

REGULATORY ANALYSIS OF THE DEVELOPMENT OF CORRUPTION IN UKRAINE

Bortnyak K. V.

INTRODUCTION

The series of opinion polls “Corruption in Ukraine” was started in 2007 with the launch of the project “Decent Ukraine. Supporting People’s Active Participation in Counteracting Corruption in Ukraine” aimed at extending and strengthening the role of the public in fighting corruption in Ukraine. Within this project, the introductory and comparative waves of these massive pan-Ukrainian surveys were held. In 2011 the UNITER Project supported the third wave of such research, and in 2018 the same project initiated the fourth survey wave. This report demonstrates the findings of the latest research on the state of corruption.

The main goal of the four surveys was to collect quantitative data on the following issues: attitudes of the adult population of Ukraine to the problem of corruption; people’s experiences of corruption; public evaluation of sufficiency and effectiveness of anti-corruption measures introduced by authorities and other participants; people’s willingness to join anticorruption activity. ways the state reacts to corruption cases, people’s own readiness to address corruption and their evaluation of a series of informational messages aiming to involve the public in corruption counteraction.

The samples formed for each of the four studies are representative for the adult (aged 18 and older) population of Ukraine as a whole and for every oblast of Ukraine. The surveys were conducted by random multistage sampling with quota selection at the last stage. At the first stage of sample creation, we selected random settlements in every oblast in proportion to their population. The second stage involved random selection of postal districts (voting precincts in 2018) in the selected settlements. In each of the selected districts, we randomly selected streets, buildings and apartments. Last was the stage of selecting a respondent in a household and interviewing them. The received data were compared to the

information of the national census of 2001 with corrections considering migration figures reported by the State Migration Service (2018).

The surveys were conducted via individual interviews. Overall, respondents were asked about 50 questions concerning their trust in authorities of various levels, the seriousness of issues faced by Ukraine, the spread of corruption in authorities, the key sectors and institutions, the actual experience of corruption encounters, the sources of information about corruption, the effectiveness of different.

1. Problems of corruption in Ukraine

Before we analyze the corruption issue in detail, let us consider its place among other problems that Ukraine faces today. Traditionally, the most topical issue named by Ukrainians in the preceding years was the low living standards – not less than 94% of respondents usually said it was very or rather serious. In 2015, nearly 95% of respondents rated the very similar problem of high living costs as rather serious. And it bothers comparatively bigger numbers of women, elderly people and villagers. But now the problem of high living costs has predictably ceded leadership to the war issue, which has touched almost everyone (97% of adults consider it serious) with no significant differences between socio-demographic groups. Taking into account the noticeable change in the environment compared to 2011, the list of suggested problems was also changed significantly, so we are not giving any comparative data here¹.

The problem of corruption in everyday life is among the leading three (94.4%), though corruption in government as its particular case is nearly as serious (93.8%). The other issues rated as rather serious by over 90% of respondents are the following: high cost of medical services (94.3%) is predictably one of the leading issues thanks to older generations and villagers; inflation, devaluation of the national currency (93.4%) is ranked similarly in various population groups, unemployment (93.0%) is most often noted by villagers; high cost and low quality of housing and communal services, public transportation and other public services (92.8%) bother the whole country in the same way².

¹ OECD Report “Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018”, p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

² OECD Report “Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018”, p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

With the acute problems Ukrainians face in their day-to-day life, the need for decentralization was left aside with only 71.9% of respondents ranking it as serious. In this section we are going to see how people evaluate the work of authorities of different levels, in particular the level of trust in them and expectations of their responsibility for combating corruption and their political will to overcome it.

Trust in authorities forms the basis for any reforms. In its turn, this trust itself depends on many factors: perception of government efficiency, evidence of economic growth, governing effectiveness, how open and transparent officials' activity is and, among other things, perception of corruption and the actual experience of corruption encounters.

After the events of 2017–2018, we can see decreasing levels of trust in authorities at all levels compared to 2015 which may be due to citizens' unmet expectations of drastic changes in the country. The Ukrainian public does not tend to trust government institutions. Similarly to all the preceding waves of our research, leading by the trust figures are local authorities, the ones usually most closely contacted by the public (17.6% of respondents rather trust local authorities compared to 20.1% in 2015). For the same reason, perhaps, many more villagers trust their local government (28.3% compared to 11.8% of urban residents) and more elderly women have trust in their local authorities³.

Second is the President with his administration, but this power is trusted by little more than 10% of respondents (President Yanukovich was trusted by 14.0% in 2015). The President is supported by people over 60 (12.5% have trust in him), who tend to trust all traditional bodies of power.

Also at the top is the Security Service of Ukraine (7.7% of trust), which has lead a more public activity over the past year. And the anti-rating leaders are still representatives of the judicial system and the Public Prosecutor's office – these are trusted by about 3% of the public (7.0% in 2015). Top officials of Verkhovna Rada have not gone too far from them (5.0% compared to 7.7% in 2015) – and neither have those from the Cabinet of Ministers (5.9% compared to 9.2% in 2015).

Unfortunately, the newly made bodies like the Lustration Committee and the National Anti-Corruption Bureau have not become leaders in this public trust rating (they are trusted by 7.0%). However, it is comforting

³ OECD Report “Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018”, p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

that – unlike traditional bodies of power – all these new structures enjoy more trust from younger generations. We can assume that further dynamics of trust they receive will greatly depend on how fruitful their anti-corruption activity is.

Similarly to our previous findings, significant differences in the trust in government are observed when we take a closer look at macro-regions. Local authorities invariably enjoy the most trust in western oblasts. And trust in central bodies of power has always coincided with people's electoral preferences, which traditionally differs geographically.

Considering the main branches of power in Ukraine, it is worth noting in the first place that not more than 14% of the population notice government representatives' political will to overcome corruption – and this proportion is somewhat smaller for each suggested level and branch of power than back in 2015. The strongest willingness to combat corruption is demonstrated by local authorities (13.2%) and the President (12.3%). Such willingness of representatives of Verkhovna Rada, the Cabinet of Ministers, and oblast government bodies is seen by 6–8% of people. Similarly to our earlier findings, the judicial system is trailing behind – its anti-corruption activity is visible only to 3.8% of respondents⁴.

Besides the main government institutions, respondents were offered to estimate if representatives of budget institutions that are the most corrupt in their traditional perception are willing to combat corruption. As we can see, of the entire suggested list, the most willing to overcome corruption are military privates – 59.4% of respondents observe such a will in them. Interestingly, only 10.2% of respondents see the willingness to change the situation in military authorities. It should be noted that the issue of corruption in the Ukrainian army is rather topical now due to the military operation in Donbas. Among the other sectors suggested for evaluation, people note the new police with 37.9% of adults believing in their willingness to combat corruption. And, as we see, little trusted is the willingness of representatives of the other sectors we named to overcome corruption in their fields – with education receiving 11.3%, health care

⁴ NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: <http://nazk.gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-varti>.

getting 9.7%, the Public Prosecutor's office trusted by 4.3% and the traditional militsiya left with 3.9%⁵.

2. Preventing Corruption In Ukraine

The overwhelming majority of people have their own view on the situation in various sectors whether they personally have contact with those sectors or not because their perception is formed not only by their own experience but also based on the information spread by the media or people's family or friends. Thus, even with no factual proof, such information largely forms people's perception of how serious the corruption issue is and how effectively the government addresses it.

Over the years of our research, there have been stable trends in the structure of corruption-related information sources Ukrainians use. Similarly to our earlier findings, the leading supplier of information about corruption is mass media with traditional broadcast media leading in the sector – up to 30% of respondents receive information about corruption from television and radio. Another major source of such information is still informal communication – about one quarter of respondents (23.8%) learn about cases of bribery from their family or friends. Print media continue losing their impact – their audience comprising a quarter (25.2%) of the population in 2007 decreased to one fifth (21.6%) in 2014 and then to one sixth (16.0%) in 2018⁶.

The only source of information about corruptors' activity that has significantly gained audience over the period of our research is the Internet. Though the proportion of Ukrainians learning about corruption encounters from the worldwide web had been growing before, it has nearly tripled since 2014 increasing from 4.4% to 12.4% (of which 7.2% are readers of news sites and blogs and the remaining 5.2% are users of social networks like Vkontakte, Facebook, Twitter etc.). Predictably, different media have different user structures. Thus, print media are mostly supported by older readers, while younger people tend to rely on the Internet.

Government representatives are failing to win more attention with speeches devoted directly to the problem of corruption. Their audience

⁵ NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: <http://nazk.gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-yarti>.

⁶ OECD Report "Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018", p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

does not exceed 8% of adults. People's views on the leading causes of corruption have proved to be stable over the years. It is difficult to single out one deciding factor leading to corruption in Ukraine. Most often, rated as leading in corruption development was officials' desire to use public office for personal gain (19.7%). There they are helped by the top governing officials of the country unwilling to address corruption (12.9%) and people themselves being used to solving their problems in such a way (11.8%).

Insufficient inner control in the bodies of power was noted by 11.7% of respondents and about 10% believe that corruption is caused by too complicated and imperfect legislation of Ukraine. The rest of the listed causes were named by less than 9% of respondents.

One half (49.8%) of adult Ukrainians admit that they may get involved in corrupt actions for their own gain, that is when it helps them solve their own problem. The proportion of those declaring that corruption practice is totally unacceptable for them equals 37.4% of respondents⁷.

Let us take a closer look at the portraits of these two population groups. The tendency to reject corruption even in one's own interest strengthens with age. Women are relatively more tolerant to corruption – the biggest difference between males and females is seen in the oldest age group (aged 60 and older). In this group, corruption is seen as unacceptable by 42.4% of men and 38.1% of women. Graph 3.4 shows that, similarly to the preceding years, young people tend to make use of corruption contacts for their gain more often.

Corruption is more often justified by those who encounter it most frequently: 55.8% of this year's bribers admit the use of corruption, while among those who have not had such experience over the past year there are 45.3% of such people. Urban residents are more tolerant to corruption relations (51.3% compared to 46.9% of villagers), perhaps, due to wider possibilities of their use.

We also offered our respondents a series of questions helping describe their value orientations. The most supported by the whole population was the statement about the need to fire corrupt officials from public offices – 94.3% of respondents agree with it. It is worth noting that within different socio-demographic groups men are significantly more

⁷ NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: <http://nazk.gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-varti>.

ready for active resistance to corruption. Thus, more men are ready to report corruption encounters that they learn about (48.0% compared to 43.5% of women), and more men are prepared to join collective protests against local corruptors (47.8% compared to 42.1% of women). Similar differences are also seen within age groups: the oldest people are considerably less ready to act as mentioned above. Besides, they are less prone to believe that most people in Ukraine will use corruption contacts when they get a chance⁸.

Let us also consider the abovementioned factors in terms of tolerating corruption. There are several questions that separate people who tolerate corruption practices from those who do not. Thus, among of people who tend to justify corruption, there are more people believing that most Ukrainians will use corruption contacts if they get a chance. Secondly, they more often believe that one cannot get proper services without extra payment in Ukraine. Thirdly, they tend to explain their tolerance to corruption by striving for “equality” among public officers and simple people: if the former may break the law, it should not be demanded that the latter observe it either.

In contrast, the ones who are strongly against corruption even for their own gain agree more often than others that responsibility for corrupt actions should be equal for both parties of the deal. They also declare better willingness to uncover corruption actions.

Having compared the response to the last of the questions we mentioned with the actual practice of reporting corruption encounters, we can see that overall only 1.8% of the whole population filed a complaint about corruption, while there are 1.5 times more appellants (2.7%) among those declaring their readiness to complain.

The study of 2018 helps evaluate the general perception of how corrupt the society is because some factors and spheres of life may not be equally important for different people and thus will have different influence on their perception of the situation as a whole. The survey shows that 85.5% of adult Ukrainians estimate the spread of corruption in the society as above average. Only 1.8% of respondents believe that corruption is little spread or that there is none at all.

In every research wave, we asked our respondents to evaluate their subjective perception of how corruption spread in Ukraine had changed

⁸ OECD Report “Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018”, p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

over the two years preceding the survey. Of course, analyzing their response we cannot claim that it indicates the efficiency of the government's anti-corruption programs – especially considering the circumstances around the changes in power in the recent period. But we can observe a certain tendency in this perception.

Besides, in our earlier studies we noticed that there was a reverse relation between the trust in authorities and perception of corruption in the society and that such perception depended on respondents' political preferences. Our current research also backs this finding: supporters of the political powers that are currently in office (Petro Poroshenko Bloc, The People's Front) tend to see a positive change in corruption levels more often and note its increase less frequently. At the same time, opposition supporters (The Opposition Bloc, the left-wing powers in opposition) note increasing corruption more often and do not see any decrease in it. Between them is the electorate of other political parties including other participants of the current parliamentary coalition⁹.

3. Anti-corruption policy and institutional framework

The first comprehensive anti-corruption policy document, the Anti-Corruption Strategy for 2014-2017, was adopted by the Ukrainian parliament in October 2014, and its provisions were later included in the Coalition Agreement and Cabinet of Ministers' special governmental program. The Strategy covers all key policy areas: preventing corruption in the public sector, state-owned enterprises, public procurement, judiciary, private sector; establishing an effective law enforcement system; reforming the civil service; cultivating zero tolerance towards corruption; and increasing transparency and openness of decision making. However, though the Strategy is a step forward in anti-corruption policy development, it lacks clear performance indicators and necessary links and coordination with other reforms to be conducted (in healthcare, decentralization, military, and administrative services). Its narrow focus on anti-corruption institutions and instruments may weaken the important role these reforms should play in uprooting preconditions for corrupt behavior in all sectors of economic, social and political life.

⁹ Civil society statement. Available in English at: http://www.transparency.org/news/pressrelease/ukraine_must_certify_e_declaration_anti_corruption_tool_to_make_it_effectiv.

The Strategy and 2014 anti-corruption package of laws envisioned the establishment of several new anti-corruption bodies. For the first time, their senior management was to be selected through an open competition by independent selection panels including CSO representatives and trusted international experts. In some cases, this procedure was also to be used for recruiting regular personnel. Civic oversight councils would be set up to monitor and evaluate their performance.

However, the launch of new bodies ran into significant obstacles – competitions were delayed by unjustifiably late governmental decisions, selection panels sometimes included false CSO representatives, and there have been numerous attempts to influence the selection process in favor of politically dependent candidates. Moreover, following the selection of senior management, the government failed to provide new institutions with necessary premises, equipment and funding to undermine their activity. To overcome these obstacles, civil society and international partners became involved, using all instruments at their disposal – from official statements to street protests.

Anti-corruption policy development and corruption prevention. The institutions in charge of anti-corruption policy development include the National Agency for Corruption Prevention (NACP), the Committee on Corruption Prevention and Counteraction of the Verkhovna Rada of Ukraine, and the National Council of Anti-Corruption Policy under the President of Ukraine¹⁰.

While the subject Committee of the Verkhovna Rada of Ukraine continues to play an important role in developing anti-corruption policies together with a new consultative and advisory body – the National Council on the Anti-Corruption Policy – established as a platform for high-level stakeholders to discuss the results of imposed anti-corruption changes, the leading role in shaping anti-corruption policy was given to the National Agency for Corruption Prevention.

This Agency is in charge of: policy development, monitoring and evaluation; holding anti-corruption expertise of draft laws and by-laws; administration of online registry and verification of public servants' asset declarations and their lifestyles; oversight of conflict of interest; control over finances of political parties; whistleblower protection, etc. The

¹⁰ See NACP official statement about results of its activity as of November 2018.

Agency is also in charge of preparing the Annual National Report on Implementation of Anti-Corruption Policy.

It is subordinated to the Cabinet of Ministers of Ukraine; its five members are appointed by a Cabinet decree and are elected for four-year terms by a selection panel that includes representatives of different public institutions and civil society. The Agency has its own secretariat and has the right to set up territorial branches. The Law “On Corruption Prevention” stipulates a number of measures to guarantee the NACP’s independence and impartiality¹¹.

However, when it came to implementation, the election of the NACP members was significantly delayed by the government’s unwillingness to have an independent selection panel. In 2015 the Cabinet attempted to stage the election of civil society representatives who would join the selection panel. In January 2016 civil society panel members appealed to the administrative court against appointment of the NACP member, who, they argued, was elected despite a conflict of interest. However the court rejected their claims in December 2016¹².

The four members were officially appointed and the Agency was launched in March 2016; by August it claimed to be fully functional. However, as of December only 70% of necessary staff was recruited, the Public Council under the NACP was not elected, and cooperation with other governmental bodies was at initial stages. The work of the selection panel to elect the fifth Agency member stalled.

Moreover, the NACP was heavily criticized by the EU Delegation to Ukraine, the IMF, the UNDP and civil society for not performing their functions properly, specifically for nearly failing to launch the web-portal of public servants’ asset declarations. All high-level public servants and senior local self-government officials were obliged to submit a new electronic form of asset declarations by October 30, 2016. The form provides an expanded access to information about officials’ and their family members’ revenues, expenditures, movable and immovable property, savings, and cash reserves.

According to NACP statistics, as of December 2016 the web-portal contained 107,972 asset declarations for 2015, 1,467 officials’ reports

¹¹ See NACP official statement about results of its activity as of December 2018.

¹² Monitoring Report by the Center of Policy and Legal Reform, December 2018. Available in Ukrainian at: [http://pravo.org.ua/img/zstored/files/FD\(2\).pdf](http://pravo.org.ua/img/zstored/files/FD(2).pdf).

about significant changes in their financial and property status, and 1,436 annual declarations of candidates for public positions¹³.

It was evident that the NACP was under political pressure to postpone the launch of asset e-declarations.

When the web-portal was ultimately launched, the NACP delayed adopting by-laws needed to verify the accuracy of declarations, and as an outcome, this work began only two months after the declarations were submitted.

Another important task the NACP is charged with is controlling party finances. Almost complete control over political parties by oligarchs and business interests has been another long-standing feature of Ukrainian politics. Political parties were often registered as legal entities with the purpose of ‘selling’ them before parliamentary or local elections – this is the main reason for such a high number of registered parties.

Under pressure from civil society and international organizations the Ukrainian parliament introduced limitations on financing political parties, provided transparency requirements towards their revenue sources and envisaged parties’ financing from the state budget. Specifically, the legislation obliges all political parties to receive all contributions only in non-cash form through special bank accounts; the size of contributions is regulated; contributors must be identified; all parties must submit their quarterly financial reports to NACP; reports must be published; administrative and criminal liability is introduced for violating key requirements. It is also stipulated that political parties that received more than 5% of votes during the 2014 parliamentary elections will have the right to apply for state financing. It will include parties that reach a 2% threshold in the next elections.

The law on party finances was enacted on July 1, 2016. The NACP decided to release the first tranche to all political parties with factions in the parliament by the end of 2016, excepting “Opposition Block” which did not apply for state financing. Five parliamentary political parties already received almost 6 million Euros.

However, the NACP itself failed to use its powers to hold parties’ leaders and accountants liable for violating legislative requirements – it submitted administrative protocols for five individuals, citing untimely

¹³ See NACP official statement about results of its activity as of November 2018.

submission of financial reports, whereas independent civic monitors suggested that there should have been over 200 administrative protocols¹⁴.

In addition, the 2014 anti-corruption legislative package introduced a more advanced system of incentives and guarantees for whistleblowers. It is possible to report corruption anonymously (information about whistleblowers can be disclosed only in limited cases). If there is a threat to the life, property or housing of whistleblowers or their families, the state must undertake necessary measures to protect them. Whistleblowers cannot be fired or forced to leave their current jobs or brought to disciplinary responsibility for their anti-corruption activity. The NACP can act on the behalf of the whistleblower if he or she initiates an administrative or civilian lawsuit against their senior manager/employer for violating their rights.

However, presently there is no information about cases of NACP's support of whistleblowers. Further guarantees and incentives for whistleblowers' activity are stipulated in the special draft law currently promoted by civic activists and reform-minded MPs and public officials.

4. Anti-corruption law enforcement

The system of anti-corruption law enforcement and prosecution bodies will also be radically changed when all legislative initiatives are fully implemented. It will include the National Anti-Corruption Bureau (NABU), the Specialized Anti-Corruption Prosecutor's Office (SAP), the National Police of Ukraine, the State Bureau of Investigations (SBI) and prosecutor's office. A National Agency for Detection, Investigation and Management of Assets Derived from Corruption and Other Crimes will be set up to identify, recover and manage confiscated assets.

Currently, there are two bodies in charge of fighting high-profile corruption – the NABU and the SAP. The NABU is an entirely new anti-corruption law enforcement body created within the 2014 Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine”, which aims to investigate large-scale bribes, embezzlement, and corruption crimes committed by high-level public servants, judges, MPs, managers of large state-owned companies, and foreign officials.

¹⁴ Monitoring Report by the Center of Policy and Legal Reform, December 2018. Available in Ukrainian at: [http://pravo.org.ua/img/zstored/files/FD\(2\).pdf](http://pravo.org.ua/img/zstored/files/FD(2).pdf).

The legislation provides unprecedented independence to the Bureau, its leadership and personnel: the Director of the Bureau is chosen by the President of Ukraine from two candidates elected by the selection panel, that includes representatives of civil society, academia, media, foreign experts, etc.; the Bureau personnel are recruited through an open competition with involvement of civil society representatives; and the personnel are guaranteed high salaries by the law. The Public Council under the NABU is entitled to monitor and evaluate its activity. The Director must submit public reports about NABU's activity biannually.

The President of Ukraine appointed Artem Sytnyk as the Director of the NABU in April 2015. By December 2016 almost 80% of NABU personnel were recruited, and a number of regional offices are expected to be fully launched by the end of 2016. Access to more than one hundred state registries and databases was already provided to Bureau detectives and analysts. Cooperation agreements were concluded with respective institutions in a number of foreign countries¹⁵.

Setting up the Specialized Anti-Corruption Prosecutor's Office was an important measure to secure NABU's independence. The SAP is empowered to supervise NABU's activity and support court cases. Although the head of the SAP holds the position of Deputy Prosecutor General, its leadership and key personnel were recruited through an open competition conducted by an independent panel consisting of representatives of civil society and trusted foreign experts. Nazar Kholodnytsky was appointed as the head of the SAP in December 2015, and all administrative positions were filled in the same month.

Consequently, the NABU was able to launch its first investigation only in December 2015, following the establishment of the SAP, and its first case was submitted to the court in February 2016. One year after launching their investigative work, NABU detectives conducted over 250 criminal investigations, submitting 41 cases to court and obtaining nine convictions (however, five of them resulted in a plea bargain). An equivalent of nearly 4 million euros was returned to state-owned companies, and NABU prevented embezzlement of almost 22 million

¹⁵ The Report of NABU Director about NABU activity from 2016-2018. Available in English at: https://nabu.gov.ua/sites/default/files/reports/report_februaryaugust.pdf.

euros. The damage caused by the investigated corrupt actions was estimated at 3 billion euros¹⁶.

A number of Members of Parliament were under investigation by NABU detectives. One of them, Oleksandr Onyshchenko, fled to the UK after the Bureau accused him of plotting a nationwide “gas corruption scheme”. The scheme allegedly resulted in the embezzlement of up to 100 million Euros¹⁷.

Immediately after its launch the work of the NABU faced fierce resistance from MPs, the Prosecutor General’s Office (PGO) and other law enforcement bodies. NABU detectives were unlawfully detained by PGO armed personnel when conducting undercover surveillance of a suspected prosecutor. PGO officials who were involved in the clash did not face any serious sanctions from the Prosecutor General. Moreover, a number of draft laws were submitted to the Parliament, aiming to limit NABU’s investigative capacity and to allow the Prosecutor General to interfere in NABU’s investigations.

These actions indicate that political elites are not yet ready to comply with independent investigation of high-profile corruption and struggle to preserve influence on anti-corruption law-enforcement. The PGO acts as the leading institution trying to thwart the efforts of newly established institutions.

The experience of the NABU and the SAP suggests the need for further legislative amendments to increase their independence and effectiveness. Currently, the NABU has to submit a request to the State Security Service of Ukraine to install wiretapping. This undermines NABU’s independence and risks information leakages in high-profile anti-corruption investigations. The initiative to give the NABU an autonomous right to wiretap was a condition of Ukraine-IMF Memorandum signed in September, 2016¹⁸ and was openly supported by the EU¹⁹. Despite this, as of December 2016, the relevant draft law was not adopted by the Parliament.

¹⁶ NABU official statement on results of its activity as of December 2016. Available in English at: <https://nabu.gov.ua/en/novyny/first-year-nabus-investigations-580-million-uah-embezzlement-prevented-100-million-uah>.

¹⁷ NABU press release. Available in Ukrainian at: <https://nabu.gov.ua/novyny/pislya-likvidaciyi-gazovoyi-shemy-zusylyamy-nabu-prybutky-ukrgazvydobuvannya-suttyevo-zrosly>.

¹⁸ Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, September 01, 2016. Available in English at: <http://www.imf.org/external/np/loi/2016/ukr/090116.pdf>.

¹⁹ Remarks by the European Commissioner for European Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, on the occasion of meeting with Ukrainian anti-corruption institutions at the

The NABU faces another urgent issue when submitting cases for court consideration. The unreformed Ukrainian court system suffers from its inability to make unbiased decisions in any corruption-related cases.

Transparency International Ukraine revealed that only 20% of those accused of extortion or bribe collection were imprisoned by court decisions²⁰. Every tenth person was acquitted while the rest received probation or were fined²¹. According to a journalist anti-corruption project “NashiGroshi”, not a single senior official was imprisoned for corruption related offenses in 2015-2016²².

As of December 2016, most of the 41 cases filed by NABU have not yet undergone the first court hearing. At the same time, courts use legal opportunities to block NABU’s work by refusing to issue investigative warrants, leaking information regarding NABU’s evidence-collecting activities, releasing NABU’s suspects on low bails or refusing to remove them from governmental posts.

Although the newly adopted framework law on judiciary envisages establishing the High Anti-Corruption Court, the relevant legislation to implement this provision has yet to be submitted to the Parliament.

Other types of corruption are to be investigated by the State Bureau of Investigations and the National Police under the supervision of the prosecutor’s office. The process of establishing or reforming these institutions is less encouraging compared with the NABU and the SAP.

The State Bureau of Investigations is supposed to investigate serious crimes, including corruption, by high-level officials and personnel of the law enforcement bodies (except those under NABU jurisdiction), crimes committed by the staff of the NABU and the SAP, and military crimes. SBI establishment was stipulated by the respective law adopted in December 2015. The bureau’s head has to be chosen by a selection panel and appointed by the President of Ukraine²³.

However, as of December 2016 the head of the SBI was not yet selected. Civil society and international organizations criticized the

Verkhovna Rada in Kyiv, September 16, 2016. Available in English at: [https:// ec.europa.eu/commission/2014-2019/hahn/announcements/remarks-johannes-hahn-occasion-meeting-ukrainian-anti-corruption-institutions-verkhovna-rada-kyiv_en](https://ec.europa.eu/commission/2014-2019/hahn/announcements/remarks-johannes-hahn-occasion-meeting-ukrainian-anti-corruption-institutions-verkhovna-rada-kyiv_en).

²⁰ Statistic is based on data from March 2014 to February 2018.

²¹ TI Ukraine study results. Available in Ukrainian at: <http://ti-ukraine.org/en/news/oficial/5948.html>.

²² Results of Nashi Groshi monitoring. Available in Ukrainian at: [http:// nashigroshi.org/2016/08/31/zi-vsih-vip-chynovnykiv-za-mynulyj-rik-v-ukrajini-sily-v-tyurmu-lyshe-troje-slidchyh-i-holova-silrady](http://nashigroshi.org/2016/08/31/zi-vsih-vip-chynovnykiv-za-mynulyj-rik-v-ukrajini-sily-v-tyurmu-lyshe-troje-slidchyh-i-holova-silrady).

²³ Latest statistics on the governmental open data web-portal are available in Ukrainian at: [http:// data.gov.ua/](http://data.gov.ua/).

selection process for its unclear criteria for selecting panel members, inclusion of MPs into the panel, its closed and non-transparent work, and potential political influence on the panel's decision. The final decision is expected to be taken in February 2017.

The delay in setting up the SBI seriously undermines the effectiveness and credibility of the new anti-corruption institutional infrastructure. It leaves law enforcement and army personnel, including the NABU, without due oversight since the PGO, currently empowered to oversee and investigate their activities, is itself in need of a radical reform.

The National Police of Ukraine is supposed to investigate minor corruption crimes (petty bribery beyond the jurisdiction of the NABU and the SBI) and corruption-related administrative offenses. The comprehensive reform of the Ministry of Internal Affairs including the creation of the National Police is still underway.

Although there are reasons to believe that the new patrol police will be corruption free, there are serious concerns that further reform of the National Police will stall. The Interior Minister Arsen Avakov is blamed for failing to dismiss officers who participated in repressions against Euromaidan activists. He was also rightfully accused of protecting some senior officials presumably involved in corruption schemes. Current open competitions for a number of senior posts largely fail to attract professionals with high integrity standards²⁴.

It is expected that prosecution bodies will supervise pre-trial anti-corruption investigations conducted by the SBI and the police and will support the accusations in court. The Prosecutor General's Office of Ukraine is widely perceived as one of the main obstacles to the successful implementation of the anti-corruption reform. The transitional provisions of the 1996 Constitution stipulated that the post-Soviet prosecution system should have been brought in line with the EU standards. The investigative and oversight functions should have been clearly separated and the PGO should have mainly focused on overseeing pre-trial investigations and supporting accusations in courts.

It was not until Euromaidan that the reform was launched. However, an attempt to bring "new blood" into the PGO failed. As an outcome of a large scale recruitment campaign at the local level, only 3% of new people outside the system were appointed to administrative positions. Attempts to

²⁴ 2018 Open Government Awards. Available in English at: www.opengovawards.org/2018Results.

reboot the PGO at the central level also failed and reform-oriented Deputies of the General Prosecutor David Sakvarelidze and Vitalii Kasko were removed.

Current General Prosecutor Yuriy Lutsenko already proposed that some reform initiatives should be reversed – he stated that the so-called “general oversight functions” should be given back to the PGO. This function was widely used by the prosecutors to extort bribes from businesses and citizens. Moreover, one MP recently submitted a draft law giving the PGO the right to decide what institution should investigate each high-profile corruption case. The draft law was clearly aimed at undermining NABU’s independence²⁵.

It is worth noting separately that the PGO failed to properly investigate corruption crimes presumably committed by high-level politicians and senior public servants under Viktor Yanukovich regime – not a single corruption accusation was submitted to the court.

CONCLUSIONS

During 2016-2018 Ukraine has greatly progressed in its fight against corruption: a new institutional framework was established and anti-corruption instruments were launched. However, as anti-corruption reform enters its decisive stage – enabling anti-corruption institutions’ work and sentencing corrupt officials – it meets growing resistance from old political and business elites.

The most widely recognized achievements are providing open access to public information and involving civic activists in governmental decision-making. The success of establishing new anti-corruption institutions is mixed, with some of them almost fully operational and independent, and others falling prey to political pressure. The General Prosecutor’s Office appears to be the main institutional stronghold of those trying to thwart post-Euromaidan anti-corruption fight. Their resistance culminated in a fight over the introduction of the new public servants’ electronic asset declaration system.

The newly created National Agency for Corruption Prevention shows disturbing vulnerability to political influence. It has been unable to effectively monitor public officials’ integrity and lifestyles and political parties’ compliance with new requirements for their financial

²⁵ Evaluation figures by CSO “Eidos”. Available in Ukrainian at: <http://eidos.org.ua/novyny/chy-zapustyat-parlamentari-povnotsinnu-robotu-portalu-e-data/>.

transparency. Therefore, NACP's further activity should be closely monitored by civil society and international organizations.

Being almost fully functional, the NABU and the SAP demonstrate first encouraging results of anti-corruption investigations, despite growing resistance from the GPO and sabotage from courts.

The development of the SBI was stalled at the stage of selecting its head.

In order to ensure smooth implementation of anti-corruption policy, additional legislative measures are needed. It is crucial that CSOs, pro-reform politicians and officials, and international organizations focus their efforts on the implementation of anti-corruption reforms. The EU, and other international partners, should make their assistance to Ukraine strictly conditional on the reform's effectiveness.

SUMMARY

Starting in 2014, Ukraine has undertaken significant reforms to address corruption in public life. So far, there has been greater success in restricting the opportunities for corruption than in bringing corrupt officials to justice. Corruption is a symptom of the poor system of governance in the country, not the cause of it. A decisive breakthrough will require opening the political system to more actors, creating greater competition and developing credible institutions to support the rule of law. Anti-corruption successes include the cleaning up of Naftogaz and reforms in administrative services, banking, the patrol police, procurement and taxation. Decentralization is also creating new opportunities for citizens to hold local authorities accountable for managing local public resources.

Progress is lacking in priority areas such as customs, deregulation, privatization, demonopolization and the reform of public administration. Defence spending is particularly opaque. Corruption schemes remain untouched in some parts of the energy sector. An overhaul of the civil service is also essential. Reforms of the law enforcement agencies are proceeding slowly, if at all. It is too early to say whether judicial reform will lead to improvements in the functioning of the courts because of the deep underlying culture of corruption in the judicial system. The newly created National Anti-Corruption Bureau has yet to achieve a high-level prosecution because of the influence of vested interests over the judiciary.

This situation should change for the better after the formation of the High Anti-Corruption Court, but there is likely to be a risk of selective justice.

Punitive measures on their own can only have a limited effect on reducing corruption. They must be part of a sustained and comprehensive strategy to reduce the space for corrupt practices and open the political and economic system to greater competition. This requires demonopolizing politics, and encouraging Ukraine's power groups to accept new rules of the game. Citizens condemn high-level corruption but regard petty corruption as a justifiable evil. This perception needs to change, and citizens must accept their responsibilities for limiting the scope of corruption. The material used in the study has only the analysis of information resources.

REFERENCES

1. OECD Report "Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018", p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

2. NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: <http://nazk.gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-varti>.

3. Civil society statement. Available in English at: http://www.transparency.org/news/pressrelease/ukraine_must_certify_e_declaration_anti_corruption_tool_to_make_it_effectiv.

4. See NACP official statement about results of its activity as of November 2018.

5. See NACP official statement about results of its activity as of December 2018.

6. Monitoring Report by the Center of Policy and Legal Reform, December 2018. Available in Ukrainian at: [http://pravo.org.ua/img/zstored/files/FD\(2\).pdf](http://pravo.org.ua/img/zstored/files/FD(2).pdf).

7. The Report of NABU Director about NABU activity from 2016-2018. Available in English at: https://nabu.gov.ua/sites/default/files/reports/report_februaryaugust.pdf.

8. NABU official statement on results of its activity as of December 2016. Available in English at: <https://nabu.gov.ua/en/novyny/first-year->

nabus-investigations-580-million-uah-embezzlement-prevented-100-million-uah.

9. NABU press release. Available in Ukrainian at: <https://nabu.gov.ua/novyny/pislya-likvidaciyi-gazovoyi-shemy-zusylyamy-nabu-prybutky-ukrgazvydobuvannya-suttyevo-zrosly>.

10. Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, September 01, 2016. Available in English at: <http://www.imf.org/external/np/loi/2016/ukr/090116.pdf>.

11. Remarks by the European Commissioner for European Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, on the occasion of meeting with Ukrainian anti-corruption institutions at the Verkhovna Rada in Kyiv, September 16, 2016. Available in English at: https://ec.europa.eu/commission/2014-2019/hahn/announcements/remarks-johannes-hahn-occasion-meeting-ukrainian-anti-corruption-institutions-verkhovna-rada-kyiv_en.

12. Statistic is based on data from March 2014 to February 2018.

13. TI Ukraine study results. Available in Ukrainian at: <http://ti-ukraine.org/en/news/oficial/5948.html>.

14. Results of Nashi Groshi monitoring. Available in Ukrainian at: <http://nashigroshi.org/2016/08/31/zi-vsih-vip-chynovnykiv-za-mynulyj-rik-v-ukrajini-sily-v-tyurmu-lyshe-troje-slidchyh-i-holova-silrady>.

15. Latest statistics on the governmental open data web-portal are available in Ukrainian at: <http://data.gov.ua/>.

16. 2018 Open Government Awards. Available in English at: www.opengovawards.org/2018Results.

17. Evaluation figures by CSO “Eidos”. Available in Ukrainian at: <http://eidos.org.ua/novyny/chy-zapustyat-parlamentari-povnotsinu-robotu-portalu-e-data/>.

Information about author:

Bortnyak K. V.

Candidate of Science of Law, Assistant Professor, Assistant Professor
at the Department of Constitutional and International Law
of the Educational and Humanitarian Institute
of the V. I. Vernadsky Taurida National University
33, Ivan Kudria str., Kyiv, Ukraine