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Corruption: Post-Communist Menaces and European Responses (Ukrainian Case)

*“Political system that wined the victory
always corrupts its opponents”*

Stefan Naperski

The reform of public service and changing of administration model in post-communist countries assisted to splash of corruption crimes at the background of deep transformation of economical relations, all-out privatization and formation of new social groups. The term “corruption” consists of two Latin words “correi” that means “the necessary participation of one of sides to the same business” and “rumpere” that means “to do something damaged /injured/ soiled”. So we have independence term “corrumpere”¹ that signified taking part of several people whose aim of activity is to damage the normal law process or process of society problems administration².

Unfortunately, problems of civil service corruption are global. Their negative influence feels all over the world but, as a rule, we can see the worst-case scenarios of corruption in countries that is in process of political, economical and social formation. The danger of corruption for this countries consists of, at first, inability of state machinery that is insufficient professional at this time to have an adequate reaction to the crime encroachments on making important political and economical decisions. In this context corruption stimulates criminality process towards government, cultivates law nihilism of population, damages peoples trust to ideals of democracy, truth and market economy.

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¹ M.Bartoshek, *Rimskoje pravo. Poniatija, terminy, opredelenija*, () Moskva 1989, p.182.

² E.Temnov, *Korupcija: proiskhozhdenie sovremennogo poniatija. Aktualnyje problemy teorii i praktiki bor’by s organizovannoj prestupnost’u v Rossiji*, () Moskva 1994, p.53.

Integration of countries of Central and Eastern Europe to European Union is inability without result activities by struggle against corruption. Studying the European experience of development of state administration system with ensuing introduction of European standards to the correspondent national systems becomes one of important elements of united Europe building. Mutual of political interests that bases on community of systems of making, accepting and realization decisions on European countries will become guarantee of European security in XXI century.

1. Corruption as a political phenomenon of post-communism: its distinctive peculiarities

Now almost all countries declare struggle against corruption. Most advanced countries of Western Europe carries on struggle against corruption for decades. This opposition consists in, at first, creation of reliable law and institution guarantees of public and political control over the state organs different organizations and individuals. The character of this control must be democratic or half-authoritarian. In present-day meaning corruption is, as a rule, "corruption on position", or, according to Rolling Perkins, "illegal realization of official duties", "using the official rights to realize individual, family and group interests for enriching and promotion own social status"³.

In this aspect corruption connects with bribery of officials, escaping the tax collection, moving the production to consumer market, financing the election campaigns, breaching of postal rules and rules of environmental security, swindling and each other crime activities. Because of this corruption and all its associates are referred to category of official and mercenary crimes.

In contrast to memory European and American countries, Ukraine (like most post-communist countries) received by inheritance deformed civil, political state and economical structures. In the days of communist regime there was social system substitution, so economical factors of society development and economy passed on secondary position and became depended on political situation. Economical problems cannot be undo by non-political methods in that structures in which before 90% of economy are in state property.

In this aspect American political scientist A.Motyl determined situation in Ukraine in such a way: "there are people and structures in Ukraine but there is not mechanism of administration. So we have underdeveloped and deep-corrupted pseudo-state instead of state which effectively realizes the tax policy and police inspection of confident territory (this points, according to Max Veber,

³ *Osnovy bor'by sorganizovannoj prestupnost'ju*, () Moskva 1996, p.14.

are state functions)”⁴. Because of this, corruption is, first of all, political problem of most post-communist countries. Absence of professional civil service (as administrative alternative to the communist nomenclature) that was initiated by objective circumstances become the base element of politization process of corruption problems.

Nomenclature that changed the state machinery by itself in days of only-party administration is not classic bureaucracy by its substance. This is, according to Mikhail Voslensky, a “class of declassed people, the party of monopoly capital (like NSDAP) based on principals of mutual responsibility, Mafia”⁵. Autocratic element absents in it. Predominate of this nomenclature created “patronage system” and nepotism which are the worst forms of present-day corruption.

Being the survival of feudalism, patronage systems arise, as a rule, in cause when unlawful transactions and distributing mechanism concentrated in hands of limited quantity of people or organizations. Centralized profitable and obligated systems embraced various contacts based on fellow-countryman, family, party and others principals. Nepotism is corrupting system based on principles of appointment the relatives to the important state posts, buying the private property on favorable terms etc.

The old authoritative parties in post-communist countries are inhomogeneous. They consist of several directions. The first of them is “rational” nomenclature that almost consciously gave the political power to society and gradually seized the economical sector. This type of nomenclature is usual for Poland and Hungary in which traditions of private property and frankness to influence of Western Europe civilization are existed for a long time.

At second, we can see “reactionary” nomenclature which was in opposition to reformers’ actions and felt a victim to one-moment ruination of pseudo-communist regime. As a result, it almost completely was throwing out beyond the border of the political and economical life. This situation is usual for Czech and Slovakia.

At third, we have the “new nomenclature” adopted to more free political and queasy-market relations. In most ex-USSR countries, besides Baltic states, nomenclature became the basis of new reigning class. It could to safe its specific role of society life organizer, as well official and unofficial, sometimes criminal, methods of social riches distribution. This structure of this class is invariable: the privatization of other people work’s products in the way of state budget and tax policy, illegal taking part in commerce activity and shady business.

⁴ A.Motyl, *Dilemmas of Independence: Ukraine after Totalitarianism*, () New York 1993, p.65.

⁵ M.Voslenskiy, *Nomenklatura: praviashchiy klass Sovetskogo Sojuza*, () Moskva 1991, p.175.

In contrast to most Central Europe countries, most of post-soviet nomenclature workers stood into the protect of public service. As a result, in Russia, Ukraine, Moldova were formed strong patronage systems based on all-out shady economy and bureaucratic racket (cooperative-clan, "thievish" capitalism). In Azerbaijan and in republics of Middle Asia nepotism is usual situation. Another words, on post-soviet aria the problem of corruption is not a problem of "corruption on position", this is a problem of administrative system.

Towards the end of 1990s, the specific process of "state power distribution" finished at region of Eastern Europe. For example, there are several categories of politicians now. The first category consists of pragmatics personally devoted to head of country and referred to leader's clan. The second category represented by romantics whose political orientations teeters depending on cultural and historical peculiarities of concrete state and political conjuncture. The Mafiosi syndicates represented the criminal national capital.

We have to take the consideration at fact that all countries of this region publish the law normative acts by struggle against corruption. In contrast to Central Europe countries in which tendency of working out the special legislation according to European standards becomes evident more and more, in ex-USSR countries there is tendency to create semblance of effective activity and imitation of socially significance of state function by the way of acceptance of legal act in which real mechanism of achievement of manifested aims is absent. In this situation the struggle against corruption finds expression in crackdowns of representatives of opposition political and economical clans or in legitimization the political course of reigning oligarchy. The group egoism squeezes out the strategy of national interests protection. In such circumstances of progressed economical and moral crisis, law modernization, implementation European innovations become, on opinion of great society, the unnecessary action.

Thievery forms of social development are usual in international activities. Most countries of Asia, Africa and Latin America are injured by organized political crime at this moment. But we say about state arranged in the geographic center of Europe, had the strong arsenal of modern armaments, scientific-capacity industrial branches and educated population. In contrast to countries of international periphery, Ukraine declared for integration into European Union and creation the new system of European security as priorities of its foreign policy. Because of this, analyzed the ability of using the European standards in civil service reformation and another spheres of life in Ukraine, we have to take the consideration on next circumstance.

At first, the practice of transitional period countries proved that European innovations into national law are ineffective in circumstances of reigning law nihilism. Any innovation will be ineffective without legible realization of existing law standards. For example, inadequate using the law "About struggle

against corruption” put in force on 1995 may not be compensated by elaboration, according to recommendation of European Union Commission, the National program by struggle against corruption (“Clean hands”). Moreover this program that was put in force in Ukraine on 1998 is unrealized in most points. Another words, tactic of European Union concerning the post-soviet countries must be transformed from doctrine about law modernization to idea of overcoming the law nihilism and propagation the law culture among population.

At second, the civil service reform is inability without division business and policy. Political-economical groups formed in most post-soviet countries mean the state machinery is auxiliary instrument in process of decision the property and authority questions. Another words, the civil service is dependent and unprotected from influence of great business and correspondingly corrupted and ineffective. In this circumstances, on author’s opinion, reforming the political system on the whole, creation the clear and transparent rules for politicians, officials and businessmen are more important then reforming the state machinery. In this context Italian experience is useful, because Italy was a kind of “heel of Achilles” for European Union in struggle against corruption and organized crime on decades. Studying and adopting this experience may became the serious assistance in process of formation the new democracy in Eastern Europe.

The administrative reform is important circumstance of development of post-communist societies. Enlargement the rights of local self-government, democratization the local authority organs may became the very effective method on struggle against nomenclature-oligarch influence. Evident administrative alternative to all-authority of state machinery controlled by oligarchy will assist to rush the new professionals into state organs and to abolish the “casiquism” which is logic result of corruption. Realization the administrative reform according to European standards have been meaning as one of important factors of “Europeization” the national administration models.

In end it’s necessary to say that corruption is political phenomenon of post-communist regime in countries of Central and Eastern Europe. It has a lot of specific demonstrations non-peculiar to problems of corruption in its European meaning. Government’s honesty is one of the principal postulates of present-day European political life and isn’t usual element of political relations in post-communist aria. Initiated by regeneration of reigning nomenclature threatens to democratic development of post-communist countries because it substitutes the legitimate authority to authority of oligarch-mason groups, total corruption presses ideas of freedom and competition. Because of this, complete copying the European models without taking onto consideration the deep differences between countries cannot result in struggle against corruption. Ignoring the correspondent European experience, absence of wish to change anything and rejection of financial-technical assistance of European Union in struggle against

corruption threatens the international isolation and outsider position on political scene of Europe to countries of ex-“socialist community” area.

2. Policy of counteraction to corruption of state authority organs: European model

European Union countries take the great consideration to problems of optimization the work of authoritative machinery and its clearance from people used their official position to realize their individual interests. At 1st international seminar on problems of corruption of state authority organs put throw The Hague on 1989 experts of EU Commission satisfied the next actions throw basis preventive actions:

1. professionalizing the official work (adequate salary, preparation, qualified administration, impartial cadre’s assortment, professional increase, codex of ethic norms, social security, perfecting the system of decision the problems and standards of making the work),
2. making agree between official structure and territorial-administrative state system, liquidation the unnecessary bureaucratic structures,
3. simplification the system of making completes about unlawful actions of state officials (creation the system of “special letter-boxes”),
4. improvement the financial and bank regulations and principles of giving declarations about profits of officials,
5. institutionalization the post of general inspector, ombudsman, or creation the committee by professional ethic for officials to inquest the facts of corruption and to make answer the discipline etc⁶.

These general points imprinted in other documents of European organizations. Corruption is, on meaning of European professionals, first of all, is “bribery and any other behaviour in relation to persons entrusted with responsibilities in the public or private sector, which violates their duties that follow from their status as a public official, private employee, independent agent or other relationship of that kind and is aimed at obtaining undue advantages of any kind for themselves or for others”⁷.

In this connection as applied to public service we proposed to identify the next forms of corruption (with the following improvement of anti-corruption law by the way of putting the answer for this crimes):

- a. bribery;
- b. corruption of foreign public officials and elected representatives;

⁶ *Mizhregionalny seminar z problem korupcji v organah derzhavnoi vlady*, () Hague 1989 and *Mizhnarodni pravovi akty ta zakonodavstvo okremykh krain pro korupciju*, () Kyiv 1999, p.138.

⁷ *Programme of Action against Corruption adopted by the Committee of Ministers*, Multidisciplinary Group on Corruption of the Council of Europe, Strasbourg 1996, p.29.

- c. corruption of international public officials or national delegates to international organizations;
- d. trading in influence;
- e. buying and selling the posts in civil service;
- f. laundering of the proceeds from corruption;
- g. other offences connected with corruption⁸.

The basis elements of present-day struggle against corruption of civil service is prohibition the practice of buying and selling the posts in civil service and in justice system. For example, in European law the one of the first statutes' rules about criminal infringement of the law is English rule about buying posts put in force on 1551. According to this rule, the action of buying or selling any post which has relationship with administration the justice. On 1809 this law was prevalent on all posts of regal public service on all territory of United Kingdom. This norm was also used in "continental" law system. This ban/injunction parted business and state administration, blocked the proliferation of nepotism and mutual responsibility.

Analyzed the problems of bribery and inducement, we must pay attention to that fact the European lawyers practice the parting of term "corruption" on two independent concepts: "passive corruption" and "active corruption". "Passive corruption" is "requests and presents for state official on personal of another people's visit to get the necessary perquisites, privileges, divisions or non-observance by state officials their duties with the mentioned purposes"⁹. Another words, we say about giving the bribe.

In situation of "active corruption" we see giving the concrete sum of money, presents, another advantages with the mentioned purposes. In first situation the state official is subject of corruption but in second he becomes the object of corruption crime. This approach is very important of the practice point of view. Insofar as "state racket" on its results is more dangerous than simple bribe giving the criminal punishment for "state racket" is more severe. For example, in Criminal Codex of France was noted that official puts the answer for extortion and bribe getting in form of putting in prison on period until 10 years and paying a fine about 1,000,000 francs (see Unit 2 "About positional crimes", the article 432-11)¹⁰. Besides these demonstrations, in criminal law of European countries was noted the answer for another forms of corruption crimes: appropriation the official property (Italy), authority misuse (Germany, France, Belgium, Italy), discredit (France), official forgery (Germany, Italy, Austria), divulgence of

⁸ Ibid. p.4.

⁹ *Framework Convention on Corruption (Preliminary Draft)*, Multidisciplinary Group on Corruption of the Council of Europe, Strasbourg 1996, p.4.

¹⁰ *Otvetstvennost' za dolzhnostnyje prestupleniya v zarubezhnyh stranah*, ()Moskva 1994, p.23.

professional secrets (Germany, France), renunciation to execute the official duties (Italy).

The important place in European policy of anti-corruption actions was taken by the problem of corruption of foreign officials and official representatives of international organizations. For example, in project of Convention about corruption had put in force on the second round of reading in Strasbourg on 1997 by members of International group of European Union in struggle against corruption it was noticed that articles about corruption of state officials of foreign countries working out and inputting to the national law are ones of the basis law measures. This article is used to officials of international organizations. In article 9 of this document noted that “every side of this memorandum has to realize law and another measures which will assist to find crimes in the country if they were doing by the person or against the person who is work on post (...) and work on a contract in international or in intergovernmental organization”¹¹.

States 10 and 11 tell us about problem of corruption of elected officials in international organizations and international justices. The article 17 says about using the norms to the countries which are the members of European Union: “among the European Union members the norms of articles 9-11 have be using only in situations if this norms don’t oppose to own norms of Union”¹².

Great consideration to this problem may be argued by several positions. At first, the struggle against non-honest concurrent (first of all, against Transnational companies) which use inducement the officials of recipient countries to get itself at the foreign markets. At second, there is process of increasing the financial component in the activity of criminal organizations of European countries (Italy, UK) makes the real threat to stability of new regional currency “euro”. At third, there is surrounding the corruption in European structures.

Corruption of international organizations was displayed thanks to general tendencies: international organizations distribute the resources (for example, the finance assistance to member countries and to clients of organizations), and this fact is used by officials who aren’t the owners of these resources. Sooner or later, there is temptation to distribute the resources among property persons or organizations to form uncontrolled financial rivers for personal enriching. The corruption scandals with ambassador of European Union to Russia Michael Emerson on 1996 and members of EU Commission on 1997-1998 become the famous facts as a result of which there was exchange of high authorities of European Union.

¹¹ *Framework Convention on Corruption (Preliminary Draft)*, Multidisciplinary Group on Corruption of the Council of Europe, Strasbourg 1996, p.8.

¹² *Ibid.* p.10.

Creation the “out-budget funds”, or “slush funds”, is one of the basis elements of state machinery corruption too. These forms of corruption activity are very “popular” in region of Central and Eastern Europe.

Reforming the state machinery at countries of new democracy (first of all, in Ukraine) meant the strengthening the status of public officials, enlargement their pay, accumulation the costs for creation the technical infrastructure of state authority organs (remounting buildings, providing with organization technique, buying the transport etc.). for realization this aims, the state plants and local authority organs got the permission to create the outbalance or out-budget funds for sacrifice’s taxing for securing the state administrations. In view of specifics of the “distribution-permission” system of national business structure (licenses, permissions, patents, certificates), the role of bureaucracy in post-communist countries in decision the essential social problems and existence of secret informal “behavior rules” that foresee the necessary “gratitude” for getting services (sometimes guaranteed by law) based on principle “you help me, I help to you”, slush funds becomes the instrument for veiled officials inducement. Public official can recommended to businessman moving the concrete costs on account of out-budget fund at district, city or regional administration. As a rule, these funds have the status of beneficent funds, and this cause have got many privileges on imposing taxes, at least, in Ukraine till 1998.

In European meaning, slush funds are structures which financial recourses and property isn’t registered at official documents and financial year’s accounts. As a result, consolidated balance or budget of organization isn’t real. In most circumstances, slush funds are enriched for years. Public officials use the sacrifices of firms and individuals, plunder budget costs, create the false commercial structures, realise money laundering and get the concrete percents, take part in bank operations and buy the immovable. Slush funds formed basis for development the phenomenon of “juridical persons’ corruption” (getting accumulation conservation on all forms, unlawful saving values and costs which was earned on unlawful way) and state machinery regeneration which begin to earn the money independently by buying of its influence. On tax-payers’ money it create the criminal system of self enriching, using the subjects of market economy for protection and realization the unlawful activity¹³.

Because of this, in the meaning of western specialists, the rejection of out-budget funds and putting in force the strict budget discipline in state organizations are the stumbling stone for struggle against corruption. For example, in Convention of European Union on struggle against corruption, that was affirmed on May, 26, 1997, and Lima declaration, that was affirmed on

¹³ *Conclusions and Recommendations of the General Rapporteur* (Mr. Lorenzo Salazar, Italy), First International Conference for Law-Enforcement officers specialised in the Fight against Corruption, Strasbourg 1996, 24-25 April, pp.3-4.

September, 11, 1997, was noted that reform of public service is impossible without strengthening the system of financial administration and making the budget process more transparent. Besides this it was proposed to put in force the system of accountability for both officials and their relatives; officials' relatives have to declare their incomes' increase if this increase is more than increase of legal incomes.

We have to say that regional collaboration is important component of European model by struggle against corruption. Because the level of corruption of civil service is different in the European countries, so we have different anti-corruption methods in national law. Regional collaboration gives the chance to work out the mutual methodic for decision the problem and standing to concrete positions. For example, Committee of Ministers of Council of Europe declared the project of Memorandum about creation the states' group on struggle against corruption (GRECO) at the 102 session organized on May, 5, 1998. This group consisted of both states which was the members of European Union and specially marked states, for example Byelorussia, Canada, Georgia, Vatican, Japan, Mexico and USA.

Preamble of this document tells us about unity of problems of corruption, of organized crime and of lawful flow of unlawful cash, necessity of communication the states' forces, exchange by experience on liquidation the corruption, creation the general criterions of assessment the struggle against corruption etc. The success of realization the concerted project of European Commission (PHARE Program) and Council of Europe on struggle against corruption and organized crime in countries of transitional period - "OCTOPUS Project" (since 1998 - "OCTOPUS-2") - became the one of basis causes of formation this group. Ahead of time the group GRECO must be created on three-year period.

Corruption problems have discussed at the many European forums, for example, at the XIX European Conference for Ministers of Justice (Malta, 1994), at 101 Meeting of Committee of Council of Europe Ministers (Strasbourg, 1997), II Conference for heads of the countries and the governments of Council of Europe (Strasbourg, 1997), at the Prague conference for Ministers of Justice of 40 countries which are the members of Council of Europe (Prague, 1997).

As a result of some corruption scandals in EU institutions, in 1998 European Bureau on the struggle against Corruption (OLAF) was formed with the goal of the corruption practice investigations in EU committees, organs and organizations. OLAF is an organic and independent part of EU Commission. The Director and Members of OLAF organize internal investigations on different corruption cases in EU institutions and information work about foreign organizations connected with activities of European Union, develop multilateral cooperation amongst EU national justice systems in this sphere, give recommendations about disciplinary or, in some cases, criminal responsibility of EU officials etc.

The functions of the control based on a *posteriori* principle toward OLAF anti-corruption policy is concentrated in special Monitoring Committee. Its' members, elected for 3 years on July 9, 1999, are: Mireille Delmas-Marty (Chairman of Committee, France), Edmondo Bruti Liberati (Ministry of Public Service, Italy), Jose-Narciso da Cunha Rodrigues (General Prosecutor, Portugal), Raymond Kendal (General Secretary of Interpol, UK), Harald Noack (layer, Germany)¹⁴.

Experts of Council of Europe said both the renunciation to take the financial help and credits and the creation the system of international isolation are very effective methods of influence to the country which is all-out corrupted and don't want to struggle against corruption. Daniel Kaufmann, the famous specialist by questions of post-communist countries' development, was the first who has explored this problem. On 1996 he has passed the poll amongst 150 representatives of ruling classes of 63 mature countries including of post-communist countries. More than one half of respondents said that during the last ten years the corruption level in their countries increased; 30% of respondents said that corruption level is staying on its position. On their meaning corruption is more popular in the state sector then in the private sector. They said too that the denude to finance their states "to prolong the reforms" may give very strong kick to corruption, because it will be very difficult to balance the budget, so it will make the social necessity to begin the anti-corruption campaigns¹⁵.

May be, because of this cause mobility of country to struggle against corruption is the one of obligatory stipulations among the recommendations of ICF, of World Bank and of EBRD for giving the financial help to the country. For example, EU realizes the anti-corruption and civil service reform's program "SIGMA" in countries of Central and Eastern Europe. Having the information about realizing the law, activity of state organs etc, EU uses it for making decisions by giving the financial help. Analogous program is realized by USAID. Its Anti-Corruption Network helps to optimize the struggle against corruption and to establish the international collaboration to national anti-corruption structures of ex-USSR area. The propaganda of project "Recommendation on Improving Ethical Conduct in the Public Service" becomes the one of last recommendations as the basis for building the "clear" state machinery in European region and in all over the world¹⁶.

Certainly, the European model of struggle against corruption of state authority organs isn't ideal by its many positions. So, for example, on 1998 the

¹⁴ J.Gonzalez, *Unia Europejska wobec korupcji*. Potrzebny jest Pakt Antykorupcyjny – konferencja naukowa, Warszawa 8 maja 2000 r., p.104.

¹⁵ D.Caufmann, *Korupcja v tumani dvoznachnosti*, Polityka i chaos, 1998, No.1, p.65.

¹⁶ *Building Integrity in Government: the OECD as part of a Multiple Response*, Statement by the Honorable Donald J. Johnston, Secretary General of the OECD, 1999, 24 February, p.3.

corruption index of "Transparency International" says that Malaysia, SAR, Poland, Czech and Chili are more "clear" than Italy and Greece which are the EU members. But the general tendency to clear out the public service of the corruptioners in EU countries is more strength than in many countries of this region. This point is a cause of active using the European colleges' experience by the countries of transitional period.

3. Ukraine and struggle against corruption at the European region

Corruption in Ukraine become serious threat to the national security of the country. The reasons of present-day bout of corruption are in connection with results of long-period authority of totalitarian regime, distribution mechanism of social-economical relations in days of communism and with present-day peculiarities of "transitional period" (general non-stability of political situation, economical crisis, destabilization of financial-monetary system, weakness of state-power institutions, law nihilism, revisions in social structure of society).

According to sociological statistics, answering the question "What cause, on your meaning, is main for corruption in Ukraine?", more than 36% of respondents said that "rulers of country haven't any political will power to prolong the struggle against corruption"; 11% said that "having to bribe the state officials, businessmen have to work hard"; 7% said that "national law base is imperfect"; 1% said that "justice organs are weak"; 37% said that "all these causes"¹⁷.

The sorrow statistic fact become the reality: 80% of Ukrainian official stay at the one state position less than 8 months. Being unsure about their future, they try to maximally use their status for quick self-enriching, for example, for taking a part in commerce activity¹⁸.

In Ukrainian regions situation becomes especially dangerous. In a result of relationships of criminal leaders and official, in some regions of Ukraine criminal structures and bandit formations factually and partial legally control the creation and development of network of different commercial enterprises (shareholders' communities, joint ventures, cooperatives etc).

The amount of registered corruption crimes has sky-rocketed. In view of high ability of corruption to standing at the last positions, statistics cannot be true. But we can make the output about increasing of corruption level from information we have. For example, 2469 criminal processes against corruption

¹⁷ The Day, 1999, 27.10.

¹⁸ V.Pikhovshek, *Borot'ba z korupcja. "Konflikt interesiv" ta ukrainske zakonodavstvo* (), Ekonomichni reformy siogodni (), 1997, No.3, p.28.

have began on 1993, but on 1997 the amount of this processes enlarged to 4504¹⁹.

So, with increasing of criminal threat, we can see inadequate reaction of law-order and justice systems to this situation. Analysis of practice of using the punishments for the bribery with heavy circumstances (parts 2 and 3, article 168, Criminal Codex of Ukraine) showed that on 1998 it was uses the measure of punishment lesser then minimal level to 42% of prisoners. Every third was convicted conditionally or with postponement of punishment. Confiscation the property wasn't used to 30% of corrupt officials; two thirds weren't denuded the ability to take the positions at the state machinery in future²⁰.

The law basis of struggle against corruption of public service of Ukraine consists of: 1) law of Ukraine "About organizes-law basis of struggle against corruption", "About state service", "About struggle against corruption"; 2) state programs, for example, the National Program on struggle against corruption, Complex-main program on struggle against crime in 1996-2000 and another bills (President's edicts, arrangements of head of the government etc).

Most of this documents have a lot of serious defects. Rule of Ukraine "About struggle against corruption" doesn't mark the main points: the express limits between administrative and criminal (corruption activity) concepts. Problems of criminal responsibility for corruption crimes are at the border of law norms, without any argues the circle of possible subjects of corruption activities and organs which are responsible for realization the struggle against corruption and organized crime was tapered.

On the meaning of experts, the Rule of Ukraine "About public service" isn't correspondent to the international law at most its points. For example, according to articles of this law more then one half officials (52,1 %) may not be attested by many causes²¹. At second, this law hasn't a catalogue about all positions of officials who are the possible subjects of corruption activity. The mechanism of control for objectivity and totality of declarations about officials' incomes wasn't stipulated.

Also, it's difficult to understand the role and status of Ministers: at one side, they are officials too (but there is no clear answer at this question at the law), but, at the second side, they have a status of politicians with a very fuzzy wording. Status of persons named the officials (workers of state newspapers, TV and radio companies etc), heads of local self-government organs, deputies of representative organs and of Parliament, directors of budget fondues and another may be discussed too.

¹⁹ Information of the Ministry of Internal Affairs of Ukraine, 1997.

²⁰ Ukrainian General Attorney Office, 1998.

²¹ M.Kamlyk, E.Nevmerzhytski, *Korupcja v Ukraini* (), Kyiv 1998, p.171.

In some post-Soviet countries these problems were presumed at the legislative acts according to European standards. For example, the law of Latvian Republic "About Officials" neatly parts the categories of "state politicians" and officials, state officials and self-government officials, inputs two classes of officials ("A" and "B") and concretely confines the term for being at the state service (articles 10 and 16). It decided the problem of controlling the incomes' declaration. In law of Lithuanian Republic the mechanism of giving the declarations about incomes and another property was noted, also it fixed the responsibility for late giving or veiling the information about incomes and property. If the state official disrupts the norms of using law, he may, as a minimum, become unemployed and lose his professional rights.

The institution of deputy immunity has an important role in the enlargement of corruption. Parliament immunity is used in the most of countries but its broad treatment gives a lot of negative results in Ukraine. According to the law "About status of the popular deputy of Ukraine" the deputy is practically within the non-jurisdiction because the Verkhovna Rada gives the permission to the arrest of deputy (deputy may be arrested only if there is a permission of Verkhovna Rada) and, factually, to the beginning the law process against the deputy. Also, the article 27 of the principal says that after the changing the job ex-deputy may be attract to administrative or criminal responsibility for criminal actions realized at the period of his being the deputy only like another popular deputies of Ukraine. Another words to say, in most situations Verkhovna Rada has to give its permission for beginning the law process against the ex-deputy. Until March, 1998, the immunity system was used to the all Soviets (from settlement to Verkhovna Rada), but after putting in force on March, 1998, the corresponding law, deputies' immunity became the privilege only of Verkhovna Rada of Ukraine.

Liquidation the immunity for deputies of local Soviets is a result of growing criminalization of representative authority organs. Finding the immunity from justice, criminal authorities, corruptioners and another offenders become the deputies. Bribery and plunder of state resources developed in unprecedented tempo. Status of deputies' immunity created the mutual responsibility amongst the deputies of local Soviets. So, according to information of Ministry of Internal Affairs, on 1997 local Soviets gave the permission to bring to administrative responsibility by only 183 deputies from 974 (20%) inquired by public prosecutors. 374 inquires were turned aside, 417 inquires weren't discussed. In summa, because of this reasons 791 protocols against deputies who realized the corruption activity weren't putting in jurisdiction.²²

²² Information of the Ministry of Internal Affairs of Ukraine, 1997.

Success of struggle against corruption in terms of increased internationalization in most positions is depended on the level of international collaboration. Being in the center of Europe, Ukraine cannot be at the border of the context of common European processes. The first situation in which Ukraine said about itself at the European ring on 1993 by supporting to the political Declaration about struggle against increasing the level of organized crime and corruption at the Western and Eastern Europe. Articles of this Declaration foresee, separately, giving the help by European Union countries to Eastern Europe countries with unification the national special law on struggle against corruption and organized crime, concluding corresponding the bilateral and multilateral agreements about juridical help etc²³.

Confirmed by European Union on 1996, "Ukraine-Action Plan" is a very important component at the establishment of collaboration between Ukraine and European countries at the sphere of struggle against corruption in a context of reforming the state machinery. This document is all-embracing; it tells about many questions. The encouragement of democratic reforms and creation the effective state machinery in Ukraine, struggle against corruption, reforming the economy and integration into the European system of economical relations, development the system of social provision, performing the Ukrainian law according to European law etc are the priorities of the Plan.

It takes a great consideration to necessity to realize the administrative reform and to clean the state machinery from bribe-takers. Separately, article 5 of this document take the accent at the help of European Union with implementation the corresponding law norms to the law system of Ukraine, at the giving the necessary financial and technical service, at the assistance to development of regional collaboration system between national police and law systems and also at the refinement the forms and methods of handling the investigations by corruption of public service²⁴.

For fulfillment the demands of this document at the first half of 1997 the concerted program on struggle against corruption (Ukraine – European Union) has been working out and putting in force. In structure of European Union was created the special commission by questions of collaboration with Ukraine; this commission consists of representatives of Ukraine and of countries which are the members of European Union. Provision the standing interrelation and information exchange between European structures and Ukraine by the questions of reforming the state machinery and struggle against corruption, organization the probation periods for Ukrainian state officials in the corresponding European institutions, financing the researches into the sphere of optimization the state

²³ M.Debacq, *Politiques nationales et dimension europeenne de la lutte contre la criminalite organisee* (), Relations internationales et strategiques, 1995, Vol. 20, pp.195-199.

²⁴ *Ukraine – Action Plan*, Politics and the Times, 1997, No. 1, p.44.

administration and struggle against corruption exhibitions are particularly favored amongst of the tasks of this commission.²⁵

Signing by President of Ukraine the Edict about putting in force the Conception of struggle against corruption to 1998 – 2005 (April, 24, 1998) become the one of results of deep collaboration between Ukraine and EU structures. Part 3 which is about preventive measures by struggle against corruption, separately, showed us the measures on democratization the state machinery according to European standards. This document declared that Ukrainian government will try to limit the apparatus and its authority on sphere of permission and allocation, to analyze the failures in cadres policy, to provide the assortment and arrangement the cadres by results of competitive examination, their adaptation, periodical rotation, to control the declaring the incomes, to regulate the terms and system of taking by officials the presents, commission bounties, services, using the transport, communication, techniques etc.

Also it's planned to work out and to confirm the Codex of state official's behavior and corresponding discipline codex with noting the system of attracting to the discipline responsibility, types and forms of recovery for positional crimes and rules of encouragement for ethical official behavior, to create the database about persons who were punished for corruption crimes or were attracted the administrative responsibility for using this information in special controlling the persons contended to stand into vacations of state sphere or standing at that positions, to form the database about commercial structures which have deep relationships with corruption for liquidation their ability to take part in realization the state orders and contracts, to limit neatly the competence, responsibility and authority of controlling instances.

It take the great consideration to the international collaboration at the conception. We tell both about the using the foreign experience and about the system of giving the information to international organizations by Ukraine (previously, the European Union) about success in struggle against corruption. Clearing the public service from corruption is the one of priority tasks of state-building for transitional-period countries. Extension the European Union and creation the unity Europe haven't meet the resistance of mercenary officials. Unification the national law and its effectiveness multiplied by ethic of state official and corresponding moods of society, struggle against law nihilism and democratization the state authority organs consist the imperative of European policy toward Ukraine. Inclination and ability of this country to struggle against corruption are guarantees of security for new Europe.

²⁵ Ibid. p.62.