

International standards in the sphere of prevention and counteraction of corruption

Міжнародні стандарти у сфері запобігання та протидії корупції

Tetiana Suprun

Key words:

preventing and counteraction of corruption, international standards, international cooperation, legal assistance, national legislation.

Ключові слова

запобігання та протидія корупції, міжнародні стандарти, міжнародне співробітництво, правова допомога, національне законодавство.

The research of international experience in the sphere of preventing and counteraction of corruption indicates that nowadays corruption have become as factor that cause the danger for the national security and democratic development of most countries of the world, and negatively affect all spheres of society's life.

Entities which are connected with the corruption that make an influence on forms and methods of implementation of legal policy of the state, often direct their efforts at the establishing of a control over the most profitable spheres of economic relations, involve representatives of a state power into the corruptive activity, while trying to get into administrative structures on different levels in order to lobby for their own interests.

Despite the catholicity of the emergence and spread of corruption in each country, main factors that contribute to its spread, can be identified as: the growing financial instability of the population, the rise of crime level, low level of incomes, a lack of social protection systems. In most countries of Central and Eastern Europe, and in countries that arose on the basis of the Post-Soviet space, corruption is closely connected with the fact that these countries are in the period of economic and social transformation.

Today in the international community there are well-known and approved methods of corruption counteraction, such as: the transparency of authorities, transparency and clarity of procedures of decision-making, effective mechanisms of the control over state institutions activities by the society, the freedom of a speech, and the freedom and independence of the media.

An important element in the formation and implementation of an effective system of the corruption prevention is a clear cooperation between states and their law enforcement agencies on regional and international levels, the participation in the activities of corruption countering, that were established by the United Nations, the Council of Europe, Interpol, Europol, the International monetary Fund, the World's Bank and by other international institutions¹.

The aim of the article is to cover the number of international legal acts in the sphere of corruption prevention and counteraction, their introduction and implementation on the territory of Ukraine for the proper and effective counteraction of the considered negative phenomenon, which causes the actuality of this scientific research.

The main international legal rules and principles on which are based the activities of government and other institutions in countries of the world in the counteraction with this social phenomenon, as corruption, are composed in documents of the United Nations, in particular:

- 1) the UN resolution "On crime prevention and criminal justice in the context of development: implementation and perspectives of the international cooperation";

¹ Міжнародний досвід щодо запобігання та протидії корупції [Electronic resource]. – Access mode : http://www.sonatta.pl.ua/index.php?option=com_content&view=article&id=88:korr&catid=39:justmist&Itemid=63.

- 2) the UN Framework convention "On counteraction with organized criminal";
- 3) the UN Declaration "On crime and public security";
- 4) the UN Declaration "On the corruption counteraction and graft in the international commercial transactions";
- 5) the International Code of conduction for public officials;
- 6) the Code of conduction for officers on the law order and others².

The General principles of corruption counteraction were developed by international organizations, taken as a basis in high-developed countries. Among the most important documents signed, ratified and entered into force in Ukraine should be noted such documents as: "Civil convention against corruption", "Criminal convention against corruption", "Convention of United Nations against corruption". The research of these legal acts will contribute to the identification of legal loopholes in Ukrainian legislation that will allow us the possibility to eliminate all inaccuracies and take the necessary measures for the effective prevention and counteraction of corruption.

The aim of "**Civil Convention against corruption**" (the date of signature is: November 4, 1999; the date of entirety into force for Ukraine is: January 1, 2006) is the prediction by each member in its legislature, effective remedies for entities whose rights were violated by the corruption, all such persons the opportunity to protect their rights and interests, providing such kind of entities with the possibility of a compensation.

Articles number 13–14 of the Civil convention against corruption provide that subjects that are under the control of the GRECO carry out an effective cooperation in cases that are related to civil proceedings of corruptive cases, especially service of documents, collecting evidences in other countries, jurisdictions, recognition and execution of decisions of law-enforcement bodies in foreign countries and litigation costs, in accordance with the provisions of relevant international instruments on international cooperation in civil and commercial matters, to which they acted as subjects and in accordance with their national legislation³.

The conviction of the necessity of the urgent implementation policy in the sphere of counteraction corruption, that is aimed at the protection of society, including the adoption of relevant normative-legal acts and preventive measures; the accent on the fact that the corruption is dangerous for the law order, democracy and human rights, destroys right governance, fairness and social justice, impede the business competition, economic development, the stability of democratic institutions and moral foundations of the society.

The effective corruption counteraction requires increasing, enhancing and improving of international cooperation in criminal cases, caused to the signature of the "Criminal Convention against corruption" by state-members of the Council of Europe (the date of signature is: 27 January 1999; entirety into the force for Ukraine is: 1 March 2010).

The Convention is aimed on the development of common standards concerning certain offences related to the corruption however there is no unified definition of the corruption. In addition, it views issues of substantive and procedural law that are of direct relevance to such corruption-related offences, and measures for the improvement of international cooperation. The experience shows that international cooperation in the sphere of prosecutions in cases of transnational corruption, especially bribery of foreign public officials, is facing with double-sense obstacles: the first one is related to the definition of corruption-related offences that often find that the discrepancy between meanings of the term "public official" in domestic law, and others – to means and channels of the international cooperation, where the prosecution of offenders occurs with delays or is impossible because of not procedural and sometimes political obstacles. According to the definition of offences related to corruption, participants of the Convention ensure compliance with the requirement of double criminality, and the provisions on international cooperation are designed to facilitate direct and rapid relationship between the relevant national authorities.

In particular, articles number 25 to 31 of the Criminal convention "On corruption counteraction" define:

- the general principles and measures for international cooperation;
- the central institution of international cooperation;

² Мукоїда Р.В. Особливості міжнародного досвіду протидії корупції / Р.В. Мукоїда // Південноукраїнський правничий часопис. – 2010. – № 2. – С. 54–56.

³ Цивільна конвенція про боротьбу з корупцією : міжнародний документ від 4 листопада 1999 р. [Electronic resource]. – Access mode : http://zakon5.rada.gov.ua/laws/show/994_102.

- the questions of mutual assistance;
- the issues of extradition;
- the issues of direct communication and the exchange of information, as well as providing information on its own initiative⁴.

Purposes of the **UN Convention against corruption** (United Nations Convention against Corruption – that is UNCAC; the date of signature is – October 31, 2003, the date of entirety into the force is 1 January 2010) are: the usage and improvement of measures aimed at more effective and efficient corruption prevention and counteraction; the promotion, facilitation and support for international cooperation and technical assistance in corruption prevention and counteraction, particularly in asset recovery; the promotion of integrity, accountability and proper management of public affairs and public property⁵.

According to the article number 8 of the Convention, state-participants are encouraged to: promote integrity, honesty and responsibility of its public officials in accordance with the fundamental principles of its legal system; to apply, within its own institutional and legal systems, codes or standards of conduction for the correct, honest and proper performance of public functions; the possibility of establishing measures and systems that ensure state officials to report the appropriate authorities about acts of corruption of which they became aware while performing their functions; to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding on-duty activities, occupations, investments, assets and substantial gifts or profit, which may arise a conflict of interest in relation to their functions as public officials; the possibility of making, in accordance with fundamental principles of its domestic law, disciplinary or other measures against public officials who violate codes or standards.

The UN Convention also defines basic options of the international cooperation in the corruption counteraction, providing for the terms of extradition of entities who committed corruption crimes, mutual legal assistance, the transfer of criminal proceedings, joint investigations, special investigative techniques, measures for the returning of assets, warning and detection of transfers of proceeds of crime, mechanisms for the recovery of a property, collection and analysis of information about the offender, training of a staff and technical assistance, and other forms and methods of interaction of the participating countries in the period of solving the problem.

Among documents of the European Union in the sphere of corruption counteraction the most important ones are the Communiqué of the European Commission from May 28, 2003 in relation to the comprehensive European Union policy on corruption counteraction, which defines basic principles of counteraction against this negative phenomenon in the European Union and the principles of its improvement in new state-members, candidate countries and third countries, as well as the Framework decision of the Council of the European Union № 568 dated on July 22, 2003 and called "On the corruption counteraction in the private sector", which defines the notion of "active" and "passive" corruption and the imposition of sanctions against entities, including legal, for committing of such criminal violations⁶.

For a long time in the international legal instruments for the development of policies for the prevention of corruption there were not even mentioned, or mentioned only some of its elements. In 2003, this provision was observed and described in an international mandatory legal instrument – in Article number 5 of the UN Convention against corruption (UNCAC), which provides:

- 1) each state-member of the Convention in accordance with fundamental principles of its legal system, develop and implement or ensures the implementation of effective, coordinated anticorruption policies that promote the participation of society and is based on the principles of the rule of law, proper management of public affairs and public property, transparency and accountability;
- 2) each state-member of the Convention must make efforts to implement and facilitates the implementation of effective practices aimed at preventing corruption;
- 3) each state-member of the Convention periodically evaluates relevant legal instruments and administrative measures, in order to determine the level of its coincidence with aims of the corruption prevention and counteraction;

⁴ Кримінальна конвенція про боротьбу з корупцією : міжнародний документ від 27 січня 1999 р. [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/994_101.

⁵ Конвенція Організації Об'єднаних Націй проти корупції : міжнародний документ від 31 жовтня 2003 р. (ратифікована Законом України від 18 жовтня 2006 р.) [Electronic resource]. – Access mode : http://zakon5.rada.gov.ua/laws/show/995_c16.

⁶ Запобігання і протидія проявам корупції як елемент модернізації системи державної служби. – Івано-Франківськ : Івано-Франківський центр науки, інновацій та інформатизації, 2012. – 237 с.

- 4) participants of the Convention, in the prescribed manner and in the accordance with fundamental principles of their legal systems, collaborate with each other and with relevant international and regional organizations in order to promote and develop methods. Such cooperation may include the participation in international programs and projects that are aimed at the prevention of corruption⁷.

Given the fact that corruption is one of the main dangers for the national security and democracy in Ukraine, which violates the proper implementation of social progress, the ratification of the abovementioned conventions was the first step towards preventing and countering of the corruption. Corruption, as it is, does not allow the proper development of a democratic civil society; violates the rights and freedoms of citizens; contradict with the principle of the law supremacy, and its rapid spread is due to the imperfection of legal norms and moral qualities of the society; infringe the freedom of speech and media because the corruption of government and corruptive business, which mainly depend on domestic media, are interested in the dishonest lighting of the corruption processes in the country; are distributed due to imperfections of the state management system from the highest to the lowest levels; causes the mistrust of citizens to the government through the unbelief of the population in justice, solving existing problems and needs; is perceived by the state power and overwhelming majority of the population as a normal phenomenon, and the possibility of its overcoming is in serious doubt; threatens to the national security because the corruption "exists" in actions of the state while carrying out its foreign policy functions.

Analyzing the activity in the sphere of prevention and counteraction of the corruption in the international community, it is better to highlight the most important point – anti-corruption agreements reinforce political commitments in the sphere of corruption counteraction and define fundamental international norms and procedures of dealing with this phenomenon. It evidence in favor of the fact that the international community is really interested in countering of the corruption at the national level and on a global scale. Therefore, the introduction of foreign experience in countering of corruption at the national level will only contribute to positive changes.

Given the above, it can be concluded that the international experience in the sphere of prevention and counteraction of the corruption, comprises some interest for Ukraine. These developments can be used in the practice of domestic state institutions for the prevention and counteraction of the corruption, as well as in the development of normative–legal acts, aimed at reducing the impact of corruption in the public administration. Consequently, the system of relevant activities should be based on the principles of legality, publicity, inevitability of punishment for corruption offences, restoration of violated rights, compensation to citizens, their associations, state damages connected with offences caused by the corruption. All methods are needed to be seen as an integral component in the reform of the public governance.

Summary

Here in the article are considered international legal acts in the sphere of prevention and counteraction of corruption, which were ratified by Ukrainian state. Here is an exploring of basic elements of the formation and implementation of an effective system of corruption prevention, cooperation of countries and their law enforcement agencies on regional and international levels.

Анотація

У статті розглядаються міжнародно-правові акти у сфері запобігання й протидії корупції, які були ратифіковані українською державою. Проведено розвідку основних елементів формування та реалізації ефективної системи попередження корупції, співпраці країн і їхніх правоохоронних органів на регіональному й міжнародному рівнях.

⁷ Запобігання і протидія проявам корупції як елемент модернізації системи державної служби. – Івано-Франківськ : Івано-Франківський центр науки, інновацій та інформатизації, 2012. – 237 с.

Literature:

1. Міжнародний досвід щодо запобігання та протидії корупції [Electronic resource]. – Access mode : http://www.sonatta.pl.ua/index.php?option=com_content&view=article&id=88:korr&catid=39:justmist&Itemid=63.
2. Мукоїда Р.В. Особливості міжнародного досвіду протидії корупції / Р.В. Мукоїда // Південноукраїнський правничий часопис. – 2010. – № 2. – С. 54–56.
3. Цивільна конвенція про боротьбу з корупцією : міжнародний документ від 4 листопада 1999 р. [Electronic resource]. – Access mode : http://zakon5.rada.gov.ua/laws/show/994_102.
4. Кримінальна конвенція про боротьбу з корупцією : міжнародний документ від 27 січня 1999 р. [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/994_101.
5. Конвенція Організації Об'єднаних Націй проти корупції : міжнародний документ від 31 жовтня 2003 р. (ратифікована Законом України від 18 жовтня 2006 р.) [Electronic resource]. – Access mode : http://zakon5.rada.gov.ua/laws/show/995_c16.
6. Запобігання і протидія проявам корупції як елемент модернізації системи державної служби. – Івано-Франківськ : Івано-Франківський центр науки, інновацій та інформатизації, 2012. – 237 с.

Tetiana Suprun,

*Candidate of Juridical Sciences,
Associate Professor at the Department of Criminal Law and Criminology
University of SFS of Ukraine*