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Implementation of Foreign Experience in Fighting Corruption and Corruption Offences in Ukraine

Abstract:

Corruption is one of the most severe threats to the stability and development of states, including Ukraine. It undermines trust in state institutions, hinders effective governance, and threatens national security. The study's relevance is determined by integrating fighting corruption's international experience into Ukrainian legislation to increase the effectiveness of anti-corruption measures. The high level of corruption crime in Ukraine and constant changes in the legal environment require revision and adaptation of the existing anti-corruption mechanisms. Global practice analysis allows us to identify successful models and strategies that can be adapted to the Ukrainian context. The study object is the world's experience in the fight against corruption and corruption offences and their implementation in Ukraine. The study aims to research foreign experience in the fight against corruption and corruption offences to highlight best practices and further implement the relevant norms in domestic legislation. The author summarises the available doctrinal and normative sources regarding the purpose and principles of legal responsibility; the synthesis method is used to determine the essence of corruption and corruption offences, the comparative method is for studying the criminal legislation for criminal offences of other countries for existing legal norms on combating corruption, generalisation method – for summarising the results of the study. The works of such scientists as I.Y. Grishova, S.S. Zadvornyykh, O.V. Zinchenko, T.V. Ilenko, M.V. Kikalivshvili, O.I. Kozinets, I.V. Korulya, V.O. Prikhodko, I.O. Roshchina, V.M. Trepak, D.Yu. Chernikov, O.M. Khalkovsky, Ya.Yu. Shvydkiy were used in the study. The article examines corruption's legal and criminological aspects, the need for political will, public support and effective implementation of anti-corruption policy. International legal acts, such as the Strasbourg Convention, covering bribery, abuse of influence and other corruption offences are analysed. In particular, in Georgia, Italy, Germany, the Netherlands, and others, the methods of combating corruption are considered in various countries. The significance of integrating international standards into Ukraine's national legislation and developing effective anti-corruption strategies based on successful foreign experience are emphasised.

Keywords: corruption, responsibility, criminal law, criminal offences.

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Імплементація іноземного досвіду щодо боротьби з корупцією та корупційними правопорушеннями в Україні

Анотація:

Корупція є однією з найсерйозніших загроз для стабільності та розвитку держав, зокрема й України. Вона підриває довіру до державних інституцій, заважає ефективному управлінню та загрожує національній безпеці. Актуальність статті зумовлена необхідністю інтеграції міжнародного досвіду боротьби з корупцією в українське законодавство для підвищення ефективності антикорупційних заходів. Високий рівень корупційних правопорушень в Україні та постійні зміни у правовому середовищі вимагають перегляду та адаптації існуючих механізмів боротьби з корупцією. Аналіз глобальних практик дозволяє виявити успішні моделі та стратегії, які можуть бути адаптовані до українського контексту. Об'єктом дослідження є світовий досвід у боротьбі з корупцією та корупційними правопорушеннями та його імплементація в Україні. Метою є вивчення іноземного досвіду боротьби з корупцією та корупційними правопорушеннями для виокремлення кращих практик та подальшої імплементації відповідних норм у вітчизняне законодавство. У статті проводиться узагальнення наявних доктринальних та нормативних джерел щодо мети і принципів юридичної відповідальності; метод синтезу — для визначення сутності корупції та корупційних правопорушень; порівняльний метод — для дослідження кримінального законодавства за кримінальні правопорушення інших країн на предмет наявності правових норм щодо боротьби з корупцією; метод узагальнення — для підсумовування результатів дослідження. Вивченням питання сутності та шляхів боротьби з корупцією займалися такі вчені як І.Ю. Гришова, С.С. Задворних, О.В. Зінченко, Т.В. Ілієнко, М.В. Кікалішвілі, О.І. Козинець, І.В. Коруля, В.О. Приходько, І.О. Рощина, В.М. Трепак, Д.Ю. Черніков, О.М. Халковський, Я.Ю. Швидкий. У статті розглядаються юридичні та кримінологічні аспекти корупції, необхідність політичної волі, суспільної підтримки та ефективної реалізації антикорупційної політики. Аналізуються міжнародні нормативно-правові акти, такі як Страсбурзька конвенція, що охоплюють підкуп, зловживання впливом та інші корупційні правопорушення. Розглядаються методи боротьби з корупцією в різних країнах, зокрема в Грузії, Італії, Німеччині, Нідерландів та інших. Наголошується на важливості інтеграції міжнародних стандартів у національне законодавство України та розробці ефективних стратегій протидії корупції, базованих на успішному іноземному досвіді.

Ключові слова: корупція, відповідальність, кримінальне право, кримінальні правопорушення.

Introduction

Corruption is one of the most serious threats to the stability and development of the state, which manifests itself in various forms at different stages of society's development. It undermines the credibility of state institutions and hinders the effective functioning of the management system. To combat this phenomenon, it is significant to understand both the legal and criminological aspects of corruption manifestations to develop effective counteraction strategies.

Corruption manifests itself in different ways at different stages and in different spheres of state and society development, and, accordingly, its consequences are also different. It contributes to the moral and ethical degradation of society's members and undermines confidence in the authorities and the main processes of state development. Civil servants are

involved in corrupt transactions, which naturally become potential targets for foreign counterintelligence services and thus pose a serious threat to national security.

The study object is the world experience in fighting corruption and corruption offenses and its implementation in Ukraine.

The study aims to research foreign experience in the fight against corruption and corruption offences to highlight best practices and further implement the relevant norms in domestic legislation.

To achieve this goal, you must complete the following tasks:

- investigate the content of the category “corruption”;
- analyse the world experience of rationing anti-corruption measures;
- identify critical factors in the fight against corruption and corruption offences.

The article summarises:

- the existing doctrinal and normative sources regarding the purpose and principles of legal responsibility;
- the synthesis method is to determine the essence of corruption and corruption offences;
- the comparative method is to study the criminal legislation for criminal offences of other countries for the existence of legal norms to combat corruption;
- the generalisation method is to summarise the results of the study.

Such scientists as I.Y. Grishova (2015), S.S. Zadvornyykh (2015), O.V. Zinchenko (2013), T.V. Iliencko (2012), M.V. Kikalivshvili (2019), O.I. Kozinets (2019), I.V. Korulya and V.A. Prikhodko (2014), I.O. Roshchina (2020), V.M. Trepak (2015), D.Yu. Chernikov (2015), O.M. Khalkovsky (2011), Ya.Yu. Shvydkiy (2020) studied the issue of the essence and ways to fight corruption. Analysis of sources and publications shows that corruption is studied by specialists in various fields of science who suggest ways to counteract this negative phenomenon. However, the anti-corruption legislation of different countries, the changes in society, and the high level of corruption and criminal offences in Ukraine make it necessary for the further scientific development of this problem.

Results

Corruption is a criminal offence in the field of politics and Public Administration, which consists of abuse of an official position for personal enrichment (Latin “corruption” is damage, bribery). This is not only a problem of the modern world but also one of the oldest criminal offences, which remains relevant in any era and poses a significant problem for any state. The laws of Hammurabi also provided punishment for bribery. The corruption problem has become particularly relevant with the advent of government bodies. Charles Montesquieu noted that “it is already known from centuries of experience that any person endowed with power tends to abuse it, and he follows this path until he reaches the limit assigned to him” (Kikalishvili, 2019). This problem not only did not lose its relevance but also gained new opportunities and expanded the scope of its application, ultimately contributing to the fall of such powerful empires as the Roman, Ottoman, Spanish and French.

Corruption in the highest levels of government poses a serious threat to state sovereignty, destroying all democratic and social institutions. It also leads to a significant violation of the rule

of law, which can eventually cause constitutional collapse. Therefore, the fight against corruption should be one of the highest state priorities. Reducing corruption, and ideally eliminating it, is a necessary task.

An effective fight against corruption requires three key factors: political will, public support, and proper implementation of the internal policies of state structures. The first legislative act that contained these principles was the French Declaration of Human and Civil Rights of 1789 (*Zinchenko, 2013*). In particular, Article XV of this declaration states: “The company has the right to demand a report from any civil servant for the area of management entrusted to him.” At the same time, the leading international documents of a normative and criminal nature do not provide an exact definition of corruption but list corruption offences subject to criminalisation.

The Strasbourg Convention on criminal liability for corruption (1999) defines specific measures for the national level in the fight against corruption. It covers the bribery of civil servants, including international judges, and granting any intangible benefits in exchange for undue benefits. In addition, the convention criminalises corruption among civil servants who knowingly accept or offer illegal benefits to themselves or others. The convention’s text also criminalises abuse of influence for profit, similar to mediation in corruption schemes and money laundering obtained by criminal means in accounting. The Strasbourg Convention provides a broader list of corruption offences and definitions than national legislation and provides for criminal liability for legal entities for corruption offences. Other necessary international instruments, such as the European Union Convention on Civil Liability for Corruption and the UN Convention against organised Transnational Criminal offences, also propose measures to criminalise corruption offences. However, they do not establish special liability for civil servants for preparing extortion or obtaining illegal benefits, leaving these issues to the discretion of member states (*Trepak, 2015*).

When planning methods to combat corruption offences, it is crucial to consider the causes of their occurrence and latent factors caused by both objective and subjective reasons. The socio-political environment of the state, including low salaries and high taxes, is a significant factor in the spread of corruption. Different countries use different methods to fight corruption, and the results vary: some countries succeed at minimal cost, while others do not have significant results despite significant resources.

From the point of view of criminal law, in the legislation, the term “corruption” is not singled out as a separate criminal wrongful act but is a collective concept that covers various types of official offences, such as abuse of office and obtaining illegal benefits. The same concept is reflected in the UN documents on the international fight against corruption, including undue profit, nepotism and embezzlement of public funds (*United Nations Convention..., 2007*). Therefore, it is necessary to strengthen the fight against criminal offences that contribute to the development of corruption. Corruption actors include civil servants and other persons who intend to benefit.

The new approach to the definition of corruption confirms that the international community does not identify corruption only with undue profit and bribery of public and private officials. Corruption is a transaction between a person who provides an illegal benefit and one who receives it. The European Commission provides a broader definition of corruption, including not only undue benefit from officials of various sectors, independent agents and

individuals with different statuses but also any illegal act that violates official duties and is aimed at obtaining illegal benefit for an individual or third party (*Zadvornykh, 2015*).

According to Article 1 of the law of Ukraine of 14.10.2014, “On Prevention of Corruption”, corruption is “the use of official powers or opportunities by a person specified in part one of Article 3 to obtain undue benefits for himself or others. This also includes accepting or offering such a benefit and promising to receive it. Corruption covers cases where a person offers or attempts to provide undue benefits to influence official decisions. An undue benefit is any money or other property, services, benefits or benefits offered, provided or received without legal grounds” (*On Preventing Corruption, 2014*). According to the Criminal Code of Ukraine, corruption offences are offences committed by abusing their official position to obtain illegal benefits. These may include actions related to misappropriation or embezzlement of property, bribery, abuse of power, misuse of budget funds, and violation of the rules and regulations governing the circulation of various resources and services. Corruption offences also include taking illegal benefits and abuse of influence, performed directly by officials or through bribery or fraud. they include a wide range of offences related to abuse of official position. This covers offences under such articles as misappropriation or embezzlement of property (Art. 191), theft of weapons or narcotic drugs (Art. 262, 308, 312, 313), violation of the rules of drug trafficking (Art. 320), and other similar actions. Corruption criminal offences are also considered misuse of budget funds (Art. 210), bribery of employees (Art. 354), abuse of power or official position (Art. 364, 3641, 3652), acceptance of illegal benefits (Article 368), illegal enrichment (Art. 3682), and abuse of influence (Art. 369, 3692). The jurisdiction of these criminal offences is determined depending on the nature of the offence. It is divided between the National Police and the National Anti-Corruption Bureau of Ukraine (*Criminal Code of Ukraine, 2001*).

The Criminal Code defines liability for corrupt transactions and criminal offences in Georgia. Article 339 of the Criminal Code of Georgia provides penalties for providing undue benefits, including promises or provision of money, securities, other property or illegal benefits to officials. Changes in the legislation have increased the penalty for providing illegal benefits from two to three years in prison. The concept of “influence trafficking” was also introduced, defined as a criminal offence, a promise or offer of illegal benefits to influence an official's decisions. In Georgia, the concept of “influence trafficking” is defined as a criminal offence involving a promise, offer or provision of illegal benefits in order to influence the decisions of an official or person performing public functions. This concept includes cases where any form of benefits, whether tangible (money, securities, property) or intangible (influence, support), are offered or promised to influence a person's decisions within the limits of their official duties (*Kikalishvili, 2019*). The legislation of Georgia provides for the punishment of such an offence in the form of fines, restriction of liberty or deprivation of Liberty, depending on the gravity of the offence and the specific circumstances of the case, thus contributing to the fight against practices that harm integrity and transparency in the public sector. The amendments to the new law on civil service are aimed at modernising the public sector and introducing innovative approaches. A model for monitoring declarations of official property status was introduced. In October 2015, the Georgian parliament adopted a draft law on amendments to the law on incompatibility of interests and corruption in the civil service. An automatic human resource management system has been implemented in 18 ministries. In April 2015, the Georgian government approved the

updated anti-corruption strategy and action plan for 2015-2016. The Anti-corruption Council approved the assessment and monitoring methodology in February 2015. International organisations rated Georgia's progress as positive in 14–15 recommendations ([Korulya, 2014](#)).

In countries like Georgia, criminal legislation does not define corruption as a separate type of criminal offense. For example, in Italy, despite the detailed regulation of penalties for bribing officials, no criminal offence is defined as corruption. The Italian Criminal Code provides liability for obtaining undue benefits and incitement to do so, distinguishing between these actions and applying different penalties.

Ukraine, focusing on European integration and facing the transnational nature of corruption, should adhere to international standards and practices to combat this phenomenon when developing anti-corruption legislation. It is significant not only to integrate international legal norms into national legislation formally but also to master the methodology, concepts and approaches to solving the problem of corruption and develop effective ways to implement international standards in national practice. An effective fight against corruption requires a global approach. That is why in the last decades of the 20th century, UN bodies, in particular the General Assembly and specialised agencies, began to actively work on forming an international consensus on the recognition of corruption as a criminal offence of an international nature. This includes concluding multilateral international treaties and facilitating countries' collective efforts to fight corruption at the global level ([Roshchina, 2022](#)).

Many countries, such as Austria, the Czech Republic, and Sweden, do not have separate laws dedicated exclusively to the fight against corruption. On the other hand, corruption issues are regulated through various legislative acts and specific provisions of criminal law. The activities of public authorities in these countries are often based on standard criminal codes or carried out within the framework of international cooperation, for example, with Interpol and Europol. For example, in Finland, the Anti-Corruption System includes detailed rules in the Criminal Code, where corruption acts are punishable by fines or up to four years in prison. In Finland, corruption acts are often qualified not as criminal offences but as administrative offences, and criminal liability occurs only in cases of particular severity of violations ([Chernikov, 2015](#)). This approach demonstrates that the fight against corruption can be effective through individual laws and by integrating anti-corruption norms into the general legal context and close cooperation with international organisations.

Let us talk about the results of Georgia's anti-corruption policy. It can be an example of a successful fight against corruption, which has attracted widespread attention inside and outside the country. During the 1990s crisis that engulfed post-Soviet countries, Georgia, like other states, faced increased corruption. Government positions became the subject of trade, which led to the flourishing of criminal business and corruption. The lack of political will, low officials' salaries, and non-compliance with legal structures and new realities have created favourable conditions for corruption development. Since the early 2000s, Georgia has embarked on significant reforms, including controlling employees' income, reforming the police, tax and customs system, liberalising the economy, and reforming the judicial system. These changes have made significant progress: the country has risen in the corruption ranking from 110th place in 2004 to 51st place in 2012. The number of people convicted of corruption offences increased by 300%. The main conditions for the success of Georgian reforms are the restriction of state

functions and the manifestation of political will. An active civil sector plays a significant role in the process, which helps maintain trust in government agencies and ensure participation in the development of state projects. The main conditions for the success of the Georgian government in the fight against corruption were due to two key factors: the reduction of the state's role in the economy and the manifestation of strong political will. Georgia has achieved significant results thanks to the reduction of state intervention in economic processes and radical reform of the state apparatus. An important aspect was the implementation of comprehensive reforms, such as the privatisation of state property, the modernisation of the tax and customs systems, and the creation of Free Economic Zones. This has significantly improved the investment climate and stimulated the development of the private sector.

However, the success of anti-corruption measures in Georgia was made possible by state policy changes and civil society's active role. Supporting the civil sector and ensuring transparency in governance are critical to achieving lasting results. Civil society, which should actively participate in policy-making and the implementation of significant projects, should ensure control over the activities of state bodies and support politicians aimed at increasing confidence in the state. This interaction contributes to the formation of effective coalitions and support for anti-corruption initiatives, which makes Georgia a valuable experience for other countries, including Ukraine (*Khalkovsky, 2011*).

The primary anti-corruption strategy in Germany is to destroy criminal groups' material base, particularly their financial resources. This is achieved by confiscating property and creating a legal environment that makes it impossible to launder funds obtained by criminally illegal means. A significant part of Germany's anti-corruption strategy is maintaining a register of companies involved in corruption, which prohibits them from participating in public procurement and attracts close attention from law enforcement agencies.

The UK has a rather complex and extensive system of anti-corruption legislation. National norms concerning corruption offences are not concentrated in one code or act but distributed among legal documents, including criminal and other branches of law. This makes it difficult for law enforcement agencies to apply the law. The UK Home Office has developed an anti-corruption bill to address these concerns. This new bill summarises pre-existing anti-corruption legislation, including provisions that eliminate parliamentary immunity from liability for corruption. This means that even high-ranking officials can now be held accountable for corruption, which previously could have been complicated by their privileges. The UK also has an effective mechanism for administrative control over the activities of civil servants. Although the country is considered one of the least corrupt compared to other states, especially developing countries, this does not mean that the system does not need to be constantly improved. In British law, corruption is defined rather narrowly, covering only practices related to obtaining illegal benefits in exchange for favourable solutions. The UK is constantly improving its anti-corruption measures, responding to new challenges and adapting them to changes in international practice. This flexibility and adaptability contribute to maintaining high transparency and integrity in public administration and business (*Ilienok, 2012*).

Singapore is another striking example of a fight against corruption based on well-defined principles. The first principle is to minimise opportunities for officials to act on their initiative. This is achieved by simplifying decision-making procedures and reducing the many signatures

required for document approval. The country has created a transparent and understandable legal system without the possibility of double interpretation of laws, eliminating unnecessary administrative barriers and simplifying economic development conditions. The second principle includes unconditional punishment for corruption. For this purpose, a specialised body was created in Singapore—the Bureau, which investigated corruption in the highest-power echelons. The head of this bureau reports directly to the prime minister, which guarantees the independence and transparency of investigations, and any external interference in the process is impossible. The third principle focuses on matching officials' salaries to the market level. In addition, civil servants are required to report annually on their property and assets. Prosecutors have the right to check the bank accounts of persons suspected of corruption, which adds a level of control and prevention of corruption (*Grishova, 2015*). These strategies have become the basis for creating an effective anti-corruption system that ensures high transparency and accountability in governance. They also demonstrate how an integrated approach to fighting corruption can significantly improve the overall situation in the country by providing precise control mechanisms and increasing public confidence in state institutions.

The Netherlands is a prime example of an effective fight against corruption through its approach at the procedural and institutional levels. One of the key measures is to ensure transparency and accountability in corruption issues. The Dutch interior minister reports annually to Parliament on the uncovered corruption cases and the results of their investigation. This approach, which involves openness and discussion of the consequences, helps reduce corruption and increase public confidence in anti-corruption measures. Ukraine should learn from this experience by introducing a similar practice of reporting the Ministry of Internal Affairs to the Verkhovna Rada, contributing to a more transparent and effective fight against corruption (*Shvidky, 2020*). Israel is also demonstrating success in the fight against corruption through multi-stage monitoring. There are government organisations, special police units and a state controller that monitor corruption manifestations regardless of ministries and government departments. They identify potential corruption cases and transmit information for further investigation.

Discussion

The author believes that the punitive function of responsibility cannot be the main one in a democratic society since it will lead to responsibility for the sake of responsibility. Punishing the offender is not an end in itself; the primary purpose of liability is to prevent wrongdoing. Liability rules, including corruption offences, should be part of a system that encourages lawful behaviour. If this goal is not achieved, the second goal of liability is to correct the person who committed the offence. Therefore, the humanisation and individualisation of legal responsibility, especially in corruption offences, should be a trend of legal regulation in a democratic state. To create this positive trend, lawmakers must explain to citizens the importance of humanising responsibility and building their political will based on a strategic vision to overcome corruption rather than meeting changing public demands. The legislator needs to form the political will to introduce and change the forms of responsibility for corruption offences based on a strategic vision, statistical indicators, and expert research, and not just based on public opinion.

Conclusion

Success in the fight against corruption cannot be achieved only by mechanically transferring international norms to the national level. Specific legal measures and tools for their implementation should be adapted to each country's political, economic and socio-cultural development. This involves considering the specifics of local legislation, administrative traditions and economic realities, which can significantly affect the effectiveness of anti-corruption reforms. Countries seeking to achieve actual results in the fight against corruption should adopt international standards and ensure their effective implementation and adaptation to their specific conditions. This includes developing and supporting an active civil society and increasing the level of accountability of state bodies, like creating a system of control and monitoring to ensure that the announced reforms correspond to fundamental changes. Only an integrated approach that combines international standards with local adaptations can deliver significant and sustainable results in the fight against corruption.

By analysing anti-corruption practices in foreign countries, we can identify several key ways to implement an effective anti-corruption strategy in Ukraine.

- (1) Develop a strong political will to fight corruption by providing support from senior officials and developing a comprehensive public policy that includes legal, economic, and social measures. This policy should provide for criminal sanctions for corruption, clearly defined elements of criminal offences, and effective mechanisms for criminal prosecution.
- (2) Activate civil society in monitoring the activities of state bodies and ensuring transparency. This includes allowing citizens to initiate criminal cases against officials suspected of corruption. An effective mechanism to investigate such cases, including independent investigating authorities and courts, is needed.
- (3) Guarantee the judicial system's independence and integrity, which is critical to ensuring a fair hearing of criminal cases. For this purpose, an independent mechanism for monitoring the judicial system should be introduced, including the involvement of international experts.
- (4) To improve criminal legislation, including the definition of clear criminal elements for various types of corruption offences, the celebration of corruption abuses and misconduct, and the provision of strict criminal sanctions for those criminal offences. This includes not only punishment but also confiscation of illegally acquired property.
- (5) Ensure fair and transparent governance, simplify bureaucratic procedures, and ensure their transparency. Introduce fair tax and social systems that will reduce the need for corruption schemes.
- (6) Establishing high standards of ethics for civil servants and conducting regular ethics training is critical to preventing corrupt practices. Ensuring competitive salaries and social guarantees for civil servants is also necessary.
- (7) Involve the most independent media and public organisations in the fight against corruption, including ensuring freedom of the press and supporting the media in covering corruption cases. Strengthening legislation and its implementation and increasing the risk of punishment for corrupt officials is necessary to ensure an effective fight against corruption.
- (8) Developing economic mechanisms to legally increase civil servants' incomes and developing markets and competition will also help reduce opportunities for corruption. Society's moral and psychological attitude toward intolerance to corruption, educational campaigns, and

information about its rights and obligations are significant for forming anti-corruption consciousness.

These measures should contribute to creating an effective anti-corruption system in Ukraine, adapting the positive experience of European countries to Ukrainian realities and ensuring the criminal law aspect of the fight against corruption.

Conflict of Interest

The author declares that there is no conflict of interest.

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