

## LAW RESPONSIBILITY FROM CORRUPTION CRIMES

**ABSTRACT:** In accordance with the recommendation of the GRECO Group (a group of states against corruption) Ukraine has to immediately develop a detailed plan of actions aimed at realization of the national anti-corruption strategy. The plan of actions should as far as possible take into account a potential cooperation and assistance of the international community.

At the same time, a number of phenomena is observed in Ukraine, that prevent realization of the global initiatives of the President of Ukraine Viktor Yushchenko aimed at curbing the level of corruption in the governmental organs. The main aspects aggravating the problem of corruption in Ukraine are as follows: insufficient maturity of the civil society democratic institutions that are underdeveloped and unable to control the activities of the representative and the executive power branches; the non-governmental organizations declaring their anti-corruption purposes (approximately 200 of them are active in Ukraine) have no real influence upon the situation; the country lacks political and social traditions of public exposure of corrupt officials; dissemination of corruption facts in mass media does not always have an adequate response of the public, the law enforcement organs, and, first of all, judicial authorities.

The procedure of punishment for corruption offences, provided by the Law of Ukraine „On the Struggle Against Corruption”, has not become an efficient means of fighting this phenomenon and provides for only the administrative responsibility. By the opinion of domestic and international experts, this Law does not meet the international standards and contributes to the negative image of Ukraine as a state that does not have adequate legal mechanisms and political will to fight the corruption. It is suggested in the recommendations given on the basis of the results of monitoring carried out in 2007, that Ukraine should revise the system of the administrative responsibility for corruption in order to establish a clear practice of considering cases related to commitment of corruption infringements as criminal offences.

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The work performed in order to execute the Threshold Program of the „Millennium Challenges” corporation intended to curb the level of corruption in Ukraine, undersigned by the governments of Ukraine and the USA in December, 2006, and the joint project of the Council of Europe and Ukraine, titled „The Project of Countering Corruption in Ukraine” (the project of UPAC) is not fully efficient. Obligations of Ukraine by the aforementioned projects envisage a number of measures: strengthening of the civil society functions related to detecting and uncovering of corruption in governmental organs, reforming the legal procedures, improvement of applying the ethic and administrative standards and public control of the execution thereof, upgrading of the efficiency of applying the standards and procedures of countering corruption in the sphere of higher education.

*Key words:* law responsibility, corruption crimes, national anticorruption strategy, Ukraine

The problem of corruption is certainly not a national, exclusively Ukrainian phenomenon, but the worldwide fact. As the history shows, the corruption has its own historical roots, traditions, and practically accompanies the state right from the moment of its emergence. Those standing at the helm of state, distributing public goods and national wealth, have never neglected, and won't neglect nowadays expensive gifts, offerings and bribes. Quite a lot was said about the social danger of corruption. It can lead to utmost decrease in effectiveness of multiple governmental programs and measures; it brings economical instability and critical reduction of the living standards in many countries of the world, unjustifiable and sharp stratification of the population of a country in profits, social status and living conditions.

All this compels the world community and its organizations to look for legal mechanisms and ways to resolve this non-simple and complex problem.

By today there has been formed a rather representative and strong international anti-corruption legislature. Some of the acts, adopted by the UN and the Council of Europe, are binding for the member-states of these organizations; others have a recommending nature; but in every case, their experience in this field for the development of the legislature of a young enough Ukrainian state and other modern states is invaluable. Namely the coordinated efforts of the countries, interconnected by innumerable ties of economical, financial, political and cultural cooperation, can bring positive results in the struggle against corruption, especially what concerns legalizing (laundering) of unlawfully acquired capitals; in the struggle against trafficking in drugs, human beings and arms.

Certain foreign countries (Germany, France and Italy) have been successful in seriously narrowing corruption. Using their expertise at preparing the Ukrainian anti-corruption legislature, to our mind, will have a positive effect.

Today the majority of laws, adopted by the Verkhovna Rada (The Supreme Council), inter alia, „On the Struggle Against Corruption”, „On the Organizational and Legal Principles of the Struggle Against Organized Crime”, are far from perfection and do not work. They are subjects for revision. Let us first of all fix on the results of the work in aspects of countering corruption in Ukraine in 2007.

Corruption threatens the national security and the social system of Ukraine. It affects the formation and activities of governmental and political institutions. It undermines the citizens' trust in authorities. During the last years the scope of corruption offences was not curbed, and at this stage countering this phenomenon remains one of the highest priorities of the state policy.

By various assessments, entrepreneurs spend up to 65% of their average yearly incomes on bribes to officials. The World Bank experts estimate the yearly sum of bribes in Ukraine at the level of the country's turn-over during two months.

On the international arena, Ukraine has a reputation of an excessively corruptive state. That is confirmed by invariably low rating of the level of integrity of Ukraine during reliable international polls and surveys during the last years. In particular, by the rating of the international organization „Transparency International”, Ukraine takes the 118-th place among 180 states. By the evidence of this reliable organization, the corruption index in Ukraine for 2007 is 2.7 (correspondingly, 2.3 in 2003; 2.2 in 2004; 2.6 in 2005 and 2.9 in 2006).

During the period of independence, the legislative and the executive branches of power failed seriously to limit the levels, ranges and scopes of corruption occurrences. Anti-corruption legislature, which comprises over 100 laws, decrees and government regulations, does not contribute to reaching the final goal – overcoming corruption, since it is mainly directed against corruption occurrences among officials of middle and lower management, and does not meet the international norms and standards in full measure.

The main provisions are stated in the Prototype Law on the struggle against corruption, adopted at the thirteenth plenary meeting of the Inter-parliamentary Assembly of the CIS member-states.

This Law is directed towards protection of rights and liberties of citizens, provision of protection of the states from the threats, resulting from corruption phenomena, provision of effective functioning of governmental organs, holders of public offices, and also persons, equaled to them, by way of preventing, detecting, suppression and uncovering of corruption offences, liquidating their consequences, bringing to responsibility of perpetrators; it establishes the types of offences, connected with corruption, and also the terms of the responsibility onset.

This Law is also directed towards widening of the democratic principles, transparency and control at governing the state, towards strengthening the trust of the population to the state and its structures, inspiring competent specialists to join the public service, creation of conditions for incorruptibility of holders of public offices. Corruption (corruption offences) – unlawful acceptance, personally or through intermediaries, of material benefits and privileges by holders of public offices and also by persons, equaled to them, by using their official powers, and opportunities, connected with them, and equally the bribing of these persons, by way of unlawful rendering to them by physical and juridical persons of the aforementioned benefits and privileges.

Corruption offences, relating to criminally punishable acts – getting and giving bribe, other corruption offences, connected with receiving benefits and privileges, or creating conditions for corruption, the responsibility for which is established by the state criminal code.

Holders of public offices are persons that occupy public offices (public offices of the governmental power and public offices of the governmental service).

Public office is an office in a governmental organ with the established round of duties for realization of the authorities of a governmental organ, tasks and function of the state.

Governmental organ is an established, by the state law, component of the state apparatus, vested with the corresponding competence, and its derivative structure, which realizes, in its organizational legal forms, the state and public mandates.

Public offices of state power (important public posts) – offices, established by the constitution and laws of the country for direct realization of the mandates of governmental organs.

Public offices of state services – offices, established by legally determined order, for direct support of realizing mandates by persons, who act as holders of public offices of state power, to guaranty the realization of their mandates.

Holders of public offices, judges, and also other persons equaled to them bear responsibility for corruption offences. To public office holders are equaled: 1) members of parliament; 2) persons elected to organs of local self-government; 3) citizens, registered by the legally determined order as candidates for the president, the vice-president of the country, for the member of the parliament of the country, and also for the member of elected organs of local self-government; 4) civil servants, who work permanently or temporarily in the organs of local self-government, and whose salaries are being paid from the means of the state budget, or from off-budget funds, created by the public offices or the organs of local self-government.

The subjects of corruption offences also include physical and juridical persons, unlawfully rendering material benefits and privileges to holders of public offices or persons equaled to them.

This Law operates on the whole territory of the country with regard to all physical and juridical persons. Beyond the state borders this Law operates regarding citizens or juridical persons, registered in the state if otherwise is not envisaged by the international agreement. By the legislature on the foundations of the public service, status of deputies and judges, on carrying out of services by various categories of holders of public offices, on other potential subjects of corruption offences, there can be established other legal norms, that will envisage limitations and prohibitions, aimed at preventing corruption.

The president, the vice-president, members of the country's parliament and judges bear responsibility for committing corruption offences by virtue and the order of the constitution and laws of the state. Responsibility for corruption offences, relating to criminally punishable actions, is established according to the state criminal code.

The struggle against corruption is carried out on the following grounds: 1) equality of all before the law and the court; 2) provision of precise legal regulation of the activities of governmental organs, lawfulness and transparency of such activities, of the state and public control over them; 3) perfection of structure of the state apparatus, personnel development, and the procedure of solving questions, affecting rights and lawful interests of physical and juridical persons; 4) the priority of defending the rights and lawful interests of physical and juridical persons, and also socio-economical, political and legal, institutional and management structures of the state; 5) the acceptance of permissibility of limitation of the rights and liberties of holders of public offices, and persons, equaled to them, in cases, envisaged by the law; 6) restitution of violated rights and lawful interests of physical and juridical persons, liquidation and prevention of consequences of corruption offences; 7) provision of personal security of citizens, rendering assistance in the struggle against corruption offences; 8) protection by the state of the rights and lawful interests of holders of public offices and persons, equaled to them, establishing for such persons of salaries (cash allowances) and privileges, that will provide to the mentioned persons and their families a decent standard of living; 9) impermissibility of delegating authority of state regulation over entrepreneur activity to physical and juridical persons carrying out such activity and also of the control thereof; 10) carrying out of operational and search activity for the purposes of detection, revealing, suppression and prevention of corruption offenses, relating to criminally punishable acts, and also enforcing by the legally established order of special measures of financial control for the purposes of exclusion of legalizing unlawfully acquired monetary means and other property; 11) establishing of the prohibition for holders of public offices and persons, equaled to them, to carry out entrepreneur activities and, which includes taking offices of profit in management bodies of economic agents, excepting cases where taking such offices is envisaged by legally established functions.

Heads of governmental organs, bodies, organs of local self-government, in the limits of their mandates, provide the fulfillment of the requirements of this Law, and application of disciplinary measures, envisaged therein, engaging to this effect personnel management, supervisory, juridical and other services.

Exposure, suppression and prevention of corruption offenses and bringing to responsibility of the persons, guilty of their committing, is carried out, in the limits of their competence, by the organs of the prosecutor's office, national security, internal affairs, customs and frontier services, tax and military police.

The corresponding bodies are obliged to take measures, resulting from their mandates, and to immediately inform the authorized organs of all the cases of exposed corruption offences, committed by holders of public offices. In accordance with the acting legislature, there can be formed a special state body for the struggle against corruption.

A person, who informed of the fact of a committed corruption offence, and who assists in the struggle against corruption, is under protection of the state. Intelligence on the person, rendering the assistance the struggle against corruption, is a state secret, and is furnished only at the requests of the law enforcement authorities. The disclosure of such intelligence entails the responsibility by the law. Where necessary, the organs, leading the struggle against corruption, provide private security for the persons, rendering assistance in the fight against corruption. The provisions of this article do not apply to persons, having informed false facts, which bear responsibility, in view of this Law.

Persons, claiming to occupy a public position, take upon themselves the limitations, established by this Law and other laws, for the purpose of inadmissibility of actions, which can lead to using their status and the influence, based on it, in the personal, group or other outside interests. At that, these persons are notified of the legal consequences of such actions. The consent of the aforementioned persons to accept the limitations is recorded by the personnel services of the corresponding organizations, in writing. Non-acceptance of the limitations entails the rejection of the admittance to the public office, or removal from the public office, or other dismissal from the public office, in the order, envisaged by the law.

Persons, who are candidates for holding a public office, must produce to the tax department, by place of residence, the income declaration; declaration on the property, subject to taxation, including such, that is located beyond the territorial borders of the state, with mentioning the assessed value and the property situs address, and also the data on the following:

- the deposits in banking institutions and securities, including those beyond the state borders, with mentioning the banking institution, and financial means, which these persons rightfully control personally, or jointly with other persons;

- their direct or indirect partaking as a shareholder or a founder (participant) of juridical bodies, with indicating the participation share in the statutory capital and full banking and other details of the mentioned organizations;

- the trusts and the states, where they are registered, with mentioning the numbers of the corresponding banking accounts, if a person is the beneficiary of such trusts;

- the names and details of other organizations, with which a person has contractual relations, agreements and obligations (including verbal ones) on holding or temporary keeping of material and financial means, belonging to a person, in the amount, a thousand times exceeding the monthly specified rate (the minimum wage);

Persons, holding public offices, yearly, in the period of the execution of their authorities, provide a declaration to the local tax department, in the order, established by the tax legislature. The aforementioned persons correspondingly produce to a governmental organ, the office in which they claim for, or at their place of employment, a certificate of the tax department on the receipt by the latter of the declarations and data, as mentioned above.

Non-submittal or submittal of incomplete or false declarations and data, if the committed does not contain signs of criminally punishable acts, is a foundation for a denial to appointment of a person to a public office, or entails removal from a public office, or other dismissal of a person from a public office, under procedure, established by the law.

In the order, established by the legislature, the intelligence might be published regarding amounts and sources of income of holders of public offices, occupying the important governmental posts, and also data on the income of the candidates for public offices at the time of their nomination.

Holders of public offices and persons, equaled to them, are prohibited to enter into civil law contracts under assumed names – by counterfeits, anonymously, under other name, etc. These contracts are held invalid, in the law established order.

Physical and juridical persons, who participate in executing functions of control over state property, provide, in terms, established by the state government, reports on all transactions of material character and financial activities, connected with the state property, to the governmental organ, executing, in regard to the state property, legal faculties of the owner. Information, envisaged by this article that arrives to tax authorities, comprises an official secret. Its disclosure, if such a deed does not contain criminally punishable acts, entails dismissal of the person at fault. This information is provided only by a request of the law enforcement authorities and by the court, in the legally established order.

Measures of financial control, envisaged by this article, do not apply to legal relations with regard to acquiring into ownership of a dwelling place or

construction materials inside the state. Financial control of acquiring dwelling places or construction materials for their building is carried out with accordance to the state legislature.

Holders of public offices are prohibited to take other gainful occupations, with the exception of pedagogical, scientific, and other creative activities. Holders of public offices shall in one month after taking the office, in the law established order, convey into trust management, for the period of their holding the office, the property, that belongs to them, and the usage of which can lead to receiving profits, with the exception of the money, that lawfully belongs to them, and property, given into lease. Holders of public offices, engaged in activities, banned by the Law, are subject for removal or other way of dismissal from office, in the legally established order. A holder of public office, removed from the public office, as a result of his (her) activities, incompatible with holding of such office, cannot be designated to such office, until he (she) terminates engagement in the activity, indicated in this article.

Holders of public offices and persons, equaled to them, cannot hold positions, which are in direct subordinacy to positions held by their close relatives (parents, spouses, brothers, sisters, children) or in-law relatives (brothers, sisters, parents and children of the spouses), with the exception of cases, envisaged by the legislature.

Persons, that have violated the requirements of the Law, if they do not voluntarily eliminate the aforementioned violation in three months after its discovery, are subject for reassignment to positions, excluding such subordinacy, controllability or accountability, and at impossibility of such reassignment, one of such officers is subject to removal or other dismissal from office.

The offences, creating the conditions for corruption, are considered to be the following deeds by holders of public offices and persons, equaled to them: 1) unlawful intrusion into activities of other governmental organs, organizations; 2) using their official powers in solving questions, connected with satisfaction of material interests of the aforementioned persons or of their close relatives or in-law relatives; 3) provision of unlawful privileges (protectionism, nepotism) while taking and advancing in a public office or an office, equaled to it; 4) provision of unlawful preference to physical and juridical persons while preparing and making decisions; 5) provision to anybody whosoever of assistance, not envisaged by the legislature, in carrying out entrepreneur and other activities, connected with deriving of revenue; 6) usage in personal or group interests of an information, acquired at execution of official duties, if such information is not subject to official distribution; 7) ungrounded rejecting of information to physical and juridical persons, provision of which is envisaged by the legislature, its delaying or giving untruthful or incomplete information; 8) demands for providing information from physical and juridical persons, the provision of which by these persons is not envisaged by the legislature; 9)

conveyance of the state material or financial resources to election funds of separate candidates or social alliances; 10) violation of the legally established order of reviewing applications of physical and juridical persons, and of solving other questions within their competence; 11) presenting gifts and rendering off-the-office services to superior officers, except giving symbolic signs of attention and symbolic souvenirs, in accordance to commonly accepted norms of politeness and hospitality, and in the limits of cost, determined by the national legislature, and also at conducting protocol and other official events; 12) self-evident impeding of exercising by physical and juridical persons of their rights and lawful interests; 13) delegating of powers of state regulating of entrepreneur activities to physical and juridical persons, executing such activities, and also of control over them; 14) taking part in gambling games, having monetary or other proprietary character, with officers, who are superior, inferior, or in any other bondage with them by office or work.

Commitment by holders of public office or persons, equaled to them, of any offence, indicated in paragraph 1 of this article, if it does not contain elements of criminally punishable acts, entail demotion, removal or other dismissal from office, or applying in legally established order, of a disciplinary penalty. Further commitment of any aforementioned offence, within a year after applying a disciplinary penalty for the first offence, entails removal or other dismissal from office, in the legally established order.

In case of commitment by members of the parliament of the country of any aforementioned offence, organs, conducting the struggle against corruption, notify of such fact the corresponding election commission, which shall in five days from the moment of getting the materials bring them to the information of the parliament.

Corruption offences, connected with unlawful acquirement of benefits and privileges, are considered to be the following deeds of holders of public office or persons, equaled to them: 1) accepting, for execution of their governmental or equaled to them functions, of any remuneration in the form of money, services, or in any other form, from organizations, in which a person does not fulfill corresponding functions, and also from physical persons, if otherwise is not envisaged by the legislature. Monetary means that have arrived on the account of a holder of public office, or a person, equaled to him, without knowledge of the aforementioned person, and also means, received by him in violation of part one of this subparagraph, are subject to transfer to the state budget, no later than in two weeks after their discovery, with supplying an explanation to the corresponding tax authority of the circumstances of arriving of such means; 2) accepting gifts or services for execution of their governmental or equaled to them functions, or from persons, officially dependent from them, excluding symbolic signs of attention and symbolic souvenirs, in accordance to commonly accepted norms of politeness and hospitality, and in the limits of cost, determined by the

national legislature, and also at conducting protocol and other official events. Gifts, having arrived without knowledge of aforementioned persons, and also gifts received by them in connection with execution by them of their functions, in violation of clause one of this sub-paragraph, are subject to gratuitous hand over to a special state fund, within seven days, and services, rendered to these persons at similar circumstances, shall be paid by them by way of transfer of monetary means to the state budget. A person, to whom such gifts have arrived, is entitled, with the approval of a superior officer, to buy them out from the aforementioned fund at market prices, actual for a corresponding region. Proceeds from selling gifts are transferred to the special fund of the state budget; 3) accepting invitations to intrastate and foreign tourist, recreational and other travels at the expense of physical and juridical persons, foreign and compatriot, except the following travels:

- by invitation of husband (wife), relatives, at their expense;
- by invitation of other physical persons (at the approval of a superior officer or an organ), if relations with such persons do not concern the official activities of the invited;
- carried out in accordance with the international treaties of the state, or mutual agreement between the governmental organs of the state and the governmental organs of foreign states, at the means of the corresponding governmental organs and (or) international organizations;
- carried out at the approval of a superior public officer or an organ for taking part in foreign (international) scientific, sportive, artistic, professional, humanitarian or other events, at the expense of social alliances (funds), including travels, carried out within the bounds of statutory activities of such social alliances (funds), by invitation of their foreign partners; using privileges not envisaged by the legislature, while getting credits, loans, purchasing securities, immovable and other property.

Commitment by holders of public office or persons, equaled to them, of any offence, indicated in paragraph 1 of this article, if it does not contain elements of criminally punishable acts, entail demotion, removal or other dismissal from the office, or applying in legally established order, of a disciplinary penalty. Further commitment of any aforementioned offence, within a year after applying a disciplinary penalty for the first offence, entails removal or other dismissal from the office, in the legally established order.

In case of commitment by members of the parliament of the country of any aforementioned offence, organs, conducting the struggle against corruption, notify of such fact the corresponding election commission, which shall in five days from the moment of getting the materials bring them to the information of the parliament.

Heads of governmental organs, who fail to take measures, in the limits of their powers, and envisaged by this Law, with regard to their subordinate

persons, guilty of committing corruption offences, or who take such measures in violation of this Law, or who fail to provide the corresponding information to tax authorities at place of residence of persons at fault, are subject to a penalty, levied by the court by the administrative procedure, at the submission of the law-enforcement authorities, in the amount of thirty to fifty monthly specified rates (minimum wages).

Further commitment of an offence, envisaged by paragraph 1 of this article, leads to removal of guilty heads of the aforementioned organs or other dismissal from office.

A public officer, an officer of the law enforcement authorities, who have conveyed false information to the organ, conducting the struggle against corruption, of a fact of a corruption offence, concerning a specific person, if their deed does not constitute a criminally punishable act, are subject to disciplinary punishment, up to removal or other dismissal from executing of corresponding functions, by the submission of the organ, leading the struggle against corruption.

A person, who has conveyed to the organ, leading the struggle against corruption, false information of a fact of a corruption offence, if his deeds do not form a criminally punishable act, is subject, by the ruling of the court, to the administrative arrest for up to thirty days, or to the penalty in amount of one hundred to two hundred monthly specified rates (minimum wages).

In all the cases of enrichment of holders of public offices and persons, equaled to them, as a result of corruption offences, all the unlawfully acquired property shall be turned into the public revenue, and the cost of all the unlawfully received services shall be recovered for the public revenue.

In case of rejection to voluntary surrender the unlawfully acquired property or pay its cost to the state, or pay the cost of unlawfully received services, the recovery is executed by the ruling of the court, at the claim of the prosecutor, tax administration, or other governmental organs or officers, authorized to that by the law. The aforementioned organs, before the award of the court, levy a distress upon the property, belonging to the perpetrator.

If a holder of public office or a person, equaled to him (her), upon his (her) removal or other dismissal from office for committing a corruption offence, declines to fulfill the requirements, envisaged by paragraph 1 of this article, an officer or an organ, taking the decision of such dismissal, shall direct to tax authorities by the place of residence of a guilty person a notification of the unlawfully acquired profits.

Transactions, concluded with commitment of corruption offences, are held invalid by the court ruling, in the legally established order. Legal acts, concluded in result of corruption offences, can be annulled by an organ or an officer, authorized to approve or cancel the corresponding acts, or by the court, at the claim by physical and juridical persons concerned, or by the prosecutor.

These provisions constitute the basis of the Ukrainian anti-corruption legislature, which is now represented by a number of laws: ratified by Verkhovna Rada (Supreme Council) of Ukraine in 2006 Criminal Convention on the Struggle Against Corruption; Additional Protocol to the Criminal Convention on the Struggle Against Corruption (ratified in 2006 together with the Convention); the Decree of the President of Ukraine "On the Council on the Questions of Provision of Implementing in Ukraine of the Threshold Program of the "Millennium Challenges" Corporation, with Regard to Curbing the Level of Corruption", in accordance with which there was created the Council for the struggle against corruption at the President of Ukraine; the Law of Ukraine from October 5, 1995, "On the Struggle Against Corruption"; and a number of normative acts, which contain measures of anti-corruption nature.

The major problems that exist nowadays in Ukraine, and concern the struggle against corruption, can be formulated as follows:

1. The national legislation is not fully harmonized with the UN Convention on the struggle against corruption, Criminal and Civil Conventions of the Council of Europe on the struggle against corruption. By reason of untimely adopting of the laws, initiated by the President of Ukraine, stay unfulfilled the international obligations of Ukraine, regarding establishing responsibility for corruption of juridical persons, bribery in the private sector, trade in influence and connections.

2. Amendments to legislation on bringing to responsibility for corruption of persons, possessing immunity, were not entered.

3. As the urgent problem remains the updating of the very definition of "corruption" with account of the international standards.

4. Dragging is the preparation of the new edition of the Law of Ukraine "On the Civil Service", of the Law of Ukraine "On the State Financial Control Over Declaring of Profits and Their Usage by Persons, Authorized to Execute Governmental Functions, by Members of Their Families, Close Relatives", and of the Code of proper behavior of public officers.

5. The previous government only in a year has approved the plan of actions for implementing the Concept of overcoming corruption in Ukraine, which was adopted by the President of Ukraine already in 2006.

A great role in the struggle against corruption plays the initiative of the President of Ukraine Viktor Yushchenko. Overcoming of corruption is one of the priority directions of the state policy, which leads our President. From the very first days of his election, Viktor Yushchenko took a number of measures, aimed at curtailing the volumes of corruption in the state.

In the Decree from November 18, 2005, "On priority measures regarding unshading of the economy and countering corruption" the President determined the major directions of countering corruption in political, economical and social spheres, on the nationwide and local levels.

The President set before the government the following tasks:

- developing of anti-corruption acts, which should correspond the international standards;
- developing of mechanisms of providing stability and inviolability of the property, acquired in the privatization process during 1994-2004;
- introduction of civil monitoring of the widening state of corruption in all spheres of the country's life;
- engaging scientific workers and the society in the independent expertise of the legislative acts;

The effective countering of corruption is possible only on condition of creation of potent system of preventing corruption, development of complex measures of countering this socially dangerous phenomenon, uncovering and overcoming its social backgrounds and manifestations.

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### *Zakonska odgovornost za inkriminacije korupcije*

#### *Re z i m e*

U preporukama sa zahtevima GRECO grupe (grupa za državnu borbu protiv korupcije), Ukrajna bi morala da razvije hitan i detaljan plan akcije u cilju realizacije nacionalne antikorupcione strategije. Akcioni plan bi morao sadržati kao što je mogućnost kontrole bankovnih računa, uz mogućnost saradnje i asistencije međunarodne zajednice.

U međuvremenu broj pojava oblika i fenomenologija korupcije u Ukrajini, prevencija u realizaciji globalnih inicijativa od Predsednika Ukrajine Viktora Juščenka, imali su za cilj otkrivanje nivoa korupcije u državnoj vlasti. Mnogobrojni aspekti pogoršanja problema korupcije u Ukrajini su praćeni: devalviranjem sadržaja građanskih asocijacija demokratskog karaktera i devalvacijom razvoja kontrolnih aktivnosti pri zakonodavnoj i izvršnoj vlasti; nevladine organizacije jasno su izrazile svoj antikorupcijski stav (približno 200 NVO postoji na teritoriji Ukrajine), ali to nije imalo uticaja na postojeću korupcionu situaciju; države sa niskom političkom i socijalnom tradicijom podnose nepotpune javne izveštaje o korupciji; publikovanje činjenica o korupciji u mas-medijima ne daje uvek adekvatne rezultate u odnosu na autoritet pravno-administrativnih, i u prvom redu pravosudnih organa.

Procedura kažnjavanja za korupcione akte predviđene u Zakonu za borbu protiv korupcije Ukrajine nije otpočela sa primenom. U skladu sa mišljenjem domaćih i međunarodnih eksperata ovaj Zakon ne sadrži međunarodne standarde i zahteve za prevazilaženje negativnog imidža Ukrajine kao države koja nema adekvatne legalne mehanizme i političku volju za borbu protiv korupcije. Te sugestije i preporuke sadrže bazne rezultate za formiranje u 2007. godini u Ukrajini potrebne revizije o korupciji u administraciji i formiranje jasne prakse za tretiranje slučajeva korupcije i njene krivičnopravne prevencije.

Rad na uspostavljanju primene i izvršenja Sporazuma o implementaciji *Threshold Program of Challenges of Millennium Corporation Intended for the Decrease of the Corruption Level in Ukraine* koji je potpisan od strane Vlade Ukrajine i vlade SAD u decembru 2006. godine, a takođe, i project Saveta Evrope i Ukrajine pod nazivom „Antikorupcioni Projekt u Ukrajini” (project UPAC) je praktično primenljiv. Obaveze Ukrajine, pošto je projekt počeo da se sprovodi, taksativno podrazumeva: jačanje civilno socijalnih funkcija radi borbe i sprečavanje korupcije u vladinim organizacijama; reforma legalnih procedura; razvijanje aplikacija o etičkim i administrativnim standardima i javnoj kontroli i egzekuciji korupcije; razvijanje efektivnih aplikacija o standardima za borbu protiv korupcije i procedura u sistemu visokog obrazovanja.

*Ključne reči: zakonska odgovornost, korupcione inkriminacije, nacionalna antikorupciona strategija, Ukrajina.*

#### **Literatura**

1. Международные правовые акты и законодательство отдельных стран о коррупции. – Координационный комитет по борьбе с коррупцией и организованной преступностью при Президенте Украины. Межведомственный научно-исследовательский центр. – Киев, 1999.
2. Состояние коррупции в Украине (результаты общенационального исследования 2007 г.) – Киев, Агентство США по международному развитию (USAID), 2007.
3. Коррупция. Глоссарий международных стандартов в области уголовного права. – Париж, Организация экономического сотрудничества и развития (ОЕСД), 2007.
4. Криминализация коррупции // Материалы Семинара для экспертов Восточной Европы и Центральной Азии 26-28 марта 2007 г., Алматы, Казахстан. – Париж, ОЕСД, 2007.
5. Мельник Н.И., Редька А.И., Хавронюк Н.И. Научно-практический комментарий Закона Украины „О борьбе с коррупцией”. – К.: Атика, 2004.