to the Corruption Perceptions Index, China has an index of 36, ranked 100th among 175 countries. This proves that the most severe measures of criminal law can not be recognized as an absolute measure to eradicate corruption.

Effective anti-corruption measures in the People's Republic of China are recognized:

1) improving procedures for interaction with citizens and organizations to avoid bureaucratic interferences;

2) ensuring the transparency of departmental control in various areas;

3) carrying out the rotation of officials to prevent

4) forming stable corrupt oversights;

5) prohibiting children and relatives from doing business in the field where the person holds a leading position;

6) operational response on calls coming to the hotline for anonymous notification of the facts of receiving (giving) a bribe or abuse of office [2, p. 313–314].

Therefore, there are different models for the formation of anti-corruption institutions abroad. While efficiency depends not only on the presence or absence of such institutions, but also on the quality of staffing, political support for the activities of such bodies, and the development of anti-corruption institutions.

Now, we will analyses the current model of the formation of anti-corruption bodies in Ukraine.

Thus, according to the current legislation one can distinguish the following anti-corruption authorities of the state:

1) the public prosecutor's offices, including the Specialized Anti-Corruption Prosecutor;

2) the National Anti-Corruption Bureau of Ukraine;

3) National Agency for the Prevention of Corruption;

4) State Investigation Bureau;

5) National Agency of Ukraine for the Detection, Investigation and Management of Assets Received from Corruption and Other Crimes;

6) The Highest Anticorruption Court.

We shall analyse in detail the basic functions and role of the said bodies in the system of anti-corruption policy implementation.

In accordance with the Law of Ukraine "On the Prosecutor's Office" [6], the Prosecutor's Office of Ukraine includes, in particular, the Specialised Anti-Corruption Prosecutor's Office.

The following specialised functions are assigned to the Specialised Anti-Corruption Prosecutor's Office:

1) Supervision over observance of laws during conducting of operational and investigative activities, pre-trial investigation by the National Anticorruption bureau of Ukraine;

2) maintenance of state prosecution in relevant proceedings;

3) representation of the interests of a citizen or state in court in cases provided for by this Law that also relates to corruption or corruption-related offences [11].

The authority of anti-corruption prosecutors also includes granting permission to initiate an investigation by NABU detectives and a decision to transfer the case to court. Thus, the normative and legal documents provide for a close Cooperation Specialised Anti-Corruption Prosecutor's Office with the National Anti-Corruption Bureau of Ukraine. The National Anti-Corruption Bureau of Ukraine is a state law enforcement agency, which is responsible for warning, manifestation the termination, investigation, and disclosure of corruption offences attributed to its jurisdiction, as well as the prevention of the commission of new ones. The task of the National Bureau is to counteract a criminal corruption offence committed by senior officials authorised to perform state or local government functions and poses a threat to national security [12].

The cooperation of the National Anti-Corruption Bureau of Ukraine with other anti-corruption bodies has been established in Ukraine's current legislation. Thus, the National Anti-Corruption Bureau of Ukraine interacts

with the National Bank of Ukraine, the State Property Fund of Ukraine, the Antimonopoly Committee of Ukraine, the National Agency for the Prevention of Corruption, the State Border Guard Service, the bodies of the State Tax and Customs Service, the central executive authority, which implements the state policy in the sphere of prevention and counteraction to the legalisation (laundering) of the proceeds from crime, financing of terrorism and the proliferation of weapons of mass destruction, and other government agencies. At the same time, mechanisms and concrete actions in the part of cooperation that create problems in ensuring the implementation of anti-corruption mechanisms are not defined.

It is important that the structure of the National Anti-Corruption Bureau of Ukraine provides for the introduction of territorial departments' activities, which will allow systematically to resolve issues of prevention, detection, termination, investigation and disclosure of corruption offences in the regions. For example, territorial units have already been established and operate, which have already detected corruption offences on the ground.

The National Agency for the Prevention of Corruption is a central executive body with a special status that ensures the formation and implementation of state anti-corruption policy [11]. One of the important functions for society and the public is checking the declarations of persons authorised on the functions of the state or local self-government. However, today this function is almost not implemented, because of the slow process of checking declarations.

The Law of Ukraine "On the State Bureau of Investigations" [15] introduced the activities of the State Bureau of Investigations, which is a central body of executive power, which carries out law enforcement activities in order to prevent, detect, terminate, disclose and investigate crimes pertaining to its competence.

The State Bureau of Investigations decides tasks for preventing, detecting, terminating, disclosing and investigating:

• crimes committed by civil servants and who hold a particularly responsible position in accordance with part one of Article 9 of the Law of Ukraine "On Civil Service", persons whose positions are classified in the first–third categories of civil service positions, judges and employees of law enforcement agencies, except when these crimes are attributed to the investigation detectives of the National Anti-Corruption Bureau of Ukraine

• crimes committed by officials of the National Anti-Corruption Bureau of Ukraine, Deputy Prosecutor General Head of the Specialized Anti-Corruption Office or other prosecutors of the Specialized Anti-Corruption Prosecutor's Office, except when the pre-trial investigation of these crimes is attributed to the investigation of detectives of the internal control unit of the National Anti-Corruption Bureau of Ukraine,

• crimes against the established order of military service (war crimes), except for the crimes provided for in Article 422 of the Criminal Code of Ukraine [15].

Moreover, the Law of Ukraine "On the Supreme Anti-Corruption Court of

Ukraine", which provides for the introduction of the High Anti-Corruption Court of Ukraine. The task of the Supreme Anticorruption Court is to administer justice in accordance with the principles and procedures established by law in order to protect individuals, society and the state from corruption and related crimes and judicial control over the pre-trial investigation of these crimes, observance of the rights, freedoms and interests of persons in the criminal the proceedings [16]. Today it is only planned to introduce the activities of these bodies of state power. There are problems in the absence of the relevant specialists in this field, the lack of experience in forming such a court, the absence of a systematic vision of the work of the Supreme Anticorruption Court.

The National Agency of Ukraine on the Detection, Detection and Management of Assets Received from Corruption and Other Crimes is the central executive body from a special status that ensures the formation and implementation of state policy in the field of detection and prosecution of assets that may be subject to seizure in criminal proceedings, and asset management, which are seized or confiscated in criminal proceedings [8]. In order to detect and seek assets, the National Agency: interacts with these authorities in order to arrest and confiscate such assets, in accordance with the appeals of the pretrial investigation agencies, the prosecutor's office, the courts of measures for the detection and tracing of assets; carries out international cooperation with relevant bodies of foreign states in the exchange of experience and information on issues related to the detection, investigation and asset management; provides cooperation with international, intergovernmental organizations, networks whose activities are aimed at providing international cooperation in the field of detection, tracing and asset management, including the Camden Interagency Asset Recovery Network (SARIN), and represents Ukraine in this organization [8] At the same time, it should be noted that in Ukraine, although established anti-corruption authorities, however, the activities of these bodies are ineffective, the lack of real results of activities, coordinated actions in the realization of anti-corruption events, which, in turn, forms the negative attitude of the public towards such newly created institutions. This is due to many factors, in particular, firstly, the absence of specially trained specialists who will implement anticorruption policy, are aware of the issues of preventing and overcoming corruption, have appropriate qualifications and experience. Secondly, the lack of experience of the activity and institutional capacity of the said bodies, as these are newly created bodies, they form their activities, taking into account the experience of European and world practices, which does not always work. After all, in Ukraine, the nature of corruption is different from corruption in other countries, so we should take into account the national peculiarities of the manifestation of corruption in our country. Thirdly, these bodies slowly started their activities, since the staffing of such bodies was formed for a very long time. In particular, the National Agency for the Prevention of Corruption for more than a year did not work in full (4 members of the National Agency

from 5 were appointed); at present, the personnel of the National Agency of Ukraine for Detection, Investigation and Asset Management, Obtained from Corruption and other crimes, as well as the State Bureau of Investigations. Fourth, there is no interaction between the said bodies, which should be regulated in the current normative legal documents, however, anti-corruption institutions overlap each other's activities, it concerns the drawing up of administrative protocols, the supervision of compliance with legislation in terms of filling the declarations, as well as conflict interests, etc.

In order to form a common framework for the prevention and counteraction of corruption, it is envisaged to exchange information bases within the competence of the bodies of the National Anti-Corruption Bureau, the National Agency for the Prevention of Corruption, the National Agency of Ukraine for the Detection, Investigation and Management of Assets Received from Corruption and Other Crimes. In addition, increased cooperation between the Specialised Anti-Corruption Prosecutor's Office and other anti-corruption bodies for the creation of databases of persons who committed corruption or corruption-related offences.

Conclusions. This article analyses the experience of organizing anti-corruption institutions in Finland, France, the Netherlands, Singapore, Japan, South Korea and China. It is substantiated that there are different models for the formation of anti-corruption institutions abroad, while efficiency depends not only on the availability or absence of such institutions, but also on the quality of staffing, political support for the activities of such bodies, and the development of anti-corruption institutions.

In Ukraine, anti-corruption institutions start to establish and develop. These include: Specialized Anti-Corruption Prosecutors; National Anti-Corruption Bureau of Ukraine; National Agency for the Prevention of Corruption; State Bureau of Investigations; National Agency of Ukraine on Detection, Investigation and Management of Assets Received from Corruption and Other Crimes; The Supreme Anticorruption Court.

In the context of further investigations, it is envisaged to analyse contemporary anti-corruption institutions in the United States and Great Britain as the basis for the formation of a high-quality anti-corruption policy.

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