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UDZIAŁ SPOŁECZEŃSTWA W MECHANIZMIE ZAPOBIEGANIA I PRZECIWDZIAŁANIA KORUPCJI W UKRAINIE

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Adnotacja. W artykule ujawniono rolę instytucji społeczeństwa obywatelskiego w zapobieganiu i przeciwdziałaniu korupcji w organach władzy publicznej. Udowodniono, że skuteczne są te mechanizmy przeciwdziałania i zapobiegania korupcji, które priorytetowo traktują zaangażowanie społeczeństwa.

Ostatnie wydarzenia w kraju pokazały, że wiele zmian w ustawodawstwie odbywa się bez udziału społeczeństwa. Większość z tych zmian dotyczy zapobiegania korupcji. Zaangażowanie społeczeństwa w ten proces pozwala na bardziej stabilny i skuteczny system przeciwdziałania korupcji. Ponadto zaangażowanie społeczeństwa pozwala przeciwdziałać korupcji we wszystkich jej przejawach: wykroczeniach służbowych, nadużyciach władzy i kradzieży mienia. Chociaż ostatnio coraz więcej osób angażuje się w uczestnictwo publiczne, nadal istnieje sceptycyzm co do jego skuteczności.

Metody i narzędzia stosowane przez społeczeństwo w walce z korupcją są dynamiczne i często się zmieniają. Ostatnio rzecznictwo i lobbying są uważane za główne. Ponadto trwają poszukiwania nowych narzędzi zapobiegania korupcji.

Słowa kluczowe: społeczeństwo, zapobieganie przestępstwom korupcyjnym, rzecznictwo, kontrola publiczna, społeczeństwo obywatelskie, korupcja, polityka antykorupcyjna, praworządność.

PUBLIC PARTICIPATION IN THE MECHANISM OF PREVENTION AND ANTI-CORRUPTION IN UKRAINE

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Abstract. The article reveals the role of civil society institutions in preventing and combating corruption in public authorities. It has been proven that the mechanisms for counteracting and preventing crime that prioritises public involvement are effective.

Recent events in the country have shown that many changes to legislation take place without public participation. Most of these changes concern the prevention of corruption. At the same time, it is considered a vital component of the country's national integrity system. The involvement of the public in this system makes it possible to create a more stable and effective anti-corruption system. In addition, public involvement opposes corruption in all forms: official crimes, abuse of power and theft of property. Although more people have recently become involved in public participation, there is still scepticism about its effectiveness.

That the methods and tools used by the public in its fight against corruption are dynamic and often change. Recently, advocacy and lobbying are considered new methods; In addition, new tools to prevent crime are being sought. It was also noticed that the public uses new methods of forming anti-corruption policies.

Key words: public, prevention of corruption crimes, advocacy, public control, civil society, corruption, anti-corruption policy, the rule of law.

УЧАСТЬ ГРОМАДСЬКОСТІ В МЕХАНІЗМІ ЗАПОБІГАННЯ ТА ПРОТИДІЇ КОРУПЦІЇ В УКРАЇНІ

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Анотація. У статті розкрито роль інститутів громадянського суспільства у запобіганні і протидії корупції в органах публічної влади. Доведено, що дієвими є ті механізми протидії та запобігання корупції, що на пріоритетне місце ставлять залучення громадськості.

Останні події в країні показали, що багато змін до законодавства відбуваються без участі громадськості. Більшість із цих змін стосуються запобігання корупції. Залучення громадськості до цього процесу дозволяє створити більш стабільну та ефективну систему протидії корупції. Крім того, залучення громадськості дозволяє протидіяти корупції у всіх її проявах: службових правопорушеннях, зловживанні владою та розкраданні майня. Незважаючи на те, що останнім часом все більше людей залучаються до громадської участі, все ще існує скептицизм щодо її ефективності.

Методи та інструменти, які використовує громадськість у боротьбі з корупцією, є динамічними та часто змінюються. Останнім часом адвокація та лобіювання вважаються провідними. Крім того, ведеться пошук нових інструментів запобігання корупції.

Ключові слова: громадськість, запобігання корупційним злочинам, адвокація, громадський контроль, громадянське суспільство, корупція, антикорупційна політика, верховенство права.

Introduction. Recent events in the country have shown that many changes to legislation take place without public participation. Most of these changes concern the prevention of corruption. The involvement of the public in this system makes it possible to create a more stable and effective anti-corruption system.

Interaction of government bodies with civil society institutions in the formation and implementation of anti-corruption policy is necessary for their practical and transparent activities. Various measures can prevent corruption, but none of them will be successful without public support.

Through thorough research in anti-corruption, such scientists as O. Nadjafov, O. Prokhorenko, E. Strilchenko, O. Tkachenko, M. Khavronyuk, B. Chela, A. Cheshko and others. S. Alfiorov, I. Bogatyrev, I. investigated the issues of corruption offences. Klochko, E. Nesvit, O. Onyschuk and others. Also, special attention to the concept of anti-corruption mechanism is paid in the works of such scientists as D. Vashchuk, T. Vilchuk, Y. Groshevy, S. Ivanytsky, K. Zakomorna, T. Kurilo, G. Murashin, V. Popelyushko, O. Potopakhina, T. Pruzhanska, V. Sviatotska, O. Sviatotsky, Y. Shemchushenko S. Shiro, V. Shapoval and others. Given the contribution of scientists to the study of various aspects of preventing corruption, the urgent issue is to determine effective forms and methods of public participation in this process.

The purpose of the study is a comprehensive study of the participation of civil society institutions in the prevention of corruption in public authorities.

Presenting main material. The events of recent years in Ukraine confirm that significant legislative changes took place with the public's participation. In particular, this concerns the field of combating corruption crimes, as this sector of public relations is currently one of the keys to the further advancement of our country on the path of Ukraine's accession to the European Union. Public participation in a national integrity system will help build a sustainable system that effectively prevents corruption crimes as part of a broader response to abuse of power, official crimes, and various forms of misappropriation (National integrity system of Ukraine,

2015) So far, we have seen an increase in this involvement, but the question of the effectiveness of this process remains open.

Practical public cooperation with state authorities and local self-government bodies in the areas of consultation, participation and partnership is an essential and effective tool: systematic interaction between the authorities and the public in the form of dialogue; involvement of citizens in the management of state affairs; free access to information about the activities of authorities; ensuring transparency, openness and transparency of the activities of state bodies; public monitoring and control (Існуючі механізми співпраці органів державної влади з організаціями громадянського суспільства в контексті реалізації Національної стратегії сприяння розвитку громадянського суспільства в Україні 2016-2020, 2016: 54). As we have repeatedly noted, the public participates in developing and implementing the anti-corruption policy by providing consultations. Based on this, we suggest considering these two phases separately.

Advice on the development of anti-corruption policy: In the scientific literature, there is no single methodology for determining measures by which the public can participate in the development of anti-corruption policy (Nalyvaiko, 2022: 28). But after summarising all existing understandings, they can be grouped in one direction – implementation of explanatory work or agitation. Advocacy (citizen representation) represents citizens' interests through their participation in the decision-making process aimed at changing policy at the local or state level, the consciousness of process participants, and legislation. We note that today there is a draft of the Law of Ukraine «On Public Advocacy», which also defines advocacy, namely: the activity of an advocacy entity, which is aimed at supporting the adoption, amendment or repeal of laws, other regulatory legal acts, and the formation of their drafts, bodies of state power of Ukraine, bodies of local self-government of Ukraine, other subjects of power of Ukraine, their officials and officials, as well as deputies of all levels. Based on the above concepts, we can state that such civic representation programs can be aimed at policy change (public lobbying), systemic (change in decision-making practice) and democratic transitions.

The previously mentioned draft of the Law «On Public Advocacy» contains a list of the rights of an individual who carries out advocacy activities. Unfortunately, the rights of a legal entity of private law, a public association or an association of public associations that have the status of a legal entity are not provided for. However, based on the practical analysis of the activity of public anti-corruption organisations, we can highlight the following directions of their advocacy activities: a) initiating and conducting a public anti-corruption examination of the activities of public authorities, laws and draft laws; b) formation of anti-corruption initiatives; c) participation in the formation of anti-corruption institutions and re-certification of law enforcement officers; d) public discussion of decisions of state authorities, projects of normative legal acts; e) formation of joint consultation and advisory bodies of state authorities and expert institutions; e) conducting peaceful meetings.

Due to their importance, the above measures became the main ones in the formation of the national anti-corruption policy. Based on the implementation of the mentioned measures, the public informs the relevant bodies about changes in the national anti-corruption policy.

The main task of the public anti-corruption examination is to identify factors in current normative legal acts, draft normative legal acts that contribute or may contribute to the commission of corruption crimes, and develop recommendations for their elimination. Scientists and experts agree that conducting a public examination is one of the most effective measures for identifying corruption incentives in existing laws or draft laws. According to the research, only about half (46 %) of the surveyed public experts noted that general anti-corruption expertise is one of their activity areas. Average citizens ignore the tool – only 20% consider it effective. The legislation regulates the procedure for conducting such inspections: Article 55 of the Law of Ukraine «On Prevention of Corruption» specifies that at the initiative of individuals, state and legal entities, conducting state inspections against corruption can lead to the adoption of normative legal acts and norms. The public anti-corruption examination of current legal actions, draft laws and their results is carried out at the expense of a physical, social group, legal entity or from another source not prohibited by law. The results of the anti-corruption inspection, including the public one, were submitted by the subject of the issuance (acceptance) of the relevant decree, its legal successor, or the matter of the appropriate regulatory authorities in this area (Закон України» Про запобігання корупції, 2014). At the same time, the law is limited to general issues of public anti-corruption inspection and does not define procedural issues of its conduct. The Ministry of Justice of Ukraine approved a unique method of anti-corruption assessment (Методологія проведення антикорупційної експертизи, 2017). This legal act regulates the process of conducting state and national anti-corruption inspections. It answers the question of how to run a detailed analysis of legislative acts and how to draw conclusions from the completed review.

It should be noted that the Regulations of the Cabinet of Ministers of Ukraine also provide the right to conduct public anti-corruption audits: during such audits, the developer, at the request of citizens or associations of citizens, provides them with a draft of the project. An account with the necessary materials, informing about the conditions of completion of its preparation (Постанова Кабінету Міністрів України «Про затвердження Регламенту Кабінету Міністрів України», 2007). In addition, this clause obliges the Cabinet of Ministers during the project's development to consider the proposals received due to the public anti-corruption examination (Новіков, 2015).

However, public organisations do not often use the above behaviour as a model (for example, the same approach as the Ministry of Justice). That is why several public organisations led by Transparency International Ukraine, with the support of the United Nations Development Program in Ukraine, developed methodological proposals for developing general anti-corruption expertise aimed at helping less experienced people in public control. The

method is accompanied by a manual outlining the basic rules for using the technique (Осика, Хавронюк, Хмара, Яцків, 2012: 206-207).

The objects of anti-corruption checks, in general, can be:

1) Legislative act of Ukraine and its draft. These are the laws of Ukraine, international treaties valid in Ukraine, resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, and resolutions and orders of the Cabinet of Ministers of Ukraine.

2) Clarification of the application of the legislation of Ukraine. It is about providing appropriate clarifications regarding: the Verkhovna Rada of Ukraine by the Law «On the Verkhovna Rada of Ukraine»; Courts carrying out legislative activities by the Law «Judicial System and Status of Judges» and procedures; Ministry of Justice of Ukraine and other state authorities;

3) Regulatory and legal acts of state bodies and their projects – acts: ministries, other central management bodies, management and control bodies; other state authorities; ministries and republican councils of the Autonomous Republic of Crimea (from now on – ARC); districts, cities of Kyiv and Sevastopol, districts. State administration, its departments, other links, local economic management bodies and control bodies (Калмиков, Сінченко, Сорока, Хавронюк, Шведова, 2017: 206-207). Norms and legal acts of national bodies also recognise acts adopted (issued) by authorised subjects in the form and procedure established by law, but: not signed by relevant officials; not registered, but need registration; not yet entered into force; although they have entered into force, they have not yet entered into force; complete failure, despite the ability to trace certain connections;

4) International treaties that have not yet entered into force for Ukraine. Experts note that the choice of the object of public anti-corruption examination is also important. They should be selected according to the following criteria: the status of the document (legal force), the subject of the legislative initiative through which the relevant document was adopted, the subject of the legal provision, the implementation of the legislative proposal and other circumstances (Калмиков, Сінченко, Сорока, Хавронюк, Шведова, 2017: 206-207).

An equally effective measure to prevent corruption crimes is the formation of public initiatives. Such initiatives include coalitions of public organisations (Reform Recovery Program, Initiative 11, etc.), public campaigns, information platforms, educational programs, etc. Examples of successful public initiatives include the creation of the Prozorro and Dozorro platforms, online services for monitoring public procurement, and the introduction of the electronic declaration system for civil servants. The popularity of this approach to the prevention of corruption among public activists is evidenced by research data: 50 % of employees surveyed by public anti-corruption organisations noted that by participating in coalitions of public organisations, they were able to influence the formation of national anti-corruption policy. At the same time, the weaknesses of public initiatives at the local level should be noted compared to the national level. In one of their analytical articles, experts of the National Institute of Strategic Studies noted that this is due to social inertia of public organisations at the local level, inadequate legal support for the implementation of public initiatives, the reluctance of local councils to involve the public in joint decision-making (Матвійчук, 2018: 293; Nalyvaiko, Chepik-Trehubenko, 2022: 414). One of the most successful public initiatives today is the creation of the public procurement information system Prozorro, which could save 22 billion UAH of budget funds.

The «Joint anti-corruption» initiative, launched at the «International Day of Combating Corruption in Ukraine 2016» forum, should become a cooperation model between the authorities, the public and businesses. The initiative was joined by Ukrainian public anti-corruption organisations, such as Package of Reforms for Revival (RPR), Public Organizations «Joint Anti-Corruption», Transparency International Ukraine, Project Office of NKREC, International Development Law and other organisations, Deloitte, EVA, ACC, Public Committees at various ministries and more than 30 public associations (Калітенко, Лемєнов, Малишев, Марчук, Сердюк, Сівєрс, Хавронюк, Чумак, 2021:135).

Participate in the formation of anti-corruption bodies and re-certification of law enforcement officers. Shortly after the Revolution of Dignity ended, the public began actively promoting new legislative anti-corruption bills. In particular, the package mentioned above of anti-corruption reforms was adopted, establishing norms for creating two new institutions: NABU and NAZK. For NABU, for example, the public accumulated funds from Western partners. Thanks to their pressure, the process of creating NABU is transparent and democratic (it indirectly participates in the institution's formation). As for the NACC, Part 4 of Article 5 of the Law of Ukraine «On Prevention of Corruption» 5 states that the Competition Commission, which selects candidates, will include four persons proposed by public associations with experience in combating corruption crimes. Members of NACC.

In addition, the public can participate in the selection of candidates for the NPU (clause 46 of the Model Provisions) (direct participation) (Наказ Міністерства внутрішніх справ України «Типовий порядок проведення конкурсу на службу до поліції та/або зайняття вакантної посади», 2015). Of course, involving public members in the Competition Commission is timely, given the development of civil society in our country, but it has not been fully implemented. The authorities tried various ways to deprive public activists of participation in the Competition Commission. During 2015-2016, a competitive selection of members of the NAKC took place, and the agency started its work. Manipulation took place during the election of public representatives to the Competition Commission during the competition for the election body. Also, according to public experts, the appointment of a member of the NACC could violate the law. Even though the activity of the agency was planned for August 2015, it started only on August 15, 2016, with a delay of one year, so all the tasks that determine the implementation of the anti-corruption strategy and the national plan by the agency are subject to threats of timely

and high-quality implementation (Марчук, Нестеренко, 2017: 12; Nalyvaiko, 2014: 60). It should also include establishing national agencies and national bureaus of investigation to investigate and manage assets derived from corruption and other crimes.

As a rule, public discussions of decisions and projects of regulatory legal acts of state bodies are held in the form of general discussions. The order and procedure for the implementation of this event are determined by the resolution of the Cabinet of Ministers of Ukraine dated October 3, 2010 № 996 (Постанова Кабінету Міністрів України «Про забезпечення участі громадськості у формуванні та реалізації державної політики», 2010). On ensuring public participation in the formation and implementation of state policy. The resolution approved the procedure for conducting consultations with the public on issues of formation and implementation of state policy (Чепік-Трегубенко, 2015: 122). Defines the main requirements for the Administration when conducting such consultations: explains the main issues on which talks can be conducted; forms of consultations – discussions, electronic consultations with the public (direct) and research of public opinion (indirect); discussion methods, etc. The law stipulates those consultations with the public in the form of public discussions and electronic consultations with the public are mandatory in the form of public consultations on draft laws: it provides for the implementation of regulatory activities in certain areas (in our case, anti-corruption). Therefore, the authorities should involve the public in the discussion of the adopted draft laws in the field of combating corruption crime. It should also be noted that public talks can be initiated at the request of the public itself. There are known cases when draft laws on amendments to anti-corruption legislation, prepared by public activists, were presented to the public. In public discussions and public opinion, the survey results were prepared, and the law drafters had to consider these results. One of the examples of general discussion was the proposal of a new draft anti-corruption strategy for 2018–2020.

Establish joint advisory and advisory bodies of state bodies and expert bodies. During the development of the new anti-corruption strategy, advisory bodies under the authorities began to be actively created: the National Council on Anti-Corruption Policy under the President of Ukraine and the Working Group on Reforms under the Ministry of Justice of Ukraine. The Commission of the Verkhovna Rada of Ukraine on Prevention and Counteraction of Corruption was established earlier. Still, after the Revolution of Dignity and the election of a new member of the Verkhovna Rada, it started working with an unknown force. Public experts and citizens evaluate the effectiveness of such participation poorly: only 13 % of experts claim that thanks to their participation in the National Council on Anti-Corruption Policy under the President of Ukraine, the Council for Prevention and Counteraction of Corruption of the Verkhovna Rada of Ukraine, the Group of Efforts «Anti-Corruption Reform», they can influence the formation anti-corruption policy, only 23% of citizens believe that public participation in the work of ministerial oversight committees and the sector is an effective measure to prevent corruption crimes. All of this shows that the state authorities limit themselves to the admission to participate in the work of such institutions without granting fundamental rights to the representatives of the public. The proposition that deliberative and deliberative bodies are controlled and managed remains relevant. The prevailing opinion in the Internet media is that most public committees fall into two categories: those that do not understand the institutions in which they operate, and those that are entirely under the control of state bodies and operate on their terms. He is interested in and comments only on the information allowed by the curator. Of course, in this case, it is not about public control (Громадські ради: для чого потрібні та як працюють в Україні, 2021; Nalyvaiko, Chanysheva, Kozin, 2018: 230).

Attention should also be paid to activities such as peaceful assemblies, protests and strikes to influence the authorities. Of course, public organisations strive to preserve the status of "peaceful" actions – rallies under different names and slogans. The latter, for example, can be a legislative consolidation of NABU's powers during a pre-trial investigation or a campaign to encourage high-ranking officials to fill out electronic documents. Implementing such measures will contribute to an informative analysis of the prevention of corruption crimes, as it will increase the understanding of the country's population and the dynamics and needs for preventing corruption (Шакун, 2003: 126).

Conclusions. Analysing all existing measures of public participation in the formation of the national anti-corruption policy, it can be said that the public mostly did not encounter obstacles in the consultation process on the formation of such a policy. According to the research data, 60% of public experts said that recommendations based on the results of anti-corruption research/public anti-corruption initiative were accepted and considered by authorities, and 60% answered that a set of legislative initiatives (President of Ukraine, Ukrainian anti-corruption industry), Cabinet of Ministers, public representatives of Ukraine) took into account the public's suggestions regarding improving anti-corruption legislation and considered them within the framework of the draft law. It is logical to assume that the main obstacles to implementing general social prevention arise at the stage of implementing the anti-corruption policy. These issues will be discussed later.

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