

SECTION 7.

LAW AND INTERNATIONAL LAW

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PROBLEM ISSUES OF IMPLEMENTATION ANTI-CORRUPTION MEASURES IN UKRAINE

Solving the problem of corruption is one of the priorities for Ukrainian society at the current stage of state development. An important aspect of the state legal policy in Ukraine is the implementation of measures to prevent and combat corruption. Achieving success in this process is a prerequisite for the formation of trust in the authorities in society, the growth of the economic potential of the state, and the improvement of the well-being of citizens [1, p. 403].

Despite significant successes in preventing and countering corruption, the level of corruption in Ukraine remains quite high. This situation is caused by certain shortcomings in the national legislation, as well as in the organization of anti-corruption measures.

The anti-corruption legislation of Ukraine consists of the Constitution of Ukraine, the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offenses, the Criminal Procedure Code of Ukraine, the Law of Ukraine «On Prevention of Corruption», the Anti-Corruption Strategy for 2021–2025 and other legal acts. The specified normative acts meet the needs of law enforcement practice. At the same time, in the issue of preventing and countering corruption in Ukraine, there are difficulties in implementing the provisions of the above-mentioned documents.

First of all, it should be noted that the Anti-Corruption Strategy for 2021–2025 was adopted in June 2022 [2]. That is, a certain part of the planned measures are no longer being implemented, or are being implemented late, which will in a certain way affect the general state of prevention and countering of corruption. In addition, the previous Anti-Corruption Strategy for 2014–2017 has long been outdated [3], and in the period from January 2018 to June 2022, Ukraine did not have a comprehensive regulatory act that would regulate the general issues of preventing and countering corruption. Thus, for a considerable period of time, the executive authorities either did nothing in terms of preventing and countering corruption, or implemented measures that are already outdated and ineffective in a certain way.

In order to solve this problematic issue, first of all, the Anti-Corruption Strategy should be approved in a timely manner, which is a reference point for all state and non-state institutions, as well as international organizations, in preventing and countering corruption both in these bodies and in Ukraine in general. And for international organizations, the approved Anti-Corruption Strategy is a factor in Ukraine's ability to overcome corruption, or to reduce its level.

In accordance with the general trend of the implementation of the anti-corruption policy of Ukraine, the system of bodies for the prevention and counteraction of corruption consists of: 1) the National Council on Anti-corruption Policy; 2) Committee of the Verkhovna Rada of Ukraine on anti-corruption policy; 3) National Anti-Corruption Bureau of Ukraine (NABU); 4) National

Agency on Corruption Prevention (NACP); 5) Specialized anti-corruption prosecutor's office (SAP); 6) Higher Anti-Corruption Court (HACS); 7) State Bureau of Investigation (SBI); 8) Asset Recovery and Management Agency (ARMA).

In general, there are no questions about it, but NABU and the SBI should be singled out among the mentioned institutions. According to the relevant laws (the Law of Ukraine «On the National Anti-Corruption Bureau of Ukraine» [4] and the Law of Ukraine «On the State Bureau of Investigation» [5] respectively), which regulate their activities, this is an executive power body that carries out the disclosure and investigation of criminal offenses, assigned to its competence and the law enforcement body, which performs similar functions, respectively. Given the provisions of the Criminal Procedure Code of Ukraine in terms of determining liability (Art. 216) [6], the role of the SBI in preventing and countering corruption is not entirely clear. The SBI is a law enforcement agency that uncovers and investigates criminal offenses that are not subject to NABU investigation. In addition, the National Police of Ukraine (NPU) operates in Ukraine, which also discloses and investigates criminal offenses that are not investigated by other bodies. Thus, it turns out that there are at least three bodies in Ukraine that in a certain way duplicate each other's powers and functions.

If NABU was formed to prevent and counter corruption, then it should be empowered to investigate all types of corruption and corruption-related criminal offenses. At the same time, the SBI should not be presented as an anti-corruption body, since its main function is the investigation of criminal offenses committed by high-ranking officials. In the NPU of elect the authority to investigate corruption and corruption-related criminal offenses.

To solve this problematic issue, the following should be done: 1) form a single system of anti-corruption bodies, which will be coordinated both horizontally (NACP–NABU–ARMA) and vertically (NABU–SAP–HACS). Thus, all anti-corruption powers will be concentrated in special bodies that have a clear hierarchy of investigation (NABU), control (SAP) and judicial supervision (HACS); 2) completely deprive the SBI and NPU of their powers to investigate corruption and corruption-related criminal offenses. This will make it possible to approach the corruption issue in Ukraine in a more specialized (profile) way, without duplicating functions and «dragging» criminal proceedings; 3) not to form new «anti-corruption» bodies that will duplicate the functions and/or powers of existing ones; 4) leave the right to disclose corruption and corruption-related criminal offenses to all law enforcement agencies and other executive authorities.

Among the problematic issues regarding the implementation of anti-corruption measures are the legally established powers of anti-corruption bodies. Yes, according to Art. 255 of the Code of Ukraine on Administrative Offenses, in the case of an administrative offense related to corruption, a report on such an offense is drawn up by an authorized person of the NPU bodies (with the exception of offenses committed by officials who occupy a responsible and particularly responsible position). In the event of such offenses being committed by officials who occupy a responsible and particularly responsible position, the protocol is drawn up by an authorized person of the NACP [7]. Based on this, the following questions arise: 1) why is the NPU not included in the system of anti-corruption bodies? 2) why are NABU employees not given such powers? 3) why can't all protocols be drawn up by authorized persons of the NACP? It is not entirely clear why such a division of powers should be carried out.

At the same time, attention should be paid to the fact that investigating corruption or corruption-related criminal offenses are authorized pre-trial investigation bodies of the NACP. Therefore, in our opinion, it is more expedient to give the detectives of this executive authority with a special status the authority to draw up protocols on administrative offenses related to corruption, in case they are committed by officials who occupy a responsible and especially responsible position. At the same time, the right to draw up such protocols regarding officials who do not hold a responsible and especially responsible position, to grant to the authorized persons of the NACP.

Thus, NPU bodies will be deprived of the right to draw up protocols on administrative offenses related to corruption, which will reduce the number of cases of abuse of their official powers in this area, and anti-corruption activities will be fully concentrated in the bodies classified as anti-corruption, which is their profile work.

In addition to the fact that changes should be made to the Code of Ukraine on Administrative Offenses, as mentioned above, we consider it expedient to «split» the Law of Ukraine «On Prevention of Corruption» [8] into two separate laws by separating from the already existing provision on NACP into separate documents. Thus, two laws of Ukraine «On Prevention of Corruption» and «On the National Agency on Corruption Prevention» will be issued.

The Law of Ukraine «On the National Agency on Corruption Prevention» should significantly expand the provisions on the agency's activities. Currently, there are a number of questions regarding the activity of both the agency itself and its structural divisions, since their activities are regulated by internal orders of the NACP, which is not entirely correct. It is more appropriate to provide all these provisions in the Law of Ukraine, which will be freely available, always with new changes, which are mandatory for other persons to perform.

Also, such changes will ensure a certain stability and reliability of the work of NACP, since a separate legal act that will regulate its activities will not depend on the provisions of the Law of Ukraine «On Prevention of Corruption». In the case, for example, if the Constitutional Court of Ukraine recognizes the specified law as unconstitutional, then the legality of the existence and functioning of the NACP, whose activity will already be provided for by another law, will not be questioned. As a result, all drawn up protocols on administrative offenses and performed inspections will remain legal.

Therefore, the implementation of the listed anti-corruption measures will significantly affect the state of prevention and counteraction of corruption in Ukraine, which will make it possible to reduce the number of corruption manifestations and, as a result, reduce the level of corruption in general.

References:

1. Yurikov O. (2021). Problems of implementation of anti-corruption policy in Ukraine. *In Implementation of the state anti-corruption policy in the international dimension: materials of the VI International science and practice conference.* (pp. 403–406). Kyiv: National Academy of Internal Affairs.
2. Law of Ukraine № 2322-IX «On the principles of state anti-corruption policy for 2021–2025». (2022, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2322-20#Text>.
3. Law of Ukraine № 1699-VII «On the principles of state anti-corruption policy in Ukraine (Anti-corruption strategy) for 2014–2017». (2014, October). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=4284%D0%B0&skl=8.
4. Law of Ukraine № 1698-VII «On the National Anti-Corruption Bureau of Ukraine». (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1698-18>.
5. Law of Ukraine № 794-VIII «About the State Bureau of Investigation». (2015, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/794-19#Text>.
6. Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17/>.
7. Code of Ukraine on Administrative Offenses. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10>.
8. Law of Ukraine № 1700-VII «On prevention of corruption». (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.