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Legal Means of Combating Corruption in Europe and Ukraine

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Abstract

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This study investigates the complex issue of manifestations of corruption in power as the critical national factor of a negative, destructive, nationwide nature. The paper provides a comparative analysis of the practices of other European states in combating corruption, describes the significance of this experience for Ukraine. The study also touched upon the issues of searching for various forms of anti-corruption, including legal means. All of the above allowed the author to highlight the main purpose of writing this paper – a comprehensive, systematic examination of the implementation of the fight against corruption as a general social issue using evidence from Ukraine and Western Europe. The main and practically significant results were obtained by theoretical and methodological research of scientific publications covering the issues of corruption both at the international and international levels, tools of comparative legal analysis, system-structural analysis, value-normative and institutional methods, content analysis results of sociological surveys, statistical data and official documents, etc. The study presents information data from surveys conducted by various social independent institutions: The O. Razumkov Ukrainian Centre for Economic and Political Studies; the Kyiv International Sociology Institute, etc. This article is a problem study of an academic, advisory socio-political, and legal nature, which has an unconditional practical significance, as well as the originality of clarifying some issues. The materials of the publication study are aimed at attempts to thoroughly investigate the key aspects of the development of anti-corruption legislation and other measures to counter corruption in Ukraine. Furthermore, the subjects brought up in this paper are, admittedly, promising for further extensive research and refinement of individual points superficially touched upon herein

Keywords: moral foundations, rules of conduct, manifestations of corruption, public survey, oligarchs, Ukraine, anti-corruption legislation

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Introduction

The conditions and the main factors of the emergence and development of manifestations of corruption in various European countries vary depending on the national specifics and the developed system of management of public processes, the level of development of economic leverage on the authorities. In this regard, attempts to develop common universal legal means of preventing and suppressing the receipt of illegal income, bribery of government officials, and other manifestations of corruption seem practically unrealistic and virtually impossible. Modern corruption phenomena usually have a considerable public resonance and damage the interests of the state and society, violate the foundations of the constitutional order of European states and interfere with the direct action of the democratic principles of Ukraine's development, hinder the development of an efficient management system in the field of economic and financial relations between the state and civil institutions, commercial organisations, effective protection of private property, pursuit of the entrepreneurs' interests. In some European countries, legislation contains numerous administrative provisions included in certain disparate legal acts and aimed at combating corruption in public administration and government. In other European countries, there are even special laws containing moral legal norms of behaviour of civil servants in the performance of their public duties.

All legal means of combating corruption should be based on the recognition and protection of the rights, interests, and freedoms of the individual with a clear performance of duties by officials within their mission. Therewith, complex legal norms concerning ethical principles, restrictions, and behaviour of civil servants should be developed considering the creation of conditions for the real implementation of anti-corruption measures in the state apparatus.

The purpose of this study is to investigate the processes of spreading corruption manifestations in Ukraine, which reduce public confidence in the authorities and legal measures aimed at solving the issues of the proliferation of corruption in public authorities.

This paper touches upon various issues related to the purpose of the study: the authors cover the basics of legislative regulation of public service in European countries; identify the causes and factors of the spread of corruption and measures to combat it; demonstrate modern legal means of countering manifestations of corruption in public power structures.

The problem of corruption has been the subject of study by various researchers and specialists: the specific features of the investigation of corruption crimes in Brazil and their scale, the social aspect of their manifestation are touched upon in the studies of E. Carvalho [1], R. Ivory [2]; the issues of corruption of rural officials are touched upon in the publication of D. Jeong and A. Shenoy [3]; some experts focus on the international nature

of corruption and its proliferation in unstable societies and transitional states [4; 5].

The practical significance and results of this study lie in the fact that the formed material and the conducted research allow pointing out practical shortcomings within the framework of anti-corruption policy in Ukraine. Therewith, the author formulated recommendations for improving the legal means of combating corruption.

The originality of this study is associated with the analysis of certain topical issues on improving the anti-corruption struggle, considering the use of modern means and tools of constitutional and sectoral legislation, as well as various organisational measures. Latest articles of various researchers (2020-2021) were also involved in this paper for an in-depth analysis of the problems under study.

Materials and Methods

Theoretical and empirical research of the subject under study was performed in several stages:

1. The first stage of the study formulates and identifies urgent issues requiring an in-depth investigation of using the tools and means to combat corruption in modern Europe, considering the socio-economic, legal policies of Ukraine, Germany, Great Britain, Spain, and other countries. Methodological research tools were also formulated and defined, using which the results were analysed and generalised within the framework of the subject matter.

2. At the second stage of the theoretical and methodological research, a content analysis of the results obtained, the study of generalised data from scientific sources, normative literature, and the results of sociological and political science surveys were carried out. Selected aspects related to the statutory regulation and improvement of certain measures to combat corruption in Ukraine were also covered in detail.

3. At the final stage, the results of this study were summarised to formulate the authors' opinion on the identified problematic elements. The results of investigating the legal regulation of anti-corruption activities using evidence from a particular state (Ukraine) were also summarised with the study of particular results and generalisation of all conclusions at the final stage.

The processing of information data involved the use of general logical and general scientific methods of cognition of legal and political processes and phenomena: analysis of the studies of other researchers and analytical information (to identify particular vectors and measures of the national anti-corruption policy); synthesis of various results obtained during this study and summary of research results. The instruments of specification of legal categories and processes allowed identifying the features of legal regulation and consolidation of the main anti-corruption tools in the modern national legislation of Ukraine.

The formal legal method was used to investigate specific legal processes, national legislation governing and consolidating the fight against corruption, restricting the rights of oligarchs to political interference in the state affairs, the creation of a special anti-corruption bureau, etc.

The method of comparative political science and comparative legal science were employed to identify the conceptual provisions of legislative acts, other government documents and measures in the field of combating corruption by comparing the practices of various Western European countries: Germany, England, etc. The European practices of combating corrupt manifestations in Western states has a considerable history, and its importance for Ukraine is undoubted.

As a special research method, content analysis involved the study of the internal content of individual regulatory documents and the results of surveys of the population of Ukraine. Quantitative characterisation and generalisation of the data of sociological surveys conducted by independent structures and social institutions allowed demonstrating the public opinion of modern citizens of Ukraine regarding the corruption components of national policy on individual examples.

The methodological tools used in this study allowed forming the research-to-practice results, which have unconditional social and political importance for the further development of Ukrainian statehood.

Results

The legislative regulation of the civil service and public discipline in different European countries formally differs; however, in terms of the content of constitutional and administrative principles and anti-corruption legislation, modern states tend to converge.

Germany, as a prominent representative of the Romano-German legal family, has a fairly extensive anti-corruption legislation, which includes the norms of the German Constitution, the General Law on the Legal Regulation of Public Service and a special act on Public Service. There is also a regulatory framework that consolidates the issues of the powers of federal employees, monetary and material support of the official apparatus. To ensure discipline and consolidate the rules of conduct, the moral foundations for exercising the powers and duties of state officials, a Disciplinary Legislative Act has been federally developed and introduced, which consolidates various types of punishments within the framework of bringing to disciplinary responsibility.

According to German legislation, civil servants have considerable restrictions in engaging in business activities, have no right to put personal interests over public ones, must not harm national interests, etc. [6]. The available legislative restrictions on the public service and the specific features of disciplinary responsibility are aimed at consolidating the status of government

officials as “servants of the people” who lead a highly moral lifestyle, are always reserved and honest, support the constitutional system of the Federal Republic of Germany, carry out only activities related to the administrative and political reform of the country.

In the United Kingdom, the modernisation of the legal framework governing the civil service and the introduction of new anti-corruption measures have led to the creation and development of a special-purpose ethical infrastructure – the Committee on Standards in the Public Sphere¹. Currently, this body is developing reports and recommendations on improving disciplinary norms, rules of conduct, and moral foundations of public service at the level of regions and municipalities.

Based on these reports, the UK Government is building a policy for the further development of anti-corruption legislation. The achievements of the Committee can be considered the development of recommendations in the following areas: the introduction of high standards in the behaviour of officials, the expansion of the structure of the legal rules of business appointment, provided through legal agreements, transparency of the institution of lobbying the interests of commercial structures in government, the reform of the rights and duties of the Commissioner for Public appointments, etc. Furthermore, the Committee performs a territorial audit and investigates corruption among local and regional authorities, the results of which allowed developing numerous recommendations and identifying “best practices for improving ethical standards in local authorities”².

The practices of Spain are unusual, where the civil service is represented by two types of bureaucracy at once: officials of the royal court and “people’s” civil servants. Most recently, the Royal Court of Spain published a Code of Conduct for its Employees (2016). This document, originally intended for internal use, has been widely distributed among public authorities. Many of its norms were well-perceived by other employees who do not belong to the category of the “royal court”: to comply with the laws of Spain, to improve professionalism and qualifications, not to disclose secret information, to communicate politely with representatives of the population, to refrain from using official position for lucrative purposes³.

Through the adoption of the Law of Ukraine No. 1698-VII “On the National Anti-Corruption Bureau of Ukraine”⁴ of October 14, 2014, Ukraine established a special structure handling the issues of corruption of officials in the country. However, unlike the UK Committee on Standards in the Public Sphere (CSPS), the Anti-Corruption Bureau investigates corruption-related offences in the criminal and public sphere, i.e., it has a special narrow competence. It seems necessary to introduce legislative amendments to the Law of Ukraine No. 1698-VII “On the National Anti-Corruption Bureau

¹Independent reports of the Committee on Standards in Public Life. (2021). Retrieved from <https://cutt.ly/HOVrt4A>.

²*Ibidem*, 2021.

³Code of Conduct for Spanish Civil Servants. (2021). Retrieved from <https://cutt.ly/oOVrczu>

⁴Law of Ukraine No. 1698-VII “About the National Anti-Corruption Bureau of Ukraine”. (2014, October). Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/T141698.html.

of Ukraine”¹ of October 14, 2014 to expand the functions of the specified special body for the preparation of reports and recommendations on combating other manifestations of corruption in the state (following the example of the UK CSPS), to assign to the National Anti-Corruption Bureau of Ukraine the right of legislative initiative in the field of its activities (corresponding amendments can be introduced to the Constitution of Ukraine). In general, the situation with the corruption of Ukrainian officials has recently been described as dangerous, affecting the overall economic crisis in the country.

According to the latest data (end of October 2021), based on the results of a three-day political and sociological study conducted by specialists of the O. Razumkov Ukrainian Centre for Economic and Political Research by personally interviewing 1,200 adult respondents, it can be indicated that currently over half of the country’s population (55.9%) believe that their financial standing has worsened compared to 2019-2020. Only a third of respondents (35.3%) admitted that it remained the same, and only 7.5% recognised some improvements in material status and stabilisation of monetary income (Fig. 1) [7].

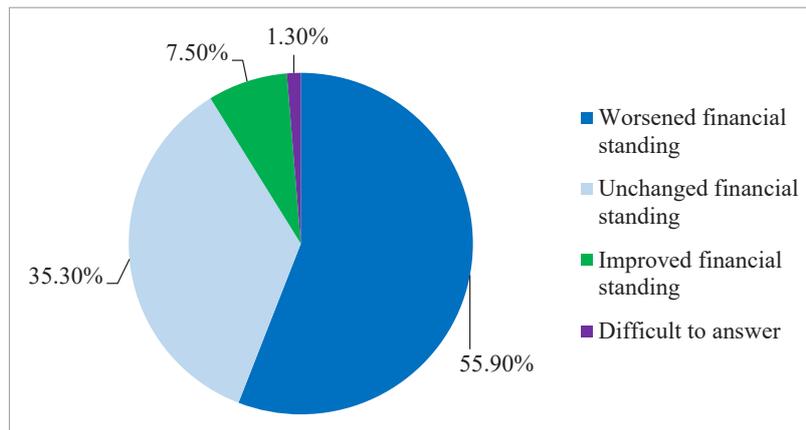


Figure 1. Public opinion regarding their financial standing (October 2021, %)

Therewith, as the main factors (Fig. 2) affecting household income and personal earnings of the population, as well as the source of all financial issues of the country, respondents name the incompetence of public authorities headed by the central government and the President (39.1%), a high degree of corruption and embezzlement of state and municipal budget funds (35.4%). Approximately 10.2% of respondents also point to the complexity of the economic situation

during the pandemic. This, in their opinion, affects the restriction of entrepreneurial activity, the inefficiency of all structures of the service sector, service and entertainment, forced unpaid absenteeism, increased mortality of the population. 10.0% of respondents consider the current national crisis to be a consequence of military actions and the presence of instability in the eastern territories of Ukraine [7].

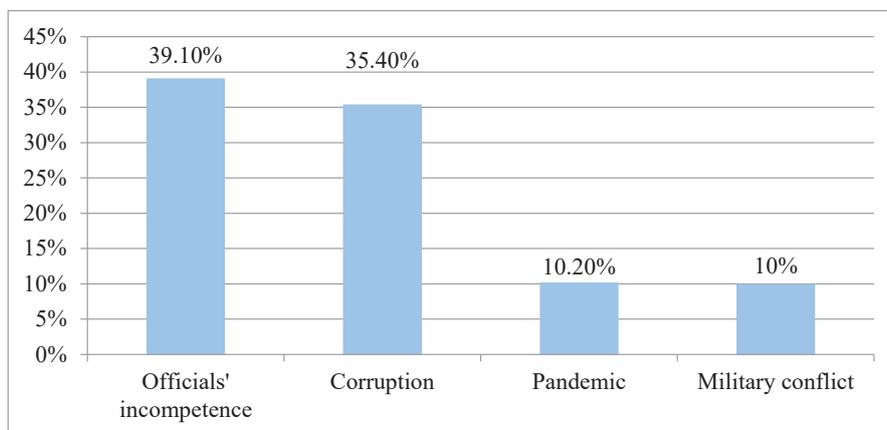


Figure 2. The main factors and causes affecting the instability of the situation in Ukraine (2021, %)

On certain topical issues related to the study of corruption manifestations, even nationwide surveys of the population are conducted to identify attitudes

towards certain problems of internal and external policy. In 2020, at the initiative of President Volodymyr Zelenskyy, an all-Ukrainian population survey was carried out for

¹Law of Ukraine No. 1698-VII “About the National Anti-Corruption Bureau of Ukraine”. (2014, October). Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/T141698.html.

the first time in the history of Ukraine, the key questions of which concerned the national sovereignty of the country, territorial issues, corruption of public officials.

The creation and successful launch of the public services platform “Diia” can be called one of the essential contemporary anti-corruption measures undertaken and implemented in Ukraine [8]. This digital resource will avoid administrative barriers in obtaining the necessary services, reduce the personal and financial interest of individual management entities and affect the overall state of corruption in the state.

Furthermore, at the initiative of the President of Ukraine, the Law of Ukraine No. 1780-IX “On the Prevention of Threats to National Security Associated with Excessive Influence of Persons with Considerable Economic and Political Weight in Public Life (Oligarchs)” of September 23, 2021¹ was developed and adopted.

According to the public opinion, studied by a survey of the population of the state by representatives of the Kyiv International Sociology Institute (KISI), the aforementioned law is necessary in Ukraine to limit the influence of oligarchs on political processes in the country.

In particular, according to Table 1, in the summer of 2021 (within a week), KISI specialists conducted an all-Ukrainian survey of the population (a sample of 2,031 respondents living in 107 municipalities of the country), which demonstrated the following quantitative results: 56.4% of respondents fully approved the adoption of a regulation on de-oligarchisation, which, in their opinion, will help fight corruption in the highest “echelons” of power, and only 20.4% of Ukrainians consider this regulation a threat to large businessmen of the country [9].

Table 1. Opinion of the population of certain regions of Ukraine regarding the adoption of the Law on Oligarchs

Answers	Nationwide result	Central part of Ukraine	South of Ukraine	East of Ukraine	Donbas Region
Approved the adoption of the law as necessary	20.4	20.5	21.3	19.1	18.1
The law is a threat to oligarchs	56.4	57.6	57.1	52.9	61.8
Have not decided	22.9	21.7	20.8	27.7	18.8
Refused to answer the question	0.3	0.1	0.8	0.3	1.4

According to the results obtained in 2013, 2016, 2020, 2021 by the Rating Group Ukraine, which is an independent research organisation conducting research in compliance with the international standards of the ESOMAR and WAPOR codes, from 18% to 51% of the population in various regions of the country consider corruption and bribery to be a serious issue [10-13].

In 2016, over 90% of respondents, i.e., the overwhelming majority of 2,000 Ukrainians surveyed from different regions of the country, practically did not recognise the achievements of public authorities in the following areas: economic and social policy, combating bribery, laundering illegal income, corruption, limiting the influence of oligarchs on political and legal processes in the state [10].

In 2020, according to public opinion, in the Chernihivska Oblast, a fifth of the population (out of 1,200 people surveyed) recognised bribery and corruption as a nationwide issue (18%), as well as 1/7 (157%) of Ukrainians faced it personally [11]. In the Lvivska Oblast, according to a survey of 2,000 respondents conducted in 2020, the problems of substandard medicine and corruption concern every fifth respondent (about 20%) [12].

All these data and indicators demonstrate the seriousness of the issue of corruption in the government in Ukraine, which should be resolved, including by legal methods.

Discussion

According to the studies of various researchers and specialists regarding the legal, political, and social elements of modern manifestations of corruption in the activities of central, regional, and local authorities, the large-scale level of national corruption exacerbates the problems of the crisis and transition period of socio-economic development of the country, preventing their constructive resolution.

This process was expressly illustrated by researchers using evidence from India, where the heads of rural settlements are engaged in the distribution of vacant positions and jobs in rural areas. Chon Dahren and Shenoy Ajay emphasise that the public central authorities and administrations of India, informal government organisations, non-profit structures and various legal organisations use a variety of funds and financial instruments aimed at manifestations of corruption at the local level of government. Recently, together with the public, the central government of India and regional authorities have been developing and implementing policy documents to combat poverty in rural areas, which should also ensure maximum transparency and accountability of the activities of municipal governments. The studied analytical materials presented on the official websites of government agencies allow researchers to establish the level and scope of corruption in certain

¹Law of Ukraine No. 1780-IX “On the Prevention of Threats to National Security Related to the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)”. (2021, September). Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/T211780.html.

territories, where various frauds are committed among the heads of rural settlements aimed at creating an unequal distribution of vacant jobs among the population and facilitating the receipt of local service positions. Therewith, as the authors of this paper note, corruption manifestations also persist due to the gap between the legal regulation of the struggle for morality in the public service system and the real transparency of the activities of individual officials in practice. Timely access to information about the activities of local government representatives will allow Indian citizens to timely respond to violations of their rights by officials [3].

In addition, Chong Dahen and Shenoy Ajay note that many residents of rural areas, having full awareness of the corruption of local officials, prefer not to apply for protection of their rights to specialised human rights bodies and institutions, but to pay a certain amount to obtain employment privileges. Sometimes honest and highly moral local politicians in India (for instance, in the state of Uttarakhand) independently undertake the factual implementation of anti-corruption laws, comprehensively protecting violated human rights and interests and supporting initiatives of citizens and public organisations in this area [3].

Recent events in Brazil have allowed the world community to explore various manifestations of hidden corruption using evidence from this country. Many experts have addressed the issues of corruption and crimes as a negative experience of democratic Brazil. Brazil was represented in the international community as a model of a new democracy among all developing countries, which “absorbed” the socio-political realities of the development of civilised countries of Western Europe. However, modern processes indicate that the political culture of Brazil retains a tendency to corruption, the development of unlawful ties between big business and government agencies, which led to abuse of official powers among high-ranking officials.

According to the criminal investigation conducted in the cases of “Lava Jato” and “Odebrecht” in Brazil, well-known political personalities, parliamentarians, large entrepreneurs, party functionaries, former representatives of executive authorities, as well as the management of the Petrobras oil company were brought to justice. These subjects were accused of various criminal offences of money laundering, bribery, and unlawful construction of facilities not provided for in the state budget [1].

E. Carvalho Nepomuceno Alencar investigates the trust of the Brazilian population in the new government after the above negative events. In his thesis research, the researcher establishes and studies the correlation between the practices of establishing manifestations of criminally punishable corruption and the decline in trust in local public structures in Brazil and other countries (the anti-corruption investigation affected subjects from 12 Latin American and African countries, for

example, Peru). Carvalho offers a diverse set of tools to prevent the expansion of corruption processes in developing countries [1].

R. Ivory, using the data from the investigation of cases in Brazil, offers his tools for countering corruption in Australia: increasing the level of audit of the financial activities of state bodies and management institutions; introducing necessary and rational changes to the Australian federal anti-corruption legislation; improving the reputation of public officials and their moral ideals; achieving transparency in the use of budget funds; developing the principles of establishing criminal liability of corporations, etc. [2].

Researchers from the University of California identify the following measures to combat national and transnational corruption: unscheduled supervisory and control state inspections, achieving decent wages and material incentives for local public officials, extending the term of office of the most honest and professional employees [14].

M. Gehrke Ryff Moreira reveals the consequences of a decrease in the effectiveness of anti-corruption policy in various countries, manifested in the imperfection and untimely imposition of judicial sanctions, low quality of investigation of money laundering crimes, weak accountability and control during legitimate elections, insufficient supervision of the legislature over the implementation of adopted regulations and the activities of officials [15].

An in-depth study by Baragvanat Vogel covers the issues of manifestations of corruption in the oil and gas field. This researcher draws parallels between tax evasion and the officials’ lucrative interests [16]. T. Mackey investigates the introduction of digital technologies that can prevent corruption in the healthcare and pharmaceutical industries. They are also used to eliminate administrative barriers to access to special medicines, to combat the leakage of expensive medicines and the penetration of substandard or falsified medicinal products [17].

This researcher emphasises the importance of including additional digital anti-corruption technologies in the regulation and control of public procurement of certain medicines from manufacturers (pharmaceutical companies in various countries) and achieving the global goal of developing quality healthcare in all countries of the world [17]. A separate group of researchers and practitioners covers the use of corrupt ties in the government when large companies evade taxes and other financial and fiscal fees [18].

O’Brien and two of his Chinese colleagues conducted a comprehensive study of unlawful regional processes in China, when for a certain fee, local officials of public authorities assist the socio-economic elite in conducting illegal and unauthorised political popular actions to overthrow the “objectionable” local government. In turn, individual officials, by organising collective actions of citizens, seek to support civil society initiatives

and use them as tools in the struggle for power against arrogant, despotic, or corrupt bosses [19]. Some experts emphasise the international nature of corruption and its proliferation in unstable societies and transitional states [4; 5].

The conducted research allowed concluding on the possibility of reducing or limiting corruption manifestations in power only by simultaneously eradicating the conditions and factors that cause them; therewith, legal means of combating corruption should be used in all diversity, with all determination and in various vectors and levels of public governance structures. National corruption exists in Ukraine insofar as the state constantly, massively, and often unreasonably interferes in the personal, public, socio-economic, cultural life of the population of the country. The problem is also that public administration bodies and power structures, exercising the legislatively regulated powers within their competence and their social purpose, are obliged to intervene, but such intervention should be as correct as possible, objectively necessary and effective. And the corruption existing in the world and in national states acts a certain indicator that points to the inefficiency, irresponsibility of the actions of the state apparatus of the state in question.

Conclusions

The issues raised in this paper bring insight into the nationwide constitutional and general legal issues of the spread and growth of corruption in Ukraine, as well as individual measures to counteract its manifestations in society and public structures by legal means. The materials of this study do not apply an analysis of the criminal sphere of combating corruption-related crimes, since this subject under study is most frequently investigated

by researchers who miss essential details of improving the legislative regulation of tools and measures to combat corruption as a universal social issue. It was the combination of general social, general legal, and political methods of investigating corruption in the Ukraine that substantiated the originality of the subject matter, allowing to touch on new aspects upon the research of legal means of combating corruption in Ukraine and in European countries.

The investigation of the problematics allowed formulating the following recommendations:

- harmonise the content of legislative and sub-legislative acts with the norms of the Law of Ukraine No. 1780-IX “On the Prevention of Threats to National Security Associated with Excessive Influence of Persons with Considerable Economic and Political Weight in Public Life (Oligarchs)” dated September 23, 2021 and ensure the implementation the norms of the said law;

- amend the Law of Ukraine No. 1698-VII “On the National Anti-Corruption Bureau of Ukraine” of October 14, 2014 to expand the functions of the specified special body for the preparation of reports and recommendations on combating other manifestations of corruption in the state;

- expand the administrative legal means of preventing and suppressing corruption, specifying certain rules of conduct and the moral foundations of the activities of a public servant in the public service system of Ukraine, it is advisable for the Verkhovna Rada to adopt laws on the prevention of abuse of power or official powers, as well as on fundamentals of anti-corruption policy as soon as possible. The latest law may introduce anti-corruption standards in various spheres of public administration, becoming a fundamental act for the interpretation of industry norms.

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Правові засоби боротьби з корупцією в Європі та Україні

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Анотація

Стаття присвячена складній проблемі існування проявів корупції у владі як найважливішого національного чинника негативного, деструктивного, загальнодержавного характеру. У роботі проведено порівняльний аналіз досвіду різних держав Європи щодо боротьби з корупційними проявами, охарактеризовано значущість цього досвіду для України. Також було порушено питання пошуку різних форм протидії корупції, зокрема, правовими засобами. Все вищезгадане дозволило автору виділити основну мету написання статті – комплексне системне вивчення питань здійснення боротьби з корупцією як загальносоціальної проблеми на прикладі України та Західної Європи. Основні та практично значущі результати були отримані засобами теоретико-методологічного дослідження наукових публікацій, присвячених проблемам і питанням корупції як на внутрішньодержавному, так і міжнародному рівні, інструментами порівняльно-правового аналізу, системно-структурного аналізу, ціннісно-нормативного та інституційного методів, контент-результатів соціологічних опитувань, статистичних даних та офіційних документів тощо. У статті наведено інформаційні дані опитувань, проведених різними соціальними незалежними інститутами суспільства: Українським Центром економічних та політичних досліджень ім. О. Разумкова; Київським міжнародним інститутом соціології та ін. Ця стаття є проблемним дослідженням науково-рекомендаційного соціально-політичного, правового характеру, що має безумовну практичну значущість, новизну уточнення деяких проблем. Матеріали публікаційного дослідження спрямовані на спроби детального вивчення найважливіших аспектів розвитку антикорупційного законодавства та інших заходів протидії проявам корупції в Україні. При цьому розглянута в роботі тематика, безумовно, є перспективною для подальшого наукового поглиблення та деталізації окремих моментів, поперхово порушених у публікації

Ключові слова: моральні засади, правила поведінки, прояви корупції, опитування населення, олігархи, Україна, антикорупційне законодавство