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DOI <https://doi.org/10.32849/2663-5313/2022.4.09>**Serhii Saranov,***External PhD Student at the Department of Public Management and Administration, National Academy of Internal Affairs, 1, Solomianska Square, Kyiv, Ukraine, postal code 03035, Saranov_Serhii@ukr.net***ORCID:** 0000-0002-3119-0143

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THE FUNDAMENTALS OF PUBLIC CONTROL FUNCTIONING IN UKRAINE AS A NATIONAL ANTI-CORRUPTION INSTRUMENT

Abstract. Purpose. The purpose of the article is to reveal the defining areas for the implementation of public control over the anti-corruption activities of State authorities with the formulation of anti-corruption strategic ways of their implementation. **Results.** The article reveals modern forms of public influence on combatting corruption manifestations and elucidates the practice of public control actors concerned over the activity of State authorities. The analysis of the Draft Anti-Corruption Strategy for 2021-2025 allows establishing a place of the public in making the State anti-corruption policy and its participation in implementing public control in this field. The weaknesses of the Anti-Corruption Strategy are highlighted, and ways of their solution are proposed. Anti-corruption principles are defined to be reflected in the Draft Anti-Corruption Strategy for 2021-2025, which will contribute to strengthening the role of the public in combating corruption and reducing the manifestations of corruption risks in the activities of public officials and employees of public authorities. The specific anti-corruption principles are provided with justification of their legal consolidation. The focus of the study is on the need to strengthen the anti-corruption education of the population of Ukraine, which plays an important role in the formation of a sense of intolerance towards corruption and its manifestations among all segments of the population, mastering the level of legal liability for corruption offences. **Conclusions.** Since currently no strategic regulatory document aimed at making the State anti-corruption policy with a clear structure of measures to counter this phenomenon, at planning appropriate ways of combatting by the special anti-corruption bodies and at identifying ways of strengthening the role of the public in this, is in force, the adoption of the Anti-Corruption Strategy for the coming years is an urgent step to be taken by the State. Reflecting the fundamental anti-corruption measures in the legal field at the national level, the State should adhere to the main trends of the United Nations Convention against Corruption to take appropriate measures, within its capacities and in accordance with the fundamental principles of its domestic law, to facilitate the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, to prevent and combat corruption and to raise public awareness of the existence, causes and dangers of corruption, as well as the threats it poses.

Key words: public control, anti-corruption principles, Anti-Corruption Strategy, State anti-corruption policy, State authorities, specialised anti-corruption bodies.

1. Introduction

The United Nations Convention against Corruption of October 31, 2003, ratified by Ukraine in 2006, contributed at the State level to the fight against corruption, to adopt and strengthen measures aimed at more effective and efficient prevention and combating of corruption. The purpose of the Convention was to promote, facilitate and support international cooperation and technical assistance in preventing and combating corruption, including in asset recovery (United Nations Convention against Corruption, 2003).

Part 1 of article 5 of the Convention establishes anti-corruption policy by States Parties that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability (United Nations Convention against Corruption, 2003). It is the active attitude of responsible citizens and other interested persons who are actively involved in the detection of corruption schemes and their publication that contributes to the fight against this phenomenon at the national level.

At the scientific and theoretical level, modern forms of social influence and practice of public activity in the exercise of control were revealed by scientists such as, O. Andriieva, T. Andriuchenko, I. Bekeshkina, M. Burbyka, R. Veprytskyi, N. Komarova, O. Korniiievskyi, M. Lukiniuk, L. Nalyvaiko, N. Pelivanova, D. Sydorenko, K. Sydorochuk, Y. Tyshchenko, L. Shypilov, V. Chudovskyi, V. Yablonskyi, V. Yatsenko, and others. However, due to the improvement of corruption channels among public officials and the continuation of abuse of power by the latter, nowadays the issue of society's opposition to this negative phenomenon and the invention of new approaches to public control remains topical.

The purpose of the article is to reveal the defining areas for the implementation of public control over the anti-corruption activities of State authorities with the formulation of anti-corruption strategic ways of their implementation.

2. Basic principles of combating corruption

The United Nations Convention against Corruption provides for that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, if their efforts in this area are to be effective (United Nations Convention against Corruption, 2003). These measures will contribute to the development of a positive anti-corruption image of Ukraine in the international arena.

Having ratified the UN Convention against Corruption, Ukraine has undertaken not only to take measures to prevent and eradicate corruption, but to establish a leading role of the public in making the State anti-corruption policy and participation in implementing public control in this field.

The participation of society in the fight against corruption is an important part of combating this negative phenomenon, which affects the economic growth of the country and undermines the trust and confidence of citizens in public authorities.

The high level of corruption among public officials has a negative impact on the international authority of Ukraine. According to the Global Corruption Barometer's study, conducted in 2016 for the countries of Europe and Central Asia, 56% of respondents from Ukraine consider corruption one of the three biggest challenges facing the country. According to this indicator, Ukraine was ranked 5th out of 42 countries where the study was conducted

(People and Corruption: Europe and Central Asia, 2016; Explanatory note to the draft Law of Ukraine On the Principles of State Anti-Corruption Policy for 2020-2024, 2020).

In order to combat corruption and reduce corruption manifestations, Ukraine continues to implement international anti-corruption standards through the implementation of GRECO recommendations.

25 GRECO Recommendations were provided to Ukraine within the framework of the Joint First and Second Evaluation Round (Joint First and Second Evaluation Round, 2007; Explanatory note to the draft Law of Ukraine On the Principles of State Anti-Corruption Policy for 2020-2024, 2020). In one of the reports on the implementation of these Recommendations, Ukraine was instructed to implement one of the 4 Recommendations on the establishment of a separate body without law enforcement functions to supervise the implementation of anti-corruption policy with representation of authorities and the public, with a sufficient degree of independence (Explanatory note to the draft Law of Ukraine On the Principles of State Anti-Corruption Policy for 2020-2024, 2020). This Recommendation is reflected in the draft Anti-Corruption Strategy for 2021-2025, which is still pending approval. The aim of the Draft is to ensure the coherence and consistency of all government bodies and the public in preventing and combating corruption, to minimise corruption risks.

Therefore, Draft Law 4135 of Ukraine "On the Fundamentals of the State Anti-Corruption Policy for 2021 – 2025" of September 21, 2020, prepared by the Cabinet of Ministers of Ukraine, remained unfinished (passed the second reading); accordingly, Ukraine does not have an approved anti-corruption strategy. We will analyse this draft law in terms of specificities of the legal definition of the role of public control in preventing corruption and reducing corruption risks.

For example, the Draft provides for not only the adoption of an Anti-Corruption Strategy for 2021-2025, but also the introduction of a number of amendments to the legislation in force, in particular, the Law of Ukraine "On the Prevention of Corruption". It is proposed that this Law be supplemented with article 18-1, which defines the State Anti-Corruption Programme for the implementation of the Anti-Corruption Strategy [9]. It should be noted that the draft of article 18-1 ignored the public discussion of the Draft State Anti-Corruption Programme to implement the Anti-Corruption Strategy, which calls into question its transparency and compliance with democratic governance principles.

Furthermore, the legal analysis of the revision of the Anti-Corruption Strategy 2021-2025 (hereinafter referred to as the Anti-Corruption Strategy) requires starting with the basic principles of this anti-corruption policy (para. 8, part 1.2., Anti-Corruption Strategy). It is appropriate to refer to the theoretical and legal analysis of the concept of principles of law. According to Yu. Bytiak, the legal nature of principles is the initial, objectively conditioned basis on which the system and content of this branch of law is formed and operates (Halunko, Dikhtiievskiy, Kuzmenko, Stetsenko, 2018). In its turn, the Draft defines principles that do not reveal the general trends of the law on making anti-corruption policy, but more resemble universal anti-corruption measures, without involving the public: streamlining functions of the State and local self-government; digital transformation of the exercise of powers by State and local authorities; creation, as a counterbalance to existing corrupt practices, of more user-friendly and lawful alternatives to meeting the needs of individuals and legal entities; ensuring the inevitability of legal liability for corruption and corruption-related offences, etc. (Draft Law on the Principles of State Anti-Corruption Policy for 2020-2025, 2020).

3. Promising trends in improving anti-corruption activities

In order to implement democratic principles, observe transparency and transparency in anti-corruption measures with the involvement of the public, we propose to add to the anti-corruption strategy the following anti-corruption principles:

1) *Publicity, transparency and mandatory anti-corruption expertise of legal regulations and their drafts involving the public.* Publicity and transparency in the adoption of draft legal regulations will allow free access to their text, and the participation of public experts together with specialised experts will contribute to the timely identification of corrupt interests of the authors of these projects. The principle also emphasises the obligatory consideration of anti-corruption expertise with the necessary participation of the public.

In confirmation of the need for anticipation with the subsequent implementation of the proposed principle there is a practice of public participation during the discussion and adoption of the project “On public procurement”, which eliminates a number of corrupt practices (liquidation of tender committees, right to reject abnormally low (dumping) price offers, 24 hours to eliminate formal deficiencies in the documents of the supplier, etc.) (Government Initiative Report: Together Against Corruption, 2019). Moreover, citizens with

the State authorities are jointly and severally responsible for the formation of a legal framework (through public expertise and participation in the discussion of standard-setting initiatives) (Semorkina, 2022).

2) *Promoting an atmosphere of intolerance and fight against corruption among the population of Ukraine.* We argue that this is possible through involving a wide range of different sectors of the population, public associations, scientists and intelligentsia of the specialised anti-corruption sector to making State anti-corruption policy to develop scientific approaches from a professional and scientific perspective.

Public associations, together with scientists in the relevant professional field, actively participate in the exercise of public control over the activities of State bodies. For example, representatives of the public and scientists are involved in the Commission for the Assessment of Corruption Risks in the Activities of the Prosecutor’s Office, in the personnel commissions of the Office of the Prosecutor General and in the Commission for the Selection of Senior Prosecutors.

3) *The principle of anti-corruption education of the population of Ukraine.* In our opinion, the indication of this principle plays an important role in the acquisition of anti-corruption education, the formation of a sense of intolerance towards corruption and its manifestations in all segments of the population, the acquisition of the level of legal responsibility for corruption violations.

The implementation of this principle is possible through the introduction of special educational anti-corruption courses for students and advanced training for employees, especially those of professions with increased social responsibility. Moreover, para. 2, sub-clause 1, clause 2.2.1 of the Anti-corruption Strategy provides “Expected strategic results”: an enabling environment for advancing the skills of teachers and persons working with the public, relating to academic virtue and on developing a zero-tolerance attitude among students to corruption in all its manifestations. This includes raising citizens’ awareness through active and systematic education and training activities integrated into formal and non-formal education (Draft Law on the Principles of State Anti-Corruption Policy for 2020–2025, 2020).

The United Nations Convention against Corruption (para. d) part 1 of article 7 points to the need for the existence and strategic consolidation of the proposed principle, indicating that State Parties shall promote education and training programmes to enable these persons to meet the requirements for the correct, honourable and proper performance of public

functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas (United Nations Convention against Corruption, 2003).

With this regard, it is necessary to consider the results of the ACREC, which implements anti-corruption programs for students. This centre was founded in 2015 at the initiative of representatives of the Anti-Corruption Centre, Transparency International Ukraine and the National University of Kyiv-Mohyla Academy (Bila, 2021). The research carried out at the ACREC is in the field of prevention and combating corruption. The target audience of the Centre is active youth (students and entrants), young professionals starting their career in the anti-corruption area, leadership of anti-corruption bodies, etc. The graduates of these educational programmes are experts of the Institute of Legislative Ideas, Anti-Corruption Centre, Transparency International Ukraine, regional anti-corruption organisations, scientists, representatives of the NACP, the NABU, the National Police, etc. (Bila, 2021).

Considering little experience, the ACREC has achieved significant results in anti-corruption education.

For example, employees and scientists of this Centre developed and launched research project Civil Society against Corruption in Ukraine, started the analytic periodical ACREC Review that focus on anti-corruption issues and provides an opportunity for young researchers and practitioners to publish; has launched a regular summer school for corruption researchers, during which students learn the basics of research and present their own ideas. One of the unique and innovative developments of the Centre is the Kyiv Anti-Corruption Tours project (this is the format of interactive city tours to places that are associated with the largest corruption or anti-corruption stories) (Bila, 2021).

4) *The principle of transparency and accountability.* This principle should be reflected in all

planned activities of the Anti-Corruption Strategy and reports on its implementation. To achieving an effective result of the Anti-Corruption Strategy requires the open and overt implementation of its measures, with the establishment of clear deadlines, tools for its implementation, the identification of implementers and the procedure for monitoring the state of implementation, with mandatory public participation.

5) *The principle of building an anti-corruption coalition* enables to involve all stakeholders, including the actors of public control, in the implementation of the Anti-Corruption Strategy.

Moreover, since the principles are the basis for the legal regulatory mechanism of social relations, guidelines of their participants in a social compromise and order (Skakun, 2006), in our opinion, it is quite logical to reflect them and enshrine them in the Law of Ukraine "On the Prevention of Corruption".

4. Conclusions

Since currently there is no strategic regulatory document aimed at making the State anti-corruption policy with a clear structure of measures to counter this phenomenon, at planning appropriate ways of combatting by the special anti-corruption bodies and at identifying ways of strengthening the role of the public in this, the adoption of the Anti-Corruption Strategy for the coming years is an urgent step to be taken by the State. Reflecting the fundamental anti-corruption measures in the legal field at the national level, the State should adhere to the main trends of the United Nations Convention against Corruption to take appropriate measures, within its capacities and in accordance with the fundamental principles of its domestic law, to facilitate the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, to prevent and combat corruption and to raise public awareness of the existence, causes and dangers of corruption, as well as the threats it poses (Bader, Hus, Meleshevych, Nesterenko, 2019; United Nations Convention against Corruption, 2004).

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Сергій Саранов,

здобувач наукового ступеня доктора філософії кафедри публічного управління та адміністрування, Національна академія внутрішніх справ, Солом'янська площа, 1, Київ, Україна, індекс 03035, *Serhii_Saranov@ukr.net*

ORCID: 0000-0002-3119-0143

ОСНОВОПОЛОЖНІ ЗАСАДИ ФУНКЦІОНУВАННЯ ГРОМАДСЬКОГО КОНТРОЛЮ В УКРАЇНІ ЯК НАЦІОНАЛЬНОГО ІНСТРУМЕНТА ПРОТИДІЇ КОРУПЦІЇ

Анотація. Мета. Мета статті полягає у розкритті визначальних напрямів здійснення громадського контролю за антикорупційною діяльністю органів державної влади з формулюванням антикорупційних стратегічних шляхів їх реалізації. **Результати.** Стаття присвячена розкриттю сучасних форм громадського впливу на протидію корупційним проявам та розкриття практики активності зацікавлених суб'єктів громадського контролю за діяльністю органів державної влади. На підставі аналізу проєкту Антикорупційної стратегії на 2021–2025 роки виділено місце громадськості у формуванні державної антикорупційної політики та її участі у здійсненні громадського контролю в цій сфері. Виділено слабкі місця антикорупційної стратегії та запропоновано шляхи їх вирішення. Визначено антикорупційні принципи, які мають відобразитися у проєктові Антикорупційної стратегії на 2021–2025 роки, що сприятиме посиленню ролі громадськості у протидії корупції та зниженню проявів корупційних ризиків у діяльності посадових осіб та службовців органів державної влади. Виокремлено конкретні антикорупційні принципи з наданням обґрунтування їх правового закріплення. Звернено особливу увагу на необхідність посилення антикорупційної освіченості населення України, що відіграє вагомe значення у формуванні у всіх верств населення почуття нетерпимості до корупції та її проявів, засвоєння настання рівня юридичної відповідальності за корупційне порушення. **Висновки.** Оскільки на сьогодні відсутній стратегічний нормативний документ, спрямований на формування державної антикорупційної політики з чіткою побудовою заходів протистояння цьому явищу, планування відповідних шляхів протидії спеціальними антикорупційними органами та визначення напрямів посилення ролі громадськості у цьому, тому саме прийняття Антикорупційної стратегії на найближчі роки є нагальним державним кроком. Відображаючи на національному рівні основоположні заходи боротьби із корупцією у правовій площині, держава має дотримуватися головних напрямів Конвенції Організації Об'єднаних Націй проти корупції щодо вжиття належних заходів у межах своїх можливостей і згідно з основоположними принципами свого внутрішнього права, для сприяння активній участі окремих осіб і груп за межами державного сектору, таких як громадянське суспільство, неурядові організації та органи-

зації, що функціонують на базі громад, у запобіганні корупції й боротьбі з нею та для поглиблення розуміння суспільством факту існування, причин і небезпечного характеру корупції, а також загроз, що створюються нею.

Ключові слова: громадський контроль, антикорупційні принципи, Антикорупційна стратегія, державна антикорупційна політика, органи державної влади, спеціалізовані антикорупційні органи.

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