

IMPLEMENTATION OF THE RIGHT TO THE ANTI-CORRUPTION EXPERTISE AS A STRATEGY FOR THE PROTECTION OF BUSINESS

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ABSTRACT

The article describes the role and essence of the anti-corruption expertise in the prevention of corruption. The author proved that the prevention of corruption requires the identification and eradication of the roots of corruption in drafts and existing regulatory legal acts. In the study of the essence of the anti-corruption expertise the attention was paid to the subjects of its implementation. It was proposed to actively involve business in conducting anti-corruption expertise through the Public Councils under the executive and local government bodies, the Council of Business Ombudsman, and civil society institutions. The gaps in the legislation on the public anti-corruption expertise were characterized, in particular, the lack of a uniform methodology for its conduct, the procedure for accrediting independent experts, the possibility of using the conclusion of the anti-corruption expertise as evidence in administrative, civil, economic proceedings. In the conclusion, the characteristic features of the anti-corruption expertise were formulated and directions for enhancing the participation of civil society institutions in the realization of the right to the anti-corruption expertise as the main business protection strategy were identified.

Keywords: Anti-Corruption Expertise, Expert, Business Protection, Institutes of Civil Society, Rulemaking.

INTRODUCTION

Today, a corruption is quite common in Ukraine, which exists in all spheres of social relations - financial, economic, social and political. At the same time, it is concluded that the issue of corruption is unlikely to lose its relevance through the periodic commission of corruption offenses by government officials, law enforcement officials and banking institutions (Reznik et al., 2017).

Also, the use of anti-corruption expertise is one of the mechanisms to prevent and curb corruption in both the public and private sectors. Traditionally, the anti-corruption expertise is considered in the context of rulemaking. The anti-corruption expertise includes both projects and existing regulatory legal acts issued by various subjects of rulemaking in the following fields: rights and freedoms of man and citizen; powers of state and local authorities, persons authorized to perform state or local government functions; administrative services; distribution and expenditure of the state budget and local budgets; competitive procedures. The prevention of corruption requires the identification and eradication of the roots of corruption, primarily in draft regulatory acts.

Regulatory acts with a potentially high degree of corruption factors include drafts and existing regulations, the subject of regulation of which are relations on the implementation of customs and tax policies; the establishment of procedures for conducting auctions or tenders for the purchase and sale of goods, works and services; investment and innovation activities of business entities; establishment and provision of benefits to certain categories of business entities; delegation of powers of executive authorities, local authorities to enterprises and organizations regardless of their form of ownership.

As Semchuk et al. aptly note:

“A corruptogenic provision generates or can lead to corruption offenses. Such a provision does not correspond to the purpose and tasks of legal regulation since the ordinary legal provision is aimed at regulating the most important social relations, effective influence on them by means of coercive measures provided for by the law, intended for repeated implementation (observance, application, execution, use and implementation). The corruptogenic provision, formally having the same functional purpose of a legal provision, in practice reduces the effectiveness of influence on social relations” (Semchuk et al., 2018).

One of the statutory subjects of initiating and conducting the anti-corruption expertise is the public society, in particular, representatives of civil society institutions, individuals, legal entities, public councils under public administration bodies. Thus, the implementation of the right to the anti-corruption expertise is one of the strategic forms of business protection.

LITERATURE REVIEW

The anti-corruption expertise is the identification of the provisions in draft legal acts and draft regulatory legal acts that, alone or in combination with other norms, may contribute to the commission of corruption offenses or offenses related to corruption. The anti-corruption expertise is carried out in order to identify factors in existing legal acts and draft regulatory legal acts that contribute to or may contribute to the commission of corruption offenses, and to develop recommendations for their elimination (The Law of Ukraine *“On Prevention of Corruption”* as of 14.10.2014).

The main purpose of the anti-corruption expertise of draft regulations is to prevent the adoption of those that would violate anti-corruption principles and rules formally (in terms of the “letter” of the act), without going beyond what is permitted to one or another regulatory act. Thus, the first thing that both the state (in the person of the relevant authorities) and the public society should take care of is to ensure the adoption of high-quality legislation that will allow authorized subjects to act solely within anti-corruption principles and rules (Kalmykov & Sinchenko, 2017). Letyaev & Letyaeva (2015) admit that:

“Therefore, in Russia an important mechanism in the fight against corruption is the anti-corruption expertise of both the existing regulatory legal acts and their projects. Well-established procedures for conducting anti-corruption expertise of regulatory legal acts create a stable regime to ensure high quality of the latter”.

Astanin (2012) appealed to the issue of preventing corruption and corporate crime. Bribery, insider trading, false accounting and kickbacks, official misconduct and abuse of official position could not but influence the change in the vector of counteraction to corruption in the world. Compliance programs that are developed by large private companies and cover corporate ethics, accepting and giving gifts, reporting on corruption violations and creating a healthy business community and manifesting legislative deficiencies for legislative activity, are a source of corruption prevention approaches.

METHODOLOGY

The methodological basis for the study of the legal basis for the implementation of the right to the anti-corruption expertise was various methods of scientific knowledge, in particular the formal legal method, comparative legal method, system analysis and monitoring. So, to determine the essence of the concept of the anti-corruption expertise and to establish its characteristic features, the formal legal method was used. With the help of the comparative legal and systemic method, the regulatory framework was determined, as well as the specifics of resolving this issue at the level of legislation in Ukraine. The monitoring made it possible, on the basis of the totality of the latest scientific publications devoted to the study of the problems and prospects for the use of the anti-corruption expertise, to make generalizations about the views of scientists and experts on this institution.

FINDINGS AND DISCUSSION

The current national anti-corruption legislation provides for two types of the anti-corruption expertises: state (official) and public (or independent). The subjects of the official anti-corruption expertise are the Ministry of Justice of Ukraine, the Committee of the Verkhovna Rada of Ukraine on Corruption prevention and counteraction, the National Agency for the Prevention of Corruption. The subjects of the public or independent anti-corruption expertise are public councils, specialists of state bodies, enterprises, institutions, organizations, representatives of the public society, international experts (Drobyazko, 2019; Maked et al., 2019).

With regard to the conduct of the public anti-corruption expertise, the implementation of this instrument by the public society is gradually activated. Civil society institutions demonstrate self-organization in the application of instrument for the public anti-corruption expertise with the independent trainings and the development of methodologies. The public anti-corruption expertise of existing regulations, draft regulations, as well as the publication of its results are carried out at the expense of relevant individuals, public associations, legal entities.

According to the Law of Ukraine "*On the Prevention of Corruption*", public associations, their members or authorized representatives, as well as individual citizens in the activities on corruption prevention, have the right to: carry out, order a public anti-corruption expertise of regulatory legal acts and draft regulatory legal acts, submit proposals to the relevant authorities based on the results of the expertise, receive information from the relevant authorities on the consideration of submitted proposals (The Law of Ukraine "*On Prevention of Corruption*" as of 14.10.2014).

The subjects of the anti-corruption expertise are also the public council under the Ministry, another central executive body, the Council of Ministers of the Autonomous Republic of Crimea, the regional, Kyiv and Sevastopol city, district, district in the city of Kiev and Sevastopol administrations. In accordance with the tasks entrusted to it, the Public Council conducts in accordance with the legislation a public expertise of the activities of the body and a public anti-corruption expertise of the regulatory legal acts and draft regulatory legal acts prepared by the body (The legislation of Ukraine, 2010; Moscovcev & Kopylov, 2014).

A number of non-governmental organizations led by the Transparency International Ukraine and with the support of the United Nations Development Program in Ukraine joined the discussion of issues on the agenda and methodology for conducting the anti-corruption expertise. Active is the work of public associations on conducting training dedicated to the anti-corruption expertise. For example, in the framework of the "*Policy Analysis for Democracy*" project, which is implemented by the public organization "*Internews-Ukraine*" with the support of the International Renaissance Foundation in partnership with the Foundation for Development of

Analytical Centers (TTF) with the financial support of the Embassy of Sweden in Ukraine, a distance learning course was developed on the anti-corruption expertise. Issues of the public anti-corruption expertise are discussed within the framework of the anti-corruption school of the United Nations Development Program (Mamitova, 2016).

The legislation after repeated improvements in most cases properly regulates the rules for the anti-corruption expertise, but still does not find a wide practical implementation. The latter aspect requires its further development by enhancing the use of this instrument, reviewing the acquired approaches to identification of corruption factors in regulatory legal acts and their drafts. Along with this, the activity of the public in the conduct of the anti-corruption expertise is gradually increasing (Ryaboshapka et al., 2015).

The body for the conducting public anti-corruption expertise can be either a separate business entity, or public associations or self-regulated associations of such entities. In turn, they may involve independent experts, scientific or consulting organizations (including foreign ones), other public associations, or commission them to conduct the public anti-corruption expertise in general (Methodical Recommendations, 2015)

"Public anti-corruption expertise of current normative legal acts of local self-government bodies".

Business is actively involved in the anti-corruption initiatives facilitated by the introduction of a business ombudsman. The anti-corruption indicators are directly dependent on reloading the corruption prevention system, which unfortunately is declarative in most cases, without real mechanisms. In Ukraine, the requirements for independent experts authorized to conduct the anti-corruption expertise, the procedure for their accreditation, and the use of the anti-corruption expert opinion as evidence in administrative, civil and economic proceedings are not legally regulated in Ukraine.

As a result, the changes expected from the anti-corruption reform to reduce corruption, the adoption of standards of good conduct in the activities of representatives of government and business, minimizing corruption risks in their activities, increasing the transparency and accountability of both authorities in general and individual officials to society in the vast majority do not find their real embodiment (Ryaboshapka et al., 2015).

In Ukraine, the Council of Business Ombudsman was created (On the Establishment of the Council of Business Ombudsman, 2014) as a permanent advisory body under the Cabinet of Ministers of Ukraine, which considers complaints of entrepreneurs regarding the violation of their legitimate interests by corrupt actions, including local government. The Council of Business Ombudsman was formed to support the Ukrainian anti-corruption initiative. This body may give recommendations to local governments on the elimination of corruption-related norms from the acts adopted by them. We are convinced that we should not limit ourselves only to handling complaints from entrepreneurs. Business representatives may initiate with the Council of Business Ombudsman the anti-corruption expertise of existing and draft regulatory acts, including decisions of local governments. In accordance with the powers, the Council has the right to submit proposals on the candidates of experts to the Cabinet of Ministers of Ukraine for the formation of working groups with the aim of drafting regulatory acts to improve the business environment and fight against corruption. We propose to fix in the powers of the Council the right to conduct the anti-corruption expertise through accreditation of Council members as experts or to order and finance an independent public expertise.

CONCLUSION

The analysis of legal acts allows to distinguish the following characteristic features of the anti-corruption expertise: it is an integral part of legal expertise; can be either mandatory or initiated by individuals and legal entities; by subjects of conduct is divided into official and

public (independent); according to the level of legal regulation: expertise of the regulatory acts of the national and local levels; the subject of the anti-corruption expertise is the existing regulatory acts, draft regulatory acts and regulatory acts submitted for registration, and the subject matter is corruption-related factors.

Positive for the protection of business will be: provide ongoing support to the business ombudsman and involve it in solving urgent business problems, including those related to corruption; activation of the anti-corruption expertise by the Ministry of Justice of Ukraine with the involvement of civil society institutions and business representatives in the implementation of this mechanism; disclosure of all the conclusions (both positive and negative) based on the results of the anti-corruption expertise; development of unified requirements for conclusions of the state and public anti-corruption expertise; development of a unified methodology for conducting the anti-corruption expertise based on the analysis of domestic and foreign experience in the practical use of this instrument.

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