

ANTI-CORRUPTION BODIES IN UKRAINE, DENMARK, SWEDEN, NORWAY AND FINLAND: COMPARATIVE ANALYSIS

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ABSTRACT

Description: The purpose of the article is to analyze the anti-corruption models of anti-corruption authorities in the countries of the northern bloc (Denmark, Norway, Sweden and Finland) and to identify common positive features for development anti-corruption policies that can be used in the course of improving the national anti-corruption mechanism. The subject of study is the same model of anti-corruption authorities of the countries of the "Northern bloc" (Denmark, Sweden, Norway, Finland), peculiarities of their powers corresponding to one or another anti-corruption model. Methodology. The analysis and synthesis method examined the mechanisms of counteracting corruption in Ukraine and some countries of the northern block with the lowest level of corruption (Denmark, Sweden, Norway, Finland), dogmatic method and hermeneutics method became the basis for determination the best anti-corruption model of anti-corruption system in Ukraine. In contrast, comparative analyses method, inductive and deductive reasoning allowed to identify the features of the anti-corruption system of the domestic sample and models of the Nordic countries and to highlight the favorable factors for the formation of low level of corruption in Denmark, Norway, Finland and Sweden. The comparative-law method helped to identify the cause-and-effect relationship between the low level of corruption in the countries of the "Northern bloc" and legal consciousness, legal culture of one or the other nation, which had been formed within a long historical period, in particular regarding the negative attitude of citizens to corruption. The results of the study made it possible to determine the ways for improving the mechanism of fight against corruption, to find out the structure and the system of anti-corruption agencies in Denmark, Norway, Finland and Sweden. The existing symbiosis of anti-corruption models in Ukraine with the combination of powers of the anti-corruption models I, II and III was clarified by reference to the example of the experience of the specified countries. Practical implications. As a result of the research, proposals were made regarding the need to improve the system of interaction between the bodies authorized in the anti-corruption area, as well as key legislative initiatives to prevent and combat corruption were identified. Value/originality. On the basis of the approach to the classification of anti-corruption models proposed by the authors, the necessary tendencies for creation the best anti-corruption model in Ukraine were formulated.

Keywords: Anti-Corruption Agencies, Model, Powers, Strategy, Fight Against Corruption.

INTRODUCTION

In 2017, Ukraine ranked 130th out of 176 in corruption perception index rating. In 2018 it ranked 120th, while some Northern European countries scored the highest number of points, in particular Denmark scored 88 points out of a hundred and took the first place, Finland and Sweden got 85 points, Norway-84 points (Corruption Perceptions Index, 2018).

The reasons for the improvement of the anti-corruption climate in Ukraine were a number of reasons, including the creation of new anti-corruption institutions: National Anti-Corruption Bureau of Ukraine, Specialized Anti-Corruption Prosecutor's Office, Asset Recovery and Management Agency, the State Investigation Bureau, National Agency on Corruption Prevention.

In the course of the study, we will analyze the system of anti-corruption authorities and their features in Denmark, Sweden, Finland and Norway as the countries, which share low level of corruption according to the Transparency International 2018 Index and geopolitical position.

MATERIALS AND METHODS

The study used analytical and statistical material from Transparency International, the Organization for Economic Development and Cooperation (hereinafter-OEDC). An attempt was made to identify the characteristics of the anticorruption system of the domestic sample and models of the Nordic countries by using the method of comparative analysis, inductive and deductive reasoning. The methods of analysis and synthesis highlighted the favorable factors for the formation of low levels of corruption in Denmark, Norway, Finland and Sweden.

RESULTS

Based on the analysis of the Corruption Perceptions Index in the world, and in particular in Ukraine, the public organization Transparency International has developed a list of recommendations for Ukraine in order to improve the fight against corruption for 2019. The key role among these recommendations plays the reformatting of the activities of anti-corruption agencies:

1. "Restart" of the National Agency on Corruption Prevention, which requires the deprivation of the principle of collegiality in management, and the need for external supervision of the activities of the department;
2. Implementation of automatic verification of declarations and monitoring of the living standards of the declarants;
3. Strengthening the role of control over the financing of political parties;
4. Updating the organizational and management structure of the Specialized Anti-corruption Prosecutor's Office;
5. Strengthening the position of the National Anti-Corruption Bureau of Ukraine;
6. Taking over the powers from the National Prosecutor's Office of Ukraine and the Security Service of Ukraine in the area of combating against economic crime;
7. Strengthening the role of the public in fight against corruption (Transparency International Ukraine, 2018).

Given the increasing impact of corruption factors in all spheres of Ukrainian society, it is an important task today to develop a coherent plan of action for combating corruption as a phenomenon and fight against corruption and corruption-related offenses. In Ukraine, as it was

already mentioned, a number of agencies have been created, the direct or indirect task of which is counteracting and preventing corruption. In the course of our study we attempt to make a comparative analysis of the anti-corruption agencies of the countries of the “*Northern bloc*” in order to determine the best option to improve the anti-corruption mechanism in Ukraine.

As the benchmark we accepted the classification of anti-corruption agencies, provided by the Organization for Economic Co-operation and Development (2007):

1. Multi-purpose anti-corruption agencies. These types of institutions do not only carry out the function of investigating and prosecuting, but also of raising awareness of the spread of information about the threat of corruption. Such agencies operate in Lithuania (Special Investigation Service); Latvia (Bureau for the Prevention of Corruption and Anti-Corruption); Poland (Central Anti-Corruption Bureau) (model I);
2. Specialized institutions within a law enforcement agency, which perform exclusively the functions related to pre-trial investigation (gathering and recording of factual data on the criminal offense and identifying the perpetrators); within the prosecuting authorities (Spain, Romania, Croatia); within the police services (Belgium, Norway, United Kingdom) (model II);
3. Monitoring and analytical agency, which actually performs the functions of anti-corruption policy development (France (Central Office for the Prevention of Corruption), the United States (Office of Government Ethics), Sweden and Finland (Ombudsman's Office)). As a rule, such agencies perform the function of monitoring the declarations of financial obligations, income and expenses, living standards of high-ranking officials, providing outreach and advocacy functions towards the public (model III) (The Anti-Corruption Network for Eastern Europe and Central Asia, 2007).

This model includes specialized institutions, which perform one or more preventive functions, such as conducting research and analysis, development anti-corruption policies, conducting a consultative information mission, gathering information on corruption risks to different agencies, carrying out preventive activities, etc. This model does not have the authority of law enforcement agencies.

DISCUSSION

Interesting is the fact, that there is no designated anti-corruption policy and an authorized anti-corruption agency in Denmark.

The hierarchy of the bodies, which indirectly carry out the function of preventing corruption in Denmark, is as follows:

1. The Ministry of Justice;
2. The Confederation of Industrialists of Denmark;
3. The Danish Trade Council;
4. Ministry of Foreign Affairs and Agency for International Development (DANIDA).

The Agency provides preventative measures to prevent bribery in international relations with foreign counterparties.

The Office of the Danish State Prosecutor for Serious Economic and International Crime undertakes a direct role in the fight against corruption.

There are two departments within the competence of the Office of the Danish State Prosecutor. The first one deals with the investigation of economic and international crimes, organized crime, tax and investment fraud, securities law violations, corruption, competition law violations. The activities of the second division aim to combat money laundering return of assets, which were illegally obtained.

Regarding the legal regulation of prevention and combating corruption, it should be noted that, under Danish law, there is no distinction between bribes and payments for the provision of illegal benefits, incentives and privileges, as well as the receipt of gifts is considered a crime with regard to the mental element of the offence (motive, purpose, guilt).

Despite a quite low level of corruption, international monitoring institutions criticize Denmark for its non-transparent rules on political party funding and insufficient bribery law enforcement in foreign countries. At the same time, anti-corruption legislation in Denmark is so rigid that even the slightest advantage or privilege expressed in the form of paying restaurant bills, plane tickets, providing guarantees, etc. is regarded as a manifestation of corruption (Business Anti-corruption portal, 2017).

Thus, we can state that the institutional construction of anti-corruption agencies in Denmark belongs to the model II of specialized law enforcement agencies.

Thus, in Finland as in Denmark, there is no single unified normative document (strategy, concept, action plan, project, etc.) governing the fight against corruption at the national and local levels. Anti-corruption efforts are fully integrated into national policy.

Finland has an expanded anti-corruption network, which includes the Ministry of Justice, State and local governments, private sector enterprises and institutions, research institutions and public non-governmental organizations. There is no expressly defined agency that specializes solely in preventing and combating corruption within the country, but there is an anti-corruption element in the responsibilities of almost all State and local authorities.

The main directions of functioning of this network of agencies are:

1. Promotion of anti-corruption activities and introduction of appropriate initiatives;
2. Raising the level of public non-acceptance of corruption and imposing anti-corruption bans in public and private sectors.

The Ministry of Justice, the Ministry of Internal Affairs, and the National Bureau of Investigation of Finland (the agency, which is indirectly involved in monitoring corruption-related activities), deal with the issues of monitoring and coordinating anti-corruption activities. Minor corruption offenses are investigated by the Police, and the National Investigation Bureau of Finland is handling serious economic offenses and corruption offenses (Kharicheva, 2011).

The key anti-corruption institutions are the Parliamentary Ombudsman and the Chancellor of Justice, who are empowered to hear cases relating to corruption, with respect to restoration of violated citizens' rights and freedoms.

The responsibilities of the Ombudsman and the Chancellor are very similar, but there are some differences. The Chancellor of Justice reviews complaints and claims of citizens relating to unlawful decisions of lawyers and legal aid centers, and controls the lawfulness of government decisions, while the Ombudsman supervises the activities of public administration bodies, the observance of the rights and freedoms of citizens by public officials while performing their functions delegated by the State (Salminen, 2013).

In Finland, the financial side of corruption control is organized in such a way that all ministries and government agencies have internal control units. These units are directly related to the financial audit and in case when these units detect corruption, the information is transmitted to the law enforcement agencies.

Among the main factors creating the unfavorable environment for corruption are the Finnish social society, as well as the socio-economic development of the country and the

creation of conditions, which do not contribute to favorable environment for corruption (Silchenkova, 2014).

The main vectors for creating an unfavorable environment for the spread of corruption should be highlighted:

1. The system of values, including moderation, personal restraint and a focus on social development for the common good;
2. The existence of secure legislative, judicial and administrative structures that carefully monitor and prevent abuse cases;
3. The meaningful participation of women in political decision making;
4. Low social inequality of income and adequate wages.

There are specialized anti-corruption agencies in Norway. Foremost among these is the Norwegian National Agency for the Investigation and Prosecution of Economic and Environmental Crime (Norwegian: Økokrim), which is a separated independent investigative body aimed at detecting and cessation of corruption, economic crimes, crimes against the environment and crimes related to the use of computers. The structure of this agency has rather a specific structure, in particular it consists of multi-disciplinary teams headed by the public prosecutors who have a certain focus of the targets: Tax and Charge Department, Tax, Charge and Competition Department, Anti-Fraud Department, Environmental Department, Securities Department, Anti-Corruption Department, Fraud Subsidy Department, Financial Intelligence Department, Anti-Laundering Department, Asset Forfeiture Department and the so-called “Assistance Cells” (Kristiansen, 2014).

It is an interesting experience that, as a rule, all corruption-related cases are heard in general non-specialized courts.

Generally, the main functions of anti-corruption agencies are:

1. Investigation and prosecution;
2. Warning;
3. Training and outreach; coordination, monitoring and research.

The additional tasks include receiving and responding to claims and reports on corruption, gathering information that can testify to corruption facts, conducting corruption investigations, imposing administrative sanctions, checking asset declarations, compliance with ethical standards, international cooperation, etc.

The conditions and factors that primarily affect the low level of corruption in the countries of the “Northern bloc” are socio-economic conditions, public engagement in investigation of corruption, low tolerance for bribery, receipt of gifts, benefits and privileges, transparent tax system, preferential treatment to small and medium-sized businesses-all these and many other factors influence the formation of a healthy society with no tolerance for corruption (Gottschalk & Gunnesdal, 2018).

The Criminal Code of Norway also has certain features of the legal regulation of the fight against corruption, in particular in accordance with the rules of the law: there is no difference between corruption in the private sector and corruption in the public sector, the intention to bribe is not a condition specified in the law, primarily is prosecuted the person, who pays bribes (the position of the passive participant), there is no statutory requirement to obtain a real advantage (Legislationline, 2013).

Summarizing the abovementioned, it is worth noting that Norway's anti-corruption institutional model belongs to the model II. The anti-corruption network of Sweden is built on the same model.

There is a National Anti-Corruption Department within the General Prosecutor's Office and a National Anti-Corruption Police Department in Sweden. These authorities are empowered to conduct criminal investigations of corruption- offenses, usually related to public office offences and economic crimes. The feature of all countries of the "*Northern bloc*" is the high level of intolerance of citizens to any, even the slightest manifestation of corruption.

Returning to domestic realities, it should be noted that the special agencies in the area of corruption prevention in Ukraine in accordance with the provisions of the Law of Ukraine "*On Corruption Prevention*" are the bodies of the National Police of Ukraine, the Prosecutor's Office, the Security Service of Ukraine, the National Anti-Corruption Bureau of Ukraine and the National Anti-Corruption Agency, which within their competence perform the functions, stipulated by the Law (The legislation of Ukraine, 2014).

At the same time, anti-corruption activities of such bodies as National Anti-Corruption Bureau of Ukraine, Specialized Anti-Corruption Prosecutor's Office and Asset Recovery and Management Agency have gone unheeded. Although prevention of corruption is not their direct duty, but indirectly these bodies play a role in reducing the level of corruption risks in the society while possessing appropriate subsidiary tools in investigating of corruption offenses.

Drawing a parallel between the domestic realities of today, it should be noted that the Ukrainian legislator tried to implement the model of three institutions simultaneously. Thus, from the perspective of anti-corruption reform, a number of anti-corruption agencies have been launched-National Anti-Corruption Bureau of Ukraine, State Investigation Bureau, Specialized Anti-corruption Prosecutor's Office, National Anti-corruption Agency, Asset Recovery and Management Agency, National Council for Anticorruption Policy.

Besides, the functions of investigation of economic, corruption and corruption-related offenses, as well as the fight against corruption among government and local self-government officials are delegated to the Department of Economy Protection of the National Police of Ukraine and to the Security Service Security of Ukraine.

The High Anti-corruption Court has been specifically created for the dispensation of justice in criminal proceedings against corruption and corruption-related crimes. It is given the authority to prosecute criminal proceedings conducted by the detectives of National Anti-Corruption Bureau of Ukraine.

Despite the long-term process of anti-corruption reform and the implementation of the principle of transparency, including in public administration in the context of the fight against corruption, this task has not yet been completed. Experts' opinions expressed in the Draft Law of Ukraine "*On the Principles of State Anti-Corruption Policy in Ukraine (Center for Political and Legal Reforms, 2019) for 2019-2023*" also indicate a need for the further reform of anti-corruption agencies (the Center for Political and Legal Reforms, 2019).

The paragraph 4.5 of the Draft Law entitled "*Anti-corruption infrastructure as a factor of inevitability of accountability and legal ensuring of its effective functioning*" testifies that for the further improvement it is necessary to pay attention to reformatting of key anticorruption agencies in part of improvement of the legal status of Specialized Anti-corruption Prosecutor's Office and creation of Financial Investigation Service as a pre-trial investigation body of the cases of misappropriation of public funds and other State and municipal property both in the

form of tax evasion and in other forms simultaneously with the deprivation of the right of the Security Service of Ukraine to conduct pre-trial investigation of economic crimes.

Thus, further reform of anticorruption agencies should be reduced to a clear distinction between the functions of each of these anti-corruption agencies, in particular those performing law enforcement, monitoring and preventive functions.

The main reason for creation of National Anti-Corruption Bureau of Ukraine as an autonomous institution was the need to develop and implement a new State policy to counteract corruption in Ukraine. Until recently, various functions were carried out within the activity of different State institutions, which include:

1. Detection of corruption offenses;
2. Conducting pre-trial investigation and prosecution;
3. Conducting financial control over public expenses;
4. Ensuring open access to public authorities;
5. Prevention of conflicts of interest among civil servants;
6. Cooperation with the public, etc.

National Anti-corruption Agency is intended to carry out a preventive function to impede corruption and corruption-related offenses. The key difference between National Anti-corruption Agency and the rest of the anti-corruption agencies is that it has no authority in the area of Criminal Law and Procedure and has the right:

1. To check the declarations of persons authorized to perform the functions of the State and local self-government bodies;
2. To receive, upon written request, information from public authorities and private entities;
3. To have a direct access to information databases of other public authorities;
4. To conduct anti-corruption expertise on its own initiative;
5. To verify the facts of the possible violation of the requirements of the Law "*On Prevention of Corruption*" on its own initiative or on the basis of statements;
6. To apply to the court with the requirement to outlaw normative legal acts, individual decisions, which were adopted in breach of the established requirements and restrictions, nullification of contracts concluded as a result of committing corruption or corruption-related offenses;
7. To formulate and implement anti-corruption policies;
8. To keep the Unified State Register of declarations of persons authorized to perform the functions of the State or local self-government and the Unified State Register of those who have committed offences of corruption (The legislation of Ukraine, 2014).

This list is not exhaustive and is constantly being expanded with the adoption of new anti-corruption strategies and concepts.

In our view, the key function of National Anti-corruption Agency is to identify and eliminate factors that enable corruption offenses, to exercise control over the compliance with anti-corruption rules by political parties, officials and politicians, cooperation with corruption expositors and monitoring of declarations.

According to the Law of Ukraine "*On the Prosecutor's Office*" Specialized Anti-Corruption Prosecutor's Office is formed as the part of General Prosecutor's Office of Ukraine (as an autonomous structural unit) (The Legislation of Ukraine, 2014).

The anti-corruption activity of Specialized Anti-Corruption Prosecutor's Office consists of a number of tasks, the most important among which are:

1. Monitoring of compliance with laws by specially authorized entities in the area of corruption, by internal security units of the Ministry of Internal Affairs (except the internal security units of the Ministry of Internal Affairs on railways) and by the Ministry of Revenue and Duties of Ukraine;
2. Monitoring of compliance with laws in the form of procedural guidance for pre-trial investigation of offences related to corruption. The Order of Prosecutor's General "*On the Organization of the Activities of the Procuratorial Authorities in the Area of Prevention and Combating Corruption*" (The Legislation of Ukraine, 2013).

If National Anti-Corruption Bureau is created as an independent agency, which combines the full range of powers in the area of combating and countering corruption from analytics to investigating criminal offenses following the example of Baltic States, National Anti-corruption Agency was primarily created as a monitoring agency, designed to analyze information and apply preventative measures to combat corruption.

Specialized Anti-Corruption Prosecutor's Office in its functional orientation corresponds to the characteristics of the model II of combating corruption. Being a part of General Prosecutor's Office of Ukraine, it has law enforcement function and oversees compliance with anti-corruption legislation that virtually reflects the functions of the Norwegian National Directorate for Investigation and Prosecution of Economic and Environmental Crimes.

A separate institutional role in the hierarchy of anti-corruption agencies is assigned to Asset Recovery and Management Agency, which task is to identify and search for assets that may be seized in criminal proceedings and/or to manage assets that have been seized or confiscated in criminal proceedings, including of corruption offences (The legislation of Ukraine, 2015).

CONCLUSION

To sum up the analysis of anti-corruption agencies, it should be noted that Ukraine has implemented the European experience in the fight against corruption, borrowing several institutional models (I, II and III).

The model I represents National Anti-Corruption Bureau of Ukraine, the model II-Specialized Anti-Corruption Prosecutor's Office, Asset Recovery and Management Agency, State Investigation Bureau, the model III-National Agency on Corruption Prevention. At the same time the Department of Economics Protection of National Police of Ukraine and Security Service of Ukraine retain their functions in the area of combating corruption and bribery in areas of strategic importance for the State economy, and among officials of public authorities and municipality; counteracting corruption offenses and offenses related to corruption.

When choosing a specialized anti-corruption model in each particular country, the following should be taken into account: the adaptability of such model to the specifics of the country where it is introduced, its features; the level of corruption in the country; competence and potential of existing institutions.

Thus, each State is characterized by its own approach to counteracting corruption and the original model of the anti-corruption agencies. In the countries where there is a threat of large-scale corruption (for example, in Ukraine), the model of multi-purpose institutions is most acceptable. The model chosen by our country corresponds to the state of corruption in the country and the tasks faced by the Ukrainian anti-corruption agencies in the steps towards overcoming its forms.

We support the view that the function of investigating corruption and corruption-related offenses, as well as economic crimes by National Police and Security Service of Ukraine should

be eliminated, which will further enable the formation of the Financial Investigation Service as a body, authorized to investigate crimes in the sphere of economy and prevent financial crime in general (Tytko & Drozd, 2014), as it is also indicated in the new Draft Law of Ukraine “*On the Principles of State Anti-Corruption Policy in Ukraine (Center for Political and Legal Reforms, 2019) for 2019- 2023*”.

As we see, the functions of combating economic crimes and corruption and corruption-related crimes are scattered among many law enforcement agencies, which to some extent adversely affect the fight against corruption, as unjustified public funding, duplication of functions, control by various state authorities and officials, lack of a unified anti-corruption strategy promote the development of deconsolidation in the system of anti-corruption bodies and reverse the important gains in in anti-corruption sphere.

In the context of the analysis of the experience of building anti-corruption mechanism in the countries of the “*Northern bloc*” (Denmark, Norway, Sweden, Finland), it can be concluded that only a comprehensive approach to the fight against corruption can reduce corruption risks in the society and create a negative perception of corruption. In our view, the key problem is the whole approach of citizens to the phenomenon of corruption as the critical threat to the development of civil society.

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