



М.Н. Марченко, И.Ф. Мачин. – М. : Велби: Проспект, 2007. – 480 с.

19. Асмус В.Ф. История античной философии / В.Ф. Асмус. – М. : Высшая школа, 1965. – 320 с.

20. Політологія / За ред. О.І. Семківа, вид. 2-ге. – Л. : «Світ», 1994. – 572 с.

21. Нерсесянц В.С. Философия права. Учебник для вузов [Текст] / В.С. Нерсесянц. – М. : НОРМА, 1997. – 652 с.

22. Аристотель. Афинская полития [Текст] / Аристотель // Политика. Афинская полития. – М. : Мысль, 1997. – 350 с.

23. Глиняний В.П. Історія держави і права зарубіжних країн: Навчальний посібник [Текст] / В.П. Глиняний ; Одеська нац. юрид. акад. [Вид. 6-ге, перероб. і доп.] – К. : Істина, 2009. – 768 с.

JURIDICAL APPROACH TOWARDS CORRUPTION: INSTITUTIONAL CONCEPT AND FUNCTIONAL RELIABILITY

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Summary

Considering controversial aspects of juridical approach towards corruption it is yet needed to outline some prospects that may help to improve the legal system's resistance to it's influence. Institutional concept is one of the key elements that may be improved so to increase system's functional reliability and yet in this point of view some structural aspects should be considered. Such credentials still need to be put into practice for legal system sustainability in distant future.

Key words: cleansing of the ranks of power, corruption, civil servant, civil society, state authority, state security.

Аннотация

Учитывая противоречивые аспекты юридического подхода к коррупции, нужно отметить некоторые перспективы, которые могут повысить противодействие правовой системы ее влиянию. Институциональная концепция является одним из ключевых элементов и должна быть улучшена для повышения надежности функционирования системы в целом. При этом должны быть учтены некоторые структурные аспекты с их последующей оптимизацией. Соответствующие концептуальные особенности также должны быть адаптированы на практике для обеспечения устойчивости правовой системы в будущем и для повышения ее функциональности в отношении прав и свобод граждан.

Ключевые слова: очищение власти, коррупция, государственная служба, гражданское общество, государственная власть, государственная безопасность.

*On the other side of the mirror
The wonder was painfully born.
It's the end of the age of the heroes
And the start of the age of forlorn.
It's the place where you seek and you lose.
It's the place of the dust of the kings.
They forget to pretend they're amused,
They prefer not the armor, but jeans.
Sofiya Kostytska
(«The Remnants of the Magnificent Era»)
[10, p. 157]*

Formulation of the problem.

Recent tendencies of global development cause widespread increase in international connections' integrity. At the same time corruption that becomes widespread even in a few countries (regional cluster of countries) may cause disastrous impact globally (considering increase in technological opportunities). Therefore even highly-advanced technological system may not oppose corruption totally [1, p. 9] as it highly resembles to individuals' personal values and objective conditions what may be observed by researchers. Thus institutional elements yet may be improved

at the concept level so to make legal system more functional and corruption resistant with further impact on social relations in legal way.

Recent publications analyses on the issues under consideration and determination of the elements of broader issue that were not addressed to earlier.

There is a huge number of scientists engaged in researches of different problems of corruption. Yet among those who are working on topics related to this research we may outline such Ukrainian-based authors as Volodymyr Goshovskiy [3], Viktor Lytvynenko [12], Makar Marchuk [13] Eugene Nevmerzhytsky [14], Ivan Presnjakov [15], Nataliya Sorokina [16] and some others. Among foreign researchers (based in other countries) here should be mentioned Robert Barrington [2], Raymond Fisman [8], Inessa Gajka [11], Goran Klemenichich [11], Yongtao Li [7], Janek Stusek [11], Alexey Stukalo [5], Lei Wang [7] and many others. At the same time institutional concept and functional reliability regarding oppression of corruption are needed to be researched



further considering different details and aspects that still need to be observed.

Setting paper objectives (aim). The key point of this article is in theoretical remodeling of the existing institutional concept in order to improve functional reliability of juridical approach towards corruption and its general effectiveness.

Presentation of the main results and their substantiation. Functional aspects of modern institutions that are established in order society to oppose corruption often lack functional reliability. Thus we need to reconsider concept of the system that is put into action in this field making it more functional-oriented and establishing its connections with non-state (civil) area of society in order to maintain functional flexibility. Modern state (especially of democratic type) is highly vulnerable in the view of corruption threats. It causes actual demand on establishing of internal functional system of corruption prevention that could be effective within state and local (citizens') society both.

The whole setup of the system that is needed in order to oppose corruption functionally in the legal way is predetermined by the goal. Yet such goal may be considered as the key point of the concept that should be acceptable by society. Thus functional aspects should be pre-determined by such conditions and in this case those should be presumed as the ideal of an order whereas legal interests of citizens are met and well-protected. This aspect of the system may be considered as the lower-rated but at the same time it is actually the key point of the concept as ideas determine peoples' willingness to accept regulations and obey them. Meanwhile Vasyl Kalitynskyi mentions: «the ideal of order is formed by: a) ideas of law: the idea of «the rule of law», the idea of subordination, the idea of equality of benefits; b) legal values: law, equality; c) the legal goal – the subordination of the individual's will to organized society; d) the image of law – depends on the specific subject's (individual's) legal consciousness, but is the result of empirical experience» [9, p. 167].

Instatement of corruption may be one of the side effects of ethical and moral downfall that also causes negative impact on society's sense of law (legality) in totalitarian or post-soviet countries (still it may relate to modern developed countries in case of special interactions). Influential groups of people as the result had their impact on

social relations (especially in individuals' will-limiting societies like in communist states) for a long time that caused legal-environmental collapse of peoples' values. As such people remained empowered after oppressive systems downfall they yet provoked further widespread of corruption with society's assets withdrawal yet causing system-level damages to countries, states, societies businesses and local individuals. Therefore lustration was considered as a preventive measure to take action against such tendencies in some post-soviet countries: «both in Latvian and in Lithuanian republics, according to the laws that are currently in force, the Parliamentary candidates are subject to examination in terms of relation with foreign intelligence services. And former employees of foreign (Soviet or other) intelligence services may not stand for parliamentary elections» [3, p. 34].

If corruption is not considered as the threat it may spread further having its impact in different ways: «Institutional ambiguity, systematic favoritism and systemic corruption are political risks international businesses are confronted with in many countries worldwide. Although they can also occur individually, they are highly interdependent and thus tend to occur concomitantly» [6, p. 7]. Still it is observed that in post-soviet countries political sphere continues to be instated as organizational basis for corruption environment preventing civil (citizens') society to obtain influence for changes at the grand grade. Neil Holt outlines some key corruption prevention obstacles: «what keeps me awake isn't the prospect of deliberate corruption, it is the fear of inadvertent, naïve errors – the sort which arise from unthinking submission to local custom» [2, p. 6]. Grand corruption with its huge impact capabilities shapes itself into self-preserving system yet not dependant on state power changes. So here we see its widespread threw «pollution» of different social relations' areas.

At the international level some measures taken to oppose corruption were considered to be effective by international organizations especially regarding those outlined in «the laws of the National Anti-corruption System adopted in Mexico:

1. Establishing a new Coordination Committee responsible for the design and implementation of anti-corruption policies and for effective coordination of anti-corruption policies.

2. Making citizens active stakeholders of the Anti-Corruption System through a Citizen Participation Committee, whose representative will preside over the Coordination Committee.

3. Bringing Mexico more in line with the current drive in OECD countries towards greater transparency and capacity to detect and prevent corruption by increasing the requirements for greater disclosure of assets, identification of conflict of interest and other private interests by public officials and enhancing the capacity of Mexico's Supreme Audit Institution to conduct real-time audits and follow up mechanisms.

4. Taking a tougher stance on sanctioning integrity violations, with potentially serious cases now falling under the jurisdiction of a Federal Tribunal for Administrative Justice with full independence to issue its resolutions.

5. Creating a Special Anti-corruption Prosecutor that will support these stronger enforcement and prosecution measures, provided that the position will be filled without delay» [4].

Those measures mentioned are yet to be applied in Ukraine but at the current stage they still need to be updated taking into consideration regional (Eastern-European) corruption conditions and the lack of political will to accept any actual changes in the field by higher officials (as far as political environment stays the basis for institutional (so-called «Grand») corruption). Nataliya Sorokina have outlined some complex measures that yet may be taken under conditions of the widespread corruption environment: «considering Ukraine it is important to note the significance and necessity of measures taken by public service like rising of the legal culture within society, the formation of social intolerance to corruption, development of the public control institute for adherence to legislation of Ukraine» [16, p. 266]. So to understand specific traces of corruption we may outline some points mentioned by American scientist: «focusing on individual wrongdoing is misleading, says Raymond Fisman, a professor of behavioral economics at Boston University who studies systemic corruption, which occurs when the corruption is so widespread and severe that it becomes an integral part of a country's economic and political life. Once systemic corruption takes hold, he explained, it can quickly infect an entire system, encouraging or even forcing bad behavior – even by



those who would, in another context, remain honest» [8, p. A13].

Considering functionality it is obvious that the whole institutional sub-system that is oriented to oppress corruption should be divided into a few specific blocks. Legal opportunities for functional impact should be granted to each of those blocks regarding social-environmental conditions and actual state of corruption widespread on different levels of international relations, state and society. Such blocks are viewed as:

1. Corruption prevention. Functionally it should comprise preventive measures that does not allow corruption to widespread or occur as is.

2. Corruption countering. This block should resemble to number of measures taken at the system grade in order to lower corruption effectiveness and it's impact on social relations yet those that lower effectiveness or prevent measures that may be taken in order to preserve corruption in society.

3. Corruption combating. This block resembles to functional oppression of corruption when active measures should be taken directly due to the scale of corruption threats and the level of danger that is caused at the time of impact (considering special intercourse measures taken in direct contact with corrupt officials or people who may be involved in grand or administrative corruption schemes).

Past observations in Ukraine show that further changes are yet needed despite some progress: «registry of corruptioners, which is going to become public, is unlikely to contain surnames of high-ranking officials, because as a rule only low-level officials are brought to justice» [15, p. 4]. According to OSCE recommendations there are still some actions prior to institutional resolution of problems: «a starting point for the development of anticorruption strategies in procurement is to identify the areas prone to corruption» [5, p. 102].

Considering mentioned functional diversification it is likely to establish state authorities resembling to corruption environmental conditions so to make oppressive system in this field flexible like: «there are three main approaches that meet the main functions of specialized types of institutions: multipurpose authorities that are granted powers for law enforcement and are carrying out preventive functions; specialized services and/or departments to combat corruption in law enforcement

agencies; institutions aiming to prevent corruption, provide policy development and coordination» [11, p. 19]. But yet these approaches need to be updated.

According to Ukrainian researches «the first and the most obvious measure to provide countering corruption is system structuring of state-empowered authorities in this field» [12, p. 169]. Therefore if we consider Ukrainian experience there is still needed «the vector change of the law enforcement authorities» [13, p. 471]. So here many researchers face a number of threats that allow corruption to instate and overcome legal system: «special attention, for example, should be devoted to the need in changes not only of the legal status of Ukrainian civil servants, but also of the mentality, culture and legal consciousness of the average Ukrainian who is still condemning corruption in words but in real life is readily giving bribe even without acute need» [14, p. 307]. Such tendencies yet may be observed in other countries as well due to elusive perception of those things that are considered as «Western standards» but yet turn out to be just a visionary and intangible image: «the crisis of ethics and law is manifested in the denial of the relative values of Western ethical and legal systems and in the pursuit of absolute values» [17, p. 16]. Such trends as they occur are used to disclose «West» as the threat but at the same time it is obvious that high corruption level is not acceptable for the majority of people within.

At the same time Chinese response to corruption resembles global tendencies: «from the experience of various countries, although there is no strict specific answer to anti-corruption, the institutional arrangement of anti-corruption must be combined with the country's own cultural traditions and social systems in order to produce more effective results, and cannot ignore the role of traditional cultural and customs, therefore, the problem of corruption governance in China needs to find the corresponding solution from China itself» [7, p. 1249].

So here it is needed to be outlined that institutional concept is not dominating from the point of view of functionality. And yet it's credibility depends on the various number of factors. Legal system may be influenced by corrupt officials that may result into the numerous crisis trends. But at the same time such credibility may be granted in the view of systemic interaction of the legal system

(institutional corruption oppressing sub-system) and civil (citizens') society.

Conclusions and perspectives for further research. Considering functional approach it is likely to use more balanced system so to make oppression of corruption more effective. In this case legal goals should be resembled with further instatement of state authorities designed in order to meet society's needs in the field of corruption oppression. Their functions should be considered resembling to actual changes of corruption environment. Thus dynamic aspects of social relations and corruption influence on the legal environment of a country still need to be monitored to maintain prevention, countering and combating corruption as such (with their special practical and theoretical understanding). Functional diversification of state authorities in this field may become one of the key points of legal system preservation. At the same time further researches are needed so to disclose functional effectiveness of this approach due to further possible dynamic social relations' and system changes.

References:

1. Corruption Perception Index 2016 / «Transparency International»: the global coalition against corruption. – Berlin: «Transparency International» International Secretariat, 2017. – 12 p.
2. Doing Business without Bribery: Trainer's Handbook / Ed. by Robert Barrington. – London: «Transparency International» UK, 2013. – 48 p.
3. Goshovskiy V. The Genesis of Lustration in the World and its Significance for the Development of Law-Based Society / Volodymyr Goshovskiy // «Legea și viața». – 2017. – № 1-2. – P. 33–37.
4. Gurría A. Mexico's National Anti-corruption System – Statement from OECD Secretary-General / Angel Gurría // Organisation for Economic Co-operation and Development. – 2016. – Access link : <http://www.oecd.org/newsroom/mexico-national-anti-corruption-system-statement-from-oecd-secretary-general.htm> (accessed 27.02.2017).
5. The OSCE Handbook on Combating Corruption / Ed. by A. Stukalo. – «red hot 'n' cool», Vienna : 2016. – 244 p.
6. Leitner J. Political Risks in Post-Soviet Markets. A Theoretical Approach. / Johannes Leitner, Hannes Meissner // Forschungsforum der österreichischen



Fachhochschulen des BFI Wien findet vom 30 – 31 März 2016. – Wien, 2016. – P. 1-10. – Access link : http://ffhoarep.fh-ooe.at/bitstream/123456789/598/1/105_348_Leitner_FullPaper_en_Final.pdf (accessed 27.02.2017).

7. Li Y.T. The Research on Chinese Corruption and the Strategy of Governance / Yongtao Li, Lei Wang // Theoretical Economics Letters. – 2016. – № 6. – P. 1244–1255.

8. Taub A. How 'Islands of Honesty' Can Crush a System of Corruption / Amanda Taub // The New York Times. – December 11, 2016. – P. A13.

9. Калітинський В.М. Сучасні різновиди правових ідеологій: філософсько-правовий вимір [Текст] : дис. ... канд. юрид. наук : 12.00.12 / В.М. Калітинський ; Львів. держ. ун-т внутр. справ. – Львів, 2016. – 256 с.

10. Костицька С. Лабіринти мета-мофоз: поезії / С. Костицька. – Обране і нове. – Дрогобич : Коло, 2016. – 256 с.

11. Клеменчич Г. Спеціалізовані інституції з боротьби проти корупції: огляд моделей / Г. Клеменчич, Янек Стусек, Інесса Гайка. – Марібор, Париж : Організація економічного співробітництва і розвитку; Мережа боротьби проти корупції для країн Східної Європи і Центральної Азії: 2007. – 132 с.

12. Литвиненко В.І. Протидія корупції в Україні: адміністративно-правові засади: монографія / В.І. Литвиненко. – К. : «МП Леся», 2015. – 472 с.

13. Марчук М.П. Основні напрями державної політики щодо протидії корупції в Україні / М.П. Марчук // Молодий вчений. – 2016. – № 3. – С. 470–474.

14. Невмержицький Є.В. Корупція в Україні: проблеми посилення протидії / Є.В. Невмержицький // Право України. – 2014. – № 1. – С. 298–309.

15. Пресняков І. Зусилля України у боротьбі з корупцією: поточний стан / І. Пресняков // Europe Without Barriers: Civic Initiative. – 2013. – P. 1–8. – Access link: <http://europewb.org.ua/wp-content/uploads/2013/07/Counteraction-corruption.pdf> (accessed 27.02.2017).

16. Сорокіна Н. Напрями запобігання корупції в органах публічної влади на сучасному етапі державотворення / Н. Сорокіна // Державне управління та місцеве самоврядування. – 2015. – Вип. 2. – С. 259–267.

17. Щокін Г.В. Закони соціального розвитку і управління / Г.В. Щокін. – К. : МАУП, 2006. – 192 с.

АНАЛИЗ ДЕЙСТВУЮЩИХ ПРАВОВЫХ ОСНОВ ПРОТИВОДЕЙСТВИЯ КОРРУПЦИИ В УКРАИНЕ

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Summary

The author analyzes the latest innovations of anti-corruption legislation of Ukraine in the context of a system of anti-corruption reforms. The issues of activities of the State Bureau of Investigation, the Specialized Anti-Corruption Prosecutor's Office and other bodies. The study revealed that the innovation component in the fight against corruption was the organization of the National Agency for the identification, investigation and management of assets derived from corruption and other crimes. It was created with the use of the European experience, in particular, the French practice, in which the Agency's management seized and confiscated assets. This new body has centralized functions, which previously belonged to a number of other structures. In particular, the State executive service, operational and investigative units, preliminary investigation bodies, as well as focused new powers, such as control of corruption and other criminal assets.

Key words: prevention of corruption, fight against corruption, fight against corruption.

Аннотация

Автором проанализированы последние новшества антикоррупционного законодательства Украины в контексте системной антикоррупционной реформы. Затронуты вопросы деятельности Государственного бюро расследований, Специализированной антикоррупционной прокуратуры и других органов. В результате исследования выявлено, что новшествами борьбы с коррупцией стала организация Национального агентства по вопросам выявления, розыска и управления активами, полученными от коррупционных и других преступлений. Оно было создано с использованием европейского опыта, в частности практики Франции, в которой действует Агентство по менеджменту арестованных и конфискованных активов. Этот новый орган централизовал функции, которые ранее принадлежали ряду других структур. В частности, Государственной исполнительной службе, оперативно-розыскным подразделениям, органам предварительного расследования, а также сконцентрировал новые полномочия, такие как управление коррупционными и другими преступными активами.

Ключевые слова: предотвращение коррупции, противодействие коррупции, борьба с коррупцией.

Постановка проблемы. Противодействие коррупции была и остается одной из ключевых проблем развития общества и государственности в Украине, что подтверждается как масштабами коррупционных угроз национальной безопасности на современном этапе, так и вниманием, которое уделяется борьбе с коррупцией ведущими международными институтами, в частности Советом Европы и GRECO, высшими должностными лицами государства.

Целью статьи является анализ действующего правового регулирования борьбы с коррупцией с учетом последних законодательных изменений в контексте евроинтеграционной политики Украины, формулирование предложений по дальнейшему реформированию системы противодействия коррупции с целью пре-

одоления кризисных явлений в деятельности системы государственного управления Украины.

Изложение основного материала. Несмотря на смену политической элиты и приход к власти новых политических сил, коррупция в Украине не уменьшилась, а в некоторых сферах даже выросла на 5–18%. Об этом свидетельствует сравнительный анализ исследований уровней коррупции в Украине, которые проводились компаниями Transparency International, Gallup International и центром Разумкова в 2014–2016 годах. По результатам экспертиз, коррупция пронизывает все сферы жизни и, несмотря на приход к власти новых людей, ее масштабы растут. Например, в 2014 году 47,3% украинцев считали, что судебная система полностью коррумпирована. В 2016 году