

UDC 343.1

DOI 10.31733/2078-3566-2021-5-215-220



**Nataliia  
CHERNIAK<sup>©</sup>**

Candidate of Law  
Sciences, Associate  
Professor  
(*Dnipropetrovsk State  
University of Internal  
Affairs, Dnipro,  
Ukraine*)



**Volodymyr  
KIIYANYTSIA<sup>©</sup>**

Senior Lecturer  
(*Dnipropetrovsk  
State University  
of Internal Affairs,  
Dnipro, Ukraine*)

### **SPECIALLY AUTHORIZED ENTITIES IN THE FIELD OF ANTI-CORRUPTION**

**Abstract.** The article describes and analyzes the current anti-corruption policy of Ukraine. The main methods and means of combating corruption at the present stage of formation of Ukrainian statehood are identified.

The main markers that show the existence of corrupt connections in one or another power structure have been identified. Considers the issue of establishing close and effective cooperation between the anti-corruption bodies of Ukraine during the investigation of criminal offenses (crimes) of corruption. The impact and role of each entity involved in the pre-trial investigation and trial is assessed.

**Keywords:** *corruption, state policy in the field of corruption prevention, anti-corruption bodies, officials, system of measures to prevent and combat corruption.*

**Relevance of the study.** Unfortunately, corruption is an urgent problem in Ukraine. Corrupt relations are increasingly displacing legal relations, which, of course, threaten its future. Recently, the extremely difficult socio-economic and political situations, the annexation of part of the country and the actions of separatists in some regions, both internal and external, have destroyed the already ineffective anti-corruption policy of the state, which is not fully operational. All this does not give grounds for an optimistic forecast of a decline in corruption in Ukraine.

It is worth noting that no country in the world has full immunity from corruption – they differ only in size, nature of manifestations and scale of impact on the socio-economic and political situation. In countries where corruption is widespread, it transforms from a social problem into regularity and becomes a common way of solving problems, becoming the norm of power and way of life for a large part of society. In countries where this phenomenon is relatively rare, corruption in the public consciousness is associated with great harm to the state and its citizens and has no significant impact on public life.

Despite the establishment and operation of the National Agency for the Prevention of Corruption, the Specialized Anti-Corruption Prosecutor's Office and the National Anti-Corruption Bureau, the issue of combating corruption still remains open, as there is no single mechanism to bring corrupt officials to justice. stage of court proceedings.

**Recent publications review.** Coverage of various aspects of corruption problems and improvement of the domestic one anti-corruption legislation is devoted to the work of the following scientists: Yu. Baulin, V. Bodnar, O. Busol, V. Vasilevich, V. Glushkov, V. Golina, O. Dzhuzha, O. Zhytny, A. Zakalyuk, O. Kalman, V. Kozlenko, O. Kostenko, O. Kulik, O. Litvinov, M. Melnyk, A. Savchenko, V. Shakun and others.

At the same time, today there is a real one the need for a systematic study of the problem of formation of modern anti-corruption bodies. Only a fragmentary issue of the

---

© N. Cherniak, 2021

ORCID iD: <https://orcid.org/0000-0001-9494-7016>

cherniak\_nat@i.ua

© V. Kiiyanytsia, 2021

k\_kp@dduvs.in.ua

formation of individual anti-corruption bodies, in particular the National Anti-Corruption Bureau of Ukraine, is analyzed in dissertation research V. Kozlenko

**The article's objective** is systematic analysis of the formation and development of anti-corruption bodies of Ukraine and modern anti-corruption policy of our state.

**Discussion.** Ukraine's signing of the UN Convention against Corruption on December 11, 2003 can be considered a positive step in anti-corruption activities. In addition, a number of anti-corruption measures have been introduced at the state level, including criminal justice reform, judicial reform, taxation and administration, and improved access to public information, including data on those who have committed corruption offenses [1, p.76].

At the same time, according to international experts, a breakthrough in overcoming corruption, unfortunately, did not happen. There are systemic shortcomings in the activities of the newly created bodies, the main of which are the lack of clear delineation of jurisdiction between them, as well as subordination to different branches of government (the Prime Minister of Ukraine and the President of Ukraine, respectively).

As a result, practical steps in the fight against corruption are still too few, and the anti-corruption tools used so far have proved ineffective. The number of corruption offenses is growing, and the number of registered criminal offenses and convictions related to corruption does not correspond to the actual spread of this negative phenomenon [2].

It is considered that the reporting on the state of anti-corruption is imperfect due to the lack of generally accepted criteria for assessing corruption, the effectiveness of law enforcement agencies with other public authorities in covering this information. Corruption is often the best way to fight bureaucracy.

Due to the complexity and confusion of the provision of services by the Ukrainian authorities, in many cases the illicit gain helps to resolve a particular case. The Ukrainian state system of government has remained essentially Soviet, and it is unable to function effectively in a market economy. Corruption, which has become a kind of market mechanism, makes it more flexible [3, p. 16].

It should be noted that most legislative initiatives in the field of anti-corruption policy are aimed at strengthening the responsibility of individuals for corruption, which directly affects the growth of corruption: increasing the level of responsibility – increasing the risk of prosecution - increasing corruption. But such measures affect the consequences of corruption, not their causes. The situation can be radically changed only by eliminating corruption opportunities in the current Ukrainian legislation, which contains many gaps, opportunities to "bypass" a particular rule, a number of conflicting rules.

The experience of countries around the world in preventing and combating corruption, taking into account the specifics of their public administration systems, is of great interest to Ukraine. Such developments can be used both in the practice of individual state anti-corruption institutions and in the development of regulations aimed at reducing the effects of corruption in public administration.

World experience in preventing and combating corruption allows us to summarize the most characteristic trends and mechanisms, the adaptation of which can be useful for Ukraine. Priorities here for our country can be:

- dissemination of information measures on anti-corruption measures and their consequences, aimed at raising public awareness and promoting public rejection of corruption as a very negative phenomenon through the implementation of various educational programs and projects aimed at combating corruption;

- strengthening the role of public organizations in anti-corruption activities, their effective participation in supervisory and advisory boards of all authorities and specialized anti-corruption institutions, creating opportunities for public organizations;

- pay more attention to preventive and anti-corruption incentives than to repressive ones (while increasing the professionalism and efficiency of anti-corruption officers in order to create conditions for the inevitability of punishment of all corrupt officials, regardless of their affiliation with certain political parties, etc.);

- wider integration of Internet platforms and improvement of interactive pages for quick response to citizens' complaints about corruption (simultaneously with the introduction of legal liability for failure to take measures to immediately record such reports by law enforcement officials) [4, p. 12].

Most European countries are pursuing effective public administration reforms to create an enabling environment to prevent corruption. Let's look at a few examples. In Sweden in the

XIX century, a set of measures was taken to combat corruption, which made it a pioneer in this field. Important attention was paid to setting moral and ethical standards for civil servants, who at that time minimized cases of bribery.

This was facilitated by the creation of an independent judiciary, and the exclusive rights of the state and the transparency of public administration were adopted and introduced. Public opinion played an important role in this, strongly condemning all those guilty of corruption and even forcing them to resign.

US anti-corruption laws are systemic. They also include rules governing lobbying, banking, stock exchanges and other activities. And while this is not a guarantee of the complete elimination of corruption, its level in the United States is much lower than in other states [5, p. 593]. The fight against corruption is facilitated by the fact that there is no immunity for civil servants in the United States. Any civil servant, including the president, congressman and senators, can be prosecuted, albeit in a special manner (after impeachment).

Given the long process of European integration of Ukrainian legislation, it is important to refer to the Association Agreement between Ukraine and the European Union, in which the parties agreed to cooperate in combating and preventing criminal and illegal activities, organized or other corrupt activities. This cooperation is aimed at solving such problems as corruption in the private and public sectors [6, p. 13].

One of the most important measures to effectively fight corruption is a proper set of rules prohibiting illegal behavior that harms both the state and citizens. It is important to understand that such a set should include not only legal prohibitions, but also certain measures to prevent corruption and aimed at limiting and reducing the causes of this phenomenon. In this case, the problem of combating corruption concerns not only the proper punishment for corruption, but also aimed at combating the root causes and reducing the favorable conditions for corruption. Indeed, today in Ukraine there is an extremely high level of corruption, which is recognized not only by domestic and foreign analysts, experts, public and international organizations, but also by domestic representatives of the highest legislative and executive branches [7, p. 96].

It is important that in Ukraine, as in the rest of the world, corruption is associated with serious political, economic and social problems. This is considered one of the most dangerous phenomena of our time, which can motivate the unregulated activities of state bodies, slow down economic development, threaten many elements of the constitutional and social system, as well as national security.

Corruption undermines the foundations of a democratic system, trusts in government, and violates the principles of law, justice and equality before the law, responsibility for actions, fair competition, leads to the growth of the shadow economy and the decline of state authority in the international community. It should be noted that corruption in Ukraine did not arise out of nowhere, it arose not suddenly with the independence of our state, but is the result of the historical development of society and the state. However, the current state of this phenomenon in the country has reached unprecedented proportions and influenced political, economic and other social processes. However, without a systematic fight against corruption by the state and society, this phenomenon can spread regardless of its nature. Therefore, the effectiveness of preventing and combating corruption in the process of social stabilization and institutional development of the Ukrainian state is of particular importance. Concentration of power in the hands of a limited group of people and their accountability can lead to the transfer of exaggerated powers to the administrative apparatus, which will worsen not only the economic but also the political situation in the country [8].

Thus, the general analysis of the anti-corruption system in Ukraine shows that the authorities cannot demonstrate their determination to build a stable and effective anti-corruption system. Those with political will are disinterested and unprepared for anti-corruption reforms.

The government's lack of attention to this situation only confirms that the fight against corruption is not a priority on their agenda. Against this background, measures to improve state anti-corruption policy in Ukraine should be aimed at improving national anti-corruption legislation and the institutional system, as well as the need to promote anti-corruption practices in the private sector. Specific anti-corruption measures should be developed individually for different departments, areas of activity that are considered the most risky. This means that special anti-corruption measures should not be taken in isolation, but in combination with general measures or in addition to them.

Thus, some recommendations are suitable for several target areas, while others

(especially specialized) can be applied only in limited areas. It should be borne in mind that in Ukraine, when creating a new national anti-corruption model, universal approaches were sometimes used to combine preventive and repressive functions within one institution, and specialized institutions were created that combine several preventive functions [9, p. 69].

Thus, Ukraine has created sufficient legal requirements for the development of an effective state mechanism for preventing and combating corruption, all that remains is to do everything in practice and prove the real effectiveness of the anti-corruption mechanism.

In analyzing possible mechanisms for streamlining and optimizing the functional and organizational structure of modern anti-corruption bodies, namely: the National Agency for Prevention of Corruption, the Specialized Anti-Corruption Prosecutor's Office and the National Anti-Corruption Bureau, two main areas of reform can be identified:

- 1) rationalization of tasks and functions of anti-corruption entities;
- 2) rationalization of the institutional structure of anti-corruption entities and their interaction.

The first group should include ways to rationalize the relevant structure, which is associated with the redistribution of existing areas and tasks of combating corruption, their standardization and reduction. The second group is the mechanisms of rationalization, which provide for a change in the anti-corruption vertical, standardization of responsible bodies and their possible decentralization [10, p. 261].

In the context of this study, the powers of the main anti-corruption bodies should be singled out. The Specialized Anti-Corruption Prosecutor's Office is an independent structural subdivision of the General Prosecutor's Office of Ukraine, established by the Order of the Prosecutor General Viktor Shokin dated September 22, 2015. The powers of the SAP are:

- supervising compliance with the law during the operational and investigative activities of the pre-trial investigation by the National Anti-Corruption Bureau of Ukraine;
- support for public prosecution in relevant proceedings;
- representation of the interests of a citizen or the state in court in cases provided by law and related to corruption or corruption-related offenses.

The Prosecutor General forms the Specialized Anti-Corruption Prosecutor's Office, determines its structure and staff (number of staff) in agreement with the Director of NABU. In this case, the head of the SAP reports directly to the Prosecutor General and is his deputy.

The general structure includes the central office and territorial branches, which are located in the same cities as the NABU territorial offices. Interestingly, the SAP is located in the same NABU offices or in the prosecutor's offices, which are located separately from other prosecutor's offices [11, p.49]. The task of the National Bureau is to combat corruption and other criminal offenses committed by senior officials authorized to perform state or local government functions and pose a threat to national security, as well as to take other measures provided by law to combat corruption.

The National Agency for the Prevention of Corruption is a central executive body with a special status. NAPC is responsible for the formation anti-corruption policy and prevention of corruption. The National Agency was established in accordance with Of the Law of Ukraine "On Prevention of Corruption". NAPC works in the following areas:

- analyzes the situation with corruption in Ukraine and develops an appropriate one Anti-corruption strategy and the state program for its implementation, as well as coordinates the implementation of these documents;
- detects corruption norms in the legislation and draft acts;
- monitors compliance with the rules of ethical conduct, legislation on prevention conflict of interest in the activities of public servants;
- coordinates and provides methodological assistance to state and local self-government bodies in identifying and eliminating corruption risks in their activities, coordinates and monitors implementation anti-corruption programs in these bodies;
- monitors and checks declarations of public servants, to spend monitoring their lifestyle;
- monitors compliance with restrictions on financing of political parties, legal and targeted use of funds allocated from the state budget by parties, timeliness of submission of relevant reports by parties and accuracy of information included in them, distributes funds allocated from the state budget to finance the statutory activities of political parties;
- cooperates with whistleblowers, provides them with legal and other protection.

Given the possible schemes of rationalization of the functional structure of the subjects of anti-corruption, scientists identify three possible ways to distribute the relevant anti-

corruption functions:

1) transfer of all anti-corruption functions to a single system of multi-purpose institutions with the powers of law enforcement agencies, as well as the implementation of preventive functions;

2) distribution of anti-corruption functions between profile units of law enforcement agencies;

3) transfer of functions related to the prevention of corruption, policy development and coordination of relevant activities to a specialized body, which leaves the investigation of corruption offenses in the general system of law enforcement agencies [12, p. 7].

The first scheme provides a systematic approach to solving the existing problems of the functional structure of anti-corruption actors, as it eliminates the conflict of competences and concentrates all relevant powers in one body. The first scheme allows you to combine all three functions - preventive, punitive and educational – in one subject.

It also speeds up the investigation process and eliminates the need for coordination between different agencies. At the same time, this approach is the most costly.

The second program includes the distribution and optimization of anti-corruption functions among the already established state anti-corruption bodies. The last scheme of distribution of powers and functions in the field of anti-corruption provides for the creation of a specialized body that has only functions to investigate the most important and serious cases of corruption, as well as powers to coordinate and control anti-corruption [13, p. 194].

Regarding the modernization of the organizational structure of anti-corruption actors, two directions should be distinguished:

1) increasing the formal and financial independence of authorized bodies;

2) change of the institutional structure of bodies on the basis of coordination and reorganization relations.

An analysis of the domestic experience in the fight against corruption shows that the implementation of the principle of independence must inevitably be limited to strict and transparent control measures. Ensuring the independence of anti-corruption actors is possible by weakening subordinate relations in favor of re-coordination and giving all subordinate entities the opportunity to make independent decisions at their own discretion [14, p. 176].

**Conclusions.** Finally, it should be remembered that there are no universal means of combating bribery and corruption. It is necessary to choose the way which the state should develop independently, proceeding from the local legislation, mentality, traditions, etc. It is necessary to look for a national way to fight corruption, taking into account foreign experience. The experience of Eastern countries is unlikely to be effective for Ukraine due to the rigidity of the hierarchy of subordination of state and local authorities.

A necessary aspect that still needs to be taken into account in all countries is the development of civic consciousness, which helps to change perceptions and strengthen communication in the fight against corruption.

#### *Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

#### **References**

1. Koruptsiia v Ukraini: prychny poshyrennia ta mekhanizmy protydii. S. V. Dromov, Yu. H. Kalnysh, D. B. Klymenko ti in.; za red. Yu. H. Kalnysha. Kyiv: Priorytety, 2010. 88 p. URL: <http://sd.net.ua/2012/03/08/korupciyavukrayinivstup.html> [in Ukr.].
2. Ukraina zalyshylasia v druhii sotni indeksu spryiniattia koruptsii. Transparency International. Radio Svoboda: ofits. sait. URL: <http://www.radiosvoboda.org/a/news/28256274.html> [in Ukr.].
3. Albul S. V., Andrusenko S. V. Zlochyny u sferi obihu narkotychnykh zasobiv, psykhotropnykh retseptoriv, yikh analohiv abo prekursoriv: taktyka provedennia okremykh slidchykh (rozshukovykh) ta nehlasnykh slidchykh (rozshukovykh) dii: taktyka okremykh slidchykh dii: metodychni vkazivky). Odesa: ODUVS, 2018. 100 p. [in Ukr.].
4. Babenko O. M. Rehionalni osoblyvosti poshyrennia narkozlochynnosti v Ukraini: deiaki zasoby protydii. Naukovyi visnyk Uzhhorodskoho natsionalnogo universytetu. Serii "Pravo". 2012. Vol. 20. Ch. 1. T. 4. Pp. 12-14 [in Ukr.].
5. Halushko B. S. Poniattia zlochynu u kryminalnomu pravi Ukrainy. Aktualni problemy derzhavy ta prava. 2012. No. 3. Pp. 592-596. [in Ukr.].
6. Bereza O. D. Derzhavna antykoruptsiina polityka: sutnist ta osoblyvosti realizatsii v postindustrialnomu suspilstvi : dys. ... kand. nauk iz derzh. uprav. ; Natsionalna akademiia derzhavnogo upravlinnia pry Prezydentovi Ukrainy. Kyiv, 2016. 218 p. [in Ukr.].
7. Hvozdet'skyi V. D. Orhanizatsiino-pravovi zasady zapobihannia i protydii koruptsii v

Ukraini. Kyiv, 2011.592 p. [in Ukr.]

8. Akhtyrskaya N.M. Mizhnarodnyi dosvid borotby z koruptsiieiu yak vektor formuvannia natsionalnoi antykoruptsiinoi polityky: ohliad zakonodavstva Rumunii. Kyiv : Viche, 2015. № 18. URL: <http://www.viche.info/journal/4910/> [in Ukr.].

9. Kyliashkanov Kh. Sh. Zarubezhniy opit borbi s korruptsiieiu. Byznes v zakone. 2014. No.3. Pp. 69-75. [in Russ.].

10. Pronevych O. S. Instytut spetsializovanoi antykoruptsiinoi prokuratury v yevropeiskii derzhavnopravovii tradytsii. Forum prava. 2015. No. 1. Pp. 261-268 [in Ukr.].

11. Drahan V., Zahynei 3. Rol prokuratury u protyidii koruptsii: dosvid Nimechchyny. Naukovyi chasopys Natsionalnoi akademii prokuratury Ukrainy. 2015. No. 2. Pp. 49-55 [in Ukr.].

12. Rudenko M. V. Spetsializovana antykoruptsiina prokuratura: stanovlennia, rozvytok, orhanizatsiia ta funktsionuvannia. Visnyk prokuratury. 2016. No. 1. Pp. 5-13 [in Ukr.].

13. Busol O. Yu. Protydiia koruptsiinii zlochynnosti u konteksti suchasnoi antykoruptsiinoi stratehii : dys. ... d-ra yuryd. nauk : 12.00.08. Busol Olena Yuriiivna. Kyiv, 2015. 480 p. [in Ukr.].

14. Kozlenko V. H. Administratyvno-pravovi osnovy Natsionalnogo antykoruptsiinoho biuro Ukrainy : dys. kand. yuryd. nauk : 12.00.07 / Kozlenko Volodymyr Hryhorovych. Dnipro, 2016. 209 p. [in Ukr.]

Submitted: 01.12.2021

**Наталія ЧЕРНЯК, Володимир КІЯНИЦЯ**  
**СПЕЦІАЛЬНО УПОВНОВАЖЕНІ СУБ'ЄКТИ**  
**У СФЕРІ ПРОТИДІЇ КОРУПЦІЇ**

**Анотація.** Аналізується система антикорупційних органів України. Розглядаються основні функції Спеціалізованої антикорупційної прокуратури, Національного антикорупційного бюро України, Національного агентства з питань запобігання корупції, Державного бюро розслідувань, Національного агентства України з питань виявлення, розшуку та управління активами, одержаними від корупційних та інших злочинів, Вищого антикорупційного суду.

Визначаються основні проблеми в системі роботи органів державної влади та місцевого самоврядування, пропонуються шляхи взаємодії зазначених органів державної влади. Обґрунтовується необхідність прийняття системного нормативно-правового акта України щодо реалізації антикорупційної політики із зазначенням ролі кожного антикорупційного органу, критеріїв його ефективності та результативності, показників виконання антикорупційних заходів.

У статті охарактеризовано та проаналізовано сучасну антикорупційну політику України. Визначено основні методи та засоби протидії корупції на сучасному етапі становлення української державності. Визначено основні маркери, які демонструють наявність корупційних зв'язків в тій чи іншій владній структурі.

У статті розглянуто питання налагодження тісної та ефективної співпраці між антикорупційними органами України під час розслідування кримінальних правопорушень (злочинів) корупційного спрямування. Оцінено вплив та роль кожного суб'єкта, який бере участь у досудовому розслідуванні та судовому розгляді. З'ясовано проблеми доказування на кожній стадії розслідування і судового розгляду та охарактеризовано особливості збирання, фіксації, використання та оцінки доказів. Встановлено, що за умови співпраці можливе відновлення прав та свобод людини, держави у кримінальних провадженнях та притягнення винних осіб до кримінальної відповідальності.

**Ключові слова:** *корупція, державна політика у сфері запобігання корупції, антикорупційні органи, службовці, система заходів запобігання та протидії корупції.*