

ინოვაციური ეკონომიკა და მართვა

INNOVATIVE ECONOMICS AND MANAGEMENT

ოქსანა პარხომენკო- კუნივილი,

სახელმწიფო მართვის
მეცნიერებათა დოქტორი,
პერსონალის მართვის
რეგიონთაშორისი აკადემიის
სახელმწიფო მართვის კათედრის
გამგე, კიევი, უკრაინა
orcid.org/0000-0002-0758-346X,

*შემოსულია რედაქციაში:
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ანტიკორუფციული დაწესებულების საქმიანობის რეალიზაცია უკრაინაში და მისი ოპტიმიზაცია

IMPLEMENTATION OF THE ACTIVITY OF THE ANTI-CORRUPTION INSTITUTIONS IN UKRAINE AND THEIR OPTIMIZATION

ანოტაცია. სტატიის მიზანს წარმოადგენს უკრაინაში სახელმწიფო მართვის ანტიკორუფციული ინსტიტუტების საქმიანობის ოპტიმიზაციისადმი თეორიულ-მეთოდოლოგიური მიდგომები. ორიგინალურობა და ღირებულება. სტატია წარმოადგენს ავტორის დამოუკიდებელ სამეცნიერო ნაშრომს, შესრულებულს აქტუალურ თემაზე. ნაშრომი შესრულებულია ორიგინალურ თემაზე და გაკეთებულია ორიგინალური დასკვნები. მასალები და მეთოდები. კვლევის მეთოდებს წარმოადგენენ სისტემური ანალიზი და სინთეზი, დედუქცია, ინდუქცია, განზოგადება. სტატიაში გაანალიზებულია ანტიკორუფციული ინსტიტუტების შექმნის გამოცდილება პოლონეთში. შედეგები. ანტიკორუფციული ორგანოების საქმიანობის თანამედროვე მდგომარეობის ანალიზი ცხადყოფს მათი განვითარებისა და ჩამოყალიბების ნელ ტემპებს, საქმიანობის რეალური ორგანიზაციული და სამართლებრივი მექანიზმების არ არსებობას, ასევე ერთიანი კავშირის არ არსებობას ახლად შექმნილ ანტიკორუფციულ ორგანოებსა და მათ გადანაცვლებებზე და მოქმედებებზე სახელმწიფო კონტროლს შორის. დასკვნები. კორუფციასთან ბრძოლისა და პრევენციისათვის შემოთავაზებულია სახელმწიფო სააგენტოს შექმნა. სავარაუდოთ, კორუფციასთან ბრძოლისა და პრევენციის სახელმწიფო სააგენტოს სტრუქტურა შედგენილი იქნება ორი ძირითადი ქვეგანყოფილებისაგან: კორუფციის აღკვეთისა და კორუფციასთან ბრძოლის კუთხით. აღნიშნული უზრუნველყოფს მოქმედებების კოორდინირებას, რომლებიც მიმართული იქნებიან კორუფციის დაძლევისა და პრევენციაზე, კომუნიკაციური პრობლემების მინიმიზაციაზე ანტიკორუფციულ ორგანოებში და მათი სტრუქტურის ოპტიმიზაციაზე.

საკვანძო სიტყვები: კორუფცია, სახელმწიფო ხელისუფლების ანტიკორუფციული ორგანოები, მოდერნიზაცია, სახელმწიფო ხელისუფლების სტრუქტურის სრულყოფა, კორუფციასთან ბრძოლა და პრევენცია.

ABSTRACT. The aim of the article is theoretical and methodological approaches to optimizing the activities of anti-corruption institutions of state power in Ukraine. Originality and value. The article is an independent scientific work, written by the author on an actual topic. The material is written on the original topic and there are original findings. Materials and methods. Research methods are system analysis and synthesis, deduction, induction, generalization. The article analyzes the experience of the establishment of anti-corruption institutions in Poland. Results. An analysis of the current state of activity of an-

OKSANA PARKHOMENKO-KUTSEVIL,

Doctor of Sciences in Public Administration,
Head of the Department of Public Administration of the Interregional Academy of Human Resources Management, Kyiv, Ukraine
orcid.org/0000-0002-0758-346X,

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ti-corruption bodies demonstrates the slowness of their development and establishment, the absence of real organizational and legal mechanisms for their activities, the lack of unified communication between newly created anti-corruption bodies and strengthening state control over decisions and actions taken by anti-corruption bodies. The problems of the development of innovative anti-corruption institutions in Ukraine are identified. Conclusions. The creation of the State Agency for the Prevention and Combating of Corruption was proposed. It is proposed that the structure of the State Agency for the Prevention and Combating of Corruption will include two main divisions: concerning the prevention of corruption; concerning the fight against corruption. This will enable coordinating activities aimed at preventing and overcoming corruption, minimizing communication problems in the anti-corruption bodies, and optimizing the structure of the anti-corruption body.

Key words: corruption, anti-corruption bodies of state power, modernization, improvement of the structure of the state authorities, prevention and struggle with the corruption.

FORMULATION OF THE PROBLEM.

The system analysis of the development and formation of anti-corruption bodies of the state power in Ukraine is important, since the problem of preventing and overcoming corruption in Ukraine is a priority issue. Corruption hinders not only the economic well-being of the country’s population, but also further positive changes and reforms. The program documents of the Government of Ukraine clearly set the priorities of the country’s development, including the elimination of corruption.

Various special institutional models may be used in different countries to fulfill the basic functions of combating corruption, but they must be in line with international standards. That is, the development of the main powers and the formation of a specialized body in the field of combating corruption should be based on a single concept in accordance with the requirements of the international legal instruments. The legislative framework for its activities should meet the requirements of the internationally-legal documents ratified by Ukraine in this area.

ANALYSIS OF THE RECENT RESEARCH AND PUBLICATIONS THAT LAUNCHED THE SOLUTION TO THIS PROBLEM.

The problem of preventing and overcoming corruption, as well as the work of anti-corruption authorities is analyzed by the scientists in various fields of science, including lawyers, political scientists, sociologists, psychologists, public officials, etc. In particular, the problems associated with the formation and development of the innovative anti-corruption bodies of the state power in Ukraine are analyzed by: S. Alexandrov, V. Andrianov, L. Bagriy-Shahmatov, O. Banchuk, I. Bachinsky, V. Belik, V. Berzner, M. Kamlyk, I. Kozyakov, O. Kostenko, V. Kuzmenko, O. Kurylenko, V. Lytvynenko, O. Lukyanov, O. Markeyeva, M. Melnyk, O. Mykhaylchenko, O. Musiyenko, E. Nevmerzhytsky, A. Novak, S. Petrashko, S. Seryogin, L. Sytnyk, E. Skulysh, M. Fomina, M. Havronyuk and others.

At the same time, there are no theoretical and methodological approaches to optimizing the activity of anti-corruption institutions in Ukraine.

FORMULATING THE GOALS OF THE ARTICLE (STATEMENT OF THE TASK).

The purpose of the article is the theoretical and methodological approaches to optimizing the activity of anti-corruption institutions of the state power in Ukraine.

RESEARCH RESULTS.

We will analyze the experience of forming anti-corruption institutions in the European countries, in particular Poland.

The Central Anti-Corruption Bureau (CAB) of the Republic of Poland is a special body to fight corruption in the public and economic life, particularly in the state and local government institutions, as well as to fight against activity, that is vested with such powers that in Ukraine has several powers anti-corruption institutions, in particular:

1. prevention and detection of offenses against [1]:
 - activities of the state institutions, as well as local self-government bodies;
 - justice, elections and referendums, public order, documents authenticity, property, economic activity, circulation of money and securities, if they are related to corruption or with activities that could harm the economic interests of the state;
 - financing of the political parties, if they are related to corruption;
 - tax responsibilities if they are related to corruption or activities that could harm the economic interests of the state;
 - rules of sporting competitions;
 - the circulation of medicines, special-purpose foods, medical products, and the prosecution of the persons who have committed them;
2. detection and counteraction to the cases of non-compliance with the provisions of the Law of the Republic of Poland “On the Organization of Economic Activities by the Persons Performing Public Functions” of August 21, 1997;
3. documenting the grounds and initiating the implementation of the provisions of the Law of the Republic of Poland “On the Return of Benefits Unreasonably Received From the State Budget or From Other State Legal Entities”;
4. detection of the cases of non-compliance with the procedures specified by the law in the course of the adoption and execution of decisions concerning: privatization and commercialization, financial support, public procurement, disposal of the state property, as well as the issuing of licenses, permits, privileges, preferences, quotas, credit guarantees;
5. control of the correctness and truthfulness of data on assets and on the conduct of economic activity by the persons performing public functions;
6. carrying out analytical activities in the areas that fall under the authority of the CAB, as well as providing relevant information to the Prime Minister, the President of the Republic of Poland, the Sejm and the Senate [1].

Thus, the CAB of Poland, within the limits of its tasks defined by the Law of the Republic of Poland “On the Central Anti-corruption Bureau”, has the authority and the following functions:

1. analytical and informational;
2. operational search;
3. control;
4. investigation.

Within the scope of its activities the CAB of Poland also carries out preventive and educational functions. In this area the Bureau cooperates with other bodies and non-governmental organizations whose subject matter is corruption and the fight against corruption [2].

It should be noted that the international standards do not foresee the creation of a universal model of an anti-corruption body, but rather the possibility of functioning of various anti-corruption bodies differing in form, functions and tasks, have certain national characteristics and peculiarities, namely:

- bodies for preventing corruption and developing anti-corruption policy and monitoring its implementation;
- bodies of combating and fighting corruption with law enforcement authorities;
- specialized units for combating corruption within the law enforcement bodies [3].

In accordance with the Law of Ukraine “On Prevention of Corruption”, the National Agency for the Prevention of Corruption (NAPC) is the central body of executive power with a special status that ensures the formation and implementation of the state anti-corruption policy [4]. One of the important functions for the society and the public is checking the declarations of the persons authorized by the functions of the state or local self-government. The mentioned function is almost not implemented, as there is no possibility of automatic verification of such persons’ declarations, which makes it impossible to establish abuse of office and illegal enrichment. In addition, the register of declarations

of the persons authorized on the functions of the state or local self-government was established in 2015, which enables many officials to declare those incomes which were also received in a “dishonest way”.

In addition, there is a problem regarding the training of the civil servants and officials of the local self-government for filling the declarations. After all, when filling in e-declarations there are many problems with the correctness of their filling, there are many explanations for filling in electronic declarations (this applies to filling in credit obligations, leasing, paying for unfinished projects, etc.). This, in turn, raises problems not only for those who fill the declarations, but also for the NAPC itself - when the declarants are beginning to ask questions and thus do not allow them to perform their duties on time. Therefore, in our opinion, there is a need for regular educational courses to fill out electronic declarations.

The issue of patriotic education of the Ukrainian citizens, which serves as a preventive measure, needs to be resolved. In our opinion, this function should also be implemented by the NAPC.

In the Law of the Republic of Kazakhstan of November 18, 2015 “On the Prevention of Corruption” [5] the main role is devoted to the formation of anti-corruption culture as well as anti-corruption education. The formation of the anti-corruption culture is the activity carried out by the subjects of counteraction to corruption within the limits of its competence on preservation and strengthening in the society of system of the values reflecting intolerance to corruption. The formation of anti-corruption culture is carried out through a set of educational, informational and organizational measures [5].

One of the key measures of Kazakhstan’s Anti-corruption strategy for 2015-2025 is the formation of a level of anti-corruption culture. The anti-corruption measures provided for by the Strategy should be accompanied by the broad public participation. Only a close partnership between the state and the society will allow successfully to confront corruption. An intolerable attitude towards corruption should become a civic position for each Kazakh, and honesty and integrity - the norm of behaviour. Without the presence of the citizens’ anti-corruption culture, stable immunity to corruption, its public condemnation is impossible to achieve the desired result. Every Kazakhstani, every family must understand that the fight against corruption is a matter for the whole society. A fundamentally important role in the formation of anti-corruption culture is played by the work with younger generations. Only the introduction from an early age of anti-corruption standards of conduct will eliminate this social evil. It is important from the childhood to educate a person in the spirit of Kazakhstan’s patriotism and the rejection of corruption. Training anti-corruption courses should cover all the educational institutions, government agencies and civil society as a whole. On a mass scale this should be done on a professional basis, using experts from different fields that will be able to access and competently disclose the mechanisms for obtaining public services by the citizens, protecting their rights and legitimate interests. The mass media are intended to provide an atmosphere of social rejection of corruption, promote the formation of an active civic attitude of Kazakhstanis, their active participation in the fight against corruption. Often corruption offenses are a consequence of poor legal literacy of the citizens in the exercise of their rights and legitimate interests. It is needed to achieve a radical eradication of the legal nihilism in the society [6].

In our opinion, the Law of Ukraine “On Prevention of Corruption” should provide for functions on the formation of anti-corruption culture as mechanisms for preventing corruption.

The National Anti-Corruption Bureau of Ukraine (NABU) is a state law enforcement agency that is responsible for preventing, detecting, terminating, investigating and disclosing corruption offenses that fall under its jurisdiction, as well as preventing the commission of new ones. The task of the National Bureau is to counter the criminal corruption offenses committed by the senior officials authorized to perform state or local government functions and endangering the national security [7]. However, the investigation of corruption offenses is very slow.

In addition, there is a problem of lack of effective cooperation between NABU and other anti-corruption bodies.

The National Agency of Ukraine for Detection, Investigation and Management of Assets Derived from Corruption and Other Crimes (AIMA) is a central executive body with a special status that ensures the formation and implementation of the state policy in the field of detection and prosecution of the assets that may be imposed arrest in criminal proceedings, and asset management seized or confiscated in criminal proceedings [8]. There is almost no information on the effectiveness of the activity of this executive body, and the information demonstrated in the media does not prove the effectiveness of this public authority.

Regarding the State Investigation Bureau and the Supreme Anti-corruption Court, it should be noted that currently there are procedures for recruiting positions to these institutions and initiating the activities of these bodies of the state power, so it is impossible to speak objectively about their role in the system of anti-corruption bodies at the moment. It should be noted that the beginning of the activities of these anti-corruption institutions had to be carried out together with the beginning of the NAPC, NABU, SAP activities, since the implementation of such important functions as the implementation of law enforcement activities to prevent, detect, suppress, investigate crimes [9] and administer justice compliance with the principles and procedures of the legal proceedings defined by the law in order to protect individuals, society and the state from corruption and related crimes and judicial of control over pre-trial proceedings of these crimes, respect for the rights, freedoms and interests of individuals in criminal proceedings [10] slows down the whole operation again anti-corruption institutions.

Therefore, there is a problem of optimization and rationalization of the functions of the executive power bodies and the creation of a single, powerful state agency that would be involved in preventing and combating corruption in Ukraine.

Optimization of anti-corruption bodies of state power is a process of bringing them to a state that would enable them to perform their tasks most effectively, in particular, to carry out anticorruption policy. And her main mission is to prevent corruption.

Analyzing possible mechanisms for streamlining the functional and organizational structure of counteraction actors and their interaction, two main directions of the relevant reforms can be distinguished:

- 1) rationalization of the tasks and functions of counteracting actors;
- 2) rationalization of the institutional construction of counter-corruption actors and their interaction.

The first group should include the ways of rationalizing the relevant structure, which relate to the redistribution of existing directions and tasks for combating corruption, their association and reduction. The second group is a mechanism for rationalization, which involves changing the vertical of counter-actors, combining relevant bodies and their possible decentralization.

Rationalization of anti-corruption bodies of state power should be considered in two aspects:

- 1) prevention of corruption, the algorithm of actions aimed at: determining the target audience; definition of measures to prevent corruption; definition of mechanisms for assessing the effectiveness of these measures; Correction of measures to prevent corruption;

- 2) counteracting corruption. The international legal doctrine defines the following general functional structure of counteraction to corruption: criminal prosecution for corruption crimes; measures to prevent corruption; educational and educational work; coordination of anti-corruption work of departments of different levels; monitoring of implementation of national anti-corruption programs; research and analysis of the state of corruption in the state.

The mentioned structure corresponds to the corresponding goals, tasks and functions of the subjects of counteraction to corruption:

- 1) formation and consideration of complaints about actions of officials;
- 2) collecting and analyzing information relating to corruption;

- 3) analysis of the criminogenic situation;
- 4) operational investigation activities and pre-trial investigation;
- 5) prosecution;
- 6) application of administrative liability;
- 7) conducting research, analysis and assistance in the field of prevention of corruption;
- 8) providing advice on ethics issues;
- 9) analysis of compliance with anti-corruption legislation;
- 10) study of property declarations of civil servants and other public entities;
- 11) providing information, conducting educational and educational events;
- 12) international cooperation and assistance in the field of anti-corruption [11].

The specified tasks can be performed within the limits of one state institution or distributed between several state authorities.

The rationalization of the tasks and functions of the subjects of combating corruption involves eliminating the duplication of functions of such bodies of the state power, their rational distribution. If NACP performs the function of preventing corruption, then NABU, SAP and AIMA act as anti-corruption measures. However, these functions are intertwined, so checking the declarations of the persons authorized to perform functions of the state or local self-government, carried out by the NACP, the said checks and related materials may be taken into account during the conduct of certain investigatory actions by other anti-corruption bodies. The same applies to NABU and AIMA materials required when verifying the electronic declarations or illegal enrichment, conflict of interest checks, etc. However, there are currently no effective communication links between the newly created anti-corruption institutions and often information is not received on time or not received at all. All this prevents a real fight against corruption, it does not allow for certain important checks to be carried out in the short term.

The rationalization of the institutional edification of the counteractors and their interaction involves optimizing the system of anti-corruption bodies and determining the coordination between them. Unfortunately, it should be noted that since the reform of the anti-corruption system the level of corruption in Ukraine has not decreased, while the activities of the anti-corruption institutions show a low level of prosecution of the persons who committed corruption or corruption-related offenses, in addition, permanent conflicts can be observed between the leaders of anti-corruption bodies, the lack of effective communication in the system of formation and implementation of the anti-corruption policy.

The analysis of the current state of the activity of the anti-corruption bodies demonstrates the slowness of their development and establishment, the absence of real organizational and legal mechanisms for their activities, the lack of unified communication between the newly created anti-corruption bodies and strengthening the state control over the decisions and actions taken by the anti-corruption bodies.

Therefore, in our opinion, there is a real need to rethink the role and rationalization of these anti-corruption bodies, in particular, it would be advisable to introduce the activity of the central executive body - the State Agency for the Prevention and Combating of Corruption on the basis of newly created anti-corruption institutions, which would enable to create a powerful mechanism for preventing and combating corruption in Ukraine.

So, in our opinion, the head of the State Agency for the Prevention and Combating of Corruption should be the head of a corresponding education, experience of work that has never worked in executive positions in the state authorities and is politically neutral. The appointment of such a leader should be through the creation of a commission of representatives of international organizations, the public, and scientists at the Verkhovna Rada of Ukraine. After the election of such a leader, the decision is approved at a session of the Verkhovna Rada of Ukraine.

To ensure the independence of the State Agency for the Prevention and Combating of Corruption, the issue of accountability should be resolved. So, in our opinion, this leader should be accountable only to the people of Ukraine, and not to high officials.

It would be advisable to form a designated agency such as the Bureau for the Prevention and Combating of Corruption in Latvia and to determine the following functions for this body of the state power:

Concerning the prevention of corruption:

- development and coordination of implementation of the national anti-corruption program;
- receiving and reviewing citizens' complaints, conducting an investigation following the address of the President, the Cabinet of Ministers, the Parliament and the Prosecutor General;
- analysis of the results of consideration of complaints, investigations, applications, practices of prevention of corruption and offenses detected by the state authorities, and submission of the proposals on elimination of the deficiencies to ministries and other bodies of the state power;
- developing a methodology for preventive anti-corruption measures at the public institutions at the national, regional and private levels;
- analysis of the current legislation, preparation of proposals for amendments to laws and drafting of new laws;
- control over the implementation of the Law "On Prevention of Corruption", other normative legal acts regulating the duties of the civil servants, including verification of the declarations of the civil servants;
- educational work among the population on the rights of persons and ethics, dissemination of the information about trends and identified violations in the field of corruption, conducting of polls and analysis of the public opinion;
- development and coordination of the international assistance programs, coordination of international cooperation and analysis of the experience of other countries;
- providing information and recommendations on the prevention of corruption to the Council for the Prevention of Corruption and Crime at its request [11].

Concerning the fight against corruption and the investigation of crimes:

- detection and investigation of the criminal offenses related to corruption in the public service provided for by the Criminal Code, in accordance with the requirements of the current legislation;
- bringing to administrative responsibility of the public servants and applying sanctions for administrative offenses in the field of prevention of corruption;
- in accordance with the law, other government bodies with investigative powers are obliged to facilitate the investigations [11].

CONCLUSIONS.

The article analyzes the experience of the establishment of anti-corruption institutions in Poland. The problems of the development of innovative anti-corruption institutions in Ukraine are identified. The creation of the State Agency for the Prevention and Combating of Corruption was proposed. It is proposed that the structure of the State Agency for the Prevention and Combating of Corruption will include two main divisions:

- concerning the prevention of corruption;
- concerning the fight against corruption.

This will enable coordinating activities aimed at preventing and overcoming corruption, minimizing communication problems in the anti-corruption bodies, and optimizing the structure of the anti-corruption body.

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10. Закон України про Вищий антикорупційний суд URL : <http://zakon.rada.gov.ua/laws/show/2447-19> (date of request 10.08.2018 р.).
11. Спеціалізовані інституції з боротьби проти корупції: огляд моделей / Організація економічного співробітництва і розвитку; Мережа боротьби проти корупції для країн Східної Європи і Центральної Азії. Official website of The Organisation for Economic Cooperation and Development. URL: <http://www.oecd.org/dataoecd/7/51/39972270.pdf> (date of request 31.10.2018)