

ВІЙСЬКОВЕ ПРАВО

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**THE SYSTEM OF LEGAL PREVENTION OF CORRUPTION
UNDER MARTIAL LAW**

The study is devoted to the theoretical understanding of administrative and legal means of combating corruption in Ukraine under martial law. In the aspect of the Law of Ukraine of 12.05.2015 “On the legal regime of martial law” and the Decree of the President of Ukraine of 24.02.2022 “On the imposition of martial law in Ukraine” political and legal documents are analyzed, as well as anti-corruption materials of analytical and socio-political content. These are, in particular: a) program documents on combating corruption; b) anti-corruption normative acts; c) organizational and legal institutions; d) forms and methods of activities of the subjects of the fight against corruption; e) sociological surveys; f) empirical research; g) materials of international organizations “Transparency International”, “Management Systems International (MSI)”, international audit company “EY”. The work of the National Anti-Corruption Agency is described in detail; The National Anti-Corruption Bureau; Specialized Anti-Corruption Prosecutor’s Office; State Bureau of Investigation.

A detailed analysis of the current Law of Ukraine “On the Prevention of Corruption” 2014 is presented. Attention is focused on the norms of this law, which contain a list of specific restrictions on the use of an official position for personal gain; using gifts for personal gain; restrictions on the joint work of relatives in the civil service; regulate the rules of ethical behavior of civil servants; regulate the submission of income tax returns.

The important components of the preventive anti-corruption system are highlighted: a) anti-corruption expertise, b) special anti-corruption inspection, c) the unified state register of persons who have committed corruption or corruption-related offenses, d) requirements for the transparency of information and access to it; 6) protection of whistleblowers (persons reporting the facts of corruption) from illegal dismissal, transfer, changes in the essential terms of the employment contract.

Key words: *administrative means of combating corruption; administrative offense; anti-corruption legislation; corruption offense; corruption; martial law; prevention of corruption.*

Колпаков В. К. Система правового запобігання проявам корупції в умовах воєнного стану

Дослідження присвячено теоретичному осмисленню адміністративно-правових засобів протидії корупції в Україні в умовах воєнного стану. В аспекті Закону України від 12.05.2015 «Про правовий режим воєнного стану» та Указу Президента України від 24.02.2022 «Про введення воєнного стану в Україні»



аналізується політико-правові документи, а також анти-корупційні матеріали аналітичного та соціально політичного змісту. Це, зокрема: а) програмні документи щодо протидії корупції; б) антикорупційні нормативні акти; в) організаційно-правові інститути; в) форми і методи діяльності суб'єктів боротьби з корупцією; г) соціологічні опитування; д) емпіричне дослідження; е) матеріали міжнародних організацій «Transparency International», «Management Systems International (MSI)», міжнародної аудиторської компанії «EY». Детально описано роботу Національного агентства з питань запобігання корупції; Національне антикорупційне бюро; Спеціалізована антикорупційна прокуратура; Державне бюро розслідувань.

Подано детальний аналіз чинного Закону України «Про запобігання корупції» 2014 року. Акцентовано увагу на нормах цього закону, які містять перелік конкретних обмежень щодо використання службового становища в особистих цілях; використання подарунків в особистих цілях; обмеження щодо спільної роботи родичів на державній службі; регулюють правила етичної поведінки державних службовців; врегулювати порядок подання декларації про доходи.

Виокремлено важливі складові системи превентивної боротьби з корупцією: а) антикорупційна експертиза, б) спеціальна антикорупційна перевірка, в) єдиний державний реєстр осіб, які вчинили корупційні або пов'язані з корупцією правопорушення, г) вимоги до прозорості інформації та доступ до неї; б) захист викривачів (осіб, які повідомляють про факти корупції) від незаконного звільнення, переведення, зміни істотних умов трудового договору.

Ключові слова: адміністративні засоби протидії корупції; адміністративне правопорушення; антикорупційне законодавство; корупційне правопорушення; корупція; військовий стан; запобігання корупції.

Introduction. The introduction of martial law led to the adjustment of legal relations in accordance with the Law of Ukraine “On the legal regime of martial law” of 12.05.2015 [1] and the Decree of the President of Ukraine “On the imposition of martial law in Ukraine” from 24.02.2022 [2].

One of the areas that has undergone significant changes is the area of anti-corruption. In particular, they touched upon the relations related to the submission of declarations, notifications of significant changes in property status, notifications on opening a foreign currency account, conducting inspections, restrictions for public servants on certain activities and others.

Normative novelties have led to changes in the work of the National Agency for Prevention of Corruption, the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office, civil service management structures (National Agency of Ukraine for Civil Service and its territorial bodies), and other public administration structures.

Corruption, as a method of conspiratorial interaction between subjects of legal relations in order to obtain personal benefits of a political, social, economic nature and other advantages contrary to legal rules and norms, became an urgent and painful problem for Ukraine already in the first years of gaining statehood.

The first anti-corruption law was adopted in Ukraine in 1995. It was aimed at preventing corruption, identifying and crossing its manifestations, restoring the legal rights and interests of individuals and legal entities, and eliminating the consequences of acts of corruption.

After some time, the analysis of the practice showed, firstly, that the operation of its norms does not meet social expectations, practically does not affect the state and dynamics of corruption offenses, and secondly, further build-up of anti-corruption efforts is impossible without reforming the administrative and legal means of combating corruption.

The consequence of this was the development of a new legislative act. As a result, in June 2009, the Law of Ukraine “On the Basics of Preventing and Combating Corruption” was adopted. However, its effectiveness was no better than the previous one.



Public concern has led to the adoption of the next Law of Ukraine “On the basics of preventing and combating corruption” in April 2011. He defined the basic principles: a) prevention and counteraction of corruption in public and private spheres of public relations, b) compensation for damage caused as a result of committing corruption offenses, c) restoration of violated rights, freedoms or interests of individuals, d) rights or interests of legal entities, e) the interests of the state.

In October and November of the same year, the State Program for the Prevention and Counteraction of Corruption for 2011–2015 and the National Anti-Corruption Strategy for 2011–2015 were successively adopted. Unfortunately, these documents were not based on substantive research and analysis of previous efforts.

Therefore, the decision to develop a new anti-corruption legislative act was quite natural and reasonable. Such a document was adopted on October 14, 2014. This is the current Law on the Prevention of Corruption [3].

The aim of the study. The purpose of the research is to obtain new knowledge: a) about the specifics of corruption in the conditions of martial law; b) effectiveness of current anti-corruption legislation under martial law; c) the effectiveness of anti-corruption entities in martial law.

To achieve the goal, the following was done. Changes to the Criminal Code of Ukraine are analyzed: the list of corruption criminal offenses; restrictions and prohibitions for persons who have committed corruption criminal offenses. Changes to the Code of Administrative Offenses of Ukraine are analyzed: Chapter 13-A “Administrative Offenses Related to Corruption”; responsibility for violation of financial control requirements; violation of requirements for the prevention and settlement of conflicts of interest; restrictions on combination and combination with other types of activities; illegal use of information that has become known to a person in connection with the performance of official or other powers specified by law; failure to take anti-corruption measures.

Research results. The vulnerability of the Ukrainian bureaucracy to interventions of corruption temptations proved to be an urgent and painful problem already in the initial stages of building state independence.

The first law on combating corruption was adopted in Ukraine in 1995. It was aimed at preventing corruption, identifying and crossing its manifestations, restoring the legitimate rights and interests of individuals and legal entities, eliminating the consequences of corrupt acts. Analysis of the practice of its application has shown that further strengthening of anti-corruption efforts is impossible without further reforms of the regulatory framework.

This led to the development of a new legislative act. As a result, in April 2011 the Law of Ukraine “On the Principles of Preventing and Combating Corruption” was adopted. It defined the basic principles: a) prevention and combating corruption in the public and private spheres of public relations, b) compensation for the damage caused by corruption offenses, c) restoration of violated rights, freedoms or interests of individuals, d) rights or interests of legal entities, e) interests of the state.

In October and November of that year, the “State Program to Prevent and Combat Corruption for 2011–2015” and the “National Anti-Corruption Strategy for 2011–2015” were adopted consecutively. Unfortunately, both documents were not based on substantive research and analysis of previous efforts. In this period, regular corruption studies, which would have provided an analytical basis for monitoring the implementation of the anti-corruption strategy and its future updates, were not conducted. The Central Election Commission, the Chamber of Accounts, the courts, and the Prosecutor’s Office were left out of their focus. There were no links to other relevant reforms, which are important in terms of eliminating the preconditions for corruption or creating effective tools for bringing perpetrators to justice: reforms of the law enforcement system, judiciary, external audit, etc. In addition, the State Program lacked clear, measurable, achievable, relevant and time-limited indicators of implementation of its tasks. The indicators themselves had no qualitative basis and were formal (“report and proposals”, “corresponding legal act”, “conducted seminars”, “annual report”, etc.). In fact, they were process-oriented only, so even their full implementation could not lead to any significant changes and ensure the achievement of objectives [4].



Therefore, it was quite natural and reasonable to decide to develop a new anti-corruption legislative act. Such a document was adopted on October 14, 2014. It was the current Law “On Prevention of Corruption”.

The law synchronized anti-corruption policy and legislation, based on the current economic and socio-legal situation. With its adoption, the normative regulation of the anti-corruption mechanism evolved, a consistent improvement of the institutional system through new preventive mechanisms began.

Thus, the main components of the preventive anti-corruption system, according to this Law, are: 1) the functioning of the National Agency for the Prevention of Corruption, a specialized body for the prevention of corruption; 2) rules for the formation and implementation of anti-corruption policy; 3) anti-corruption restrictions: a) regarding the use of one’s official position, b) receiving gifts, c) combining jobs and combining with other activities, d) joint work of close persons related to the performance of state or local government functions; 4) prevention and settlement of conflicts of interest; 5) special anti-corruption tools: a) anti-corruption expertise, b) a special anti-corruption audit, c) the Unified State Register of Persons Who Committed Corruption or Corruption-Related Offenses, d) requirements for transparency of information and access to it; 6) protection of whistleblowers (persons who report facts of corruption) from unlawful dismissal, transfer, changes in the essential terms of the employment contract); 7) legal liability for corruption and corruption-related offences; 8) elimination of the consequences of corruption offenses: a) cancellation of acts, b) recognition of transactions as void, c) compensation for losses in court; 9) international cooperation.

In accordance with the Law of 2014 “On the Prevention of Corruption” and in the development of its provisions, important transformations took place in the system of organizationally structured anti-corruption institutions [5, p. 39].

First of all, it should be noted the creation of the National Agency for the Prevention of Corruption as a central executive body with a special status. Its main functions were: ensuring the formation and implementation of anti-corruption policy with the involvement of the public; analysis and study of the situation with corruption; development, monitoring and coordination of the implementation of the Anti-Corruption Strategy and the state program for its implementation; monitoring and control over the implementation of acts of legislation on professional ethics and conflicts of interest; coordination and methodological assistance in identifying and eliminating corruption risks; implementation of financial control, verification of declarations, monitoring of the lifestyle of persons authorized to perform the functions of the state or local government; approval of the rules of ethical behavior of civil servants and officials of local self-government; cooperation with whistleblowers, taking measures for their legal protection; providing methodological and advisory assistance on the application of anti-corruption legislation; implementation of international cooperation in the field of anti-corruption policy.

At the same time, the Agency received the right to demand the necessary information from the governing bodies; make binding instructions (to eliminate violations of the implementation of anti-corruption legislation); apply to law enforcement agencies with mandatory conclusions regarding the identified signs of offenses; apply to the court with claims (applications) to declare illegal legal acts, individual decisions, invalidate transactions issued (accepted, concluded) as a result of violation of anti-corruption legislation) have access to databases of state and other bodies (for financial control, in particular for checking declarations).

In the format of the implementation of anti-corruption legislation, the following were also created: the National Anti-Corruption Bureau of Ukraine [6]; Specialized Anti-Corruption Prosecutor’s Office; State Bureau of Investigation [7].

In the mechanism of combating corruption, these structures interact with each other, with other law enforcement agencies, the executive branch, local self-government, and civil society actors.

The National Anti-Corruption Bureau of Ukraine was established as a state law enforcement agency with broad enforcement powers. It is he who is entrusted with the duty of direct prevention, detection, suppression and disclosure of corruption crimes that are committed by senior officials



authorized to perform the functions of the state or local self-government, and constitute a threat to national security. To this end, the National Bureau carries out operational-search activities; conducts a pre-trial investigation of criminal offenses related to its jurisdiction, as well as conducts a pre-trial investigation of other criminal offenses in cases specified by law; takes measures to search for and seize funds and other property that may be subject to confiscation or special confiscation for criminal offenses related to the jurisdiction of the National Bureau; interacts with other state bodies, local governments and other entities to fulfill their duties; carries out information and analytical work in order to identify and eliminate the causes and conditions that contribute to the commission of criminal offenses attributed to the jurisdiction of the National Bureau; provides confidentiality and voluntary cooperation with persons who report corruption offences.

The Specialized Anti-Corruption Prosecutor's Office was created as part of the General Prosecutor's Office of Ukraine as an independent Department. Its leader is also the Deputy Prosecutor General of Ukraine. The main areas of activity of the Anti-Corruption Prosecutor's Office include: supervision over compliance with laws in the conduct of operational-search activities, preliminary investigation by the National Anti-Corruption Bureau of Ukraine; participation in the consideration by the courts of the petitions of detectives and prosecutors during the pre-trial investigation; participation in the judicial review of criminal proceedings investigated by detectives of the National Anti-Corruption Bureau of Ukraine.

The State Bureau of Investigation has the status of a state law enforcement body and exercises its powers directly and through territorial administrations. The State Bureau of Investigation solves the tasks of preventing, detecting, suppressing, disclosing and investigating crimes committed by officials who occupy a particularly responsible position in the public service; judges and law enforcement officials; officials of the National Anti-Corruption Bureau of Ukraine, the Deputy Prosecutor General, the head of the Specialized Anti-Corruption Prosecutor's Office or other prosecutors of the Specialized Anti-Corruption Prosecutor's Office.

The law of 2014 introduced significant changes to the regulatory framework for the institution of whistleblowers, anti-corruption expertise of legal acts; conflict of interest; information support for anti-corruption activities; special check and others.

Important changes have been made to the Criminal Code. For the first time in the history of Ukraine, it presents a list of corruption criminal offenses and states that the perpetrators of them are subject to a number of restrictions and prohibitions.

Thus, they cannot be released from criminal liability: in connection with repentance (Article 45); in connection with the reconciliation of the perpetrator with the victim (Article 46); in connection with bail (Article 47); in connection with a change in the situation (Article 48); they cannot be given a more lenient punishment; than provided by law (Article 69); the court does not have the right to release such a person from punishment in connection with the loss of public danger by the act (part 4 of article 74); release from serving a sentence with a trial (part 1 of article 75; article 79) or on the basis of an amnesty (part 4 of article 86); the terms of the actual serving of the sentence have been increased; appointed by the court for a corruption offense; for parole (art. 81); replacement of the unserved part of the punishment with a milder one (Article 82); pardon (part 3 of article 87); a conviction for committing a corruption offense cannot be prematurely dismissed by the court (part 2 of article 91).

The Code of Administrative Offenses [8] was supplemented with Chapter 13-A "Administrative Offenses Related to Corruption". It contains norms providing for responsibility for: violation of restrictions on part-time employment and combination with other types of activity (Article 172-4); violation of legal restrictions regarding the receipt of gifts (art. 172-5); violation of financial control requirements (art. 172-6); violation of the requirements for the prevention and settlement of conflicts of interest (art. 172-7); illegal use of information that became known to a person in connection with the performance of official or other powers determined by law (Article 172-8); violation of the restrictions established by law after the termination of the powers of a member of the national commission that carries out state regulation in the field of energy and utilities (Article 172-8-1); failure to take measures to combat corruption (art. 172-9); violation of the prohibition on placing



bets on sports related to the manipulation of an official sports competition (art. 172-9-1); violation of legislation in the field of environmental impact assessment (art. 172-9-2).

As a result of these transformations, there are reasons to note some positive trends in combating corruption.

Thus, sociological studies have recorded a noticeable decrease in the proportion of citizens who have direct experience of involvement in corrupt relations. In 2013, 60 percent of respondents had it, and largely thanks to these data, in April 2017, the international audit company EY ranked Ukraine in first place in the world in terms of corruption among 41 countries surveyed (including from Africa) [9, p. 23]. By the beginning of 2022, less than 40 percent of the citizens surveyed indicated its presence.

There is also some improvement in the comparative indicators of the level of corruption, which is recorded in a special rating by the international organization “Transparency International”. According to her, in the period from 2013 to 2019, it increased from 25 to 30 points. In 2021, Ukraine received 33 points and took 117th place out of 180 countries, which is 3 points better than the previous indicators [10, p. 9].

However, this progress does not satisfy society. Citizens perceive it as too slow, and corruption is recognized as one of the most important problems. In scientific publications on this issue, it is noted that annually, experts estimate the loss of the state budget from the illegal activities of the shadow business in Ukraine at UAH 12–13 billion.

The reluctance of foreign investors to invest in the Ukrainian economy is mainly due to corruption, since the amount of bribes usually equals the amount of capital invested in the business. Corrupt bureaucracy has turned into a kind of all-powerful monster.

The impression is that it is in the interests of the bureaucracy that laws are adopted and amended. The official is omnipotent and unpunished. And in the country now there is no real force, including in the highest echelons of power, which would be able to curb bureaucratic arbitrariness [11, p. 114].

According to a survey conducted in early 2020, corruption-driven social tensions were seen as tantamount to the Donbass crisis. The slow pace of implementation of anti-corruption policy in Ukraine significantly slows down its economic growth. The prevalence of corruption and distrust in the main instruments of counteraction (regulatory support, organizational and legal institutions, research support, control by non-governmental organizations) are diagnosed by civil society as a dominant obstacle to improving living standards, progress in combating the pandemic, the effectiveness of education, and attracting people to the country. investment.

Returning to positive changes, we note that progress in minimizing corruption risks is correlated with: a) the start of work of the Supreme Anti-Corruption Court with appropriate jurisdiction; b) rebooting the National Agency for the Prevention of Corruption; c) modernization of legal regulation; d) improvement of law enforcement practice.

The update of the anti-corruption policy and its regulatory support is associated with the new Anti-Corruption Strategy for 2020–2024, which is currently under consideration in the Verkhovna Rada of Ukraine (draft law No. 4135 “On the Fundamentals of the State Anti-Corruption Policy for 2020–2024” [12, p. 11]).

The draft, among other measures, provides for the need to ensure the inevitability of legal liability for corruption and corruption-related offences. In particular, we are talking about disciplinary, administrative and criminal liability

The institution of disciplinary responsibility as the main mechanism for ensuring compliance with the rules of ethical behavior by public servants is characterized by a high anti-corruption potential, since it allows to remove from the performance of the functions of the state or local government persons who grossly or systematically violate their duties. However, Ukraine has not yet been able to fully realize the potential of this institution. In this regard, the novelties of subsection 4.1 of the draft are primarily aimed at improving the provisions of the legislation regarding the grounds and procedure for bringing persons to disciplinary responsibility for committing corruption and corruption-related offences.



One of the most effective mechanisms for ensuring compliance with the rules, procedures, prohibitions and restrictions established by anti-corruption legislation (violation of which constitutes a corruption offense) is a properly functioning system of administrative responsibility measures. The Code of Ukraine on Administrative Offenses still provides for liability for most of these violations, but the practice of implementing the relevant provisions of administrative legislation shows that the security and deterrent (preventive) effect of these mechanisms is minimal. Based on this, subsection 4.2 of the draft contains recommendations to ensure the inevitability of administrative liability by improving the grounds and procedural means of bringing to administrative liability.

In order to effectively combat corruption and corruption-related crimes in Ukraine, the system of norms that provided for the grounds for criminal liability for committing such crimes was radically changed, which is now generally consistent with international standards in this area. At the same time, for a number of objective and subjective reasons, it has not yet been possible to ensure a high level of inevitability of criminal liability for committing corruption and corruption-related crimes. Based on this, the provisions of subsection 4.3 are aimed at achieving the following main results: improvement of legislation that establishes criminal liability for committing corruption and corruption-related criminal offenses (harmonization of the provisions of the Criminal Code of Ukraine with the Law of Ukraine “On the Prevention of Corruption”, increasing the statute of limitations for liability for such crimes, harmonization and slight increase in sanctions, etc.); ensuring stable and predictable investigative and judicial practice in relevant proceedings; improvement of the provisions of the criminal procedural legislation; ensuring the effective operation of the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor’s Office and their interaction with other bodies; increasing the effectiveness of countering the legalization of assets obtained by criminal means, as well as the return of such assets; ensuring the continuity of the trial of criminal proceedings and the stability of judicial practice in such cases.

Thus, all the factors that contributed to the progress of anti-corruption efforts are somehow related to qualitative changes in the regulatory framework for combating corruption.

Thus, at the crossroads to martial law, the anti-corruption mechanism turned out to be institutionally formed and legally systematized. Its adaptation to the new conditions has become an important vector for the introduction and provision of measures for the legal regime of martial law in Ukraine.

All components of this mechanism have been adjusted accordingly, but the most structured impact has been on the declaration of financial and property assets of public servants.

First, the requirements for declaring property and funds received for assistance to: a) the security and defense forces of Ukraine have been amended; b) persons who have suffered as a result of aggression. Naturally, such funds and property are not the personal income of the declarant. Therefore, it is considered fair that they are not subject to reflection in the declaration

Secondly, the requirements for the submission of notifications of “significant changes in property status” have been adjusted. Significant changes in property status of the Law of Ukraine “On Prevention of Corruption” of 14.10.2014, recognizes: a) income; b) acquisition of property c) expenditure in the amount exceeding 50 subsistence minimums (established for able-bodied persons).

According to this law, the subjects of declaration (persons referred to in paragraph 1, paragraphs “a” and “c” of paragraph 2, part 1 of Article 3) are obliged to notify the National Agency for Prevention within 10 days corruption about “significant changes in property status”.

In terms of the Law of Ukraine “On the legal regime of martial law” of 12.05.2015 and the Decree of the President of Ukraine “On the imposition of martial law in Ukraine” of 24.02.2022 National Agency for Prevention of Corruption recognized the right to suspend corruption about “significant changes in property status”.

Third, the National Agency for the Prevention of Corruption clarified the declaration of movable enemy property obtained in combat by the declarant.

In this case, the requirement to declare movable property worth more than 100 subsistence minimums is adjusted, regardless of the form of the transaction for its acquisition.



In this regard, the National Agency for the Prevention of Corruption explains the following. Enemy property obtained in battle by the subject of the declaration shall not be reflected in the declaration on such grounds. First, it was acquired not as a result of a transaction, but in connection with the protection of the state in accordance with the above regulations. Secondly, the assessment of such objects in accordance with the Law of Ukraine of 12.07.2001. “On the valuation of property, property rights and professional valuation activities in Ukraine” in order to determine whether their value exceeds the declaration threshold is impossible.

At the same time, if the relevant entities wish to declare them, the National Agency for the Prevention of Corruption will facilitate the declaration.

Conclusions. Elaboration of 1) requirements for declaring property and funds received for assistance to: a) security and defense forces of Ukraine; b) persons who have suffered as a result of aggression; 2) requirements for the deadlines for filing a notice of “significant changes in property status”; 3) requirements to declare movable property worth more than 100 subsistence minimums, regardless of the form of the transaction for its acquisition from the positions of the Laws of Ukraine “On Prevention of Corruption” of 14.10.2014, “On Martial Law” of 12.05.2015, Decree of the President of Ukraine “On the introduction of martial law in Ukraine “from 24.02.2022, as well as the generalization of the vision of these issues by the National Agency for the Prevention of Corruption, allowed to formulate algorithms for declaring the assets of civil servants in martial law.

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