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WORLD PRACTICES OF PUBLIC CONTROL ON THE ELECTRONIC DECLARING PROCESS AS AN EFFECTIVE METHOD OF COMBATING CORRUPTION

Ірина Алєксєєнко, Марина Кобець. СВІТОВІ ПРАКТИКИ ГРОМАДСЬКОГО КОНТРОЛЮ ЗА ПРОЦЕСОМ ЕЛЕКТРОННОГО ДЕКЛАРУВАННЯ ЯК ЕФЕКТИВНИЙ МЕТОД БОРОТЬБИ З КОРУПЦІЄЮ. В умовах розгортання глобалізаційних процесів корупція, подолавши державні кордони, стала міжнародним феноменом, який з небезпеки для окремо взятої держави поступово перетворився в глобальну комплексну загрозу для міжнародної спільноти.Сьогодні перед людством ,з усією очевидністю постало питання про створення міжнародної системи «стримувань і противаг» цього явища, тобто, системи протидії корупція.

Але, незважаючи на надзвичайну гостроту даної проблеми, на сьогодні політична воля міжнародної спільноти у протидії корупції, вільна від подвійних стандартів, несистемних та протиріччливих заходів,чітко не сформувалася. На сьогоднішній день не існує загальноприйнятого, конвенційно закріпленого визначення корупції. Законодавство, як розвинених країн, так і країн з перехідною економікою, по-різному визначає термін «корупція», наповнюючи його різним за природою і сенсом складовими елементами. Цей факт є наслідком небажання багатьох держав обтяжувати себе міждержавними зобов'язаннями в сфері боротьбі з корупцією, а більшість актів міжнародних організацій, спрямованих на боротьбу з корупційними злочинами, вирішують лише окремі аспекти даної проблеми. Але найголовніше, до цих пір не сформовано механізм реалізації цих міжнародно-правових рішень.

Е системі суб'єктів, які забезпечують реалізацію антикорупційної політики в більшості держав, включаючи і Україну, безперечно, одне з місць займають громадські організації та рухи.

Від успішного вирішення проблеми протидії корупції залежить, в першу чергу, національна безпека держав, подальше їх позиціонування в світовому співтоваристві.

Останнім часом практично жоден документ не обходиться без згадки про ліквідацію та необхідність рішучої боротьби з корупцією, зокрема , і в питанні електронного декларування доходів. Тому, в даній статті, з метою врахування міжнародного досвіду при розробці концепцій законодавчих та інших нормативно - правових актів в Україні, що регулюють питання про декларування доходів чиновників, досліджується нормативна і правозастосовча практика зарубіжних країн в цій сфері.

***Ключові слова**: корупція, антикорупційна політика, міжнародні організації, державна антикорупційна програма, міжнародна спільнота, рівень корупції.*

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Corruption has crossed state borders due to the deepening globalization processes and has become an international phenomenon. It has gradually turned from a danger to a single state into a global complex threat to the entire world order. Thus, humanity has clearly faced with the need to create an international system of «checks and balances» to this phenomenon – an anti-corruption system, in other words.

Aristotle considered the fight against corruption as the basis for ensuring political stability, saying that: «the most important thing in any state system is through laws and the rest of the order to arrange things in such a way that officials could not prey».[1,p.77].

Problem statement. At the same time, despite the deadly «topicality» of the problem of corruption, there is still no clearly expressed political will of the international community in combating corruption on a global scale, free from double standards and unsystematic and illogical actions. Currently there is no commonly-accepted and conventionally fixed definition of corruption. The legislation of both developed countries and countries with economies in transition defines the term «corruption» in different ways. It is filled with different meanings and constituent elements, different in nature and structure.[2].

This fact is a consequence of the disinclination of many states to burden themselves with interstate corruption combat liabilities. Most of the acts of international organizations, which are aimed at combating corruption crimes, solve only single aspects of the said problem.

Resalts. Public organizations and movements undoubtedly occupy one of the key places in the system of subjects that ensure the implementation of anti-corruption policies in most states. This also applies to Ukraine.

According to the former Executive Director of the United Nations Office on Drugs and Crime, Antonio Maria Costa, «everyone has a responsibility for corruption disrooting: not only governments, but also parliament, business, civil society, the media, every citizen. Corruption affects everyone, so fighting corruption is our shared responsibility»[3].

This is beyond all doubt. However, anti-corruption activities of non-governmental organization organizations would not be as effective as it is possible without support from governments and international organizations. Article 13 of the United Nations Convention against Corruption (UNCAC), entitled «Participation of society», notes that «each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption»[6]. These measures imply transparency increasing and promoting the involvement of the population in decision-making processes; wide access to information; hosting activities that promote intolerance against corruption (including training programs).[7]. The right of civil society to participate in the fight against corruption was the first time ever identified in a document of such a high level. The Global Program Against Corruption, developed by the United Nations Office on Drugs and Crime, stipulates that anti-corruption measures for civil society include free access to information; raising public awareness; work with the media on anti-corruption education; journalistic investigations; close interaction of civil society institutions and governments, etc [8]. Establishment of the UN Convention against Corruption Coalition in 2006 contributed to the raising the profile of civil society participation in the fight against corruption. It is global network of more than 350 Civil Society Organizations (CSOs) from around the world and is dedicated to supporting the UNCAC. The main goals of the Coalition are «promoting the ratification, implementation and monitoring of the UNCAC); it mobilises civil society action for UNCAC at international, regional and national levels» [9, s.15]. It should be noted that the UNCAC Coalition engages a wide range of organizations: from those that protect human rights to those that protect the environment, from research centers to law firms.

It is necessary to point out that the problems of corruption have been in the field of view of Western researchers for a long time. We can highlight among them the next names: Clark W., Scott D., Weili D., Hattington S, Kramer D., Merton R., Grossmann G., Klin G., Blackwell R., Palmer JL, Dell Port D., Viatr E., Rose-Ackerman S. Et al. Them researches are based on a historical approach that retrospectively reflects the problem of corruption in the USSR and Western countries in the 60s and 80s. At the same time, the most part of the works of Western scientists do not disclose the content of the revealed patterns, and there is also no analysis of the causes and disclosure of patterns of what is happening. The theoretical basis of this research are the works of such scientist as V.S. Afanasyev, V.P. Bozhiev, V.N. Butylin, I.I. Veremeenko, N.V. Vitruk,

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A successful solution to the problem of combating corruption affects primarily to the national security of Ukraine. Taking into account the importance of the stage that our country is going through, the solution of this problem can affect to the further prospects of its position in the world community.

Basic content. In recent years, almost none of the documents is complete without mentioning the elimination and the need for a decisive fight against corruption. This also applies to the issue of electronic declaration of income.

In order to take into account the international experience when developing concepts of legislative and other regulatory acts of Ukraine on the issues of declaring information about the main expenses by officials, we study the statutory regulation and law enforcement practice of foreign countries in this area.

In Italy, the tax agency provides for the possibility of conducting a so-called «purchasing power assessment» of a particular individual, however, based on the results of such an assessment, no sanctions should be applied, even in cases where there is an excess of purchasing power over the declared income. However, this assessment does not lead to the application of any sanctions, even in cases of excess of purchasing power over the declared income. As a rule, such a check further serves subsequently for an in-depth study of the income tax return.[3].

Federal legislation of Canada provides for the provision of a single document (income declaration) by all able-bodied citizens of the country who receive regular income from their work activities for tax purposes. This approach applies to all jobholders, regardless of whether they are public officials.[24].

In China, all public officials and persons of equal status submit annual income tax returns to the tax authorities. The declaration contains information on the presence of real estate, bank deposits, and other property from public officials. Employees of the state body of the PRC fill out a declaration for themselves, as well as for the next of kin (spouse, children). At the same time, the declaration also indicates whether the public officials or their relatives are engaged in commercial activities, whether they live abroad.[26].

In turn, in accordance with the current legislation of Denmark, only income declaration is applied to public officials. There are no differences in the form of taxation of public officials and those who employed in the private sector in Denmark. Information about other sources of income of citizens comes to the Danish tax service when each specific source of income arises – savings, pension deposits, stocks and bonds, real estate. The acquisition of real estate is recorded by the registration office of the city (village) council, and this information is automatically transferred to the tax service[14].

In Norway, the obligation to submit an income tax return applies to every person living in Norway, including public officials (without any special features). After submitting the tax return, the tax office sends the tax resident the so-called «tax assessments notice».[13].

In Sweden, expense declaring by citizens is not provided for by law, but this does not exclude practically total control over all large acquisitions of movable and immovable property made by the Swedes. The system for submitting income returns by absolutely all citizens is clearly debugged. Combined with an effective financial control system that covers the entire banking and payment system of the country, it is highly effective in the realities of the Swedish social and political environment.[20].

In Finland, it is provided the declaring of expenses by the police. Beyond this, public authorities responsible for the registration of major transactions, including the purchasing of property, are also obliged to inform the Finnish Tax Administration about the costs incurred under the relevant transactions. In case of a discrepancy between the income and expenses of a citizen, the Finnish tax authority sends a letter to the taxpayer asking for clarification and indication of the source of income.[23].

In Singapore, public officials submit annual reports on their expenses since 1952. Information about incurring large expenses by public officials that are not comparable with their income may become the basis for inspections carried out by the Corrupt Practices Investigation Bureau.[4].

Members of Parliament and members of the House of Lords of the United Kingdom are obliged to declare their income. At the same time, in the course of inspections carried out in 2009, there were revealed facts of spending budget funds for personal purposes by members of

the Parliament. In this regard, since 2010, UK law contains provisions that obliges the members of the House of Commons (the lower house of the British Parliament) to provide, upon election, an annual detailed report of their income and expenses.[20].

In the United States, a civil servant is required to provide the Ethics Office with information about his expenses and income, as well as the expenses and income of his close relatives (children, spouse, parents), namely: information about the sources of origin of the property, its components and value; information about available deposits, received and issued loans, as well as received credits; list of gifts received, the value of which exceeds $ 50; a list of transport, entertainment and other comparable services paid not from personal or budget funds (indicating the source).[6]

Besides, in the United States, has been formed a departmental system for monitoring police officers, which includes: declaring expenses, monitoring the credit card balance of all employees and obtaining information from banks about employees who are debtors for consumer loans.

In Brazil, the prevention of illicit enrichment of public officials is carried out through the annual submission of a financial disclosure statement to the personnel department of the public authority, a second copy of which is sent to the tax authority.[5]

Discussion. An analysis of the German regulatory framework showed that the issues of declaring their expenses by public officials are not regulated in the country's legislation, and therefore there are no relevant law enforcement practices and statistics on expenses of German public officials.

Thereby, based on the results of the analysis of the legislation of a number of foreign countries, it can be concluded that the prevention of illegal enrichment of civil servants is carried out by checking information about income, property and property-related obligation (the similar procedure is currently provided for by Ukrainian legislation) or through the use of strict measures of tax administration and countering the legalization (laundering) of money obtained by illegal means.

It should be noted that in the 1990s, there was not only a process of spreading the practice of declaring assets in countries with economies in transition, but also “soft” (advisory) international standards in this area began to appear. One of the first international documents to provide for the declaration of assets by public officials was the Inter-American Convention against Corruption, which was adopted in March, 1996. The Convention sets out a requirement for States parties to consider measures to create, maintain and strengthen, among other things, also the «systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.». [6] The second is The African Union Convention on Preventing and Combating Corruption, adopted in 2003, which obliges member states to «require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service».The very first European standard in this area is included into the Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials. Article 14 of this Recommendation contains the issue of declaration, in particular: «the public official who occupies a position in which his or her personal or private interest are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interest». It is noteworthy that this recommendation emphasizes only the control function of the declaration, which is associated with conflicts of interest, and not with control of the financial situation, which is also considered an important issue in a number of countries. The conditions applicable to countries wishing to join the European Union usually do not explicitly require the introduction of a declaration system for public officials (there is no EU law or general body of legislation regarding declaration). The EU position, expressed in a broad sense, includes the requirement that « the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights ...» [25]. At the same time, candidates were expected to comply with the requirements of relevant international standards and introduce various procedures to prevent corruption. In addition, certain countries were given specific requirements to implement or strengthen measures for controlling conflicts of interest and verifying the assets of public officials within the general EU anti-corruption requirements.

Thus, even in the absence of a binding regulatory framework and irrefutable evidence of the effectiveness of these systems, the declaring of assets by public officials has become the de

facto standard of the European Union in relation to candidates for membership. It should be noted that all the countries of Central and Eastern Europe that joined the EU in the 21st century introduced such systems, which are more or less effective, long before their actual accession to the EU. The European Commission continues to study the functioning of declaring systems in the countries that are currently candidates for membership. The declaration of assets by public officials has now become part of the global standard embodied in the United Nations Convention against Corruption, adopted in 2003. Article 8, paragraph 5 of the Convention contains a «soft» standard requiring states parties to strive to ensure that «each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials».[7]. The Convention again addresses the issue of disclosure of information in connection with the return of property, establishes a requirement according to which: «Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention»[7].

This requirement of the UN Convention is nothing more than a recommendation to consider this obligation, but nevertheless, judging by the wording from the Legislative Guide for the Implementation of the United Nations Convention against Corruption, it becomes clear that states are encouraged to consider introducing such declaring systems and to make genuine efforts to identify the compatibility of such systems with their legal systems. Additional recommendations are contained in the Technical Guide to the United Nations Convention Against Corruption, in particular the following: disclosure covers all substantial types of incomes and assets of officials (all or from a certain level of appointment or sector and/or their relatives); disclosure forms allow for year-on-year comparisons of officials' financial position.[16].

Ukraine acceded to the Convention against Corruption on December 11, 2003, and on October 18, 2006, the Criminal Convention against Corruption was ratified. Proceeding from the above, Ukraine has undertaken to strengthen cooperation with other states regarding the fight against corruption, create international criminal law standards in this area and create a unified policy aimed at protecting society from this negative phenomenon, including the development of appropriate legislation and the adoption of appropriate preventive measures.

Taking into account the above, the actions of the Constitutional Court of Ukraine became illogical, which is expressed in the fact that on October 27, 2020, it abolished a number of provisions of the law on the prevention of corruption and declared unconstitutional Article 366-1 of the Criminal Code of Ukraine, which provides for punishment for declaring false information. This decision is justified by the fact that anti-corruption legislation creates the preconditions for undue influence on the court.

Having recognized as unconstitutional the Articles 48-51 of the Law of Ukraine «On Preventing Corruption» of October 14, 2014, No. 1700, which provide for the control and verification of declarations (Article 48), establishing the timeliness of the submission of declarations (Article 49), are not consistent with the Constitution of Ukraine (unconstitutional), complete verification of declarations (Article 50), monitoring of the lifestyle of subjects of declaration (Article 51), the Constitutional Court abolished the right of the NACP to verify declarations and identify conflicts of interest, recognizing that such powers of the department are not in compliance with the Basic Law.

Conclusion. This decision of one of the leading state bodies evoked a response and brought into question a number of international obligations that Ukraine assumed in relations with international partners, including the EU, since the fight against corruption is one of the key indicators and commitments under the Association Agreement, as well as the macro-financial assistance and visa liberalization program.

By its decision, the Constitutional Court of Ukraine has also blocked the implementation of the results of local elections, depriving the NACP of access to state registers, which are used to check the declarations of candidates for leading positions in the government.

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Summary

At the same time, despite the deadly «topicality» of the problem of corruption, there is still no clearly expressed political will of the international community in combating corruption on a global scale, free from double standards and unsystematic and illogical actions. Currently there is no commonly-accepted and conventionally fixed definition of corruption. The legislation of both developed countries and countries with economies in transition defines the term «corruption» in different ways. It is filled with different meanings and constituent elements, different in nature and structure.

This fact is a consequence of the disinclination of many states to burden themselves with interstate corruption combat liabilities. Most of the acts of international organizations, which are aimed at combating corruption crimes, solve only single aspects of the said problem. Public organizations and movements undoubtedly occupy one of the key places in the system of subjects that ensure the implementation of anti-corruption policies in most states. This also applies to Ukraine.

***Keywords**: corruption, anti-corruption policy, international organizations, state anti-corruption program, global community, corruption index.*